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Presidential Documents

Title 3—

The President

Proclamation 7563 of May 17, 2002

National Safe Boating Week, 2002

By the President of the United States of America

A Proclamation

America is blessed with beautiful coastlines, lakes, and waters that offer ample opportunities for boating recreation. More than 70 million recreational boaters use our waters every year and boat registrations continue to increase. Although the number of recreational boats and boaters is growing, the incidence of boating deaths continues to drop, thanks to an increasing emphasis on safety.

Despite this positive trend, much work remains to further reduce boating accidents and fatalities. National Safe Boating Week and the North American Safe Boating Campaign remind us that safety must always remain a top priority when boating on our Nation's waterways.

To further reduce boating deaths, it is vital that both children and adults wear life jackets while boating. Nearly 70 percent of recreational boating deaths are by drowning, and nearly 90 percent of these victims were not wearing life jackets. Many of these fatalities could have been avoided had a Coast Guard-approved life jacket or personal flotation device been worn. Thanks to new technology and designs, life jackets are now less burdensome to wear.

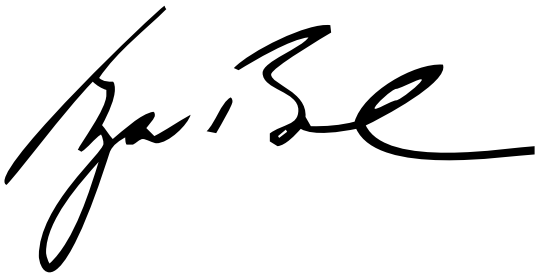
Another major cause of boating accidents is the operation of boats while drunk or otherwise impaired. Boating under the influence of alcohol or drugs is illegal in every State and is a violation of Federal law. According to the United States Coast Guard, the dangerous effects of alcohol on persons operating boats are even greater than for individuals operating land vehicles. The additional factors that can further impair judgment and coordination include motion, vibration, engine noise, wind, sun, and any spray. Boat operators with a blood alcohol concentration above .10 percent are ten times more likely to be killed in a boating accident than boat operators who have not been drinking. During National Safe Boating Week, we must underscore again that to operate a boat or any vehicle while under the influence is never safe.

A less recognized boating hazard involves a silent killer: carbon monoxide. Dangerous or deadly fumes can accumulate in confined spaces on boats, near stern ladders, and under swimming platforms. Swimmers and water-skiers behind running boat engines face the greatest risk of exposure to exhaust fumes, which can build up to deadly levels. Boaters should be aware of the threats posed by carbon monoxide and take steps to avoid them. Individuals may learn more about carbon monoxide and other ways to stay safe while boating by visiting the U.S. Coast Guard's website at www.uscgboating.org.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 18 through May 24, 2002, as National Safe Boating Week. I encourage the Governors of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the officials of other areas subject to the jurisdiction of the United States, to join in observing this occasion. I also urge boaters to learn about proper boating practices and to take advantage of programs offered by the U.S. Coast Guard Auxiliary. By taking sensible precautions on the water and learning more about potential dangers, boaters can enjoy boating recreation and help ensure the safety of others.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–13029
Filed 5–21–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7564 of May 17, 2002

World Trade Week, 2002

By the President of the United States of America

A Proclamation

Trade plays a vital role in encouraging prosperity and improving the lives of people around the world. It fosters economic growth, ingenuity, and innovation. And it builds high-quality jobs and promotes economic and political stability around the world. During World Trade Week, we recognize the importance of trade to building a brighter future for our Nation and for countries throughout the world.

Over the last decade, U.S. exports have accounted for as much as a quarter of our Nation's economic growth. Most of our exporters are small- and medium-sized firms that have fewer than 100 employees. An estimated 12 million U.S. jobs are supported by our export of manufactured products, agricultural goods, technology, and other goods and services. These jobs are high-quality, high-paying positions that provide good wages.

As the world's largest exporter, the United States is a leader in promoting free trade. Free trade and open markets benefit businesses, employees, and consumers by creating a competitive environment with greater choice and lower prices. We must continue to promote an aggressive trade agenda that opens markets and builds economic opportunity. In support of this goal, my Administration has worked to help secure the entry of China and Taiwan into the World Trade Organization. We also completed trade agreements with Vietnam and Jordan and launched new global trade negotiations in Doha, Qatar. But more remains to be done.

At present, there are about 150 free trade agreements in effect worldwide, nearly 25 percent of which involve countries in the Western Hemisphere. The United States is a party to only three of these pacts. To give U.S. exporters much broader access to markets throughout the hemisphere, our Nation envisions a Free Trade Area of the Americas (FTAA), an area that would be the world's largest open market. The FTAA would include more than 800 million consumers in countries with a combined Gross Domestic Product of around $13 trillion. Our Nation would also benefit from renewal of the Andean Trade Preference Act, which would continue to help create economic alternatives to drug production in Andean region countries.

Economists have calculated that lowering trade barriers by just one-third will strengthen the world's economic welfare by up to $613 billion and that of the United States by $177 billion. For the average American family of four, that amounts to $2500 of annual savings.

Another critical step for U.S. economic growth is successful passage of Trade Promotion Authority. Under this legislation, the Congress grants the President the authority to negotiate trade agreements. Trade Promotion Authority demonstrates to our trading partners the alliance that exists between the executive and legislative branches to help raise living standards through out the world. This is vital to securing new free trade agreements with potential negotiating partners.

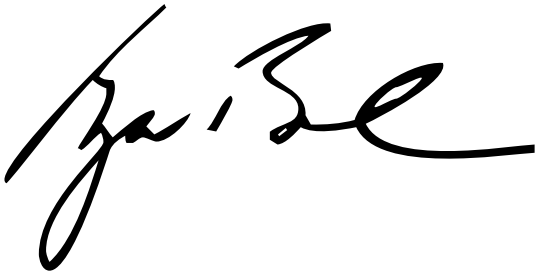
Fundamental to free trade is competitive fairness. America's support of an aggressive, forward-looking trade agenda requires that government assist industries' interests when they are challenged by unfair trading practices

or subsidies. We must insist that our trading partners honor their commitments. As we open markets for American companies competing internationally, we need tools to secure a level playing field for American businesses. And we will remain committed to improving both the environment and worldwide labor standards.

In the future, trade will continue to play a crucial role in creating economic and political stability, building democracies, reducing poverty, and contributing to an increased standard of living around the world. Open trade will help ensure a more peaceful and prosperous tomorrow for all people.

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 May 19 through May 25, 2002, as World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate the benefits of trade to our economy and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–13030
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Rules and Regulations

Federal Register
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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.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 614

RIN 3052–AB86

Organization; Loan Policies and Operations; Termination of Farm Credit Status; Effective Date; Correction

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date; correction.

SUMMARY: The Farm Credit Administration (FCA) published a notice of effective date (67 FR 31938, May 13, 2002) that announced the effective date for a final rule amending FCA regulations to allow a Farm Credit System (FCS or System) bank or association to terminate its FCS charter and become a financial institution under another Federal or State chartering authority. This document corrects a typographical error in the notice of effective date.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Technical Editor, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the notice for publication in the **Federal Register**, an error was inadvertently made when stating the Code of Federal Regulations parts in the **EFFECTIVE DATE** caption.

Accordingly, the Effective Date caption should read as follows:

EFFECTIVE DATE: The regulation amending 12 CFR parts 611 and 614 published on April 12, 2002 (67 FR 17907) is effective May 13, 2002.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 16, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–12782 Filed 5–21–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM218, Special Conditions No. 25–202–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 Garrett Aviation Services. These airplanes will have novel and unusual design features 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 provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 15, 2002. Comments must be received on or before June 20, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM218, 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. NM218. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 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:

Comments Invited

The FAA has determined that the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received; therefore, good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On April 12, 2002, Garrett Aviation Services, 1200 North Airport Drive,

Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Dassault Aviation Mystere-Falcon 50 airplanes approved under Type Certificate No. A46EU. The Dassault Aviation Mystere-Falcon 50 is a small transport category airplane. The Dassault Aviation Mystere-Falcon 50 airplanes are powered by three Turbofan Engines with a maximum takeoff weight of 40,780 pounds. The aircraft operate with a 2-pilot crew and can hold up to 19 passengers. The modification incorporates the installation of a Rockwell Collins ProLine 21 Display System, a Collins AHS–3000 Attitude-Heading Reference System, and a Goodrich GH–3000 Electronic Standby Display. The ProLine 21 system consists of dual Electronic Primary Flight Display systems that replace the existing Primary Flight Display systems. These systems 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, Garrett Aviation Services 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 certification basis for the modified 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 except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A46EU.

If the Administrator finds that the applicable airworthiness regulations (that is, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Mystere-Falcon 50 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

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

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Dassault Aviation Mystere-Falcon 50 airplanes modified by Garrett Aviation Services will incorporate dual Electronic Primary Flight Display systems that will perform critical functions. The modification incorporates the installation of a Rockwell Collins ProLine 21 Display System, a Collins AHS–3000 Attitude-Heading Reference System, and a Goodrich GH–3000 Electronic Standby Display. The ProLine 21 system consists of dual Electronic Primary Flight Display systems that replace the existing Primary Flight Display systems. These systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effect 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 electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Aviation Mystere-Falcon 50 airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems, which 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 digital avionics 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 (root-mean-square) 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 field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below 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–1GHz	700	100
1 GHz–2 GHz	2000	200
2GHz–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 root-mean-square (rms) values 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 Garrett Aviation Services. Should Garrett Aviation Services apply at a later date for design change approval 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 Dassault Aviation Mystere-Falcon 50 airplanes modified by Garrett Aviation Services. 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 the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. 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 type certification basis for Dassault Aviation Mystere-Falcon 50 airplanes modified by Garrett Aviation Services.

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, May 15, 2002.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12852 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–123–AD; Amendment 39–12755; AD 2002–10–09]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 airplanes. This action requires repetitive inspections for evidence of fuel accumulation inside of the aft service compartment; and follow-on actions, if necessary. This AD also provides for an optional terminating modification. This action is necessary to prevent such fuel accumulation, which could result in fuel vapors coming into contact with ignition sources and consequent fire. This action is intended to address the identified unsafe condition.

DATES: Effective June 6, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via the Internet must contain ''Docket No. 2002–NM–123–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Model Galaxy and Gulfstream 200 airplanes. The CAAI advises that fuel was found on service door 310AB and in the aft service compartment on several airplanes. The cause of the fuel leakage has not yet been determined. This condition, if not corrected, could result in a fire in the aft service compartment of the airplane.

Explanation of Relevant Service Information

Gulfstream has issued GALAXY Alert Service Bulletin GALAXY–28A–130, dated March 22, 2002, which describes procedures for repetitive general visual inspections for evidence of fuel accumulation inside of the aft service compartment; and follow-on actions, if necessary. The follow-on actions

include performing a leak test to identify the source of any fuel leak if there is fuel accumulation; repairing any fuel leak found; or, if the source of the leak cannot be found, performing an engine run-up leak test, and sealing certain drain holes and the access door with speed tape prior to a ferry flight to an authorized service center. The CAAI classified this alert service bulletin as mandatory and issued Israeli airworthiness directive 28–02–03–15, dated March 26, 2002, in order to assure the continued airworthiness of these airplanes in Israel.

Since the issuance of the Israeli airworthiness directive, the manufacturer has issued Gulfstream Service Bulletin 200–53–127, dated May 2, 2002, which describes procedures for modification of the aft fuselage area, which eliminates the need for the repetitive inspections. The modification includes ensuring that certain drain holes are present and are eight millimeters in diameter; installing a diverter around the access door of the aft service compartment; installing grommets on fuselage drain holes; installing an extension to the existing auxiliary power unit diverter; drilling fastener holes, installing, and sealing an angle for tail cone drainage; removing certain fuel vent tubes; repairing or replacing the form in-place gasket between the service door and fuselage, if necessary; and applying finishing treatment. The CAAI classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between This AD, Service Information, and Foreign Airworthiness Directive

This AD differs from the parallel Israeli airworthiness directive and GALAXY alert service bulletin in that it requires accomplishment of the initial inspection within five flight cycles after the effective date of this AD. The alert service bulletin and the Israeli airworthiness directive recommend accomplishment of the initial inspection prior to further flight. In developing an appropriate compliance time for this AD, the FAA considered not only the CAAI's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. In light of these factors, we have determined that requiring the inspection within five flight cycles after the effective date of the AD will not adversely affect safety and allows reasonable time for operators to accomplish the inspection without immediately taking airplanes out of service.

Additionally, operators should note that, although the Israeli airworthiness directive does not reference a modification, this AD mandates modification of the aft fuselage area for conditions where fuel leakage cannot be found.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–123–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–10–09 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–12755. Docket 2002–NM–123–AD.

Applicability: Model Galaxy airplanes, having serial numbers 004 through 056 inclusive; and Gulfstream 200 airplanes, having serial numbers 057 through 061 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel accumulation inside of the aft service compartment, which could result in fuel vapors coming into contact with ignition sources and consequent fire, accomplish the following:

Repetitive Inspections/Follow-On Actions

(a) Within 5 flight cycles after the effective date of this AD, do a general visual inspection to detect evidence of fuel accumulation inside of the aft service compartment, per the Accomplishment Instructions of GALAXY (Gulfstream Aerospace Corporation) Alert Service Bulletin GALAXY–28A–130, dated March 22, 2002.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no evidence of fuel accumulation is found, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5 flight cycles until the modification provided by paragraph (b) of this AD has been accomplished. Accomplishment of the modification terminates the requirements of this AD.

(2) If any evidence of fuel accumulation is found, before further flight, accomplish the leak test per paragraph 5.A. of the Accomplishment Instructions of the alert service bulletin.

(i) If no fuel leak is found, before further flight, accomplish the modification provided by paragraph (b) of this AD. Accomplishment of the modification terminates the requirements of this AD.

(ii) If a fuel leak is found, before further flight, repair the leak per paragraph 5. of the Accomplishment Instructions of the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5 flight cycles until the modification provided by paragraph (b) of this AD has been accomplished. Accomplishment of the modification terminates the requirements of this AD.

Optional Terminating Modification

(b) Accomplishment of the modification of the aft fuselage area (includes ensuring that certain drain holes are present and are 8 millimeters in diameter; installing a diverter around the access door of the aft service compartment; installing grommets on fuselage drain holes, installing an extension to the existing APU diverter, drilling fastener holes), per the Accomplishment Instructions of Gulfstream Service Bulletin 200–53–127, dated May 2, 2002, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the actions listed in paragraph 6. of the Accomplishment Instructions of GALAXY (Gulfstream Aerospace Corporation) Alert Service Bulletin GALAXY–28A–130, dated March 22, 2002, have been accomplished.

Incorporation by Reference

(e) The actions required by paragraph (a) of this AD, shall be done in accordance with GALAXY (Gulfstream Aerospace Corporation) Alert Service Bulletin GALAXY–28A–130, dated March 22, 2002. The modification provided by paragraph (b) of this AD, if accomplished, shall be done in accordance with Gulfstream Service Bulletin 200–53–127, dated May 2, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Israeli airworthiness directive 28–02–03–15, dated March 26, 2002.

Effective Date

(f) This amendment becomes effective on June 6, 2002.

Issued in Renton, Washington, on May 13, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12516 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–17]

Modification of Class E Airspace, Newport, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Newport Municipal Airport, Newport, OR. Newly developed Area Navigation (RNAV) Special Standard Instrument Approach Procedure (SIAP) at the Newport Municipal Airport made this action necessary. Additional Class E 700-feet and 1,200-feet controlled airspace above the surface of the earth is required to contain aircraft executing

the RNAV RWY 16 RNAV SIAP at Newport Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Newport Municipal Airport, Newport, OR.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On March 11, 2002, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E Airspace at Newport, OR in order to provide a safer IFR environmental at Newport Municipal Airport, Newport, OR (67 FR 10864). This amendment provides additional Class E5 700 and 1,200 foot controlled Airspace at Newport, OR to contain aircraft conducting instrument flight operations at Newport Municipal Airport. Additionally, this action modifies the effective hours of the Class E–2 Surface Area from part-time to continuous. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) modifies Class E Airspace at Newport, OR, in order to provide adequate controlled Airspace for IFR operations at Newport Municipal Airport, Newport, OR. Newly developed RNAV RWY 16 SIAP at the Newport Municipal Airport and newly installed 24-hour weather reporting equipment made this modification necessary. Additional Class E 700-feet and E 1,200-feet controlled Airspace, above the surface of the earth is required to contain aircraft executing the Instrument Flight Rules (IFR) operations, at Newport Municipal Airport. New weather reporting equipment has been installed and certified; therefore, this action modifies the Class E–2 Airspace at Newport, OR to a 24-hour operation. The FAA establishes Class E Airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable Airspace and to promote safe flight operations under IFR at the Newport Municipal Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this Airspace docket are based on North American Datum 83. Class E Airspace designated as surface area for an airport, are published in Paragraph 6002; Class E Airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E Airspace designation listed in this document will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6002–Class E Airspace designated as surface area for airport.

* * * * *

ANM OR E–2–Newport, OR [Revised]

Newport Municipal Airport, OR
(Lat. 44°34′49″N, long. 124°03′28″W.)
Newport VORTAC
(Lat. 44°34′31″N, long. 124°03′38″W)

Within a 4-mile radius of the Newport Municipal Airport, and within 3.5 miles each side of the Newport VORTAC 357° radial extending from the 4-mile radius to 7.9 miles north of the VORTAC.

* * * * *

Paragraph 6005–Class E Airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM OR E5–Newport, OR [Revised]

Newport Municipal Airport, OR
(Lat. 44°34′49″N, long 124°03′28″W.)
Newport VORTAC
(Lat. 44°34′31″N, long. 124°03′38″W)

That airspace extending upward from 700-feet above the surface within a 5.5 mile radius of Newport Municipal Airport, and within 3.5 miles each side of the 005° bearing from the Newport VORTAC extending from the 5.5 mile radius to 8.7 miles north of the VORTAC, and within 2 miles each side of the Newport VORTAC 044° radial extending from the 5.5 mile radius to 11.4 miles northeast of the VORTAC, and within 3 miles each side of the Newport VORTAC 341° radial extending from the 5.5 mile radius to 7 miles northwest of the VORTAC; and that airspace extending upward from 1,200-feet above the surface, bounded by a line beginning at lat. 44°35′27″N., long. 124°17′15″W.; to lat. 44°47′56″N., long. 124°21′20″W.; to lat. 44°51′32″N., long. 124°21′30″W.; to lat. 44°54′10″N., long. 124°19′50″W.; to lat. 45°05′37″N., long. 124°18′01″W.; to lat. 45°05′37″N., long. 123°52′30″W.; to lat. 44°31′59″N., long. 123°58′04″W., to lat. 44°18′20″N., long. 124°11′55″W., to lat. 44°21′58″N., long. 124°20′30″W.; to lat. 44°25′22″N., long. 124°14′40″W.; thence to point of origin; excluding that airsparce within Federal Airways, the Tillamook and Corvallis, OR, Class E airspace area.

* * * * *

Issued in Seattle, Washington on May 13, 2002.

David B. Johnson,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–12854 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–6]

Amendment of Class E5 Airspace; Liberty, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E5 airspace at Liberty, NC. On April 20, 2000, the May Airport, which is included in the Liberty, NC Class E5 airspace, reverted from a public use facility to private use and the Standard Instrument Approach Procedure (SIAP) serving that airport was cancelled. Cancellation of the SIAP at May Airport eliminated the need for Class E5 airspace, therefore, the Liberty, NC Class E5 airspace legal description must be amended to reflect the change.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

The Liberty, NC Class E5 airspace includes the May Airport Class E5 airspace. On April 20, 2000, the May Airport reverted from a public use facility to private use and cancelled the SIAP serving the airport. Cancellation of the SIAP eliminated the need for Class E5 airspace at the May Airport, and requires that the Liberty, NC Class E5 airspace legal description be amended to delete the May Airport Class E5 airspace. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action eliminates the impact on controlled airspace on the users of the airspace in the vicinity of the May Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Liberty, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 2979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Liberty, NC [Revised]

Liberty Causey Airport, NC
(Lat. 35°54′46″ N, long. 79°37′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Causey Airport.

* * * * *

Issued in College Park, Georgia, on May 15, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–12853 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–003]

RIN 2115–AE47

Drawbridge Operation Regulation; Pelican Island Causeway, Galveston Channel, TX

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is changing the existing drawbridge operation regulation for the draw of the Pelican Island Causeway bridge across Galveston Channel, at Galveston, Texas. The modification will allow for the morning closure period to be moved 20 minutes earlier to better align with the automobile traffic that crosses the bridge. This rule also clarifies the mile mark for the location of the drawbridge.

DATES: This rule is effective June 21, 2002.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–02–003 and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 21, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation, Pelican Island Causeway, Galveston Channel, TX in the **Federal Register** (67 FR 7989). We received one response commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Presently, the draw of the Pelican Island Causeway bridge, Galveston Channel mile 4.5 (GIWW mile 356.1), at Galveston, Texas, shall open on signal; except that, from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time. The bridge owner has requested to modify the morning bridge closure periods to allow the bridge to remain closed to navigation from 6:40 a.m. until 8:10 a.m. vice 7 a.m. to 8:30 a.m. Approximately 4,000 vehicles cross the bridge in each direction daily. The adjustment to the morning closure times reflects changes to align the closure periods with the work times of the businesses located on the island. The bridge has been observing the morning closure times of 6:40 a.m. to 8:10 a.m. for several years without properly codifying the times in the regulation. This change will reflect the actual times the bridge remains closed in the morning hours.

Additionally, by this rulemaking, the Coast Guard plans to clarify the published location of the bridge in the Code of Federal Regulations. In 33 CFR 117.977, the section heading is for Galveston Channel. The mile mark for the bridge in that section, 356.1, is for the GIWW. The bridge is actually located at mile 4.5 of the Galveston Channel. This rulemaking will clarify the mile mark for the bridge by including both the Galveston Channel mile mark and the GIWW mile mark.

Discussion of Comments and Changes

One response was received in response to the **Federal Register** notice and the Public Notice. The Gulf Intracoastal Canal Association had no objections to the proposed change.

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).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods.

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.

This rule will not have a significant impact on the number of small entities because the bridge has been operating on this revised schedule for several years.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 would call 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 the preamble.

Taking of Private Property

This rule would 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 cause 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 32(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.977 is revised to read as follows:

§ 117.977 Pelican Island Causeway, Galveston Channel.

The draw of the Pelican Island Causeway bridge across Galveston Channel, mile 4.5 of the Galveston Channel, (GIWW mile 356.1) at Galveston, Texas, shall open on signal; except that, from 6:40 a.m. to 8:10 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the draw need not be opened for passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time.

Dated: May 9, 2002.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–12732 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–034]

RIN 2115–AE47

Drawbridge Operation Regulations: Canaveral Barge Canal, Cape Canaveral, Brevard County, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating regulations of the Christa McAuliffe, State Road (SR) 3 bridge across the Canaveral Barge Canal at Cape Canaveral, Florida. This temporary rule allows the Christa McAuliffe, SR 3 bridge to remain closed for periods of time during the week and provides a temporary schedule for other times during the week. This rule is necessary to facilitate repairs to the bridge.

DATES: This rule is effective from 6:15 a.m. on May 15, 2002 until 12:01 a.m. on September 1, 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 [CGD07–02–034] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, Room 432, 909 S.E. 1st Avenue, Miami, Florida 33131–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone 305–415–6743.

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, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest because immediate action is needed to facilitate repairs to the bridge.

For the same reason, 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

The Christa McAuliffe, SR 3 bridge, mile 1.0, across the Canaveral Barge Canal, is a twin, double bascule leaf bridge, with a vertical clearance of 21.6 feet at mean high water and a horizontal clearance of 90.3 feet between fenders. The existing operating regulations for this bridge in 33 CFR 117.273(a) require the bridge to open on signal from 6 a.m. to 10 p.m. except that, from 6:15 a.m. to 7:45 a.m. and from 3:30 p.m. to 5:15 p.m. Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels. From 10 p.m. to 6 a.m., everyday, the draws shall open on signal if at least three hours notice is given to the bridge tender. The draws shall open as soon as possible for the passage of public vessels of the United States, tugs with tows and vessels in distress.

The Florida Department of Transportation requested that the Christa McAuliffe, SR 3 bridge operations be temporarily changed to allow needed repairs to the structure. This rule temporarily changes the bridge's operating regulations to require the bridge to open on signal, except from 6:15 a.m. to 8:15 a.m. and from 3 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. From 8:15 a.m. to 3 p.m., Monday through Friday except Federal holidays, the draws need only open on the hour and half hour for the passage of vessels. From 10 p.m. until 6 a.m., everyday, the draws shall open on signal if at least three hours notice is given to the bridge tender. The draws shall open as soon as possible for the passage of public vessels of the United States, tugs with tows and vessels in distress.

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). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because the regulations will only affect an area of limited marine traffic and this temporary rule still provides for scheduled openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered

whether this rule would have a significant economic effect upon 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. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Canaveral Barge Canal under the Christa McAuliffe, SR 3 bridge between May 15, 2002 and September 1, 2002. 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 the regulations will only affect an area of limited marine traffic and this rule still provides for scheduled openings.

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. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 requirements 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. 1521–1538) 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 the 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 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 has considered the environmental impact of this rule and has concluded that under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket we have indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From 6:15 a.m. on May 15, 2002, until 12:01 a.m. on September 1, 2002, in § 117.273, temporarily suspend paragraph (a) and add a new temporary paragraph (c) to read as follows:

§ 117.273 Canaveral Barge Canal.

* * * * *

(c) The draws of the Christa McAuliffe bridge, SR 3, mile 1.0, near Indianola shall open on signal, except from 6:15 a.m. to 8:15 a.m. and from 3 p.m. to 6 p.m., Monday through Friday except Federal holidays the draws need not open. From 8:15 a.m. to 3 p.m., Monday through Friday except Federal holidays, the draws need only open on the hour and half hour for the passage of vessels. From 10 p.m. until 6 a.m., everyday, the draws shall open on signal if at least three hours notice is given to the bridge tender. The draws shall open as soon as possible for the passage of public vessels of the United States, tugs with tows and vessels in distress.

Dated: May 9, 2002.

John E. Crowley, Jr.

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

[FR Doc. 02–12730 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–056]

Drawbridge Operation Regulations: New Rochelle Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: On May 10, 2002, the Commander, First Coast Guard District, issued a revised temporary deviation from the drawbridge operation regulations for the Glen Island Bridge, mile 0.8, across New Rochelle Harbor at New Rochelle, New York. This revised deviation replaces the temporary deviation issued on March 21, 2002, and will allow the bridge to operate on scheduled openings daily, and remain closed to navigation from 11 p.m. to 7 a.m., Sunday through Friday, from May 12, 2002 through June 26, 2002. This revised temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This revised deviation is effective from May 12, 2002, through June 26, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: On February 5, 2002, the Westchester County Department of Public Works, requested a temporary deviation from the drawbridge operating regulations for the Glen Island Bridge, mile 0.8, across New Rochelle Harbor, in New York. The purpose of the temporary deviation was to facilitate necessary maintenance, replacement of deteriorated concrete and structural supports, at the bridge. On March 21, 2002, the Commander, First Coast Guard District, issued a temporary deviation from the drawbridge operating regulations for the Glen Island Bridge. A notice of that deviation was published on March 29, 2002 (66 FR 15117).

On April 10, 2002, the bridge owner advised the Coast Guard that some potential problems were discovered concerning the temporary manual bridge opening system that will be utilized to open the bridge. The temporary manual system takes thirty-minutes to fully open and close the bridge compared to the normal ten-minute cycle time for bridge openings. This lengthy operating cycle is expected to cause vehicular traffic delays for vehicles traveling to and from the Glen Island County Park.

As a result of the above information, the Commander, First Coast Guard District issued a revised deviation on May 10, 2002, to help mitigate traffic delays during the effective period of necessary maintenance at the bridge.

The Coast Guard and the owner of the bridge coordinated this schedule with the mariners that normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system and to vehicular traffic.

Under the revised temporary deviation the Glen Island Bridge will operate from May 12, 2002 through June 26, 2002, as follows:

- From 11 p.m. to 7 a.m., Sunday through Friday, the draw need not open for vessel traffic.
- From 7 a.m. to 2 p.m., Monday through Wednesday, the draw shall open on signal, every other hour, on the odd hour and from 2 p.m. to 11 p.m., the draw shall open every hour on the hour.
- From 7 a.m. to 2:30 p.m., Thursday and Friday, the draw shall open on signal every other hour on the odd hour and from 2:30 p.m. to 10:30 p.m. every hour on the half hour.
- The draw shall open on signal, every hour on the hour all day on Saturday and on Sunday until 11 p.m.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: May 10, 2002.

V.S. Crea,

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

[FR Doc. 02–12801 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–033]

RIN 2115–AA97

Safety Zone; Lake Champlain Challenge, Cumberland Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Lake Champlain Challenge Hydroplane race located on Cumberland Bay, NY. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the affected waterway.

DATES: This rule is effective from 11:30 a.m. on Saturday, June 29, until 6:30 p.m. on Sunday, June 30, 2002.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. 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 CGD01–02–033 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander M. Day, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 2, 2002, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Lake Champlain Challenge, Cumberland Bay, NY in the **Federal Register** (67 FR 15507). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The New England Inboard Racing Association sponsors the Lake Champlain Challenge, a high-speed powerboat race with less than 100 powerboats, propelled by 1.5 to 6 liter engines, at the north end of Cumberland Bay, Plattsburgh, NY. The safety zone includes all waters of Cumberland Bay north of a line drawn from the east end of the old Canal Terminal Pier in approximate position 44°42′26.0″ N 073°26′28.5″ W, to approximate position 44°43′00.8″ N 073°24′37.3″ W (NAD 1983) on Cumberland Head.

Marine traffic will still be able to transit through the Saranac River and southern Cumberland Bay while the safety zone is in effect. Additionally, vessels will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the safety zone. Commercial piers located within the safety zone are no longer used.

The rule will be enforced from 11:30 a.m. to 6:30 p.m. on Saturday, June 29, and Sunday, June 30, 2002. All vessels

and swimmers will be prohibited from transiting the portion of Cumberland Bay designated as a safety zone. This rule is needed to protect the waterway users from the hazards associated with high-speed powerboats racing in confined waters.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zone, and the relatively small number of vessels that normally operate in the vicinity of the zone. Vessels may transit through the Saranac River and southern Cumberland Bay throughout the safety zone's duration. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zone. Advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

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.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Cumberland Bay during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can still transit through the Saranac River and southern Cumberland Bay during the event; vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zone before the effective period. Further, we will ensure wide dissemination of maritime advisories to users of Lake Champlain via Local Notice to Mariners and marine information broadcasts.

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.

Collection of Information

This rule would call 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 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 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 might 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 M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. 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 proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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. From 11:30 a.m. June 29, 2002, to 6:30 p.m. June 30, 2002, add temporary § 165.T01–033 to read as follows:

§ 165.T01–033 Safety Zone; Lake Champlain Challenge, Cumberland Bay, NY.

(a) *Regulated Area*. The following area is a safety zone: All waters of Cumberland Bay north of a line drawn from the east end of the old Canal Terminal Pier in approximate position 44°42′26.0″ N 073°26′28.5″ W, to approximate position 44°43′00.8″ N 073°24′37.3″ W (NAD 1983) on Cumberland Head.

(b) *Enforcement period*. This section will be enforced from 11:30 a.m. to 6:30 p.m. on Saturday, June 29, and Sunday, June 30, 2002.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 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: May 14, 2002.

C.E. Bone,

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

[FR Doc. 02–12802 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–059]

RIN 2115–AA97

Safety Zone; Sandy Hook Bay, Highlands, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Clamfest fireworks display located on Sandy Hook Bay, NJ. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the affected waterway.

DATES: This rule is effective from 8:30 p.m. on Friday, June 14, to 10 p.m. on Saturday, June 15, 2002.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–059 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander M. Day, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. An annual safety zone has been published for this event in 33 CFR 165.161 effective on the Saturday and Sunday before Father's Day. The date for this year's event has been moved to the Friday before Father's Day. Further, it is an annual local event, recreational vessels may still transit around the zone during the event, the zone is only in effect for 1 and a half hours, and vessels can be given permission to transit the zone for all but about 25 minutes during this time. Any delay encountered in this rule's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with fireworks launched from a barge in the area.

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**. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish a temporary final rule (TFR) more than 30 days before the event. An annual safety zone has been published for this event in 33 CFR 165.161 effective on the Saturday and Sunday before Father's Day. The date for this year's event has been moved to the Friday before Father's Day. Further, it is an annual local event, recreational vessels may still transit around the zone during the event, the zone is only in effect for 1½ hours, and vessels can be given permission to transit the zone for all but about 25 minutes during this time. Any delay encountered in this rule's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of Sandy Hook Bay. This rule establishes a safety zone in all waters of Sandy Hook Bay within a 125-yard radius of the fireworks barge in approximate position 40°24′33.8″ N 073°59′46.2″ W (NAD 1983), about 1,200 yards west of Plum Island. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Friday, June 14, 2002.

Discussion of Rule

This rule prevents vessels from transiting a portion of Sandy Hook Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational traffic will still be able to transit around the safety zone during this event. Other vessels can be given permission to transit the zone for all but about 25 minutes during this time. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 5 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zone. Further, it is an annual local event, recreational vessels may still transit around the zone during the event, the zone is only in effect for 1½ hours, and vessels can be given permission to transit the zone for all but about 25 minutes during this time. Advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

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 proposed 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 might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Sandy Hook Bay during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is an annual local event, recreational vessels may still transit around the zone during the event, the zone is only in effect for 1 and a half hours, and vessels can be given permission to transit the zone for all but about 25 minutes during this time. We will ensure wide dissemination of maritime advisories to users of Sandy Hook Bay via Local Notice to Mariners and marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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.

Collection of Information

This rule would call 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 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 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 might 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 M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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. From 8:30 p.m. June 14, 2002, to 10 p.m. June 15, 2002, add temporary § 165.T01–059 to read as follows:

§ 165.T01–059 Safety Zone; Sandy Hook Bay, Highlands, NJ.

(a) *Regulated Area.* The following area is a safety zone: All waters of Sandy Hook Bay within a 125-yard radius of the fireworks barge in approximate position 40°24′33.8″ N 073°59′46.2″ W, (NAD 1983) approximately 1,200 yards west of Plum Island.

(b) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10 p.m. on Friday, June 14, and Saturday, June 15, 2002.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 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: May 14, 2002.

C.E. Bone,

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

[FR Doc. 02–12800 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 157

[OPP–2002–0059; FRL–7177–2]

Termite Insecticide Bait Stations; Exemption From Adult Portion of Child-Resistant Testing Specifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Exemption order.

SUMMARY: This exemption order announces EPA's decision to grant an exemption until December 31, 2016, from the child-resistant packaging (CRP) senior-adult test and younger-adult test effectiveness specifications for prefilled, nonrefillable termite insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. Products qualifying for this exemption must still fully comply with all other CRP effectiveness, compatibility, and durability standards. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per the exemption announced in this document. This exemption was requested by FMC Corporation APG Specialty Products, Griffin L. L. C., and United Industries Corporation, pursuant to EPA's CRP regulations. The basis for this exemption is that a package that does not require opening or activation to put into use should not require adult ease of opening testing.

DATES: This exemption order is effective on May 22, 2002 and expires on December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Rosalind L. Gross, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7368; fax number: (703) 308–9382; e-mail address: gross.rosalind@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you have a prefilled, nonrefillable termite insecticide bait station not designed or intended to be opened or activated in a manner that exposes the contents to human contact. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide and Other Agricultural Chemical Manufacturing	325320	Household-type insecticides manufacturing, termite poisons 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 this table could also be affected. The North American Industrial Classification System (NAICS) codes are 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/. A frequently updated electronic version of 40 CFR part 157 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr157_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–2002–0059. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 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

A. What is the Agency's Authority for Taking this Action?

Section 25(c)(3) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) authorizes EPA to establish CRP standards that are consistent with those of the Consumer Product Safety Commission (CPSC). Accordingly, EPA's CRP regulations at 40 CFR 157.32 require that CRP for pesticides meet the CPSC packaging standards (effectiveness specifications) and testing procedures set forth in 16 CFR 1700.15(b) and 1700.20. The CPSC Poison Prevention

Packaging Standards in 16 CFR 1700.15(b) provide that CRP, when tested by the method described in 16 CFR 1700.20, shall meet certain child-resistant test, senior-adult test, and younger-adult test effectiveness specifications. In 16 CFR 1700.15(b)(2), the senior-adult test and younger-adult test effectiveness specifications are discussed with reference to the senior-adult panel test of 16 CFR 1700.20(a)(3) and the younger-adult panel test of 16 CFR 1700.20(a)(4), respectively.

EPA's CRP regulations at 40 CFR 157.24(b)(3) provide that exemptions from compliance may be granted on a case-by-case basis for specific products based on technical factors. The regulations further provide that, if granted, any such exemption decision will be published in the **Federal Register**, will be for a specified length of time, and will be applicable to any product with substantially similar composition and intended uses. When EPA's CRP regulations were published in the **Federal Register** on March 9, 1979 (44 FR 13019), the Agency explained that a decision to grant an exemption shall be applicable to any product with identical or substantially similar composition and intended uses ''[t]o insure fairness . . . to any product in the identical situation. Some of the factors for consideration in determining whether or not a situation is identical may include the type of formulation and size and type of container.''

B. What was the Exemption Requested?

FMC Corporation APG Specialty Products, Griffin L. L. C., and United Industries Corporation requested an exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR1700.15(b)(2) (Ease of adult opening), for prefilled, nonrefillable termite insecticide bait stations that are not designed or intended to be opened or activated in a manner that exposes the contents to human contact.

As support for the exemption request, FMC Corporation APG Specialty Products, Griffin L. L. C., and United Industries Corporation advanced the following arguments: The purpose of adult testing is to ensure that the package is not difficult for adults to use properly. If CRP is difficult for adults to open, the concern arises that the package may be disabled or left unsecured to eliminate the difficulty of reopening it. Under such circumstances, the contents would be accessible to children. In the case of prefilled, nonrefillable termite insecticide bait stations not designed or intended to be opened, this concern does not arise. There is no risk that an adult will disable or fail to re-secure a difficult to open package, because the packages need not be opened or activated in order to function properly. As there is no concern that an adult will disable or fail to re-secure such a package, there is also no concern that the contents of disabled or unsecured packages will be accessible to children. Instead, from a child safety standpoint, the only relevant question regarding such packages is whether they can prevent a child from gaining access to the bait.

C. What Action is the Agency Taking?

The Agency has considered the FMC Corporation APG Specialty Products, Griffin L. L. C., and United Industries Corporation exemption requests and the basis therefore and agrees that it is unnecessary to test the ability of a senior-adult or younger-adult to open and properly re-secure a package not designed or intended to be opened or activated. No benefits in terms of improved child safety would be gained by such testing. Therefore, the Agency has decided to grant an exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2), for prefilled, nonrefillable termite insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. This exemption order is effective on May 22, 2002 and expires on December 31, 2016. In addition, this exemption applies to any product with substantially similar composition and intended uses. Products that qualify for this exemption must fully comply with all other CRP effectiveness, compatibility, and durability standards, as well as all other requirements of 40 CFR part 157. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per the exemption announced in this document.

III. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects

Environmental protection, Administrative practice and procedure, Infants and children, Packaging and containers, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–12712 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 157

[OPP–2002–0058; FRL–7177–3]

Ant or Roach Insecticide Bait Stations; Exemption From Adult Portion of Child-Resistant Testing Specifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Exemption order.

SUMMARY: This exemption order announces EPA's decision to grant an exemption until December 31, 2016, from the child-resistant packaging (CRP) senior-adult test and younger-adult test effectiveness specifications for prefilled, nonrefillable ant or roach insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. Products qualifying for this exemption must still fully comply with all other CRP effectiveness, compatibility, and durability standards. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per the exemption announced in this document. This exemption was requested by S.C. Johnson & Son, Inc., pursuant to EPA's CRP regulations. The basis for this exemption is that a package that does not require opening or activation to put into use should not require adult ease of opening testing.

DATES: This exemption order is effective on May 22, 2002 and expires on December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Rosalind L. Gross, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7368; fax number: (703) 308–9382; e-mail address: gross.rosalind@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you have a prefilled, nonrefillable ant or roach insecticide bait station not designed or intended to be opened or activated in a manner that

exposes the contents to human contact. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide and Other Agricultural Chemical Manufacturing	325320	Ant poisons manufacturing, household-type insecticides manufacturing, roach poisons 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 this table could also be affected. The North American Industrial Classification System (NAICS) codes are 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/. A frequently updated electronic version of 40 CFR part 157 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr157_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–2002–0058. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 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

A. What is the Agency's Authority for Taking this Action?

Section 25(c)(3) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) authorizes EPA to establish CRP standards that are consistent with those of the Consumer Product Safety Commission (CPSC). Accordingly, EPA's CRP regulations at 40 CFR 157.32 require that CRP for pesticides meet the CPSC packaging standards (effectiveness specifications) and testing procedures set forth in 16 CFR 1700.15(b) and 1700.20. The CPSC Poison Prevention Packaging Standards in 16 CFR 1700.15(b) provide that CRP, when tested by the method described in 16 CFR 1700.20, shall meet certain child-resistant test, senior-adult test, and younger-adult test effectiveness specifications. In 16 CFR 1700.15(b)(2), the senior-adult test and younger-adult test effectiveness specifications are discussed with reference to the senior-adult panel test of 16 CFR 1700.20(a)(3) and the younger-adult panel test of 16 CFR 1700.20(a)(4), respectively.

EPA's CRP regulations at 40 CFR 157.24(b)(3) provide that exemptions from compliance may be granted on a case-by-case basis for specific products based on technical factors. The regulations further provide that, if granted, any such exemption decision will be published in the **Federal Register**, will be for a specified length of time, and will be applicable to any product with substantially similar composition and intended uses. When EPA's CRP regulations were published in the **Federal Register** on March 9, 1979 (44 FR 13019), the Agency explained that a decision to grant an exemption shall be applicable to any product with identical or substantially similar composition and intended uses ''[t]o insure fairness . . . to any product in the identical situation. Some of the factors for consideration in determining whether or not a situation is identical may include the type of formulation and size and type of container.''

B. What was the Exemption Requested?

S.C. Johnson & Son, Inc. requested an exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR1700.15(b)(2) (Ease of adult opening), for prefilled, nonrefillable ant or roach insecticide bait stations that are not designed or intended to be opened or activated in a manner that exposes the contents to human contact.

As support for the exemption request, S.C. Johnson &Son, Inc. advanced the following arguments: The purpose of adult testing is to ensure that the package is not difficult for adults to use properly. If CRP is difficult for adults to open, the concern arises that the package may be disabled or left unsecured to eliminate the difficulty of reopening it. Under such circumstances, the contents would be accessible to children. In the case of prefilled, nonrefillable ant or roach insecticide bait stations not designed or intended to be opened, this concern does not arise. There is no risk that an adult will disable or fail to re-secure a difficult to open package, because the packages need not be opened or activated in order to function properly. As there is no concern that an adult will disable or fail to re-secure such a package, there is also no concern that the contents of disabled or unsecured packages will be accessible to children. Instead, from a child safety standpoint, the only relevant question regarding such packages is whether they can prevent a child from gaining access to the bait.

C. What Action is the Agency Taking?

The Agency has considered the S.C. Johnson & Son, Inc. exemption request and the basis therefore and agrees that it is unnecessary to test the ability of a senior-adult or younger-adult to open and properly re-secure a package not designed or intended to be opened or activated. No benefits in terms of improved child safety would be gained by such testing. Therefore, the Agency has decided to grant an exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2), for

prefilled, nonrefillable ant or roach insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. This exemption order is effective on May 22, 2002 and expires on December 31, 2016. In addition, this exemption applies to any product with substantially similar composition and intended uses. Products that qualify for this exemption must fully comply with all other CRP effectiveness, compatibility, and durability standards, as well as all other requirements of 40 CFR part 157. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per the exemption announced in this document.

III. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects

Environmental protection, Administrative practice and procedure, Infants and children, Packaging and containers, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–12711 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0035; FRL–6836–7]

Nicotine; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes specific tolerances for residues of nicotine-containing compounds used as insecticides and for the insecticide nicotine. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 66 tolerances which are counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

DATES: This regulation is effective August 20, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0035, must be received by EPA on or before July 22, 2002.

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 IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0035 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''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–2002–0035. 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, Crystal 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

A. What Action is the Agency Taking?

This final rule revokes certain FFDCA tolerances for residues of nicotine-containing compounds used as insecticides and for the insecticide nicotine in or on specified commodities listed in the regulatory text because nicotine is no longer registered under FIFRA for use on those commodities. The tolerances revoked by this final rule

are no longer necessary to cover residues of nicotine or nicotine-containing compounds in or on domestically treated commodities or commodities treated outside but imported into the United States. Nicotine or nicotine-containing compounds are no longer used on those specified commodities within the United States, and no one commented that there was a need for EPA to retain the tolerances to cover nicotine residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

In the **Federal Register** of January 16, 2002 (67 FR 2175) (FRL–6810–3), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the January 16, 2002 proposal invited public comment for consideration and for support of tolerance retention under FFDCA standards. No comments were received by the Agency.

Currently, with the exception of cucumber, lettuce, and tomato, there are no other active food use registrations existing for nicotine-containing compounds or nicotine. Because no active food use registrations have existed since 1994 and because no comments expressed a need to retain these tolerances for import purposes, EPA is revoking 62 tolerances in 40 CFR 180.167 for residues of nicotine-containing compounds used as insecticides in or on apples; apricots; artichokes; asparagus; avocados; beans; beets (with or without tops) or beet greens alone; blackberries; boysenberries; broccoli; brussels sprouts; cabbage; cauliflower; celery; cherries; citrus fruits; collards; corn; cranberries; currants; dewberries; eggplants; gooseberries; grapes; kale; kohlrabi; loganberries; melons; mushrooms; mustard greens; nectarines; okra; onions; parsley; parsnips (with or without tops) or parsnip greens alone; peaches; pears; peas; peppers; plums (fresh prunes); pumpkins; quinces; radishes (with or without tops) or radish tops; raspberries; rutabagas (with or without tops) or rutabaga tops; spinach; squash; strawberries; summer squash; Swiss chard; turnips (with or without tops) or turnip greens; and youngberries. Also, EPA is revoking the four tolerances in 40 CFR 180.167a for residues of the insecticide nicotine in eggs; poultry, fat; poultry, meat; and poultry, meat byproducts by removing section 180.167a in its entirety.

Because some of the tolerances in 40 CFR 180.167 will not be revoked and will remain in the Code of Federal Regulations, EPA is revising the commodity terminology changes for the remaining tolerances to conform with current Agency administrative practice as follows: ''cucumbers'' to ''cucumber'' and ''tomatoes'' to ''tomato.''

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the Federal Register. EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is August 20, 2002. For this final rule, tolerances that were revoked because registered uses did not exist concerned uses which have been canceled for many years. Therefore, commodities containing these pesticide residues should have cleared the channels of trade.

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

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August, 2006. As of May 1, 2002, EPA has reassessed over 4,140 tolerances. For counting purposes, the tolerances depicted as ''with or without tops'' were each counted as two tolerances. In this rule, EPA is revoking 66 tolerances which count as reassessments toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and

then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

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–2002–0035 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 July 22, 2002.

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. *Objection/hearing 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 IV.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 docket control number OPP–2002–0035, 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).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final 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 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 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, I certify that this action will not have a significant

economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with nicotine-containing compounds used as insecticides or the insecticide nicotine. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

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.

VI. 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: May 2, 2002.

Joseph J. Merenda,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.167 is revised to read as follows:

§ 180.167 Nicotine-containing compounds; tolerances for residues.

(a) *General.* Tolerances are established for residues of nicotine-containing compounds used as insecticides in or on the following raw agricultural commodities:

Commodity	Parts per million
Cucumber	2.0
Lettuce	2.0
Tomato	2.0

(b) *Section 18 emergency exemptions.* [Reserved]

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

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

§ 180.167a [Removed]

3. Section 180.167a is removed.

[FR Doc. 02–12423 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0052; FRL–7178–6]

Trifloxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for trifloxystrobin regulated as trifloxystrobin and the free form of its acid metabolite CGA–321113 in or on fruit, stone, group; nut, tree, group; pistachio; corn, field, grains; corn, field, forage; corn field stover; corn, field, refined oil; corn, pop, grain; corn, pop, stover; rice, grain; rice, hulls; rice, straw; citrus, dried pulp; citrus oil; fruit, citrus, group; egg; poultry, fat; poultry, meat; and poultry, meat by products. Bayer, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 22, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0052, must be received by EPA on or before July 22, 2002.

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 VI. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0052 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740 and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	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 the section **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_40/40cfr 180_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–2002–0052. 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, Crystal 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

In the **Federal Register** of November 14, 2001 (66 FR 57074) (FRL–6806–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 0F6121 for tolerances by Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64121–0013. This notice included a summary of the petition prepared by Bayer Corporation, the registrant. No comments were received in response to the amendment.

The petition requested that 40 CFR 180.555 be amended by establishing tolerances for combined residues of the fungicide trifloxystrobin and the free form of its acid metabolite CGA–321113, in or on fruit, stone, group at 2 parts per million (ppm); nut, tree, group at 0.05 ppm; pistachio at 0.05 ppm; corn, field, grains at 0.05 ppm; corn, field, forage at 0.05 ppm; corn, field, stover at 7 ppm; corn, field, refined oil at 0.1 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 7 ppm; rice, grain at 3.5 ppm; rice, hulls at 8 ppm; rice, straw at 7.5 ppm; citrus, dried pulp at 0.8 ppm; citrus, oil at 7 ppm; fruit, citrus, group at 0.3 ppm; egg at 0.04 ppm; poultry, fat; and poultry, meat; poultry, kidney; poultry, liver; and poultry, meat by products at 0.05 ppm. Bayer, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

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....''

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).

III. Aggregate Risk Assessment and Determination of Safety

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 trifloxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 on fruit, stone, group at 2 ppm; nut, tree, group at 0.04 ppm; pistachio at 0.04 ppm; corn, field, grains at 0.05 ppm; corn, field, forage at 0.2 ppm; corn, field, stover at 7 ppm; corn, field, refined oil at 0.1 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 7 ppm; rice, grain at 3.5 ppm; rice, hulls at 8 ppm; rice, straw at 7.5 ppm; citrus, dried pulp at 0.8 ppm; citrus oil at 30 ppm; fruit, citrus, grroup at 0.3 ppm; egg at 0.04 ppm; poultry, fat at 0.04 ppm; poultry, meat at 0.04 ppm; poultry, meat by products at 0.04 ppm. In examining the data for corn field forage and citrus oil the Agency found that the residue data supports a higher tolerance than was proposed. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by trifloxystrobin

and the free form of its acid metabolite CGA–321113 are discussed below as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

1. *Subchronic-feeding study—rat.* The No Observed Adverse Effects Level (NOAEL) was 500 ppm (30.6–32.8 mg/kg/day). Decreased body weight, hypertrophy of hepatocytes in males and pancreatic atrophy were observed at the Lowest Observed Adverse Effects Level (LOAEL) of 2,000 ppm (127–133 mg/kg/day).

2. *Subchronic-feeding study—mouse.* The NOAEL was 500 ppm (76.9–110 mg/kg/day). Increased liver weights and necrosis of hepatocytes were observed at the LOAEL of 2,000 ppm (315–425 mg/kg/day).

3. *Subchronic-feeding study—dog.* The NOAEL was 30 mg/kg/day. Increased liver weight and hepatocyte hypertrophy in males were observed at the LOAEL of 150 mg/kg/day.

4. *28–day dermal toxicity study—rat.* The NOAEL was 100 mg/kg/day. Increased liver and kidney weight were observed at the LOAEL of 1,000 mg/kg/day.

5. *Developmental toxicity study—rat.* The maternal NOAEL was 10 mg/kg/day. Decreased body weight gain and food consumption were observed at the maternal LOAEL of 100 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day. No developmental effects were observed. The developmental LOAEL was equal to or greater than 1,000 mg/kg/day.

6. *Developmental toxicity study—rabbit.* The maternal NOAEL was 10 mg/kg/day. Decreased mean body weights and decreased mean body weight gain (compared to control), food consumption and efficiency were observed at the maternal LOAEL of 50 mg/kg/day. The developmental NOAEL was 250 mg/kg/day. Skeletal anomolies were observed at the Developmental LOAEL of 500 mg/kg/day.

7. *Reproductive toxicity study—rat.* The parental NOAEL was 50 ppm (3.8 mg/kg/day). Decreased mean body weight and decreased mean weight gain (compared to control), decreased food consumption, and increased incidence of liver, kidney and spleen effects were observed at the parental LOAEL of 750 ppm (55.3 mg/kg/day). The reproductive NOAEL was 1,500 ppm (110.6 mg/kg/day). The reproductive LOAEL was greater than 1,500 ppm (110.6 mg/kg/day).

8. *Chronic-feeding study—dog.* The NOAEL was 5 mg/kg/day. Increased clinical signs, increased liver weight and hepatocellular hypertrophy were observed at the LOAEL of 50 mg/kg/day.

9. *Carcinogenicity study—mouse.* The NOAEL was 300 ppm (39.4 mg/kg/day). Liver effects were observed at the LOAEL of 1,000 ppm (131.1 mg/kg/day).

10. *Chronic toxicity/carcinogenicity study—rat.* The NOAEL was 250 ppm (9.81–11.37 mg/kg/day). Decreased mean body weight and decreased mean body weight gain (compared to control) were observed at the LOAEL of 750 ppm (29.7–34.5 mg/kg/day).

11. *Gene mutation study—Salmonella.* Negative.

12. *Gene mutation study—Chinese Hamster Cultured V–79.* Positive.

13. *Structural chromosome aberration-micronucleus study—mouse.* Negative.

14. *Structural chromosome aberration-cytogenetics study—Chinese Hamster.* Negative.

15. *DNA Repair study-hepatocytes—rat.* Negative.

16. *Acute oral neurotoxicity study—rat.* The NOAEL and LOAEL could not be determined.

17. *Metabolism study—rat.* The tissue half-lives ranged from 13 to 42 hours. The highest residues were found in liver, kidneys, spleen and blood. The parent compound was extensively metabolized to approximately 35 metabolites.

B. 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 level of concern (LOC). 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 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 trifloxystrobin used for human risk assessment is shown in the following Table 1:

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

Exposure Scenario	Dose(mg/kg/day)	Endpoint	Study
Acute Dietary [a] Females 13–50 only	NOAEL = 250 UF = 100	Increased fetal skeletal anomalies.	Developmental Toxicity - Rabbit

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

Exposure Scenario	Dose(mg/kg/day)	Endpoint	Study
Chronic Dietary [b] General population	NOAEL = 3.8 ..... UF = 100	Decreased pup body weights during lactation.	Reproductive Toxicity - Rat
Short-Term and Intermediate-Term (Dermal)	Dermal NOAEL= 100.	Increases in liver and kidney weights.	28-Day Dermal Toxicity Study in Rats
Long-Term (Dermal)[c]	Oral NOAEL = 5	Increased incidence of clinical signs, increased mean liver weight, and hepatocellular hypertrophy.	Chronic Toxicity - Dog
Short-, Intermediate- and Long-Term (Inhalation)[d]	Oral NOAEL = 3.8 ...	Decreased pup body weights during lactation.	Reproductive Toxicity - Rat
Short-Term and Intermediate-Term (Incidental Oral)	Oral NOAEL = 3.8 ...	Decreased pup body weights during lactation.	Reproductive Toxicity - Rat

[a] Acute RfD=2.5 mg/kg
[b] Chronic RfD=0.038 mg/kg/day
[c] Since an oral NOAEL was selected, a dermal absorption factor of 33% should be used for route-to-route extrapolation.
[d] Since an oral NOAEL was selected, inhalation absorption factor of 100% should be used for route-to-route extrapolation.

C. Exposure assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established for the combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 on several commodities; including almonds, bananas, sugarbeets, pomefruit, grapes, peanuts, potatoes, cucurbit vegetables, fruiting vegetables, and wheat. The Agency conducted a new assessment incorporating these commodities and the following additional tolerances: fruit, stone, group at 2 ppm; nut, tree, group at 0.04 ppm; pistachio at 0.04 ppm; corn, field, grains at 0.05 ppm; corn, field, forage at 0.2 ppm; corn, field, stover at 7 ppm; corn, field, refined oil at 0.1 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 7 ppm; rice, grain at 3.5 ppm; rice, hulls at 8 ppm; rice, straw at 7.5 ppm; citrus, dried pulp at 0.8 ppm; citrus oil at 30 ppm; fruit, citrus, group at 0.3 ppm; egg at 0.04 ppm; poultry, fat at 0.04 ppm; poultry, meat at 0.04 ppm; poultry, meat by products at 0.04 ppm. Risk assessments were conducted by EPA to assess dietary exposures from trifloxystrobin in food as follows:

i. *Acute exposure.* The acute dietary exposure analysis for trifloxystrobin is a Tier 1 assessment because no additional data were used to refine the analysis. One hundred percent of proposed and registered crops are assumed treated with trifloxystrobin (100% CT) and tolerance-level residues were used in the analysis. The acute dietary endpoint (increased fetal incidence of fused sternebrae) is only applicable to the population subgroup Females 13–50 years old. An acute dietary endpoint for the general population including infants and children was not identified. The estimated dietary exposure for females 13–50 years old occupies less than 1 percent of the acute PAD and does not exceed EPA's level of concern.

TABLE 2.—RESULTS OF ACUTE DIETARY EXPOSURE ANALYSIS AT THE 95TH PERCENTILE OF EXPOSURE

Population Subgroup	aPAD (mg/kg/day)	Exposure (mg/kg/day)	% aPAD
Females 13–50 years old	2.5	0.011587	0.46

ii. *Chronic exposure.* The chronic dietary exposure analysis for trifloxystrobin is a Tier 1 assessment because no additional data were used to refine the analysis. One hundred percent of proposed and registered crops are assumed treated with trifloxystrobin (100% CT) and tolerance-level residues were used in the analysis. The chronic dietary endpoint applies to all population subgroups including infants and children. A listing of the subgroups with the highest exposure are reported below in Table 3.

The results of the chronic dietary analysis show that risk ranges from 9% of the cPAD for adult males (20 years and older), to 39% of the cPAD for all infants (<1 year). Risk estimates for all population subgroups are below EPA's level of concern (100% of the cPAD).

TABLE 3.—RESULTS OF CHRONIC DIETARY EXPOSURE ANALYSIS

Population Subgroup	cPAD (mg/kg/day)	Exposure (mg/kg/day)	% cPAD
U.S. Population (total)	0.038	0.00503	13
All Infants (< 1 year)	0.038	0.015	39
Children 1–6 years	0.038	0.014	37
Children 7–12 years	0.038	0.0069	18
Females 13–50	0.038	0.0036	9.3
Males 13–19	0.038	0.0035	9.1
Males 20+ years	0.038	0.0034	9.0
Seniors 55+	0.038	0.0039	10

iii. *Cancer.* Trifloxystrobin was classified as a ''not likely human carcinogen.'' Therefore, a cancer risk assessment was not conducted.

2. *Water exposure.* Trifloxystrobin is immobile, degrades and transforms rapidly, in soil (half life is about 2 days) and aquatic environments (half life is about 15–55 days), mostly to a series of isomers and the primary acid metabolite, CGA–321113. The major isomer forms at the average rate of 80% of the applied parent, is persistent, (half life is about 301 days), and soluble, 30.9 ppm and is also mobile. The major degradate minimum Koc is 49, the median Koc is 127 and is also stable to hydrolysis. The major degradate, CGA–321113 is persistent and mobile and has a potential to leach into groundwater. CGA–321113 has been found in the soil profile at the 36 inch depth.

Estimated environmental concentrations (EECs) were calculated for total trifloxystrobin residues (parent trifloxystrobin and its major degradate, CGA–321113) using EPA's FIRST model for surface water and the screeninig concentration in ground water (SCI-GROW) model. EPA's interim method for drinking water estimates for pesticides used in rice paddies was also used to generate EECs. No degradation process of the chemical and no dilution with uncontaminated water outside of the paddy were taking into account. The rice estimates are ''expected to vastly exceed the 'true' values found in the environment, especially for trifloxystrobin, since available environmental fate data show that this compound degrades fairly rapidly in water and soil.''

EECs were estimated for total trifloxystrobin residues because the environmental fate studies indicated that the parent compound forms transformation compounds (isomers) which are similar in structure to the parent under most conditions. Further, the EPA concluded that both trifloxystrobin and the free form of its acid metabolite CGA–321113 are of concern for both regulatory and risk assessment purposes for plant and livestock commodities.

The use site with the highest application rate is turfgrass, with a maximum label rate of 1.078 pounds active ingredient per acre per year (lbs/ai/ac/yr) (three applications at 0.359 lbs/ai/ac/yr). Drinking water estimates were also provided for rice paddies that may be treated with trifloxystrobin.

Surface water concentrations of trifloxystrobin and its major degradate CGA–321113 are 92 parts per billion (ppb) for the peak value (acute) and 50 ppb for the chronic value using the FIRST model. The groundwater screening concentration to be used for both acute and chronic assessments is 3.4 ppb. These values represent upper-bound estimates of the concentrations of total residues of trifloxystrobin that might be found in surface water and groundwater from the use of trifloxystrobin on turfgrass at the maximum application rate.

3. *Non-dietary exposure.* Trifloxystrobin's residential uses include turfgrass/ornamental disease control (Compass®). Because the FQPA requires consideration of aggregate exposure to all likely non-occupational uses, this assessment uses non-occupational postapplication contact with trifloxystrobin following Compass® use on turfgrass as the most common and worst case contributor to such exposures. The margin of exposure (MOEs) for applicable residential scenarios (i.e., postapplication dermal exposure from pesticide residues on lawns, incidental non-dietary ingestion of pesticide residues on lawns from hand-to-mouth transfer, incidental non-dietary ingestion of residues from pesticide-treated turfgrass from object-to-mouth activities, and incidental non-dietary ingestion of soil from pesticide-treated residential areas) were calculated separately, and then combined.

i. *Residential handler.* This current petition does not propose residential uses for trifloxystrobin. However, the label for the trifloxystrobin product, Compass® , includes residential use on turfgrass and ornamentals. This product may only be applied by a Certified Pest Control Operartor (PCO), not by homeowners directly.

ii. *Postapplication.* There is potential for dermal (adults and children) and oral exposure (children only) during postapplication activities. The following postapplication exposure scenarios resulting from lawn treatment were assessed: (1) Dermal exposure from pesticide residues on lawns, (2) incidental non-dietary ingestion of pesticide residues on lawns from hand-to-mouth transfer, (3) incidental non-dietary ingestion of residues from object-to-mouth activities (pesticide-treated turfgrass), and (4) incidental non-dietary ingestion of soil from pesticide-treated residential areas. Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. Exposure via incidental non-dietary ingestion involving other plant material may occur but is expected to result in much less exposure than the four exposure scenarios listed above.

The exposure and risk estimates for the four residential exposure scenarios are assessed for the day of application (day ''0'') because it is assumed that adults and toddlers could contact the lawn immediately after application. On

the day of application, it was assumed that 5 percent of the application rate is available from the turfgrass as transferrable residue (20 percent for object-to-mouth activities). Intermediate-term exposure (1 to 6 months) is not expected based on trifloxystrobin's short half-life in soil (about 2 days). Chronic or long-term (continuous exposure over more than 6 months) exposure is not expected. The short-term MOEs for adults and children are above 100, they DO NOT exceed EPA's level of concern.

iii. *Recreational.* Trifloxystrobin may be used on turf at recreational use sites, and, therefore may result in postapplication exposure to adults and children involved in recreational activities. Exposures to adults and children from the use of trifloxystrobin at recreational use sites are assumed to be the same as those assessed for residential use sites. Residential turf exposure assessment results in what are considered upper bound risk estimates. Therefore, it is not expected that the upper bound residential exposure scenario would occur on the same day as an upper bound recreational exposure scenario. Exposure from these two exposure scenarios are not aggregated. Rather, the residential risk estimate should serve as an upper bound for both residential and recreational exposure.

Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. There is potential for dermal (adults and children) and oral exposure (children only) during postapplication activities. Four postapplication exposure scenarios resulting from lawn treatment were assessed. Postapplication exposure and risk estimates for adults and children resulted in MOE's that were above 100 and all risks were considered below EPA's level of concern.

iv. *Other exposure sources.* Spray drift is always a potential source of exposure to residents nearby to spraying operations. This is particularly the case with aerial application, but, to a lesser extent, could also be a potential source of exposure from the groundboom application. The Agency has been working with the Spray Drift Task Force, EPA Regional Offices and State Lead Agencies for pesticide regulation and other parties to develop the best spray drift management practices. The Agency is now requiring interim mitigation measures for aerial applications that must be placed on product labels/labeling. The Agency has completed its evaluation of the new database submitted by the Spray Drift Task Force, a membership of U.S. pesticide registrants, and is developing a policy on how to appropriately apply the data and the AgDRIFT computer model to its risk assessments for pesticides applied by air, orchard airblast and ground hydraulic methods. After the policy is in place, the Agency may impose further refinements in spray drift management practices to reduce off-target drift and risks associated with aerial as well as other application types where appropriate.

4. *Cumulative exposure to substances with 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.'' Trifloxystrobin belongs to a new class of fungicides, the MAEs (beta-methoxyacryl esters), which are synthetic analogs of strobilurin A, an antifungal secondary metabolite of the fungus *Strobilurus tenacellus.* Trifloxystrobin works by interfering with respiration in plant pathogenic fungi. The site of action of strobilurin compounds is located in the mitochondrial respiration pathway between cytochromes b and c1 at the level of the hydroquinone binding site. As a result of this mode of action, trifloxystrobin is a potent inhibitor of fungal spore germination and mycelial growth. Trifloxystrobin can be referred to more specifically as an oximinoacetate.

EPA does not have, at this time, available data to determine whether trifloxystrobin 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, trifloxystrobin 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 trifloxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA 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).

D. Safety Factor for Infants and Children

EPA determined the 10x safety factor for the protection of infants and children should be removed for the following reasons:

1. The toxicology database is complete for FQPA assessment.

2. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the developmental and reproductive toxicity studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

3. It was determined that a developmental neurotoxicity study in rats is not required.

4. The exposure assessments will not underestimate the potential dietary (food and drinking water) or nondietary exposures for infants and children from the use of trifloxystrobin.

E. Aggregate Risks and Determination of Safety

Acute and chronic aggregate risk estimates were calculated in this risk assessment. Acute aggregate risk was calculated by comparing acute drinking water levels of concern (DWLOCs) to potential drinking water exposure to trifloxystrobin. Similarly, chronic aggregate risk was calculated by comparing chronic DWLOCs to potential drinking water exposure.

Short-term aggregate risk estimates were also calculated. Short-term risk is based on exposures occurring over 1 to 30 days. Short-term aggregate risk was calculated by combining risk estimates for high-end residential oral and/or dermal exposures with chronic food and drinking water risks. Intermediate-term risk is based on 30 to 180 days of exposure (1 to 6 months). Intermediate-term exposure is not expected to occur based on the short soil half-life (about 2 days). Chronic non-dietary aggregate risk was not calculated as chronic dermal and oral exposures (from residential treatment) are not expected. Cancer aggregate risk was not calculated because trifloxystrobin is classified as ''not likely human carcinogen.''

1. *Acute risk (food + drinking water).* The acute aggregate risk assessment takes into account exposure estimates from dietary consumption of trifloxystrobin from food and drinking water sources. The acute risk estimate for Females 13–50 years, resulting from aggregate exposure to trifloxystrobin in food and drinking water is below EPA's level of concern. Acute aggregate risk was not calculated for the U.S. population including infants and

children or other population subgroups as EPA did not identify an endpoint for risk assessment for those groups.

The surface and groundwater EECs were used to compare against back-calculated DWLOCs for aggregate risk assessments. To calculate the DWLOC for acute exposure relative to an acute toxicity endpoint, the acute dietary food exposure (from DEEM®) was subtracted from the aPAD to obtain the acceptable acute exposure to trifloxystrobin in drinking water. The acute DWLOCs are listed in the following Table 4:

TABLE 4.—DWLOCS FOR ACUTE DIETARY EXPOSURE TO TRIFLOXYSTROBIN

Population Subgroup[1]	Acute PAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure (mg/kg/day)[2]	Rice Surface Water (µg/L)[3]	Ground Water (µg/L)[3]	DWLOC (µg/L)[4]
Females (13–50 years)	2.5	0.012	2.5	48	3.4	75,000

[1] Within each of these subgroups, the subpopulation with the highest (acute) food exposure having an adequately representative number of samples was selected EPA default body weight is 60 kg for females (13+ years old).
[2] Maximum Water Exposure (mg/kg/day) = Acute PAD (mg/kg/day) - Acute Food Exposure.
[3] Estimate for the highest use rate was chosen.
[4] DWLOC (µg/L) = [Maximum water Exposure (mg/kg/day) x body wt (kg)] ÷ [(10^{-3} mg/µg) x water consumed daily (L/day)]. µg/L = parts per billion. EPA default daily drinking rate is 2 L/day for adults.

For the acute aggregate risk scenario, food and drinking water exposures were taken into account. DWLOCs were calculated for females (13–50 years old) the only subgroup to which the acute dietary endpoint applies. The DWLOC was 75,000 ppb for females. This value is well above the EECs for drinking water, and therefore, acute aggregate risk is below EPA's level of concern.

2. *Short-term risk (food + drinking water + residential).* The short-term aggregate risk assessment estimates risks likely to result from 1– to 30–day exposure to trifloxystrobin residues are from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the short-term assessment, while average values are used for food and drinking water exposure (i.e. chronic exposures).

A short-term risk assessment is required for adults because there is a residential exposure scenario (postapplication only). In addition, a short-term risk assessment is required for infants and children because there are residential post-application dermal and oral exposure scenarios. Toddlers' incidental oral exposure is assumed to include hand-to-mouth exposure, object-to-mouth exposure and exposure through incidental ingestion of soil.

Different endpoints were identified by EPA for short-term incidental oral and dermal risk assessment. The basis for the oral endpoint is reduced pup body weights and the dermal endpoint is based on increases in liver and kidney weights. Therefore, it is not possible to combine the exposure from both dietary/oral exposure with that from dermal exposure.

For the short-term aggregate risk scenario, food, drinking water and residential exposures are taken into account. DWLOCs were calculated for the U.S. population, males (13–19 years old), all infants (less than 1 year old) and females (13–50 years old). DWLOCs ranged from 170 ppb for all infants to 1,200 pbb for the U.S. population and males (13–19 years old). These values are above the EECs for drinking water and therefore, short-term aggregate risk is below EPA's level of concern.

3. *Intermediate-term risk.* The intermediate-term aggregate risk assessment estimates risks likely to result from 1 to 6 months of exposure (30 to 180 days) to trifloxystrobin residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the short-term assessment, while average values are used for food and drinking water exposure (i.e. chronic exposures).

Intermediate-term exposure is not expected to occur based on the short soil half-life (about 2 days). Therefore, an intermediate-term aggregate risk assessment was not performed.

4. *Chronic risks.* The chronic aggregate risk assessment takes into account exposure estimates from dietary consumption of trifloxystrobin from food and drinking water sources. Chronic risk estimates resulting from aggregate exposure to trifloxystrobin in food and drinking water are below EPA's level of concern from all population subgroups.

The surface and groundwater EECs were used to compare against back-calculated DWLOCs for aggregate risk assessments. To calculate DWLOCs for chronic exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM®) was subtracted from the cPAD to obtain the acceptable chronic exposure to trifloxystrobin in drinking water. The chronic DWLOCs are listed in the following Table 5:

TABLE 5.—DWLOCS FOR CHRONIC DIETARY EXPOSURE TO TRIFLOXYSTROBIN.

Population Subgroup[1]	Chronic PAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure (mg/kg/day)[2]	Rice Surface Water (µg/L)[3]	Ground Water (µg/L)[3]	DWLOC (µg/L)[4]
U.S. Population	0.038	0.00503	0.033	140	3.4	1,200
Males (13–19 years)	0.038	0.0035	0.035	140	3.4	1,200
All Infants (< 1 year)	0.038	0.015	0.023	140	3.4	230
Females (13–50 years)	0.038	0.0036	0.034	140	3.4	1,000

[1] Within each of these subgroups, the subpopulation with the highest food exposure having an adequately representative number of samples was selected EPA default body weights are: General U.S. Population, 70 kg; Females (13+ years old), 60 kg; and, All Infants/Children, 10 kg.
[2] Maximum Water Exposure (mg/kg/day) = Chronic PAD (mg/kg/day) - Chronic Food Exposure.
[3] Estimate for the highest use rate was chosen.

[4] DWLOC (µg/L) = [Maximum water Exposure (mg/kg/day) x body wt (kg)] ÷ [(10^{-3} mg/µg) x water consumed daily (L/day)]. µg/L = parts per billion. EPA default daily drinking rates are 2 L/day for Adults and 1 L/day for Infants/Children.

Chronic DWLOCs for all population subgroups are above the estimated concentrations of trifloxystrobin and its metabolites in drinking water, and are therefore not of concern.

5. *Aggregate cancer risk.* Not applicable. There is no evidence of carcinogenicity.

6. *Determination of safety.* EPA concludes with reasonable certainty that aggregate exposure from trifloxystrobin will not result in harm to the adult U.S. population or infants and children.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *For plants.* The qualitative nature of the residue in plants is adequately understood for fruits, fruiting vegetables, cucurbit vegetables and peanuts, based on acceptable metabolism studies conducted on apples, cucumbers, peanuts, and a supplementary study on wheat. For the current petition, Bayer submitted two sugar beet trifloxystrobin metabolism studies. As result of these studies the nature of trifloxystrobin in/on sugar beets is adequately understood. The sugar beet metabolism studies, however, do not fulfill the wheat metabolism data requirement because the two crops are too dissimilar.

2. *For animals.* No livestock data were submitted. The qualitative nature of the residue in livestock is adequately understood based on acceptable studies conducted on goats and laying hens. The EPA has determined that the total toxic residues for livestock, both for regulatory and risk assessment purposes, is trifloxystrobin and the free form of its acid metabolite CGA–321113. Additionally, metabolite L7a (taurine conjugate of trifloxystrobin) in the liver should be included in the risk assessment.

B. Analytical Method for Plants and Livestock

EPA has completed a method validation trial of AG–659A on apples, wet apple pomace, grapes, summer squash, peanut hay, peanuts, cow liver, cow milk and raisins, and concluded that AG–659A is suitable for enforcement of trifloxystrobin and the free form of its acid metabolite in plant and livestock commodities. The enforcement method has been submitted to the Food and Drug Administration for publication in the Pesticides Assessment Manual II.

The analytical methods, AG–659A or AG–659A/REM 177.04, are adequate for collecting data for residues of trifloxystrobin and its acid metabolite CGA–321113 in/on all crops associated with this petition.

C. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for trifloxystrobin. Harmonization is thus not an issue at this time.

V. Conclusion

Therefore, tolerances are established for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 in/on fruit, stone, group at 2 ppm; nut, tree, group at 0.04 ppm; pistachio at 0.04 ppm; corn, field, grains at 0.05 ppm; corn, field, forage at 0.2 ppm; corn, field, stover at 7 ppm; corn, field, refined oil at 0.1 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 7 ppm; rice, grain at 3.5 ppm; rice, hulls at 8 ppm; rice, straw at 7.5 ppm; citrus, dried pulp at 0.8 ppm; citrus oil at 30 ppm; fruit, citrus, grroup at 0.3 ppm; egg at 0.04 ppm; poultry, fat at 0.04 ppm; poultry, meat at 0.04 ppm; poultry, meat by products at 0.04 ppm.

VI. 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–2002–0052 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 July 22, 2002.

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, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, 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 be 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, 401 M St., SW., 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, 401 M St., SW., 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 VI.A. of this preamble, you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–2002–0052, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. of this preamble. 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 6.1/8.1 file format 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 EPA, 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).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). 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 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 petition under FFDCA section 408(d), 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). 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.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*,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: May 13, 2002.

Debra Edwards,

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 374.

2. Section 180.555 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Citrus, dried pulp	0.8
Citrus, oil	30
Corn, field, forage	0.2
Corn, field, grain	0.05
Corn, field, stover	7
Corn, field, refined oil	0.1
Corn, pop, grain	0.05
Corn, pop, stover	7
* * * * *	
Egg	0.04
Fruit, citrus, group	0.3
Fruit, stone, group	2
* * * * *	
Nut, tree, group	0.04
* * * * *	
Pistachio	0.04
* * * * *	
Poultry, fat	0.04
Poultry, meat	0.04
Poultry, meat byproducts	0.04
* * * * *	
Rice, grain	3.5
Rice, hulls	8
Rice, straw	7.5
* * * * *	

* * * * *

[FR Doc. 02–12850 Filed 5–21–99; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–7214–4]

Land Disposal Restrictions: Granting of Two Site-Specific Treatment Variances to U.S. Ecology Idaho, Incorporated in Grandview, Idaho and CWM Chemical Services, LLC in Model City, New York

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is promulgating two site-specific treatment variances from the Land Disposal Restrictions (LDR) standards for wastes generated at U.S. Ecology Idaho, Incorporated (USEII) in Grandview, Idaho, and CWM Chemical Services, LLC (CWM) in Model City, New York. These waste streams are derived from the treatment of multiple listed and characteristic hazardous wastes, including K088 (spent potliners from primary aluminum reduction), and differ significantly from the waste used to establish the LDR treatment standard for arsenic in K088 non-wastewaters. Accordingly, we are finalizing an alternate treatment standard of 5.0 mg/l for arsenic, measured using the Toxicity Characteristic Leaching Procedure (TCLP), for the K088 derived emission control dust from the USEII facility. We are also, for the CWM facility, finalizing an alternate treatment standard of 5.0 mg/l for arsenic, measured using the Toxicity Characteristic Leaching Procedure, for the K088 derived baghouse dust, incinerator ash, and filtercake.

This treatment variance requires USEII and CWM to dispose of their respective waste in RCRA Subtitle C landfills provided the waste complies with the specified alternate treatment standard for arsenic in K088 non-wastewaters and meets all other applicable LDR treatment standards.

DATES: This rule is effective May 22, 2002.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–2002–TV3F–FFFFF and is located in the RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $0.15 per page. (The index is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.)

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). The RCRA Call Center operates Monday-Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this rule, contact Laurie Solomon on 703–308–8443, *solomon.laurie@epa.gov,* or write her at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION:

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type *http://www.epa.gov/epaoswer/hazwaste/ldr.*

The official record for this action will be kept in paper form. Accordingly, EPA has transferred any comments received electronically into paper form and placed them in the official record which also includes comments submitted directly in writing. The official record is the paper record maintained at the RIC listed in the **ADDRESSES** section at the beginning of this document.

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I. Why and How Are Treatment Variances Granted?

Under section 3004(m) of the Resource Conservation and Recovery

Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984, EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' We have interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the court in *Hazardous Waste Treatment Council* vs. *EPA,* 886 F. 2d 355 (D.C.Cir.1989).

We recognize that there may be wastes that cannot be treated to levels specified in the regulation (see 40 CFR 268.40) (51 FR 40576, November 7, 1986). For such wastes, a treatment variance exists (40 CFR 268.44) that, if granted, becomes the treatment standard for the waste at issue.

Treatment variances may be national or site-specific. A national generic variance can result in the establishment of a new treatability group and a corresponding treatment standard that applies to all wastes that meet the criteria of the new waste treatability group (55 FR 22526, June 1, 1990). A site-specific variance applies only to a specific waste from a specific facility. See 62 FR at 64505 (December 5, 1997). Under 40 CFR 268.44(h), a generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance in cases where a waste that is generated under conditions specific to one site cannot or should not be treated to the specified level(s). Under 40 CFR 268.44(h)(1), the applicant for a site-specific variance must demonstrate that because the physical or chemical properties of the waste differ significantly from the waste analyzed in development of the treatment standard, the waste cannot be treated to the specified levels or by the specified method(s). Although there are other grounds for obtaining treatment variances, we will not discuss those in this notice because this is the only provision relevant to the present petitions. U.S. Ecology Idaho, Incorporated (USEII) (Grandview, ID) submitted their request for a treatment variance in September 2000. CWM Chemical Services LLC (CWM) (Model City, NY) submitted their request in December 2000. All information and data used in the development of this proposal can be found in the RCRA docket supporting this rule.

II. Summary of the Proposed Rule

On July 24, 2001 (66 FR 38405), we proposed to grant two site-specific treatment variances from the K088 (spent potliners from primary aluminum reduction) treatment standard for arsenic. The first proposed variance is for arsenic in the K088-derived emission control dust from an air pollution control system from a stabilization and containment building at the USEII facility. The second proposed variance is for arsenic in roll-off boxes of K088-derived baghouse dust and incinerator ash at the CWM Model City facility. This variance also covers wastewater treatment filtercake from the CWM facility (66 FR 38405, July 24, 2001). To date, no K088 filtercake has been generated. At both facilities, these waste streams are derived from the treatment of multiple listed and characteristic hazardous wastes, including K088. Under the RCRA regulations, when different hazardous wastes are combined for treatment and there are different treatment standards for a particular hazardous constituent, the treatment residue must meet the most stringent of the applicable treatment standards. Section 268.40 (c). With the advent of the Universal Treatment Standards, this situation does not arise often because most of the treatment standards are identical. However, K088 has a ''non-universal'' treatment standard for arsenic, which arguably might be considered more stringent than the universal treatment standard. (63 FR 51257, September 24, 1998.) The treatment standard for arsenic in K088 waste is to achieve a total concentration of arsenic of less than 26.1 mg/kg. The wastes which are the subject of these petitions would likely not achieve this treatment standard. The treatment residues, however, feasibly can be treated to meet the arsenic Universal Treatment Standard of 5 ppm measured using the TCLP.

In the proposal, we concluded that an alternative treatment standard of 5.0 mg/l for arsenic, measured using the TCLP, is warranted for the following reasons. First, the chemical properties of the derived-from waste at both facilities differ significantly from the waste used to establish the LDR treatment standard for arsenic in K088 non-wastewaters. Second, the alternative standard of 5.0 mg/l TCLP is currently the standard applicable to arsenic in all other hazardous wastes, except K088 non-wastewaters. Third, arsenic concentrations in USEII's K088-derived emission control dust and in CWM's K088-derived baghouse dust, incinerator ash and filtercake cannot be treated to a lower treatment standard based on a total analysis. This is because arsenic, as an element, cannot be destroyed and must be immobilized. In the proposal, we concluded that these reasons meet the criteria for granting a site-specific variance under 40 CFR 268.44(h)(1). (66 FR 38407, July 24, 2001.)

III. Comment Summary and Final Rule

We received three comments on the proposed rule. One commenter supports EPA's decision to grant these variances based on its experiences in meeting the relevant Land Disposal Restrictions. Another commenter requests clarification regarding whether the alternate treatment standard of 5.0 mg/l, measured using the TCLP, is limited to CWM's wastes that are currently managed on-site. Our answer is that the treatment standard granted under today's variance applies to existing and future incinerator residue treated at the facility. It also applies to existing and future baghouse dust generated at the facility, as well as to any K088 derived-from filtercake generated in the future at the facility (since the reasons for granting the treatment variance apply in all of these situations).

A commenter also requested clarification regarding which incinerator residue at CWM's Model City facility is covered by this final regulation. The commenter sought clarification as to whether the variance applies to just those wastes that are received from off-site and treated on-site or to these wastes plus any K088 derived baghouse dust and incinerator ash received from off-site and directly disposed in CWM's Model City Subtitle C landfill without treatment. The variance granted to CWM's Model City facility under this rulemaking is limited to wastes generated or treated at the Model City facility. Facilities other than CWM's Model City facility who believe their wastes meet the criteria for a variance from the KO88 standard can submit their own variance petition to the Agency for consideration.

Two commenters believe that the 26.1 mg/kg arsenic standard should apply only to newly-generated K088 and that all other mixture, derived-from and contained-in K088 should use the 5.0 arsenic TCLP universal treatment standard (UTS). These commenters believe that the cost and time spent by industry and EPA in preparing and responding to petitions for variances would be more than offset by a revised treatment standard. One commenter suggests that the rationale that EPA has used in previous final and proposed variances—that the treatment residues are physically and chemically different

from the waste analyzed in establishing the treatment standard—is applicable in all cases where K088 is treated with other hazardous waste and a K088-derived residue is generated. This commenter believes that, as a result, the most effective course of action is to revise the regulations and adopt a treatment standard of 5.0 mg/l for arsenic, measured using the TCLP, in K088 derived-from waste. Under this suggested approach, the 26.1 ppm total arsenic standard would continue to apply to newly-generated K088 at the primary aluminum facility. EPA would finalize a new standard for all other mixture, derived-from and contained-in K088 wastes; this new standard would use the existing UTS standard of 5.0 ppm arsenic.

Based on the limited number of variance requests we have received, we believe that the existing regulation is sufficient. We disagree with the commenter's cost estimate of revising the regulation versus continuing to use variances. In cases where site-specific variances from this standard are appropriate, EPA's regulations set forth a means by which generators or treaters of hazardous waste can file petitions for variances from the K088 treatment standard. To date, EPA has responded to only four petitions regarding the treatment standard for arsenic in K088. (66 FR 33887, June 26, 2001 and 65 FR 45978, July 26, 2000, plus the two granted today.) There are no outstanding treatment variance petitions.

In conclusion, for USEII, EPA is granting an alternate treatment standard of 5.0 mg/l for arsenic, measured using the TCLP, in existing and future K088 derived-from emission control dust from its air pollution control system. Likewise, at CWM's Model City facility, EPA is granting an alternate treatment standard of 5.0 mg/l for arsenic, measured using the TCLP, for existing and future K088 derived baghouse dust, incinerator ash and filtercake.

IV. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

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

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

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

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

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

Because this final rule does not create any new regulatory requirements, it is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. These treatment variances do not create any new regulatory requirements. Rather, they establish an alternative treatment standard for a regulated constituent at two specific facilities. This action, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this final rule does not include a Federal mandate that may result in estimated costs of $100 million or more in the aggregate to either State, local, or tribal governments or the private sector in one year. The final rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes, and local governments would have no compliance costs under this rule. EPA has also determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act. Thus, today's final rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule will not significantly or uniquely affect small governments. This final rule will not impose any requirements on small

entities. These treatment variances do not create any new regulatory requirements. Rather, they establish an alternative treatment standard for a regulated constituent at two specific facilities. Today's final rule is not, therefore, subject to the requirements of section 203 of UMRA.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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

Today's final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The subject wastes will comply with all other treatment standards and be disposed of in RCRA Subtitle C landfills. Therefore, we have identified no risks that may disproportionately affect children.

E. Environmental Justice Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to the concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's final rule applies to wastes that will be treated and disposed of in a RCRA Subtitle C hazardous waste landfill, ensuring a high degree of protection to human health and the environment. Therefore, the Agency does not believe that today's action will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Paperwork Reduction Act

This rule only changes the treatment standards applicable to a sub-category of K088 wastes at two facilities. It does not change in any way the paperwork requirements already applicable to these wastes. Therefore, this rule is not affected by the requirements of the Paperwork Reduction Act.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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. These treatment variances do not create any new regulatory requirements. Rather, they establish an alternative treatment standard for a regulated constituent at two specific facilities. Thus, Executive Order 13175 does not apply to this final rule.

I. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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'' are 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 governments.''

This final 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. These treatment variances do not create any new regulatory requirements. Rather, they establish an alternative treatment standard for a regulated constituent at two specific facilities. Thus, Executive Order 13132 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 22, 2002.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 7, 2002.

Marianne Lamont Horinko,

Assistant Administrator for Solid Waste and Emergency Response.

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

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.44, the table in paragraph (o) is amended by adding in alphabetical order two new entries for ''CWM Chemical Services LLC, Model City, New York'; and ''U.S. Ecology Idaho, Incorporated, Grandview, Idaho'' and Footnotes 9 and 10 to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER SEC. 268.40

Facility name[1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
*	*	*	*	*	*	*	
CWM Chemical Services, LLC, Model City, New York.	K088[9]	Standards under § 268.40.	Arsenic	1.4	NA	5.0 mg/L TCLP ...	NA
*	*	*	*	*	*	*	
U.S. Ecology Idaho, Incorporated, Grandview, Idaho.	K088[10]	Standards under § 268.40.	Arsenic	1.4	NA	5.0 mg/L TCLP ...	NA * * * * * * *
*	*	*	*	*	*	*	

[1] * * *

* * * * *

[9] This treatment standard applies only to K088-derived bag house dust, incinerator ash, and filtercake at this facility.

[10] This treatment standard applies only to K088-derived air emission control dust generated by this facility.

Note: NA means Not Applicable.

[FR Doc. 02–12768 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020329075–2124–03; I.D. 031902E]

RIN 0648–AP11

Fisheries of the Northeastern United States; Monkfish Fishery;Framework 1; Emergency Measures

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

ACTION: Disapproval of Framework 1; emergency interim rule; request for comments.

SUMMARY: NMFS notifies the public that it has disapproved proposed Framework 1 to the Monkfish Fishery Management Plan (FMP). NMFS is issuing this emergency interim rule to amend temporarily the monkfish fishing mortality rate (F) criteria in the FMP to be consistent with those recommended by the most recent stock assessment (SAW 34; January 2002). This emergency rule also implements the management measures that were proposed in Framework 1 to the FMP because, with the amendment of the F criteria in the FMP, these measures are consistent with the best available scientific information. The intended effect of this rule is to suspend temporarily the restrictive Year 4 default management measures that became effective May 1, 2002, and to implement management measures for the monkfish fishery based on the best scientific information.

DATES: Effective May 17, 2002 through November 18, 2002. Comments on this emergency rule must be received no later than 5 p.m. EDT June 14, 2002.

ADDRESSES: Comments on the emergency rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on Monkfish Emergency Rule.'' Comments may also be submitted via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the emergency rule, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR) are available upon request from Patricia A. Kurkul at the address listed above. The EA/RIR is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst,

(978) 281–9103, fax (978) 281–9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils), with the New England Fishery Management Council having the administrative lead. The objectives of the management program established by the FMP are to eliminate overfishing by May 2002 and to rebuild the stock by 2009. In order to ensure the elimination of overfishing by May 2002, the FMP specified that restrictive measures be implemented for Year 4 of the management program (May 1, 2002—April 30, 2003), unless a 3–year review of the stock status indicates that these restrictive measures are not necessary. The Year 4 default measures, which became effective on May 1, 2002, eliminated the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS) and by allowing only incidental landings of monkfish.

As required by the regulations at 50 CFR 648.96(b), a 3–year review of the management program was conducted by the Monkfish Monitoring Committee. Based on the results of this review, the Councils submitted Framework 1, which presented alternative management measures for Year 4. A proposed rule seeking public comment on Framework 1 was published in the **Federal Register** on April 4, 2002 (67 FR 16079). The measures proposed in Framework 1 were as follows: (1) A 1–year delay in implementing the restrictive Year 4 default management measures; (2) a target TAC of 19,595 metric tons (mt), with area-specific TACs of 11,674 mt and 7,921 mt for the Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA), respectively; (3) allocation of 40 DAS to limited access monkfish vessels for the 2002 fishing year (May 1, 2002 - April 30, 2003); (4) a revision to the monkfish trip limits in the SFMA to 550 lb (249 kg) (tail weight per DAS) for vessel permit categories A and C, and 450 lb (204 kg) (tail weight per DAS) for vessel permit categories B and D while fishing on a monkfish DAS in the SFMA; and (5) maintenance of all other measures as established for Year 3 of the FMP, including less restrictive incidental catch limits.

Based upon the F criteria recommended by SAW 34 and the 2001 NMFS fall trawl survey, the measures contained in Framework 1 were initially determined to be consistent with the FMP objectives of ending overfishing in 2002. However, that determination was based on the F criteria recommended by SAW 34, not the F criteria in the FMP. Therefore, during a closer review of the F criteria in the FMP, NMFS determined that Framework 1 was not consistent with the FMP because the F criteria in the FMP have not yet been formally amended to reflect the best available information on the monkfish stock. Therefore, NMFS is disapproving Framework 1 because it is inconsistent with the FMP.

The FMP authorizes the Councils to revise the F criteria through framework action. However, the results of SAW 34 were not available until late January 2002, when the Councils approved Framework 1, which was too late to incorporate the new scientific information into the framework action in order to have measures in place before the default measures became effective on May 1, 2002.

The F thresholds defined in the FMP are F=0.05 for the NFMA and F=0.14 for the SFMA. The FMP F targets and thresholds were generated using reference points and estimates of contemporaneous fishing mortality from SAW 23 (March 1997). Estimates of those reference points were recalculated during SAW 31 (October 2000) using updated data and under different hypotheses, which were considered to be more reasonable, regarding the mean length at full selection.[1] This resulted in negative estimates of the F threshold for the NFMA, which is an unrealistic result, indicating that the F reference points in the FMP are not reliable as indicators of stock status with respect to exploitation rates. As a result, the 31st Stock Assessment Review Committee (SARC) concluded that the fishing mortality reference points established in the FMP needed to be reevaluated.

The 34th SARC recognized inherent flaws in the method used to establish the F criteria in the FMP and discussed potential alternatives for establishing revised F criteria. The SARC stated that information now exists to estimate current F rates by age, and that yield per recruit (YPR) analyses could be used to establish revised reference points. Based on a provisional YPR analysis, the SARC recommended F thresholds of F=0.2 and F targets of F=0.14 for the stock units in both the NFMA and the SFMA.

The FMP includes target TAC levels projected to be consistent with the fishing mortality objectives of the FMP. The FMP's planned reductions in the target TACs were based on achieving the F threshold in the fourth year of management. However, when the F thresholds were found to be invalid, the TACs also became invalid.

The current assessment methodology is adequate to estimate the level of F in recent fishing years. In Framework 1, the Councils considered information from SAW 34 that provided a range of F estimates for calendar year 2000. Within the range of estimates, the SAW attached the most significance to those derived from the recent cooperative industry survey, which was conducted in February—April 2001. The most probable estimates of F derived from the cooperative survey ranged from about 0.25 to about 0.4. These estimates include only 7 months of monkfish DAS restrictions and trip limits and, therefore, underestimate the effect of the management measures in reducing F. Furthermore, the results of the 2001 NMFS fall trawl survey indicate that the NFMA component of the stock is no longer overfished and that the SFMA stock biomass is at its highest level since 1986.

NMFS implements this emergency rule to amend temporarily the F criteria in the FMP to be consistent with those recommended by SAW 34. Amendment 2 to the FMP, which is currently under development by the Councils, will permanently amend these F criteria and establish a revised stock rebuilding program using the best scientific information available. Because the measures proposed in Framework 1 were found to be consistent with the F criteria recommended by SAW 34, this temporary revision to the F criteria contained in the FMP provides a clear basis for implementing the management measures proposed in Framework 1. Therefore, this action also enacts the management measures proposed in Framework 1, which are described in the preamble to this emergency rule. These measures achieve the FMP objective of ending overfishing in 2002 since setting the target TACs for the 2002 fishing year based on 2000 landings is consistent with the amended F threshold of F=0.2. Moreover, with stock survey indices showing increasing biomass, F should decrease further if monkfish catch remains stable. To achieve the target TACs recommended for Framework 1, the Councils and NMFS considered combinations of trip limits and DAS. The combination of restrictive trip limits and 40 DAS to keep landings at the 2000 level was selected by the Councils over other (higher) trip limits and a reduced number of DAS based on industry testimony favoring the maintenance of the 40 DAS.

[1] The mean at which monkfish is retained by the fishing gear.

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address an emergency if the Secretary finds that an emergency exists. These emergency regulations may remain in effect for no more than 180 calendar days after the date of publication in the **Federal Register**, with a possible 180–day extension, provided the public has an opportunity to comment on the measures.

The restrictive Year 4 default measures currently required by the FMP became effective on May 1, 2002. These default measures are expected to have a significant negative economic impact on monkfish vessels and monkfish-dependent communities. In addition, because monkfish are often caught incidentally when vessels target other species, the default measures are likely to cause wasteful bycatch of monkfish in other directed fisheries as a result of reduced incidental trip limits. Furthermore, the results of SAW 34 and the 2001 NMFS fall trawl survey indicate that the restrictive Year 4 default measures are not necessary to eliminate overfishing.

Implementing this action through section 305(c) emergency authority is justifiable because the need to disapprove Framework 1 and immediately amend the FMP to make it consistent with the best scientific information available became discoverable only after NMFS had the time to fully evaluate the framework action after the public comment period had ended. As discussed above, the disapproval of Framework 1 is based on the fact that the framework measures, which are based on the best available scientific information on the monkfish stock, are inconsistent with the F criteria in the FMP. The need for a formal change to the FMP to incorporate the new F criteria was not clearly apparent earlier, given the newness of the scientific information and the extremely compressed timeframe for considering public comments and implementing the framework before the default measures became operative. Moreover, it would not have been possible to incorporate the new scientific information into the FMP through Framework 1 to avoid the default measures because the scientific information necessary to justify the change was not available in time. Disapproval of Framework 1 means that the default measures, which are no longer considered necessary in light of the best scientific information available, must remain in place until the newest science is incorporated into the FMP. To delay the incorporation of the newest science and implementation of the action necessary to avoid the default measures would result in substantial, unwarranted and unnecessary economic harm to the industry and would likely cause wasteful bycatch of monkfish in other fisheries. Because NMFS is constrained to only approve or disapprove a framework action, the only available way to implement this action, without further delay, is through the Magnuson-Stevens Act section 305(c) emergency authority.

Implementing this action through the section 305(c) emergency authority of the Magnuson-Stevens Act is fully consistent with NMFS' Policy Guidelines for the Use of Emergency Rules (Emergency Guidelines) found at 62 FR 44421, *et seq.* (August 21, 1997). The Emergency Guidelines specify ''emergency criteria'' and ''emergency justification'' for determining the appropriateness of section 305 (c) rulemaking. Under the ''emergency criteria'' guidelines, an emergency exists in a situation that: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

As more fully discussed above and in the EA accompanying this action, this emergency action meets all of these criteria. First, the need for the action results from a ''recently discovered circumstance'' created by the need to disapprove Framework 1. Second, to allow the default measures to remain in place creates serious management problems in that fishers are subject to substantial, unwarranted and unnecessary economic harm if they are not allowed to retain more than an incidental catch of monkfish. It also creates serious conservation problems in that the default measures are likely to cause wasteful bycatch of monkfish in other fisheries. Third, the immediate benefits of relieving the substantial economic harm on the fishers outweigh the value of additional public comment and deliberative consideration, particularly because there has been prior notice and comment on the measures to be implemented in the context of receiving comments on a proposed framework action.

For these same reasons, this emergency action is consistent with the ''emergency justification'' guidelines which state that an emergency action is justified:

> If the time it would take to complete notice-and-comment rulemaking would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse effect to the public health, emergency action might be justified under one or more of the following situations:
>
> (1) Ecological (A) to prevent overfishing as defined in an FMP, or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or,
>
> (2) Economic to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or,
>
> (3) Social to prevent significant community impacts or conflict between user groups; or,
>
> (4) Public health to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products (62 FR 44421).

This emergency action clearly qualifies under the ''Economic'' situation in that it is intended to relieve unnecessary economic loss to fishers that otherwise would not be able to fish for monkfish under the default measures. It also preserves a significant economic opportunity for those fishers that rely on the monkfish fishery for their livelihood as more fully discussed above and in the EA. In addition, this emergency action addresses the ''Social'' situation by lessening impacts on fishers in communities more dependent on monkfish and the ''Ecological'' situation by minimizing wasteful bycatch of monkfish in other fisheries.

Classification

For these reasons, the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive the requirement to provide prior notice and the opportunity for public comment on the temporary amendment to F thresholds and F targets in the FMP, pursuant to authority set forth at U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. This will prevent unnecessary economic harm and biological waste by enacting a temporary suspension of the restrictive Year 4 default management measures and implementing alternative measures consistent with the measures proposed in Framework 1. These reasons are more fully explained in the justification for implementing this emergency action pursuant to section 305(c) of the Magnuson-Stevens Act. It is further noted that the management

measures contained in this emergency rule received prior notice and public comment through the Council's framework process and the publication of a proposed rule for Framework 1. The AA is also waiving the 30 day delay in effective date under 5 U.S.C. 553(d)(1), as this rule relieves a restriction.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment. However, the management measures contained in this emergency rule received prior notice and public comment through the Councils' framework process and the publication of a proposed rule, accompanied by an Initial Regulatory Flexibility Analysis, for Framework 1. A Final Regulatory Flexibility Analysis was prepared for the draft final rule for Framework 1.

A formal section 7 consultation under the Endangered Species Act was initiated for Framework 1. Because the measures contained in this emergency rule are the same as those proposed in Framework 1, the Biological Opinion (BO) prepared as part of that consultation is applicable to this action. In the BO for Framework 1 dated May 14, 2002, the AA determined that fishing activities conducted under the measures contained in Framework 1 are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

The Regional Administrator has determined that fishing activities conducted under this emergency rule will not have an adverse impact on marine mammals.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.92, paragraph (b)(1) is suspended and paragraph (b)(9) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(9) *Limited access monkfish permit holders*. For fishing year 2002, all limited access monkfish permit holders shall be allocated 40 monkfish DAS. Multispecies and scallop limited access permit holders who also qualify for a limited access monkfish permit shall be allocated up to 40 monkfish DAS, depending on whether they have sufficient multispecies and/or scallop DAS to use concurrently with their monkfish DAS, as required by paragraph (b)(2) of this section.

3. In § 648.94, paragraphs (b)(1) through (b)(7) and (c)(2) are suspended, and paragraphs (b)(8) through (b)(11), and (c)(7) are added to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(8) *Vessels fishing under the monkfish DAS program in the SFMA.*—(i) *Category A and C vessels*. Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (249 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) *Category B and D vessels*. Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iii) *Administration of landing limits*. A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(8)(ii) and (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(9) *Category C and D vessels fishing during a multispecies DAS.*—(i) *NFMA*. There is no monkfish trip limit for a Category C or D vessel that is fishing under a multispecies DAS exclusively in the NFMA.

(ii) *SFMA*. If any portion of a trip is fished only under a multispecies DAS, and not under a monkfish DAS, in the SFMA, the vessel may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(10) *Category C and D vessels fishing under the scallop DAS program*. A Category C or D vessel fishing under a scallop DAS with a dredge on board, or under a net exemption provision as specified in § 648.51(f), may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(11) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board*. Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have on board a dredge are subject to the same landing limits as specified in paragraph (b)(9) of this section. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(c) * * *

(7) *Scallop dredge vessels fishing under a scallop DAS*. A scallop dredge vessel issued a monkfish incidental catch permit and fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

* * * * *

[FR Doc. 02–12774 Filed 5–17–02; 10:37 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 99
Wednesday, May 22, 2002

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 00–052–1]

Fruits and Vegetables From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes to be moved interstate from Hawaii if the fruits and vegetables undergo irradiation treatment at an approved facility. Treatment could be conducted either in Hawaii or in non-fruit-fly-supporting areas of the mainland United States. The fruits and vegetables would also have to meet certain additional requirements, including packaging requirements. This action would relieve restrictions on the movement of these fruits and vegetables from Hawaii while continuing to provide protection against the spread of plant pests from Hawaii to other parts of the United States. We are also proposing to amend the irradiation regulations to require cartons of fruits and vegetables that are being moved interstate in accordance with the regulations to be marked with irradiation indicators. This requirement would provide additional protection against the introduction of plant pests into the United States from Hawaii.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 22, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–052–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–052–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–052–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii.

The regulations at § 318.13–4f allow abiu, atemoya, carambola, litchi, longan, papaya, rambutan, and sapodilla to be moved interstate from Hawaii if, among other things, the fruits and vegetables undergo irradiation treatment in accordance with that section. We are proposing to allow bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes to be moved interstate from Hawaii if treated with irradiation in accordance with these same requirements. We are proposing this action because research by the Department's Agricultural Research Service (ARS) has shown that this irradiation treatment can eliminate infestations of fruit flies and other pests in bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes moving interstate from Hawaii. These fruits and vegetables would be added to the list in § 318.13–4f(a) of fruits and vegetables for which irradiation is an approved treatment.

Section 318.13–4f provides that:

1. Irradiation treatment must be carried out only in Hawaii or in non-fruit-fly-supporting areas of the mainland United States (i.e., States other than Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia);

2. The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service (APHIS);

3. In order to be approved, a facility must be capable of administering a minimum absorbed ionizing radiation dose of 250 Gray (25 krad), be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, complete a compliance agreement with APHIS, and be certified by Plant Protection and Quarantine, APHIS, for initial use and annually for subsequent use;

4. Irradiation treatment must be monitored by an inspector, who may be either an APHIS employee or a designated State plant regulatory official;

5. If treated in Hawaii, the fruits and vegetables must be packaged in pest-proof cartons. Then, the pallet-load of pest-proof cartons must be wrapped, before leaving the irradiation facility, in one of the following ways: (1) With polyethylene sheet wrap; (2) with net wrapping; or (3) with strapping so that each carton on an outside row of the pallet-load is constrained by a metal or plastic strap. In addition, pallet-loads must be labeled before leaving the irradiation facility with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment;

6. If moving to the mainland for treatment, the untreated fruits and vegetables must be shipped in shipping containers sealed prior to interstate

movement with seals that will visually indicate if the shipping containers have been opened;

7. The fruits and vegetables must receive a minimum absorbed ionizing irradiation dose of 250 Gray (25 krad);

8. Dosimetry systems in the irradiation facility must map, control, and record the absorbed dose;

9. The absorbed dose must be measured by a dosimeter that can accurately measure an absorbed dose of 250 Gray (25 krad);

10. The number and placement of dosimeters must be in accordance with American Society for Testing and Materials standards;

11. The irradiation facility must keep records or invoices for each treatment lot for a period that exceeds the shelf life of the irradiated food product by 1 year and must make those records available to an inspector for inspection; and

12. An inspector will issue a certificate for the interstate movement of fruits and vegetables treated and handled in Hawaii in accordance with the regulations at § 318.13–4f. An inspector will issue a limited permit for the interstate movement of untreated fruits and vegetables from Hawaii for irradiation treatment on the mainland United States.

Paragraphs (c) and (d) of § 318.37–4f set forth procedures for applying for approval and inspection of a treatment facility, and procedures for denial and withdrawal of approval.

Paragraph (e) of § 318.13–4f further provides that the U.S. Department of Agriculture and its inspectors are not responsible for any loss or damage resulting from any treatment prescribed or supervised.

Bell peppers, eggplant, pineapple (other than smooth Cayenne), Italian squash, and tomatoes are currently allowed to move interstate from Hawaii if they are first treated for the Mediterranean Fruit Fly (Medfly, *Ceratitis capitata*), Oriental fruit fly *(Bactrocera dorsalis),* and melon fly *(B. cucurbitae)* with vapor heat in accordance with the regulations in § 318.13–4b. Tomatoes may also be moved interstate from Hawaii if they are treated with methyl bromide in accordance with the regulations in § 318.13–4c. This proposed rule, if adopted, would provide for an alternative means of treating eggplant, peppers, pineapple (other than smooth Cayenne), Italian squash, and tomatoes from Hawaii for fruit flies.

Mangoes have not previously been allowed to move interstate from Hawaii due to the absence of an approved treatment to control the mango seed weevil *(Sternochetus mangiferae),* a pest that occurs in Hawaii, but not in the mainland United States. However, ARS research has recently shown that infestations of mango seed weevil in Hawaiian mangoes are eliminated if the host mangoes receive a minimum absorbed ionizing irradiation dose of 100 Gray (10 krad). Since prior research has shown that fruit fly infestations in fruits can be eliminated with a minimum ionizing irradiation dose of 250 Gray (25 krad), we are proposing to allow mangoes to be moved interstate from Hawaii if they are treated at that dosage, which would eliminate both fruit flies and the mango seed weevil.

We believe that the existing requirements in § 318.13–4f (b) through (e) described above would be sufficient to allow the safe interstate movement of bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes from Hawaii to the mainland United States.

Irradiation Indicators

The regulations in § 318.13–4f do not contain any requirements related to irradiation indicator devices. Indicator devices change color, or undergo some other obvious change, when exposed to irradiation in the required dose range for regulated articles, and can be attached to cartons of articles. We are proposing to amend the regulations in § 318.13–4f to require that irradiation indicators be attached to cartons of irradiated fruits and vegetables from Hawaii that move interstate under the regulations in that section. Abiu, atemoya, bell peppers, carambola, eggplant, litchi, longan, mangoes, papaya, pineapple (other than smooth Cayenne), rambutan, sapodilla, Italian squash, and tomatoes moving interstate from Hawaii that are treated with irradiation in either Hawaii or on the mainland United States would be subject to this requirement.

We are proposing this action because carton indicators would be a useful enforcement tool. They could not serve as primary documentation that articles have been irradiated in accordance with the regulations, because such indicators are not as sensitive or accurate as the dosimetry systems required by the regulations, and because it would be relatively easy to produce fraudulent indicators (*e.g.,* by subjecting a large number of indicators to irradiation and then attaching them to cartons that have not been irradiated). However, we believe that such indicators can be useful when used in conjunction with the other safeguards required by the regulations in § 318.13–4f. In particular, they can be a useful ''cross check'' when personnel at irradiation facilities are distinguishing irradiated cartons from nonirradiated cartons, and when APHIS inspectors are correlating the required interstate movement certificates with the cartons referred to in the documents.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to allow bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes to be moved interstate from Hawaii if they are treated with irradiation in accordance with the regulations in § 318.13–4f. Irradiation at certain dosages eliminates infestations of pests in fruits and vegetables. Irradiation also eliminates bacterial or fungal growth that can otherwise cause accelerated spoilage and result in illness. Bacterial contamination can come from soil, insects, bird or rodent droppings, or the water used in processing.

We are also proposing to require that irradiation indicators be attached to cartons of any fruits or vegetables from Hawaii that are eligible to move interstate under the regulations if treated with irradiation in accordance with § 319.13–4f.

Effects on Producers and Shippers of Fruits and Vegetables

Since 1995, the amount of land used for commercial production of mangoes in Hawaii has nearly tripled, and more than 7,500 new mango trees have been planted. However, producers in Hawaii have not been able to ship mangoes to the mainland United States due to the presence of the mango seed weevil in Hawaii (the mango seed weevil is not present in the mainland United States).[1] If this proposal is adopted, the irradiation treatment would be the first approved treatment for the mango seed weevil, thereby opening up the mainland U.S. mango market to Hawaiian mangoes.

U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218

[1] The mango seed weevil attacks mango seeds, but rarely the fruit, and may cause slight fruit drop in production areas. The mango seed weevil poses no threat to other crops or flora. It is strictly monophagous.

mango farms in Florida, 171 in Hawaii, and 2 in California. The total domestic harvest that year was about 2,829 metric tons, of which about 97 percent was produced in Florida and about 3 percent (approximately 85 metric tons) produced in Hawaii. According to National Agricultural Statistics Service data, Hawaii produced approximately 72 metric tons of mangoes in 1999. It is unlikely that this proposed rule, if adopted, would result in a significant amount of mangoes being moved from Hawaii to the mainland United States because it is expected that nearly all mangoes produced in Hawaii will continue to be consumed within the State. Further, given that the United States imported 219,000 metric tons of mangoes between September 1998 and August 1999, any movements of Hawaii-grown mangoes to the mainland United States would be insignificant in contrast to the volume of annual imports.

Bell peppers, eggplant, pineapple (other than smooth Cayenne), Italian squash, and tomatoes are currently allowed to move interstate from Hawaii if they are first treated for Medfly, Oriental fruit fly, and melon fly with vapor heat in accordance with the regulations in § 318.13–4b. Tomatoes may also be moved interstate from Hawaii if they are treated with methyl bromide in accordance with the regulations in § 318.13–4c. This rule, if adopted, would provide for an alternative means of treating bell peppers, eggplant, pineapple (other than smooth Cayenne), Italian squash, and tomatoes from Hawaii for fruit flies and other pests.

Since 1995, Hawaii's production of bell peppers, eggplant, Italian squash, and tomatoes has increased in value and volume (see tables 1 and 2). Hawaii's production of pineapples (other than smooth Cayenne) has decreased by 4 percent, but its value has increased by 6 percent.

TABLE 1.—PRODUCTION OF SELECTED VEGETABLES IN HAWAII.

	Year			
	1995	1996	1997	1998
Bell Peppers				
Volume (fresh weight in lbs.)	2,400,000	2,600,000	2,000,000	3,000,000
Value	$1,392,000	$1,248,000	$980,000	$1,500,000
Eggplant				
Volume (fresh weight in lbs.)	1,200,000	1,300,000	1,500,000	1,300,000
Value	$984,000	$949,000	$1,185,000	$1,053,000
Pineapples (other than smooth Cayenne)				
Volume (fresh weight in lbs.)	760,594,590	765,003,834	714,297,528	731,934,504
Value	$87,360,000	$95,914,000	$91,721,000	$92,776,000
Italian Squash				
Volume (fresh weight in lbs.)	620,000	700,000	1,400,000	1,500,000
Value	$316,000	$336,000	$700,000	$735,000
Tomatoes				
Volume (fresh weight in lbs.)	6,000,000	7,000,000	10,200,000	10,200,000
Value	$2,910,000	$3,710,000	$5,508,000	$5,610,000

TABLE 2.—CHANGE IN PRODUCTION OF SELECTED VEGETABLES IN HAWAII BETWEEN 1995 AND 1998

	Volume (percent)	Value (percent)
Bell Peppers	−4	+6
Eggplant	+70	+93
Pineapples (other than smooth Cayenne)	+25	+8
Italian Squash	+8	+7
Tomatoes	+142	+96

According to the Hawaii Agricultural Census, there were 27 farms growing pineapples for commercial sale in 1997. Twenty-two (or 82 percent) of those farms harvested between 1 and 14 acres of pineapple. During the same year, 74 farms produced tomatoes for commercial sale (a total of 388 acres harvested). There are no official data with respect to the number of farms in Hawaii producing bell peppers, eggplant, and Italian squash during the same year. However, considering that in 1997 there were 657 farms in Hawaii that harvested fruits and vegetables for sale (90 percent of which had less than 14 acres of crops planted), we believe that the majority of farms producing bell peppers, eggplant, and Italian squash for sale were small according to Small Business Administration (SBA) criteria. It is also likely that the majority of firms shipping bell peppers, eggplant, and Italian squash interstate from Hawaii are small according to SBA criteria.

Regardless of their size, Hawaii's fruit and vegetable producers and shippers who move fruits and vegetables interstate from Hawaii would benefit from the availability of an additional treatment alternative, especially since the proposed treatment is less time-consuming than the presently available vapor heat treatment (see table 3 below).

TABLE 3.—COMPARISON OF IRRADIATION AND VAPOR HEAT TREATMENTS

	Irradiation	Vapor heat
Cost	$0.22 to $0.33/kg (treatment cost) + $0.05 to $0.10/carton (indicator cost)	$0.20 to $0.50/kg.

TABLE 3.—COMPARISON OF IRRADIATION AND VAPOR HEAT TREATMENTS—Continued

	Irradiation	Vapor heat
Treatment Time	40 minutes	1.5 to 7 hours.

Effects on Treatment Facilities

The proposed irradiation treatments for bell peppers, eggplants, mangoes, pineapples (other than smooth Cayenne), Italian squash, and tomatoes would take place mostly at a new facility that was recently built in Hawaii. However, it is possible that some of these fruits and vegetables could be shipped to the mainland United States and treated with irradiation at facilities in Illinois or New Jersey. At present, various other tropical fruits, such as papaya, litchi, rambutan, carambola, and atemoya are shipped from Hawaii to a facility in Illinois for cobalt irradiation treatment.

On August 1, 2000, a new x-ray irradiation facility in Hawaii began treating papayas, which, after their x-ray treatment, are commercially shipped to the mainland United States. This facility treats between 500 to 1,000 boxes of papayas per day, 4 days per week.

This facility would be the primary irradiation facility to treat Hawaii-grown bell peppers, eggplants, mangoes, pineapples (other than smooth Cayenne), Italian squash, and tomatoes before they are moved interstate. However, if there is not enough capacity at the Hawaiian plant for the fruits to be irradiated, the fruits could be sent for treatment to any of the three irradiation treatment facilities on the mainland United States.

According to SBA criteria, the facility in Hawaii mentioned in the previous paragraphs is a small entity (i.e., an entity with annual sales of less than $5 million). Another firm that provides irradiation treatments for fruits and vegetables owns two irradiation facilities in Illinois and one facility in New Jersey. This other firm, which primarily provides irradiation treatment to sanitize medical devices, is not a small entity according to SBA criteria.

This proposed rule, if adopted, would benefit the Hawaiian treatment facility, and may benefit the mainland facilities if the Hawaiian facility cannot keep up with demand for treatment of fruits and vegetables moving interstate from Hawaii. The proposed rule could also potentially benefit U.S. mainland consumers by increasing the mainland's supply of those fruits and vegetables that would be eligible for interstate movement with irradiation treatment.

Additional Effects of Proposed Irradiation Indicator Requirement

Under the proposed regulations, irradiation indicators would be required to be attached to cartons of any fruits or vegetables that are moved interstate from Hawaii and that are irradiated in Hawaii or on the mainland United States. Prototypes of such indicators have already been developed, and are based on dosimeter technology. The indicators would be considerably less expensive to manufacture than dosimeters because no precise measurement is involved only—an indication that irradiation has occurred.

APHIS anticipates that manufacturers of indicators could produce the indicator in large quantities at a low unit cost—$0.05 to $0.10 per indicator. The cost of the indicators, once they are produced in volume, will be negligible compared to the value of the produce shipped.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–052–1. Please send a copy of your comments to: (1) Docket No. 00–052–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would allow bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes to be moved interstate from Hawaii if the fruits and vegetables undergo irradiation treatment at an approved facility in Hawaii or in non-fruit-fly-supporting areas of the mainland United States. In order for the fruits and vegetables to move interstate to the mainland United States, we would have to issue certificates or limited permits, and we would have to mark and seal shipping containers. We would also require that persons treating fruits and vegetables with irradiation for interstate movement from Hawaii would need to attach irradiation indicators to each carton of irradiated fruits and vegetables. These information collection activities would help ensure that only those fruits and vegetables that have been handled in compliance with the regulations move interstate to the mainland United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.127 minutes per response.

Respondents: Fruit producers, shippers, importers, irradiation facility personnel, and State plant regulatory officials.

Estimated annual number of respondents: 756.

Estimated annual number of responses per respondent: 7,659.

Estimated annual number of responses: 5,790.

Estimated total annual burden on respondents: 736 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we propose to amend 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

2. Section 318.13–4f would be amended as follows:

a. By revising paragraph (a).

b. By redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(8) and (b)(9), respectively, and by adding a new paragraph (b)(7).

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables: Abiu, atemoya, bell pepper, carambola, eggplant, litchi, longan, mango, papaya, pineapple (other than smooth Cayenne), rambutan, sapodilla, Italian squash, and tomato.

(b) * * *

(7) *Indicators.* Each carton of fruits and vegetables must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.

* * * * *

Done in Washington, DC, this 16th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12810 Filed 5–21–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 99–032–1]

Importation of Cooked Meat and Meat Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products to allow meat cooked in plastic in processing establishments located in regions where rinderpest or foot-and-mouth disease exists to be further processed after cooking and before importation. Additionally, we are proposing to allow the pink juice test to be used in determining whether ground meat cooked in such establishments has been adequately cooked. These proposed amendments would provide foreign meat processing establishments with additional processing options while continuing to protect against the introduction of rinderpest and foot-and-mouth disease into the United States.

DATES: We will consider all comments that we receive that are postmarked, delivered, or e-mailed by July 22, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 99–032–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–032–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 99–032–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Masoud Malik, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–8096.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, swine vesicular disease, hog cholera, and African swine fever. These are dangerous and destructive communicable diseases of ruminants and swine.

Under § 94.4 of the regulations, the importation of cured and cooked meat from regions where rinderpest or FMD exists is prohibited unless the cured or cooked meat fulfills the conditions prescribed in that section.

Meat Cut Into Cubes

Currently, § 94.4(b)(8) requires that cooked ruminant or swine meat imported into the United States from regions where rinderpest or FMD exists be inspected at the port of arrival by an inspector of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) and be found to be thoroughly cooked. For meat that is cooked in plastic, thoroughness of

cooking must be determined by a temperature indicator device (TID) registering at least 79.4 °C at the cold spot (the area in a plastic cooking tube or other type of container loaded with meat product that is slowest to reach the required temperature during the cooking process) or, for cubes, slices, and anatomical cuts of meat, by the pink juice test.

A TID is a precalibrated temperature-measuring instrument containing a chemical compound activated at a specific temperature (the melting point of the chemical compound) that is identical to the processing temperature that must be reached by the meat being cooked. Paragraph (b)(6) of § 94.4 requires that any TID used to determine that meat cooked in plastic has been throughly cooked must remain in the meat, as originally inserted, and must accompany the cooked meat whose temperature it has gauged when that meat is shipped to the United States.

When a TID is not used, thoroughness of cooking is determined using the pink juice test. The requirements for providing meat of adequate form and size to allow for the pink juice test are set forth in paragraphs (b)(5)(i), (b)(5)(ii), and (b)(5)(iii) of § 94.4 for cubes of meat, slices of meat, and anatomical cuts of meat, respectively.

Currently, for both cubed and sliced meat, the regulations require that at least 50 percent of the meat pieces or slices per tube be 3.8 centimeters (1.5 inches) or larger in each dimension after cooking or, if more than 50 percent of meat pieces or slices per tube are smaller than 3.8 centimeters in any dimension after cooking and no TID is being used, an indicator piece of sufficient size for a pink juice test to be performed (3.8 centimeters or larger in each dimension after cooking) must have been placed at the cold spot of the tube. For anatomical cuts of meat, the indicator piece must be removed, after cooking, from the center of the cut, farthest from all exterior points, and be 3.8 centimeters or larger in each dimension for performance of the pink juice test.

In order for the FSIS inspector to be able to associate an indicator piece or TID with the tube of meat it came from, meat from multiple tubes may not be commingled before being imported into the United States. This means that meat from various cooking tubes cannot be combined after cooking for further processing at the foreign meat processing establishment before being exported to the United States.

In some cases, the inability of foreign meat processors to combine meat after cooking and still comply with the regulations restricts their ability to process meat into cube sizes that can be readily used in the United States. The most efficient way of cutting meat precisely into cubes of a desired size is to cool the meat close to the freezing point after cooking, then to cut the meat. Cutting the meat before cooking is not as effective, because the cooking process can cause meat cubes to assume irregular sizes and shapes. It is also not possible to cut the meat properly when it is hard frozen at temperatures significantly below freezing, such as when it is frozen for shipment to the United States. While it may be possible for foreign meat processors to further cut the meat after cooking and prior to freezing one cooking tube at a time, it is not economically efficient to cut the meat one tube at a time, as such cutting is done most efficiently in larger quantities.

As a general practice, processors of meat for export to the United States cook the meat to the temperature required under the regulations in large ''cookers.'' These are containers or chambers that cook multiple tubes of meat by means of boiling water or steam. Most facilities that cook meat have multiple cookers. Each day, a cooker may be used several times to cook meat to the required temperature. Each cooking session per cooker is referred to as a ''shift.''

To allow for the cutting of meat combined from separate tubes from the same shift, while at the same time ensuring that all meat imported from FMD-affected countries can be adequately inspected upon its arrival in the United States, we are proposing certain changes to the regulations regarding meat for which the pink juice test is used to determine adequate cooking. Additionally, we are making a change to update the regulations as to which Federal agency is responsible for approval of plastic containers used for meat that is cooked.

Approval of Containers

Currently, § 94.4(b)(5), regarding meat cooked in plastic, provides that the tube in which the meat is cooked must be constructed of plastic film or other material approved by FSIS. This reference to approval by FSIS is outdated. Currently, all packaging material that comes into direct contact with food must be approved by the U.S. Food and Drug Administration (FDA). In this proposal, we are including that reference change.

Further Processing of Meat Cooked in Plastic

We are proposing to add a new § 94.4(b)(6) that would allow meat cooked in plastic in a single shift to be combined after cooking for further processing, e.g., to be cut into smaller cubes as described above. Once the meat was cooled after cooking, one tube from each shift per cooker would have to be randomly selected by the official of the National Government of the region of origin who is authorized to issue the meat inspection certificate required by the FSIS regulations in 9 CFR 327.4. We would require that a cylindrical or square piece (depending on the shape of the tube) of at least 3.8 centimeters in each dimension be cut from the cold spot of the tube, to be used as the indicator piece for the shift. The indicator piece would have to be sealed in plastic or other material approved by FDA and accompanied by a certificate issued by the official who selected the tube. The certificate would have to provide the cooker and shift number, and the date the tube was selected. As noted, each shift per cooker would be required to have an indicator piece. All indicator pieces would have to be individually sealed, properly labeled, and enclosed together in one sealed box that accompanies the shipment. After the indicator piece was removed, all remaining meat from the same shift could be cut into cubes of the desired size and packed in a box or container approved by FDA. The indicator pieces selected and the cut cubes of the desired size could then be frozen for shipment to the United States. The indicator pieces and cubes of meat would have to be accompanied to the United States by a certificate as provided in § 94.4(b)(8).

Ground Meat

While the current regulations in § 94.4(b)(5) provide for ground meat to be cooked in plastic, the only allowable method of determining whether ground meat cooked in plastic has been cooked to the required temperature is by means of a TID, i.e., the use of an indicator piece is not an option for ground meat as it is for cubes, slices, and anatomical cuts of meat. However, we recognize that if a large enough indicator piece were used when cooking ground meat, that piece would serve as a valid method of determining whether the ground meat had been cooked to the required temperature. Therefore, we are proposing to amend § 94.4(b)(5)(i) to provide that an indicator piece could be used in lieu of a TID for ground meat if the indicator piece is of sufficient size for a pink juice test to be performed (i.e.,

3.8 centimeters or larger in each dimension after cooking). The indicator piece must have been placed at the cold spot of the tube. This proposed change would provide the same options for determining the thoroughness of cooking for ground meat as are currently provided for cubes, slices, and anatomical cuts of meat.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In this document, we are proposing to amend the regulations regarding meat cooked in processing establishments located in regions where rinderpest or FMD exists to allow for further processing of meat after cooking and before importation.

Although these proposed amendments would apply to both ruminant and swine meat, the primary impact of the proposed changes would be on beef. As described previously in this document, the regulations in § 94.4(b)(5) already provide for the importation of cooked ruminant and swine meat prepared under conditions that are largely similar to those that would be provided under this proposed rule, but it is only beef and veal that are currently being imported into the United States under those provisions, primarily from Argentina, Brazil, and Uruguay. The proposed rule would allow for quality improvements in these cubed beef and veal products and, therefore, expand their marketability. However, the potential effect on imports of beef and veal and the overall U.S. supply of beef and veal is expected to be small for several reasons.

The cooked ground meat, cubes of meat, slices of meat, and anatomical cuts of meat that are currently imported are used primarily in the production of other products such as stews and meat pies. This proposed rule would allow for an improvement in the quality of the meat cubes by making them available in more sizes and in a more consistent size and shape. This would allow the products to have expanded marketability. However, cooked cubed beef and veal constitute a small portion of the U.S. beef and veal industry. Imports of prepared beef, including beef cooked in plastic, but not cured, pickled, salted, dried, or made into sausages, account for about 7.8 percent of all U.S. imports of beef and veal, but only about 0.6 percent of total U.S. supply.

In addition, imports into the United States of fresh beef and veal from Argentina and Uruguay are no longer occurring, due to recent FMD outbreaks in those countries. Also, although Argentina, Brazil, and Uruguay are large producers of beef and veal, their total exports are small relative to U.S. supply. The production of beef and veal in these three countries in 1999 was about 79 percent of that of the United States, but their exports of these products to all countries, including the United States, equated to considerably less than 1 percent of the U.S. supply of beef and veal. Thus, the impact on price would be negligible even if these countries were willing and able to redirect all of their beef and veal exports to the production of cooked cubed beef and veal for export to the United States.

Because (1) similar products are already being imported, (2) the proposed amendments would alter only the sizes of these products, and (3) other types of beef and veal imports from Argentina, Brazil, and Uruguay have stopped, we do not expect that the adoption of this proposed rule would greatly increase the volume of beef and veal imports. These proposed amendments may result in a change in the character of the imports, but should not greatly increase the volume of those imports.

Imports of these products would potentially offer competition for producers of ground meat, cubes of meat, slices of meat, and anatomical cuts of meat. Producers of these products are meatpacking plants, both those that slaughter animals directly and those that process purchased meats. In addition, these imports would also compete with domestic ruminant farms that sell to meatpacking facilities.

The Small Business Administration's (SBA) definition of a small entity in the production of cattle is one whose total sales are under $750,000 annually. In 1997, there were 656,181 cattle farms in the United States, of which 99 percent would be considered small entities. However, as was discussed above, we expect the economic impact on these producers would be minimal.

The SBA's guidelines state that a small producer of beef and veal meat that is in the form of cooked ground meat, cubes, slices, or anatomical cuts is one employing fewer than 500 workers. In 1997, 98 percent or 1,297 of the meatpacking establishments processing purchased meats in the United States were small. These small establishments accounted for approximately 78 percent of the total value of shipments of the industry, or approximately $25 billion. Also in 1997, 95 percent of 1,393 animal slaughtering establishments were considered small. These small establishments accounted for approximately 76 percent of the total value of shipments of the industry, or $41.6 billion.

Based on the above information, we do not expect that the proposed amendments would have a significant effect on the volume of imports of ruminant and swine meat, including ground meat, cubes of meat, slices of meat, and cuts of meat. Given that the volume of imports would be unlikely to increase substantially, we do not expect that the economic effects of this proposed rule on domestic producers of these products, whether small or large, would be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136,

and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. In § 94.4, paragraph (b)(5) would be revised to read as follows; paragraphs (b)(6) through (b)(8) would be redesignated as paragraphs (b)(7) through (b)(9), respectively, and a new paragraph (b)(6) would be added to read as follows; and newly redesignated paragraph (b)(8) would be revised to read as follows:

§ 94.4 Cured or cooked meat from regions where rinderpest or foot-and-mouth disease exists.

* * * * *

(b) * * *

(5) *Meat cooked in plastic.* Ground meat, cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) weighing no more than 11.05 lbs (5 kg) must be loaded into a flexible or semiflexible cooking tube constructed of plastic or other material approved by the U.S. Food and Drug Administration. The meat must then be cooked in boiling water or in a steam-fed oven to reach a minimum internal temperature of 174.92 °F (79.4 °C) at the cold spot after cooking for at least 1.75 hours. Thoroughness of cooking must be determined by a TID registering the target temperature at the cold spot, or as follows:

(i) *Cubes of meat and ground meat.* For cubes of meat, at least 50 percent of meat pieces per tube must be 1.5 in (3.8 cm) or larger in each dimension after cooking or, if more than 50 percent of the cubes of meat pieces per tube are smaller than 1.5 in (3.8 cm) in any dimension after cooking, or if the meat is ground meat, an indicator piece of sufficient size for a pink juice test to be performed (1.5 in (3.8 cm) or larger in each dimension after cooking) must have been placed at the cold spot of the tube.

(ii) *Slices of meat.* At least 50 percent of the slices of meat must be 1.5 in (3.8 cm) or larger in each dimension after cooking or, if more than 50 percent of meat pieces are smaller than 1.5 in (3.8 cm) in any dimension after cooking, an indicator piece of sufficient size for a pink juice test to be performed (1.5 in (3.8 cm) or larger in each dimension after cooking) must be placed at the cold spot of the tube.

(iii) *Anatomical cuts of meat.* An indicator piece removed from an anatomical cut of meat after cooking must be removed from the center of the cut, farthest from all exterior points and be 1.5 in (3.8 cm) or larger in each dimension for performance of the pink juice test.

(6) *Further processing of meat cooked in plastic.* Cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) cooked in plastic in accordance with paragraph (b)(5) of this section may be cooled after cooking then processed further if the following provisions are met:

(i) For meat that is cooked and then cooled for further processing, one tube or plastic container from each shift per cooker must be randomly selected by the official of the National Government of the region of origin who is authorized to issue the meat inspection certificate required by § 327.4 of this title. A cylindrical or square piece of at least 1.5 in (3.8 cm) in each dimension must be cut from the cold spot of the tube. The cylindrical or square piece will be the indicator piece for the pink juice test. The indicator piece must be sealed in plastic or other material approved by the U.S. Food and Drug Administration, and be accompanied by a certificate issued by the official who selected the tube. The certificate must provide the date the tube was selected, and the cooker and shift number. Each shift per cooker must have an indicator piece. All indicator pieces must be individually sealed, properly labeled, and enclosed together in one sealed box that accompanies the shipment; and

(ii) After removing the indicator piece, all remaining meat from the same shift may be cut into smaller cubes and sealed in plastic or other material approved by the U.S. Food and Drug Administration. The indicator pieces and cubes of meat must be accompanied to the United States by a certificate as provided in paragraph (b)(7) of this section.

* * * * *

(8)(i) The cooked meat must be accompanied by a certificate issued by an official of the National Government of the region of origin who is authorized to issue the foreign meat inspection certificate required under § 327.4 of this title, stating: ''This cooked meat produced for export to the United States meets the requirements of title 9, Code of Federal Regulations, § 94.4(b).'' Upon arrival of the cooked meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(ii) For cooked meat that is further processed in accordance with paragraph (b)(6) of this section, the certificate must include the following statement, in addition to the certification required under paragraph (b)(8)(i) of this section: ''One tube or plastic container was randomly selected per shift per cooker for cutting an indicator piece. A piece 1.5 in (3.8 cm) or larger in each dimension was cut from the cold spot of the tube or plastic container, and was sealed and marked with the following date, cooker, and shift: _____. The total number of indicator pieces enclosed in a sealed box is ____.''

* * * * *

Done in Washington, DC, this 16th day of May 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12809 Filed 5–21–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–001]

RIN 2115–AA97

Security Zones; Captain of the Port Chicago Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones on the navigable waters of the Des Plaines River, the Kankakee River, the Rock River, and Lake Michigan in the Captain of the Port Zone Chicago. These security zones are necessary to protect the nuclear power plants, water intake cribs, and Navy Pier from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. These zones are intended to restrict vessel traffic from portions of the Des Plaines River, Rock River, and Lake Michigan.

DATES: Comments and related material must reach the Coast Guard on or before June 21, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Burr Ridge, IL 60521. Marine Safety Office Chicago maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Chicago between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Al Echols, U.S.

Coast Guard Marine Safety Office Chicago, (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–02–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office Chicago at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely.

We propose to establish 10 permanent security zones for the following facilities: (1) Jardine Water Filtration Plant; (2) Navy Pier; (3) Dresden Nuclear Power Plant Water Intake; (4) Donald C. Cook Nuclear Power Plant; (5) Palisades Nuclear Power Plant; (6) Byron Nuclear Power Plant; (7) Zion Nuclear Power Plant; (8) 68th Street Water Intake Crib; (9) Dever Water Intake Crib; and (10) 79th Street Water Filtration Plant.

These proposed security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Chicago, or his authorized representative, are prohibited from entering or moving within the zones with those exceptions described below. The Captain of the Port Chicago may be contacted via VHF Channel 16. The Captain of the Port Chicago's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of these security zones, their exact locations, and the restrictions involved via Broadcast Notice to Mariners.

Discussion of Proposed Rule

Following the catastrophic nature and extent of damage realized from the aircraft flown into the World Trade Center towers, this rulemaking is necessary to protect the national security interests of the United States from future strikes against public and governmental targets. The security zones protecting the greater Chicago area water intake systems (Jardine and 79th Street water filtration plants, and the Dever and 68th Street water intake cribs) are necessary to protect the drinking water supply for Chicago and its suburbs. This system is the sole source of drinking water for more than 5 million people. The security zones protecting the nuclear power plants are necessary to safeguard the supply of electricity along Lake Michigan and to protect the public from possible exposure to the radioactive materials that could be released into the environment as a result of a terrorist attack on those facilities.

On December 17, 2001, the Coast Guard issued a temporary rule establishing a security zone around the Navy Pier (66 FR 66749, December 27, 2001). In addition, on March 25, 2002,we issued a temporary rule establishing nine security zones in or near Lake Michigan (67 FR 19676, April 23, 2002).

Regulatory Evaluation

This proposed 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, l979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons.

Recreational boaters in portions of the Des Plaines River will be impacted, however recreational traffic in those areas is historically quite low. Commercial river traffic, expected to consist of towing vessels and barges transiting through the security zones, will be unimpeded.

The Captain of the Port Chicago will permit those U. S. Coast Guard certificated passenger vessels that regularly, and as part of their normal route, load and unload passengers at Navy Pier to operate in the zone. However, should the Captain of the Port Chicago determine it is appropriate, he will require even those U. S. Coast Guard certificated passenger vessels which normally load and unload passengers at Navy Pier to request permission before leaving or entering the security zones. The Captain of the Port Chicago will notify these vessels via Broadcast Notice to Mariners if they must notify the Coast Guard before transiting the security zone. This proposed rule will not obstruct the regular flow of traffic and will allow vessel traffic to pass around the security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on

them and participate in the rulemaking. 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 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 proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed 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) 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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.

Environment

We have considered the environmental impact of this proposed 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 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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.

§ 165.T09–002 [Removed]

2. Remove § 165.T09–002.

3. Add *§ 165.908 to read as follows:*

§ 165.908 Security Zones; Captain of the Port Chicago Zone, Lake Michigan.

(a) *Security zones.* The following areas, defined by coordinates based upon North American Datum 1983, are security zones:

(1) *Jardine Water Filtration Plant.*

(i) *Location.* All waters between the Navy Pier and the Jardine Water Filtration Plant shoreward of a line drawn from the southeast corner of the Jardine Water Filtration Plant at 41° 53′ 36″ N, 87° 36′ 10″ W, to the northeast corner of the Navy Pier at 41° 53′ 32″ N, 87° 35′ 55″ W.

(ii) *Regulations.* The Captain of the Port Chicago will normally permit those U. S. Coast Guard certificated passenger vessels that normally load and unload passengers at Navy Pier to operate in the zone. However, should the Captain of the Port Chicago determine it is appropriate, he will require even those U. S. Coast Guard certificated passenger vessels which normally load and unload passengers at Navy Pier to request permission before leaving or entering the security zones. The Captain of the Port Chicago will notify these vessels via Broadcast Notice to Mariners if they must notify the Coast Guard before entering or transiting the security zone. As such, vessels who regularly operate within this zone are responsible for monitoring Broadcasts Notice to Mariners for the Chicago area. These broadcasts will be made by U.S. Coast Group Milwaukee.

(2) *Navy Pier Southside.*

(i) *Location.* All waters encompassed by a line commencing at the southeast corner of the Navy Pier at 41° 53′ 29″ N, 87° 35′ 55″ W, then continuing southwesterly to the eastern end of Dime Pier at 41° 53′ 23″ N, 87° 35′ 58″, then westerly along Dime Pier and continuing westerly until the northsouth pier face at 41° 53′ 23″ N, 87° 36′ 35″ W; then north to Navy Pier and east along Navy Pier continuing back to the point of orgin.

(ii) *Regulations.* The Captain of the Port Chicago will permit those U. S. Coast Guard certificated passenger vessels that normally load and unload passengers at Navy Pier to operate in the zone. However, should the Captain of the Port Chicago determine it is appropriate, he will require even those U. S. Coast Guard certificated passenger vessels which normally load and unload

passengers at Navy Pier to request permission before leaving or entering the security zones. The Captain of the Port Chicago will notify these vessels via Broadcast Notice to Mariners if they must notify the Coast Guard before transiting the security zone. As such, vessels who regularly operate within this zone are responsible for monitoring Broadcasts Notice to Mariners for the Chicago area. These broadcasts will be made by U.S. Coast Group Milwaukee.

(3) *Dresden Nuclear Power Plant.* All waters of the Illinois River in the vicinity of Dresden Nuclear Power Plant encompassed by a line starting on the shoreline at 41° 23′ 45″ N, 88° 16′ 18″ W; then east to the shoreline at 41° 23′ 39″ N, 88° 16′ 09″ W; then following along the shoreline back to the beginning.

(4) *Donald C. Cook Nuclear Power Plant.* All waters of Lake Michigan around the Donald C. Cook Nuclear Power Plant encompassed by a line starting on the shoreline at 41° 58.656′ N, 86° 33.972′ W; then northwest to 41° 58.769′ N, 86° 34.525′ W; then southwest to 41° 58.589′ N, 86° 34.591′ W; then southeast to the shoreline at 41° 58.476′ N, 86° 34.038′ W; and following along the shoreline back to the beginning.

(5) *Palisades Nuclear Power Plant.* All waters of Lake Michigan around the Palisades Nuclear Power Plant within a line starting on the shoreline at 42° 19′ 02″ N, 86° 19′ 05″ W; then northwest to 42° 19′ 43″ N, 86° 19′ 52″ W; then north to 42° 20′ 10″ N, 86° 20′ 01″ W; then southeast back to the shoreline at 42° 19′ 26″ N, 86° 18′ 55″ W; then following along the shoreline back to the beginning.

(6) *Byron Nuclear Power Plant.* All waters of the Rock River encompassed by the arc of a circle with a 100-yard radius with its center in approximate position 42° 05′ 01″N, 89° 19′ 27″W.

(7) *Zion Nuclear Power Plant.* All waters of Lake Michigan encompassed by a line starting on the shoreline at 42° 26′ 36″ N, 87° 48′ 03″ W; then southeast to 42° 26′ 20″ N, 87° 47′ 35″ W; then northeast to 42° 26′ 53″ N, 87° 47′ 22″ W; then northwest to the shoreline at 42° 27′ 06″ N, 87° 48′ 00″ W; then following along the shoreline back to the beginning.

(8) *68th Street Water Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the 68th Street Crib with its center in approximate position 41° 47′ 10″ N, 87° 31′ 51″ W.

(9) *Dever Water Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the Dever Crib with its center in approximate position 41° 54′ 55″ N, 87° 33′ 20″ W.

(10) *79th Street Water Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the 79th Street Water Filtration Plant with its center in the approximate position 41° 45′ 30″ N, 87° 32′ 32″ W.

(b) *Regulations.*

(1) Under § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Chicago. Section 165.33 also contains other general requirements.

(2) All persons and vessels shall comply with the instruction of the Captain of the Port Chicago or the designated on-scene U.S. Coast Guard patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone but must abide by the restrictions imposed by the Captain of the Port.

(3) Persons who would like to transit through a security zone in this section must contact the Captain of the Port at telephone number (630) 986–2175 or on VHF channel 16 (121.5 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: May 13, 2002.

R.E. Seebald,

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

[FR Doc. 02–12734 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI02

Endangered and Threatened Wildlife and Plants; Retention of Threatened Status for Argali in Kyrgyzstan, Mongolia, and Tajikistan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), retain threatened status for the argali (*Ovis ammon*), the largest species of wild sheep, in Kyrgyzstan, Mongolia, and Tajikistan under the Endangered Species Act of 1973 (the Act), as amended. The special rule allowing importation of sport-hunted trophies from those countries also is retained. We will not proceed with reclassifying the argali as endangered in these three countries, as proposed on April 27, 1993. That proposal is hereby withdrawn. The withdrawal is based on two factors. First, the two lawsuits challenging the original listing and special rule were defeated or dismissed, thereby eliminating our strong concern over the adequacy of existing regulatory mechanisms related to import of sport-hunted trophies from Kyrgyzstan, Mongolia, and Tajikistan. Second, a review of information compiled over the past eight years (i.e., since the proposed rule was published) in relation to the five listing factors under the Act, indicates that the argali is properly classified as threatened in Kyrgyzstan, Mongolia, and Tajikistan.

ADDRESSES: The complete file for this action is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Scientific Authority; Mail Stop: Arlington Square, Room 750; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703–358–1708; fax number 703–358–2276).

SUPPLEMENTARY INFORMATION:

Background

The argali (*Ovis ammon*) is the largest species of wild sheep. Its historic range includes Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, southern Siberia in the Russian Federation, Mongolia, north-central and western China, Bhutan, Nepal, and the Himalayan portions of Afghanistan, Pakistan, and India. In a final rule published pursuant to the Endangered Species Act of 1973 (Act) in the **Federal Register** of June 23, 1992 (57 FR 28014), and becoming effective on January 1, 1993, the Service classified the argali as endangered throughout its range, except in Kyrgyzstan, Mongolia, and Tajikistan, where it was designated as threatened. A special rule, promulgated under Section 4(d) of the Act, provided for issuance of permits pursuant to section17.32 of title 50 of the CFR for certain activities for argali from Kyrgyzstan, Mongolia, and Tajikistan. This rule also provided for importation of sport-hunted argali trophies without

a threatened species permit once we had received from the governments of these same countries properly documented and verifiable information that: (1) Argali populations are sufficiently large to sustain sport hunting; (2) regulating authorities have the capability to obtain sound data on these populations; (3) regulating authorities recognize these populations as a valuable resource and have the legal and practical means to manage them as such; (4) the habitat of these populations is secure; (5) regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations; and (6) funds derived from the involved sport hunting are applied primarily to argali conservation. (For threatened species, Section 4(d) of the Act authorizes the Secretary to promulgate ''such regulations as he deems necessary and advisable to provide for the conservation of such species'.)

In connection with the final rule of June 23, 1992, we noted that, with the exception of the subspecies *O. a. hodgsoni*, the argali was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and thus, until the effective date of the regulation, could be imported into the U.S. upon presentation of a proper CITES export permit from the country of origin in accordance with Section 9(c)(2) of the Act (which provides that the otherwise lawful, noncommercial importation of wildlife that is not an endangered species, but that is on Appendix II of CITES and meets CITES requirements, shall be presumed to be in compliance with provisions of the Act and implementing regulations). There had previously been some question as to whether Section 9(c)(2) of the Act might automatically require us to allow the importation of a species that is both listed as threatened and on Appendix II, and preclude the issuance of more restrictive special rules covering importation. However, in a detailed discussion in the background to the final rule, we concluded that such special rules may be issued to provide for the conservation of the involved species. We emphasized that this interpretation of Section 9(c)(2) was one of the key factors in assigning threatened status to the argali in Kyrgyzstan, Mongolia, and Tajikistan. Had we been unable to issue a special rule restricting importation of trophies from those countries, importation could have proceeded without assurances of adequate population status and management in those countries. Such a situation may have been sufficient to warrant endangered classification of the involved populations under listing factor ''D'' of Section 4(a)(1) of the Act, ''inadequacy of existing regulatory mechanisms.''

In promulgating the final rule and special rule, we recognized that there was a reasonable argument for the proposition that controlled sport hunting may provide economic incentives contributing to the conservation of certain wildlife populations. During the periods of review and comment prior to publication of the final rule, various interested groups and individuals had argued that sport hunting programs, with consequent exportation of trophies, might encourage and provide necessary funds for conservation of the argali. Consideration of such interests, and allowance for their development and submission of information supporting their position, was a factor in the unusual length of the argali rulemaking process (almost 3 years). Throughout this process we emphasized that the importation of sport-hunted argali trophies was feasible, provided that substantive data showed that such activity was beneficial to the conservation of the species.

Despite the above considerations, the final rule was challenged in two separate lawsuits on January 4, 1993. The plaintiffs included a number of hunting organizations and businesses. They contended, among other things, that we failed to give adequate notification of the argali rulemaking process, and that Section 9(c)(2) of the Act requires that argali trophies be allowed to enter the United States simply upon presentation of a CITES export permit from the country of origin. Although we believed that our interpretation of Section 9(c)(2) was valid, we were also concerned that this interpretation and the special rule could be set aside in the course of legal proceedings. We might then be placed in the situation for which we had expressed concern in the final rule-not being able to adequately regulate argali importation. The strong potential for such a situation and its implications vis-a-vis listing factor ''D'' of Section 4(a)(1) of the Act (''the inadequacy of existing regulatory mechanisms''), together with the hunting community's unwillingness to accept the intent of the new argali regulations, and the other problems we perceived with the status of the species, as described in the final rule of June 23, 1992, were deemed sufficient to warrant a proposal to reclassify the argali in Kyrgyzstan, Mongolia, and Tajikistan from threatened to endangered. A proposed rule to such effect was published in the **Federal Register** of April 27, 1993 (58 FR 25595).

In August 1993, the U.S. District Court for the Western District of Texas, ruling on the suit brought by Safari Club International and several supporting plaintiffs, upheld all substantive aspects of the regulations, including our interpretation of Section 9(c)(2) of the Act. Later that same month, the U.S. District Court for the District of Columbia dismissed a suit brought primarily by a group known as Putting People First. The Service's successful defense in the two lawsuits moderated the immediate concern that led to the proposed rule of April 27, 1993, and was the principal factor in the Service's decision to withdraw the proposed reclassification. A notice of withdrawal, which addressed the lawsuits and assessed the threats confronting the argali populations of Kyrgyzstan, Mongolia, and Tajikistan as described in the 1993 proposed rule was prepared in 1995 for **Federal Register** publication, but not finalized. The court decisions had diminished the management concerns for the species, and, with the special rule in place, priorities other than argali emerged and redirected the Service's focus.

An analysis of information on argali in Kyrgyzstan, Mongolia, and Tajikistan generated over the last eight years, including two reports prepared under contract to the Service (Luschekina and Fedosenko 1994 and Fedosenko 1999), has lead us to conclude that the Kyrgyzstan, Mongolia, and Tajikistan distinct population segments of argali are properly classified as threatened, and that the special rule for argali (50 CFR 17.40(j)) is adequate to provide for the conservation of the species. In addition, the Service is continuing its ongoing efforts to encourage range countries to develop and submit the information necessary to ''certify'' the country under the special rule, thereby eliminating the need for issuance of threatened species permits for sport-hunted trophies. Our analysis of the Act's five listing factors is summarized in the ''Summary of Factors Affecting the Species'' below. As part of our analysis, we have taken into account efforts made by foreign governments to protect the species (as required by section 4(b)(1) of the Act).

Summary of Comments

In the proposed rule of April 27, 1993, and in associated notifications and the subsequent reopening of the comment period, all interested parties were requested to submit information that

might contribute to development of a final rule. Cables were sent to United States embassies in the involved countries, requesting any new data the embassies could provide and asking them to obtain official comments from the governments of those countries. Twenty-eight (28) parties commented on the proposal, some of them several times. Of these, 5 provided information but did not specifically state an opinion on the proposal, 3 expressed support, and the remainder did not support the proposal (most of these expressed a point of view of hunting interests).

A common theme in statements by opponents of the proposed rule was that the argali was not of conservation concern and should be completely removed from the List of Endangered and Threatened Wildlife. Such an action was not under consideration in the proposed rule, and was at odds with the available information and listing status at that time. The Service still believes that the argali is appropriately listed under the Endangered Species Act.

Likewise, many of the negative comments claimed that the special rule for argali was unworkable and should be eliminated or revised to make importation easier. Although the proposed rule did state that modifications to the special rule were under consideration, there is no scientific or commercial data that support eliminating or substantively moderating the restrictiveness of the special rule. The only supportable options were to keep the existing threatened classification and special rule, finalize the proposed endangered status with elimination of the special rule, or keep the threatened classification, at least in part, and add more restrictions to the special rule. The Service has chosen, based on the best available scientific and commercial information, to retain the existing threatened classification and special rule.

A number of comments dealt with the question of whether the criteria of the special rule may have been met, thereby allowing importation of sport-hunted trophies without a threatened species permit. This question is associated with some of the matters involved in the argali proposed rule. Indeed, the proposed rule stated that receipt of data demonstrating that the criteria had been met could be a reason for withdrawal of the proposal. And the reason for reopening the comment period on March 21, 1994, was receipt of a report of the Service's own survey to gather information that might have helped meet the criteria. We do not believe, based on information currently available to us, that any of the three countries has fully satisfied the criteria of the special rule. That is why threatened species permits continue to be issued on a country-by-country and year-by-year basis.

Remaining major issues brought out by commentors are discussed below.

Issue 1.— Based on numbers, distribution, regulation, and other listing factors, the argali is or is not endangered in Kyrgyzstan, Mongolia, and/or Tajikistan.

Service response.— Different commentors argued either for or against endangered status, based on various listing factors. The relevant question is whether new information or assessment indicates that the status of the argali in the three involved countries is substantively worse or better than at the time of the original final rule, when the threatened classification was assigned. This issue is at the core of the analysis in the following section ''Summary of Factors Affecting the Species.'' Basically, available scientific evidence indicates that habitat conditions and population status has remained stable or improved over the past eight years, and that regulatory mechanisms are at least as adequate as determined at the time of the original final rule. Thus, retention of threatened status is warranted.

Issue 2.— The Service has not demonstrated that sport hunting is a detrimental factor to the argali.

Service response.— The various published notices on the argali have repeatedly recognized the principle that carefully managed sport hunting programs are not necessarily detrimental to overall wildlife populations, and even have the potential to provide benefits under certain conditions. We do not find legal sport hunting to be a factor that currently threatens argali populations in Kyrgyzstan, Mongolia, or Tajikistan; we believe it provides benefits.

Issue 3.— The Service did not consult with appropriate officials in the involved countries.

Service response.— The Service followed all standard procedures, by which the State Department is requested to send telegrams to appropriate U.S. embassies, which in turn are asked to contact government officials and other knowledgeable authorities.

Issue 4.— The lawsuits on the argali were not a proper basis for the proposal, and, in any case, the defeat of the lawsuits should have resulted in withdrawal of the proposal.

Service response.— As explained in detail in the proposal and in the above ''Background,'' the lawsuits posed a threat to the Service's ability to appropriately regulate importation of argali and therefore brought into play factor ''D'' of Section 4(a)(1) of the Act, ''Inadequacy of existing regulatory mechanisms.'' This problem has been resolved by the legal decisions.

Issue 5.— The issuance of permits for importation of argali trophies is a violation of the special rule of June 23, 1992, or, in any case, shows that current regulation is inadequate.

Service response.— Issuance of threatened species permits is consistent with section 17.40(j)(1) of the special rule. We do not find legal sport hunting to be a factor that currently threatens argali populations in Kyrgyzstan, Mongolia, or Tajikistan; we believe it provides benefits. Therefore, issuance of permits does not show that current regulation is inadequate.

Summary of Factors Affecting the Species

A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Kyrgyzstan

Range and Distribution

The argali in Kyrgyzstan occurs in two populations comprising two subspecies, the Marco Polo argali (*O. a. polii*) and the Tien Shan argali (*O. a. karelini*). A third subspecies, *O. a. severtzovi,* is not considered to occur in Kyrgyzstan. The Tien Shan argali is distributed across approximately the northern half of Kyrgyzstan in the Tien Shan Range west of Lake Issyk-Kul, whereas the Marco Polo argali (also called the Pamir argali) is distributed across the Pamir Plateau of southeastern Kyrgyzstan, along the border with China (see map on page 190 of Weinberg et al. 1997). The ranges of the two subspecies apparently overlap—or are not clearly delineated—in the Uzengikush River basin in the north-eastern portion of the Kokshalatau Range, between the city of Kara Say and the Chinese border.

Only very general information is available regarding the historical and current habitat area actually occupied by the Tien Shan argali in Kyrgyzstan. Weinberg et al. (1997) discuss the taxon's general distribution in Kyrgyzstan, but do not give any figures for the total habitat area occupied, either historically or currently. They state that in many places this argali has ''disappeared completely,'' although no details are given.

Few data are available on the habitat area occupied by Pamir argali in Kyrgyzstan prior to the 1970s. Much of the older information is summarized in a report entitled ''The Status of Argali

in Kirgizstan, Tadjikistan and Mongolia,'' completed in January 1994 by Dr. Anna Luschekina of the Russian Academy of Sciences and Dr. A. K. Fedosenko under contract to the Service (Luschekina and Fedosenko 1994). The report is a compilation of information derived from direct field observations, interviews, existing literature, and hunting data and other data from government archives. According to the report, Andrienkov (1983) reported that, in the 1940s, the Pamir argali occupied an area of 3 million hectares (ha). Argali lived in the valleys of such rivers as Aksai and Arpa (Luschekina and Fedosenko 1994). Luschekina and Fedosenko (1994), after examining data collected in the late 1970s by Andrienkov (1983), in the early 1990s by the Kyrgyz Institute of Biology, and 1993 by themselves, concluded that the Kyrgyz population of Pamir argali had ''undergone considerable changes'' over that period of time. In most locations subject to substantial human influence (grazing, poaching, etc.), numbers had ''notably declined'', while at the same time high numbers persisted in remote locations with difficult access, areas with limited livestock grazing, and areas with rigid border controls (Luschekina and Fedosenko 1994).

Protected Areas

Small numbers of argali are found in the Naryn (24,200 ha) and Besh-Aralsk (45,000 ha) Nature Reserves in Kyrgyzstan, according to Weinberg et al. (1997).

Although few argali occur in designated protected areas in Kyrgyzstan, a large percentage of the Kyrgyz population has been protected, at least until recently, in a ''de facto'' protected area beyond the line of ''engineering works'' along the border with China (Luschekina and Fedosenko 1994). These ''engineering works,'' essentially a continuous barrier consisting of razor wire fences, were erected along the border with China during the late 1980s. The ''border zone'' (i.e., the area between the fences and the border) varies in width from approximately 1 kilometer (km) to several km, and extends the entire length of the Kyrgyz border with China (a distance of 858 km according to the CIA World Factbook 2000). We do not know the total land area within the border zone. However, if we make some conservative assumptions about this zone, we can calculate an approximate area. If we assume that the average width of the zone is 1 km, and the actual length of the fence is 650 km (meaning that various bends and curves in the border have been ''straightened'' by the fence), then the zone encompasses about 650,000 ha. We understand that the border barriers have not been well maintained in recent years, and may be broken down in places. It is believed that these border areas, which have become more accessible in recent times, may now be subject to greater human pressures including poaching, although Luschekina and Fedosenko (1994) also indicated that the mobility of local peoples is hampered by the expense and scarcity of fuel for vehicles.

Livestock Competition

According to Luschekina and Fedosenko (1994), collective and state farms in Kyrgyzstan had over 8 million sheep and goats in the mid-1960s. Intensive grazing of mountain rangelands led to a reduction in the number of argali, since argali use the same ranges as domestic livestock. Particularly intensely utilized by livestock grazers were the Altai and Aksay valleys and the upper reaches of the Saryjaz; these areas experienced severe declines in argali numbers and in some locations argali disappeared (Luschekina and Fedosenko 1994). However, with the change of government in Kyrgyzstan, many collective and state farms were eliminated and livestock turned over to individual herdsmen. Many of these herders did not have the resources necessary to utilize distant or hard-to-access ranges; livestock use of those areas decreased sharply and some ranges (e.g., Kurumduku) were abandoned altogether by domestic grazers (Luschekina and Fedosenko 1994). Presumably argali populations began to recover in those areas.

Mongolia

Range and Distribution

Two subspecies of argali occur in Mongolia: Altai argali (*O. a. ammon*) and Gobi argali (*O. a. darwini*) (see map on page 199 of Mallon *et al.* 1997). Altai argali inhabit the high Altai Mountain region of western and southwestern Mongolia; along the main ridge of the Hangai Mountains in central Mongolia; and in the mountains of north and northwest Mongolia (Mallon *et al.* 1997). Gobi argali occur in the hills, rocky outcrops, and mountains across the whole of the Transaltai Gobi (the desert and semi-desert zones south of the Altai Range), portions of the Gobi Altai Mountains east almost to 112o E longitude, and also in several isolated ranges of hills in the steppe zone of central Mongolia (Mallon *et al.* 1997). According to Mallon *et al.* (1997), the division between ranges of the two subspecies of argali in Mongolia is poorly known.

Protected Areas

The existence of reserves and hunting restrictions in the modern Mongolian People's Republic can be traced to the 1920s. Sokolov *et al.* (1991) documented at least 14 protected areas and 20 hunting preserves situated throughout the country. In 1994, Mongolia adopted a ''Law on Special Protected Areas'' that designated four categories of protected areas: (1) Strictly Protected Area (SPA), National Conservation Park (NP), Nature Reserve (NR), and Monument (M). Mallon *et al.* (1997) listed 12 protected areas with Caprinae in Mongolia, as of late 1995. As of July 2000, Mongolia had established 48 ''State Special Protected Areas'' covering 20.1 million hectares or almost 13 percent of Mongolia's territory, according to S. Banzragch, Director General of Mongolia's Environmental Protection Agency (*in litt.* to Teiko Saito, DMA, August 1, 2000). According to the protected area law, strictly protected areas are divided into three zones: pristine zone, conservation zone, and limited use zone. In 1997, Mongolian Parliament passed a ''Law on Buffer Zones of Special Protected Areas'' which created a buffer zone council for each special protected area responsible for coordinating activities that could be carried out in the area's buffer zone. As of May 2001, argali occurred in 11 protected areas, according to A. Bolat, Vice Minister of the Mongolian Ministry of Nature and Environment (MNE) (*in litt.* to Tim Van Norman, Branch of Permits, DMA, May 9, 2001).

Livestock Competition

According to Luschekina and Fedosenko (1994), large-scale privatization of domestic livestock in 1991–1994 led to extensive, uncontrolled use of rangelands in Mongolia, resulting in competitive displacement of argali to poorer quality habitats, and increased poaching of argali by herdsmen. Argali populations were thought to have declined as a result. Reading *et al.* (1997) cited a number of recent references (e.g., Shagdarsuren *et al.* 1987) indicating widespread degradation of argali habitats by domestic livestock.

Tajikistan

Range and Distribution

The argali in Tajikistan consists of only one subspecies, the Marco Polo argali (also known as Pamir argali or Pamir arkar) (*O. a. polii*), which occurs in the eastern Pamir Plateau, along the

border with China (see map on page 190 of Mallon *et al.* 1997). This subspecies also occurs on the Pamir Plateau of Kyrgyzstan, the eastern portion of the Wakhan Corridor of Afghanistan, northernmost Pakistan, and the Pamir region of China.

Protected Areas

According to a recent report ''Current Population Status of the Pamir Arhar in Tajikistan,'' completed in 1999 by Dr. A. K. Fedosenko of the Department of Conservation and Rational Use of Game Resources of the Russian Federation, under contract to the Service (Fedosenko 1999), there were three protected areas under administration of the Regional Department of Forestry within the range of argali in the Pamir: Pamirskii zakaznik (50,000 ha), Muzkol'skii zakaznik (66,900 ha), and Zorkul'skii zakaznik (16,500 ha). In 1992, the Pamir National Park was declared, based on the Pamirskii zakaznik, but lack of funding precluded its functioning as a legitimate protected area. Likewise, according to Fedosenko (1999), the other two zakazniks also do not function as real protected areas. More recently (1999), the Tajik National Park was declared in place of the Pamir National Park, and staff have been appointed (Fedosenko 1999).

As in Kyrgyzstan, a large portion of the Tajik argali population has been protected, at least until recently, in a ''de facto'' protected area beyond the line of ''engineering works'' along the border with China. These ''engineering works,'' were constructed along the 414-km border with China during the late 1980s. The ''border zone'' in Tajikistan encompasses about 300,000 ha (assuming the average width is 1 km and the length is 300 km). As in Kyrgyzstan, the border barriers have not been well maintained in recent years, and may have broken down in places.

Livestock Competition

Fedosenko (1999) surveyed argali in several parts of the Eastern Pamir in 1999, and compared his results with data from the mid-1990s. He concluded that the abundance of argali in the central and northern parts of the Eastern Pamir had not changed or had decreased to some extent in recent years, while in the southeastern and especially the southern part of the Pamir, argali abundance had increased by more than three times. Dr. Fedosenko attributed argali population growth in the south to the removal of large numbers of domestic livestock from local pastures during the last several years; he also attributed the lack of population growth or slight decline in the central and northern parts of the Eastern Pamirs to the concentration of domestic livestock in those areas (Fedosenko 1999).

Findings for Factor A

Habitat conditions for argali in Kyrgyzstan appear to have improved over the last decade, largely as a consequence of the change of government. Livestock numbers have increased in some areas (with, presumably, a concomitant decrease in habitat quality for argali as a result of overgrazing), but have been substantially reduced in other, more extensive areas (with, presumably, a concomitant increase in habitat quality for argali as a result of decreased grazing pressure). The ''de facto'' protected area in the border zone with China has probably improved habitat conditions. While habitat loss and degradation does not endanger the argali throughout all or a significant part of Kyrgyzstan, it remains a factor that threatens certain argali populations in a significant portion of the country.

In Mongolia, argali habitats appear to have degraded over a wide area since the early 1990s as a result of overgrazing by domestic livestock. This may have been offset by the designation of a substantial number of ''State Special Protected Areas'' covering almost 13 percent of Mongolia's territory, and a new law on buffer zone management in special protected areas. We do not believe that habitat loss and degradation is of sufficient magnitude and extent to endanger the argali throughout all or a significant part of Mogolia, however, habitat degradation and loss continues to threaten certain argali populations in a significant portion of Mongolia.

In Tajikistan, as in Kyrgyzstan, argali habitats have improved in many areas due to removal of large numbers of domestic livestock, but have degraded in other, less extensive areas, due to concentration of domestic livestock there. The ''de facto'' protected area in the border zone with China has probably improved habitat conditions. As with Kyrgyzstan, it appears that overall habitat conditions for argali have improved in Tajikistan. Thus, while habitat loss and degradation does not endanger the argali throughout all or a significant part of Tajikistan, it remains a factor that threatens certain argali populations in a significant portion of the country.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Kyrgyzstan

Population Status

On the basis of their own field surveys in the Kokshalatau Range in 1993 and surveys conducted by the Kyrgyz Institute of Biology in 1991, Luschekina and Fedosenko (1994) estimated a minimum population of 7,800 Marco Polo (or Pamir) argali for Kyrgyzstan in 1994, distributed as follows: 2,500–3,100 in the Aksai River basin (right-hand tributaries); 500–900 in the Myurduryum area; 1,300 in the Uzengikush area; 700 in the Akshiiryak area; 1,000 in the Sarydzhaz basin; and 1,800 in the Arpa valley. We note that this does not appear to cover the entire range of Marco Polo argali within Kyrgyzstan.

In response to our annual request for information, Mr. C. Omurakunov of the Kyrgyz Central Administrative Board of Hunting and Hunting Supervision (*in litt.* to Michael Carpenter, DMA, June 30, 1998) told us that, in 1997, the total argali population of Kyrgyzstan was estimated to be 20,000–21,000 animals, based on aerial and ground surveys. Of that total, more than 13,000 were estimated to be Marco Polo argali, the subspecies targeted for sport hunting in Kyrgyzstan. Mr. Omurakunov provided some details about survey methods used and results obtained. Ground and aerial surveys were used to cover extensive areas, with helicopters being used in areas that are remote and difficult to access. Population estimates for specific areas with high concentrations of argali were as follows: 6,600 in right-hand tributaries of the Aksai River; 2,400 in the Arpa Valley; 2,900 in Jety-Oguz. These estimates are substantially higher than those made in earlier years (i.e., 1991–1993), and we suspect that the survey methods used may have resulted in slight overestimation, particularly in the Aksai River area. Although some error in counting and/or differences in survey methods may partially account for differences between earlier population estimates and the 1997 estimate, Mr. Omurakunov asserted that the number of argali in Kyrgyzstan had actually increased between years, which he linked directly to sport hunting (although other factors may also be involved).

In a 1999 fax to us, Mr. Omurakunov (*in litt.* to the Service, January 26, 1999) repeated the previous population estimates—a total argali population of 20,000–21,000 and a Marco Polo argali population of 13,000. In 2000, Mr. T.

Alykulov, Minister of Environmental Protection of Kyrgyzstan (*in litt.* to Teiko Saito, Chief, DMA, July 7, 2000) told us that the total population estimate for the country in 1999 was 16,600, and 14,000 ''live in areas where hunting is conducted,'' implying that these were Marco Polo argali, because only Marco Polo argali are hunted. These recent survey data suggest that argali numbers in Kyrgyzstan have remained relatively stable in the past few years, with some fluctuation, although a comprehensive survey does not appear to have been undertaken since 1997.

Sport Hunting

Sport hunting of argali by international trophy hunters has been taking place in Kyrgyzstan since at least 1990 (Luschekina and Fedosenko 1994).

Hunting Companies. The number of hunting organizations (companies) leading ''hunting tours'' for Marco Polo argali in Kyrgyzstan has grown in recent years. The hunting industry was formerly run by one organization—Glavokhota. However, in 2000, six or seven organizations were involved in hunting (including the Society for Hunting and Fishing of the Kyrghyz Republic, the State Enterprise ''Kyrghyz Too'', and others).

Hunting Locations. In previous years we believe that the entire hunting quota was assigned to the Naryn region, which appears to contain one of the largest concentrations of Marco Polo argali in Kyrgyzstan, and which also does not appear to include any of the Tien Shan argali (DSA 1995). Luschekina and Fedosenko (1994) indicated that there were two hunting camps, one named Atabash, which is in the Aksai River Valley, and one named Przhevalsk, which is in the basin of the Uzengikush River. Subsequently, we received information about a hunting area in what appears to be the Alai Valley in the Osh region. The Alai Valley is an area that contained a concentration of argali estimated at 1,890 animals in the 1996 surveys, and therefore should be able to sustain some offtake of trophy animals. During the 1999–2000 hunting season, hunting areas were in the Narynskaya Oblast and in the mountains systems from the southern portion of Issyk-Kul'skaya Oblast to Borkoldoi-Too and Boz-Dzhalpaka, according to T. Alykulov, Minister of Environmental Protection for Kyrgyzstan (*in litt.* to Teiko Saito, Chief, DMA July 7, 2000).

Harvest Quotas. Harvest quotas for sport-hunted trophies of Marco Polo argali have steadily increased in Kyrgyzstan. The 1995 quota for Marco Polo argali was 15 according to Mr. C. Omurakunov of the Kyrgyz Committee of Nature Protection (*in litt.* to Safari Club International, January 24, 1995). The 1996 quota was 20 (Mr. T. Kulumbaev, Kyrgyz Committee of Nature Conservation *in litt.* to the Service, February 21, 1996), the 1997 quota was 24 (Mr. Omurakunov *in litt.* to DMA, 1997), and the 1998 quota was 25. For 1999, Mr. Omurakunov (*in litt.* to Michael Carpenter, DMA, June 30, 1998) stated that the quota was increased to 40, which, he said, was based on an increasing population trend and expansion of the range of the species within Kyrgyzstan in recent years (although the population appears to have remained relatively stable during that time frame). For 2000, Mr. Alykulov stated that the quota was set at 60.

Based on information provided by the Kyrgyz Government, harvest quotas in previous years appear to have been adhered to, and may not have been met in some years. Only 18 argali were hunted under a quota of 20 in 1996. Mr. Omurakunov stated in his 1998 letter that, based on several years' data, only 70–80% of the annual quota was being used on average.

Biological Impact of Harvest. Luschekina and Fedosenko (1994) stated ''we believe that the size of the argali populations is adequate in both Kyrgyzstan and Tajikistan to sustain the pressure of sporting (trophy) hunting within the limits it is currently conducted.'' At that time, the Marco Polo population of Kyrgyzstan was estimated at 7,800 animals, while the hunting quota was 18.

In our 2000 biological opinion on argali sport hunting in Kyrgyzstan we assessed the biological impact of the harvest quotas for that year (DSA 2001a). We based our assessment on the harvest recommendations of Wegge (1997) and Harris (1993). Wegge (1997) considers that harvesting males within a limit of 10 to 20 percent of the replacement rate for the trophy-sized segment of the population is a safe, conservative level for stable or increasing wild sheep and goat populations. In most cases this is equivalent to less than 4 percent of the total pre-hunting season population (Wegge 1997). Harris (1993) states that a healthy population should be able to sustain an annual ''trophy harvest of males, in numbers equivalent to 1–2 percent of the total population size,'' without negative consequences to the population. For 2000, the harvest quota of 60 argali represented 0.46% of the estimated total Marco Polo argali population of 13,000. Comparing this figure to the harvest recommendations of Wegge (1997) and Harris (1993), and noting that the Marco Polo argali population in Kyrgyzstan appears to be stable or increasing based on recent survey results, we concluded that the total harvest quota of 60 was conservative and sustainable. We further note that as long as Marco Polo argali population estimates for Kyrgyzstan were correct within ± 50% (i.e., the population is at least 6,000), this quota is below 1 percent of the population.

Poaching

Local harvest of argali for sport and/or consumption is prohibited. In previous years illegal hunting was acknowledged to be a persistent problem, especially in remote areas where enforcement is difficult. However, efforts were being made to control poaching, which resulted in poachers being detained and fined. We have been told that the head of the local game management unit accompanies foreign hunters; thus we presume that trophy specimens are legally taken and exported. Some argali populations may suffer locally in areas of military activity or ''expeditions,'' although these seem to be intermittent and isolated events. In previous years we also noted that the Government of Kyrgyzstan had agreed to strengthen and augment reserve areas. Indeed, Mr. Omurakunov indicated in his May 1997 letter that new reserves had been established. Levels of poaching described by Mr. Omurakunov in 1998 appeared to be relatively low. The level of illegal offtake (poaching) appears to be low enough that total harvest mortality (i.e., illegal harvest and legal sport-hunting harvest) has not exceeded sustainable levels and has not caused the Marco Polo argali population to decline.

Mongolia

Population Status

Luschekina and Fedosenko (1994) estimated there to be ''no more than 20,000'' argali of both subspecies in all of Mongolia, although they also stated that ''there are no systematic data on the argali population in Mongolia.'' Mallon *et al.* (1997) concurred that reliable, country-wide population estimates for each subspecies were not available, although both Mallon *et al.* (1997) and Reading *et al.* (1997) felt that Altai argali were less abundant than Gobi argali.

No comprehensive, rangewide population surveys of Altai argali have been undertaken in Mongolia. Mallon *et al.* (1997) felt that Altai argali were less abundant than Gobi argali, and that

populations were fragmented and disjunct. Amgalanbaatar and his colleagues surveyed several sites in western Mongolia in 1991–1992 and estimated a total population of 3,000 Altai argali for the four westernmost aimags (provinces) (Amgalanbaatar 1993, Amgalanbaatar *et al.* 1993 cited in Reading 1996). In 1995, Amgalanbaatar and Reading revisited several of the earlier survey sites. They did not observe argali in several of the areas and counted a total of only 52 argali (Amgalanbaatar 1995 cited in Reading 1996). However, according to Mallon *et al.* (1997), these recent surveys have not been comprehensive enough to permit estimation of the total population of Altai argali.

Additional surveys have been conducted since the studies cited in Mallon *et al.* (1997) and Reading (1996). Michael Frisina, Wildlife Biologist-Range Coordinator for the Montana Department of Fish, Wildlife & Parks, and his Mongolian colleagues, surveyed argali in Mongolia during 1997, 1998, and 1999 under the auspices of a cooperative project between Argali Conservation International and the Mongolian Ministry for Nature and the Environment (MNE) (Frisina and Boldbaatar 1998, Frisina and Ulziimaa 1999, 2000). Survey areas have included the western Altay Mountains in Bayan Olgiy and Hovd Aimags (Provinces) and the eastern Hangay Mountains (at Oshgog Mountain in Ovorkhangay Aimag-an area where government-regulated trophy hunting has occurred for several years (Frisina and Boldbaatar 1998). The eastern Hangay Mountains appear to be a zone where the two subspecies in Mongolia come together; thus, it is uncertain which subspecies occurs at Oshgog Mountain.

Frisina and colleagues conducted surveys for Altai argali in the western Altay Mountains in 1997 and 1999. In August 1997, Frisina and Boldbaatar conducted ground surveys in three areas in the western Altay Mountains (in Bayan Olgiy and Hovd Provinces) (Frisina and Boldbaatar 1998). They counted 244 argali, 234 of which were rams. This skewed sex ratio reflects the fact that their survey areas were remote alpine valleys, habitats dominated by rams in August. Older rams (Class III and IV) comprised 49% of the rams counted. In July 1999, Frisina and Ulziimaa conducted a less-intense reconnaissance survey of the sites in Bayan Olgiy and Hovd Provinces that had been surveyed in 1997 (Frisina and Ulziimaa 2000). They counted only 65 argali—15 ewes, 5 lambs, 35 rams, and 10 unclassified animals. They suggested that this decrease may have been due to the shorter period of observation in 1999, or the hot and dry daytime conditions in 1999, which may have made the sheep less visible because they were bedded down or in shady areas.

Frisina and colleagues conducted more intensive argali surveys at Oshgog Mountain in the Hangay Mountains (in Ovorkhangay Aimag) in 1997, 1998, and 1999. In August 1997, Frisina and Boldbaatar counted 305 argali at Oshgog, 135 of which were rams, 120 of which were ewes, and 50 of which were lambs (Frisina and Boldbaatar 1998). The observed lamb-to-ewe ratio was 41.7 lambs per 100 ewes. In addition, 63.7% of classified rams were in older age classes (Class III or IV). The relatively high proportion of older rams was interpreted as indicating that ''natural mortality is not excessive and poaching of rams is limited.'' The authors concluded that ''argali populations in the areas surveyed are healthy and productive'' (Frisina and Boldbaatar 1998).

In October 1998, Frisina and Ulziimaa conducted a second ground survey of the Oshgog Mountain area, and counted 862 argali, including 252 ewes, 159 lambs, 241 rams, and 210 unclassified animals (Frisina and Ulziimaa 1999). They estimated the total argali population for Oshgog Mountain (an area 91,500 ha) to be 901, and considered that to be a conservative estimate. They reported a good lamb-to-ewe ratio (63 lambs per 100 ewes) and high percentages of older age-class males (75.9% of classified rams were Class III or IV), and concluded that trophy hunting of argali at Oshgog Mountain was within sustainable limits (Frisina and Ulziimaa 1999).

In July 1999, Frisina and Ulziimaa conducted a third ground survey of the Oshgog Mountain area (Frisina and Ulziimaa 2000). They counted 339 argali, including 161 ewes, 77 lambs, 69 rams, and 32 unclassified animals. The lamb-to-ewe ratio was 47.8 lambs per 100 ewes, but there was a lower percentage of older age-class males than in previous years (39.1% of classified rams were Class III or IV). Rams made up a smaller percentage of the observed population in 1999 than in either 1997 or 1998, and the percentage of old rams (Class IV) was lower in 1999 than in 1997 or 1998. The authors implied that data comparisons among years should be made cautiously because 1998 data were collected during the rut, when older males would be expected to be more visible, whereas 1999 data were collected during extremely hot and dry conditions, and older males were difficult to see as most were bedded down in shady areas to avoid the heat (Frisina and Ulziimaa 2000).

No comprehensive, rangewide population surveys of Gobi argali have been undertaken in Mongolia. Mallon *et al.* (1997) felt that argali in the Gobi region, particularly in South Gobi Province, are apparently relatively abundant although the distribution is highly fragmented and local populations are often quite small. Recent surveys have been conducted by Frisina and colleagues, and by Reading and colleagues.

Valdez and Frisina (1993) conducted ground surveys for Gobi argali at Ih Nartiin in Dornogobi Aimag (East Gobi) in 1993, while Frisina and Ulziimaa (1999) conducted a second ground survey of Ih Nartiin in 1998. In 1993, 162 argali were counted in the 60,700-ha survey area (Frisina and Ulziimaa 1999). The observed lamb-to-ewe ratio was 44 lambs per 100 ewes, and the percentage of older males in the population was high (61.5% of classified rams were Class III or IV). In 1998, 131 argali were counted in the survey area (Frisina and Ulziimaa 1999). They estimated the total argali population for Ih Nartiin (60,700 ha) to be 632, and considered that to be a conservative estimate. The observed lamb-to-ewe ratio was 40 lambs per 100 ewes, and the percentage of older males in the population was high (60.6% of classified rams were Class III or IV). Frisina and Ulziimaa (1999) concluded that the argali population at Ih Nartiin had remained stable from 1993 through 1998.

Schaller (1994 cited in Mallon *et al.* 1997) surveyed Gobi argali in a 15 million-ha area in the eastern part of South Gobi and the western part of East Gobi in 1994. He estimated that 3,500 to 4,000 Gobi argali occurred in small, fragmented populations throughout the survey area (Mallon *et al.* 1997).

Reading *et al.* (1997) conducted ground and aerial surveys of Gobi argali in a 20.9 million-ha region in Dundgobi, Omnogobi, and Dornogobi aimags in the South Gobi region in 1994 (the same general region that Schaller surveyed). They estimated the overall population size to be 3,900 ± a standard error of 1,130, resulting in a 95% confidence interval of 2,190 to 6,960 animals (Reading *et al.* 1997). Populations were small and fragmented.

Reading *et al.* (1999) surveyed argali populations in Three Beauties of the Gobi National Conservation Park, an area of 21,700 sq. km., in 1995 (ground survey), 1996 (ground survey), and 1997 (aerial survey). They observed 265 argali in 38 groups in Fall 1995, 233 argali in 46 groups in Spring 1996, and 113 argali

in 20 groups in Winter 1997. Extrapolating results of the ground surveys, they derived populations estimates of 2,977 argali in Fall 1995, and 3,333 argali (including young) in Spring 1996. Extrapolating aerial survey results, they derived a population estimate of 3,257 ± 1,071 argali in the aerial survey area (the eastern half of the park).

Sport Hunting

Sport hunting of argali by international trophy hunters has been taking place in Mongolia since at least 1967 (Luschekina and Fedosenko 1994).

Hunting Companies. In1994, only 3 companies were authorized by the Government of Mongolia to conduct sport hunts with foreign clients—Juulchin, Mongol An, and Sondor. In 1998, 6 companies were authorized by the Mongolian Government to conduct sport hunts with foreign clients. In 1999, the number of authorized companies jumped to 17 (Juulchin, Mongol Safari, Mongol Tour and Genesis, Mat Outdoor Safaris, Adiya & Altai, Mongol Altai Travel, Mongolyn Zug, Jim Trade, Zereglee, Tsagaan Shonmkhor, Derentsnat, Badan, Power Energy-Environment, Tovshin Tour, New Tour International, Karakorum) according to S. Banzragch, Director General of Mongolia's Environmental Protection Agency (*in litt.* to T. Van Norman, DMA, June 28, 1999). For the 2000 hunting season, 18 companies were authorized to conduct sport hunts with foreign clients; most were the same companies authorized in 1999, but a few new companies appeared and a few old ones disappeared (S. Banzragch, Director General, Environmental Protection Agency, Mongolia *in litt.* to Teiko Saito, August 1, 2000).

Hunting Locations. Since 1971, hunting concessions (otogs) operated by the tourism/hunting companies have been established in various areas for hunting of argali by foreign hunters. Luschekina and Fedosenko (1994) listed these as: Yamaatyn am (Bukhmuren somon of UvsNuur Aimag), Myangan-Ugalzat (Must somon of Kobdo Aimag), Khukh Serkh (Khovd somon of Kobdo Aimag), Akhuunt (Dellum somon of Bayan Ulgi Aimag), Mogoin gol (Tonkhil somon of Gobi-Altai Aimag), Biger (Biger somon of Gobi Altai Aimag), Gobi Altai-Zhinst (Zhinst somon of Bayan-Khongor Aimag), and Ikh-Baga Nomgon (Nomgon somon of Southern Gobi Aimag). Information received in support of permit applications in subsequent years indicated that these general locations remained unchanged (e.g., DSA 1995). The Government of Mongolia previously informed us that, for 3 years beginning in 1998, there was to be a complete ban on hunting in certain areas of Hovd aimag, which lies in the range of the Altai argali in western Mongolia. According to information contained in one hunter report submitted in 1999, these areas may include White Rock Mountain, Mountain of 1,000 Rams, and Bluger Mountain, although we have no corroboration of these locations. This closure was reiterated in the information received from the Government of Mongolia prior to the 1999 hunting season (Director General, Environmental Protection Agency, Mongolia *in litt.* to T. Van Norman, June 28, 1999). We do not know if these closures remain in effect.

According to information in Frisina and Ulziimaa (2000), there has been considerable hunting of argali in the Oshgog Mountain area (in the Hangay Mountains of Ovorkhangay Aimag) in recent years. This area was not previously highlighted as a principal argali hunting area. Since 1994, the trophy ram harvest at Oshgog Mountain has ranged from approximately 1 to 18 (pers. comm. with Jantzen and Luya of Mongol Tours, cited in Frisina and Ulziimaa 2000). In 1998, about 18 trophies were harvested by foreign hunters from three different hunting camps at Oshgog. In 1999, 14 rams were harvested.

Harvest Quotas. The Council of Ministers of Mongolia establishes a quota for argali to be sport-hunted by foreign hunters. Before 1992, annual quotas of up to 100 argali were issued. The 1994 quota for argali was 15, of which 10 were designated for the High Altai and 5 for the Gobi region. The quota was increased to 20 for 1995 and 1996, and to 30 for 1997. For 1998, the quota was increased to 35 animals, with two-thirds of the quota being in the Gobi region and one-third in the Altai region. For 1999, the quota was again increased to 45; approximately two-thirds of the quota is assigned to the Gobi area and one-third in the Altai (Director General, Environmental Protection Agency, Mongolia *in litt.* to T. Van Norman, June 28, 1999). For 2000, the quota was decreased to 40; no mention was made of the distribution of permits between the two subspecies (Director General, Environmental Protection Agency, Mongolia *in litt.* to Teiko Saito, August 1, 2000).

Biological Impacts of Harvest. According to Juulchin, a tourist hunting company, 1,630 argali were taken by sport hunters in Mongolia from 1967–1989, an average of 71 per year (Luschekina and Fedosenko 1994). Over 200 argali were harvested in Kobdo Aimag from 1978 through 1992 (Luschekina and Fedosenko 1994).

In our 1999 and 2000 biological opinions on argali sport hunting in Mongolia we assessed the biological impacts of the harvest quotas for those years (DSA 1999, DSA 2000). As in our analysis for Kyrgyzstan, we based our assessment on the harvest recommendations of Wegge (1997) and Harris (1993). The total sport-hunting quota of 45 represented about 0.45% of the estimated total population of 10,000. The quota of 30 Gobi argali represented about 0.5% of that subspecies' estimated total population, while the quota of 15 Altai argali represented 0.375% of that subspecies' estimated total population. Comparing these figure to the harvest recommendations of Wegge (1997) and Harris (1993), we concluded that the total harvest quota of 45 and the subspecies quotas of 30 and 15, were conservative and sustainable. We further note that as long as Marco Polo argali population estimates for Mongolia were correct within ± 50% (i.e., the population is at least 5,000), this quota is at 1 percent of the population. Giving further consideration to the ''trophy'' segment of the population (i.e, mature, older males), we believe that recent sport-hunting data indicate that the *number* of animals in older age-classes are not being adversely affected by sport hunting.

Poaching

There is little quantitative information on former or current levels of argali poaching in Mongolia. Mallon *et al.* (1997) states that poaching is a major threat but cites little recent literature other than Luschekina and Fedosenko (1994), although these authors only provide anecdotal information. In a recent communication with us, Mr. A. Bolat, the Vice-Minister of MNE (*in litt.* to Tim Van Norman, DMA, May 9, 2001) indicated that ''there is a vague estimate that at least 70–80 argalis are hunted each year by Mongolian citizens illegally for food and medical purposes . . . therefore, measures have been taken to prevent illegal hunting of argali.'' This could have a substantial impact on argali in Mongolia, especially if poaching is concentrated in certain areas.

Tajikistan

Population Status

Luschekina and Fedosenko (1994) state that the Marco Polo argali population in Tajikistan has undergone considerable changes in recent years. In areas subject to substantial anthropogenic effects (grazing,

poaching, harassment), numbers have declined, and in some areas the species has disappeared altogether. The authors also stated that an estimated 72% of the Tajik argali population were inhabiting protected areas in the Sarykol Mountains along the Chinese border, and especially dense populations occurred within the border barrier zone (Luschekina and Fedosenko 1994).

During the 1960s, argali were considered abundant in Tajikistan, with estimates as high as 70,000–80,000 sheep in the Eastern Pamirs, although such figures are considered an overestimate by some investigators (Luschekina and Fedosenko 1994). Based on estimates of population densities, the northeastern Pamirs were estimated by Sokov to contain about 20,000 argali in the mid-1970s, and this number was further revised by Sokov and Odinashoyev to 10,000–12,000 by the late 1980s (Luschekina and Fedosenko 1994). A decline in the population was attributed to increased access to areas inhabited by argali due to development of roads as well as the increase in domestic stock competing for pasture. Available habitat became fragmented and argali numbers declined (Luschekina and Fedosenko 1994).

In 1991, various governmental, quasi-governmental, and private organizations, including scientists from the Institute of Zoology and Parasitology of the Tajik Academy of Sciences, cooperated in aerial surveys of argali in Tajikistan (Luschekina and Fedosenko 1994). The surveys encompassed 90–95% of suitable argali habitat, and 9,415 animals were counted. The total population was estimated to be 9,900–10,300 animals (Luschekina and Fedosenko 1994).

The report ''The Pamirs Argali in Tadjikistan Population State,'' completed in 1996 by Dr. A.K. Fedosenko (Fedosenko 1996), includes much of the same information as the report by Luschekina and Fedosenko (1994) (i.e., population estimates for the 1960s through 1991). However, Dr. Fedosenko included specific information on field studies of argali conducted by himself in the hunting concession area of MAK, one of the Tajik hunting firms, described as located in the area of the Akbura ridge and the area between the Saluistyk and Aksu Rivers in eastern Tajikistan (Fedosenko 1996). Dr. Fedosenko confirmed that, at the time of his report, about 60 % of the argali in Gorno-Badakhshan Province existed in the border zone (i.e., between the barrier fences and the international boundary with China), where densities were about four times higher than ''outside'' the barriers on the Tajik side. Outside the barriers, argali numbers were highest in the Saluistyk-Aksu interfluve and Akbura mountains (MAK hunting areas), the Yushno-Alichursky ridge (Tadjik-international hunting area), the Sever-Alichursky ridge, and the Bilyand-Kiik area (part of the area, along with areas around western Lake Karakul, controlled by Badakhshan hunting firm) (Fedosenko 1996).

In response to our annual request for information, Dr. N. Safarov, First Deputy Minister of the Tajik Ministry of Nature Protection (*in litt.* to the Service, October 26, 1998) told us that surveys conducted in February-March 1998 showed a continued increase in the numbers of argali. On six survey plots totaling 2.72 million acres, 6,560 argali were counted. For the entire country, the population was estimated at 10,000–13,000, mostly concentrated in the Murgab Region. Dr. Safarov stated that the population increase may have been due to political instability, civil unrest, and a reduction in the human population (emigration) in the Murgab Region due to the shortage of food and fuel, apparently because of disruption of supplies. According to Dr. Safarov, as the human population decreased, threats to argali (primarily livestock grazing and poaching) also decreased. However, during meetings with Service representatives held October 28–31, 1998, A. Luschekina and A. Fedosenko of the Russian Academy of Science indicated that they thought that the argali population of Tajikistan was in decline, although they still believed there were about 10,000 animals.

In mid-1999, Dr. A. Latifi, First Deputy Minister, Ministry of Nature Protection/ Conservation (in a written summary titled ''Information on Marco Polo's Sheep Hunting Conducted with Participation of Foreign Tourists During the Hunting Season of 1998–1999''), told us that the Marco Polo argali population in the Pamirs in 1999 was estimated at 10,000–13,000 animals (the same as in the previous year). Dr. Latifi stated that ground counting conducted by hunting firms during the hunting season supported these estimates. The summary document he provided includes a table with wildlife population figures for 10 ''hunting entities'' for 1999, but the table also has a caveat that the data are considered to be approximate ''because the task of counting them accurately has never been undertaken.''

More recently, Fedosenko (1999) surveyed a number of areas in the Eastern Pamir and counted 5,990 argali. Although Fedosenko did not extrapolate these results to a total population estimate for the country, he did state that ''Taking into account significant underestimation of arhar (argali) population in the central and in the northern parts of the Eastern Pamirs, we must conclude that the total number of these animals has increased in comparison with mid-90s (1990s). While in the central and northern parts of the Eastern Pamir the abundance of arhars has not changed or has decreased to some extent, in the southeastern and especially the southern part it has increased by more than three times.'' Dr. Fedosenko attributed argali population growth in the south to the removal of large numbers of domestic livestock from local pastures during the last several years; however, argali numbers remained steady or declined slightly in the central and northern parts of the Eastern Pamirs, because domestic livestock numbers did not decline significantly in those areas (Fedosenko 1999).

Sport Hunting

Luschekina et al. (1994) and Fedosenko (1999) state that, until the mid-1980s, about 100–120 permits were issued annually to local people for shooting argali. Actual legal hunting of argali was terminated in 1987 (Fedosenko 1999). Information received from the Ministry of Nature Conservation and from Safari Outfitters indicates that the hunting of argali is now primarily limited to trophy hunting by foreign nationals only, about 70% of whom are American.

Hunting Companies. In earlier years, we understood that trophy hunting was conducted by three hunting firms in Gorno-Badakhshan: MAK, Tadjikinternational, and Badakhshan (DSA 1998). According to Fedosenko (1996), the area controlled by Tadjikinternational was estimated to contain about 640–760 specimens based on 1992–1993 data, with several males taken annually. The hunting lands of Badakhshan were estimated to contain about 554 argali in 1991 (actual aerial counts), and although 43 males were taken during 1987–1990, Fedosenko indicated that they are now limited to taking five to seven animals annually. The MAK hunting lands were estimated to contain 1,500 argali, which had remained stable from 1990 to 1995. In the years 1992–1995, the number of argali taken each year on MAK lands was 15, 4, 6, and 6. It has been our understanding that none of the hunting concessions includes areas within the border barriers, so the majority of argali in Tajikistan (about 65%) is not subject to sport-hunting pressure, but this also means that sport-hunting pressure is

concentrated on a smaller portion of the population.

The number of hunting enterprises apparently increased dramatically in 1998–1999, to around 40. However, by mid-1999, the number apparently dropped back to around 10 hunting companies functioning in the Pamir. According to information provided by Dr. Latifi (*in litt.* to the Service, October 18, 2000), 8 hunting companies had been registered, but only 7 of them hosted sport hunters. Dr. Fedosenko's 1999 report corroborates this number (Fedosenko 1999). He stated that, at present, 8 firms organizing or willing to organize hunting are registered in Eastern Pamir. They are ''MAK'' (''Asia-Span''), ''Obi-Safed'', ''Badakhshan'', ''Pamir-Eco'', ''Pamir'', ''Mergen'', ''Turvest'' (former ''Tajik International''), ''Issyk-Bullak''. In addition, the forestry-game farm of the Ministry of Forestry was organized in 1998 with the purpose of conducting trophy hunts in its area.

Hunting Locations. Dr. Fedosenko described the hunting areas allocated to each of the 8 firms, but stated that hunting lands and their boundaries are known only to the staffs of the hunting companies and the registering organization, and local people are not well aware of the locations (Fedosenko 1999; pages 20–21).

Harvest Quotas. When Luschekina and Fedosenko prepared their report in 1993, hunting firms were annually allocated 20–25 licenses to shoot argali (Luschekina and Fedosenko 1994). According to Dr. Safarov (*in litt.* to the Service, October 26, 1998), the 1998–1999 quota was 40 argali per season, with two seasons per year: September 1 to December 31 and February 15 to April 1. However, any part of the quota not used during the September-December season could be added to the quota for the February-April season. According to Dr. Latifi's mid-1999 communication with us, the Fall 1999/Spring 2000 quota was set at 70 (no breakdown was given for the individual seasons). In 2000, Dr. Latifi told us that the Fall 2000/Spring 2001 quota has been set at 70, with no breakdown given for the individual seasons. Based on recent hunting information, it appears that the quota has not been reached in recent years, but the number of re-exports (from the Russian Federation) of argali taken in Tajikistan has increased from 10 in 1995 to 63 in 1997.

Biological Impacts of Harvest. Luschekina and Fedosenko (1994) stated ''we believe that the size of the argali populations is adequate in both Kirgizia and Tajikistan to sustain the pressure of sporting (trophy) hunting within the limits it is currently conducted.'' At that time, the Marco Polo population of Tajikistan was estimated at 9,900–10,300 animals, while the hunting quota was 20–25.

In our biological opinion on sport-hunted argali trophies taken in the Fall 2000/Spring 2001 season in Tajikistan (DSA 2001b), we assessed the biological impacts of the harvest quota for that season. We based our assessment on the published recommendations of Wegge (1997) and Harris (1993) (see background discussion of these papers under Kyrgyzstan). The total sport-hunting quota of 70 represented about 0.70% of the total estimated population of 10,000, and about 1.55% of the ''huntable'' population (that portion of the total population on the Tajik side of the border barriers and therefore subject to sport hunting). Comparing these figure to the harvest recommendations of Wegge (1997) and Harris (1993), we concluded that the quota is conservative and sustainable when compared to the total population of 10,000, but that it is close to the upper limit of 2% mentioned by Harris (1993) when compared to the ''huntable'' population. This is still conservative, since the border barriers are not absolute and some movement of animals does occur.

Poaching

Luschekina and Fedosenko (1994) and Fedosenko (1999) state that, until the mid-1980s, about 100–120 permits were issued annually to local people for shooting argali. Legal hunting of argali by local people was terminated in 1987 (Fedosenko 1999). According to Luschekina and Fedosenko (1994) and Fedosenko (1999), herdsmen, various expeditions, and military personnel shot upwards of 1,000 argali per year until the late 1980s. Illegal harvest increased in the early 1990s as a result of civil unrest and human population re-location into the Gorno-Badakhshan region, but then began to subside because of a reduction in the number of military personnel, increasing fuel costs, and a local government effort to confiscate weapons (Luschekina and Fedosenko 1994, Fedosenko 1996). More recently, Fedosenko (1999) has implied that poaching continues and may be on the increase. The majority of argali remains (89%) he found were shot by poachers, and many argali skulls were found near herders camps (Fedosenko 1999).

According to N. Safarov, Deputy Minister of the Tajik Ministry of Nature Conservation, and A. Lailibekov, Deputy Chairman of the Nature Conservation Committee of Gorno-Bakakhshan (*in litt.* to the Service, February 16, 1996) sport hunting of argali by foreign hunters prevents poaching of argali due to the contribution of sport hunting to the local economy and the value that the local population then places on argali. In addition to providing a disincentive to poaching, the income generated from sport hunting of argali reduces reliance of local people on domestic livestock, especially sheep, so there are fewer sheep to compete with argali for pasture and water. These arguments were restated in Mr. Safarov's letter to the Service of October 26, 1998.

Findings for Factor B

Argali populations in Kyrgyzstan appear to have remained stable or increased slightly in recent years, although the lack of a comprehensive population survey since 1991 limits interpretation of population trend. Legal sport hunting has not had a detrimental impact on Kyrgyz argali populations in recent years, but poaching is acknowledged to have been a persistent problem until recently. Although overutilization is not a factor that endangers the argali throughout all or a significant portion of its range in Kyrgyzstan, the lingering impact of past poaching continues to be a factor that threatens argali populations in certain parts of Kyrgyzstan.

Argali populations in Mongolia appear to be much reduced from previous years, but the lack of a recent, countrywide population survey inhibits interpretation of population trends. In addition, there is little quantitative information on former or current levels of poaching. Legal sport hunting has impacted argali populations in some areas, resulting in their closure. Because of these factors, overutilization continues to be a factor that threaten argali populations in Mongolia. However, the overutilization is not of sufficient magnitude or extent to endanger the argali throughout all or a significant portion of its range in Mongolia.

Recent population surveys in Tajikistan indicate that the argali population in the Eastern Pamirs has increased since the early 1990s. Legal sport hunting has not had a detrimental impact on Tajik argali populations in recent years, but local experts indicate that poaching has been and continues to be a problem. Thus, we conclude that former and current overutilization in the form of poaching threatens argali population in Tajikistan, but, as with Mongolia, the magnitude and extent of overutilization is not at a level that endangers the argali in all or a significant portion of its range in Tajikistan.

C. Disease or Predation

Kyrgyzstan

Luschekina and Fedosenko (1994) report that the wolf (*Canis lupus*) is a major predator of Pamir argali in Kyrgyzstan. Predation appears to be more substantial in fall and winter, the time of year when the principal prey—the Altai marmot—is hibernating.

In recent years' communication with officials of the Kyrgyz government, we have received information indicating that Kyrgyzstan has embarked on an apparently widespread program of wolf control in an attempt to reduce predation on argali (see, for example, the letter from T. Alykulov, Minister of Environmental Protection of Kyrgyzstan to Teiko Saito, Chief, DMA, July 7, 2000). While selective predator control might help with survival of juvenile and yearling argali in some areas, the Service does not endorse widespread predator control as an acceptable management method for argali.

Diseases transmitted from domestic sheep can be a significant mortality factor for wild sheep, and as long as argali occur in proximity to domestic sheep, there is the possibility of disease transmission. However, we do not consider that this threat is of sufficient magnitude to threaten or endanger argali populations throughout all or a significant portion of the species' range in Kyrgyzstan.

Mongolia

Wolves do not appear to be a major predator of argali in Mongolia (Luschekina and Fedosenko 1994).

We do not consider that the threat of disease is of sufficient magnitude to threaten or endanger argali populations throughout all or a significant portion of the species' range in Mongolia.

Tajikistan

Fedosenko (1999) indicated that wolf predation is a major mortality factor for argali in Tajikistan. We understand that the Tajik Government has embarked on wolf control, but, in his most recent communication, A. Latifi (*in litt.* to Teiko Saito, DMA, October 18, 2000) expressed the opinion that the situation with predators is not alarming. As previously stated for Kyrgyzstan, the Service does not endorse widespread predator control as an acceptable management method for argali.

We do not consider that the threat of disease is of sufficient magnitude to threaten or endanger argali populations throughout all or a significant portion of the species' range in Tajikistan.

Findings for Factor C

Although wolf predation appears to impact argali populations in Kyrgyzstan and Tajikistan, we do not consider predation to be a factor that threatens or endangers argali throughout all or a significant portion of the species' range in Kyrgyzstan, Mongolia, or Tajikistan. Diseases transmitted from domestic sheep can be a significant mortality factor for wild sheep, and as long as argali occur in proximity to domestic sheep, there is the possibility of disease transmission. However, we do not consider that this threat is of sufficient magnitude to threaten or endanger argali populations throughout all or a significant portion of the species' range in Kyrgyzstan, Mongolia, or Tajikistan.

D. Inadequacy of Existing Regulatory Mechanisms

Kyrgyzstan

Legal Protection

The Tien Shan argali is listed in the Kyrghyz Red Data Book as endangered, however we do not know if this status carries any legal authority under Kyrgyz law. In 1999, the Parliament of Kyrgyzstan adopted laws ''On Environmental Protection'' and ''On Wildlife'' that regulate resource protection and use (T. Alykulov, Minister of Environmental Protection of Kyrgyzstan *in litt.* to Teiko Saito, Chief, DMA, July 7, 2000).

Trophy Fees and Their Distribution

In previous years' communications to the Service, Mr. C. Omurakunov of the Kyrgyz Central Administrative Board of Hunting and Hunting Supervision stated that implementation of an argali management program depended on revenues generated by sport hunting, and he provided a rough accounting of the total amount of revenue generated by sport hunting and amounts devoted to wildlife conservation and management (which includes activities for argali), for the years 1994–1997. Based on Mr. Omurakunov's comments, we concluded that population monitoring (surveys) and other activities would continue on an annual basis, largely as a result of funding derived from sport hunting. In 1999, Mr. Omurakunov (*in litt.* to the Service, January 26, 1999) indicated again that about 60% of hunting revenues are used for ''hunting management, conservation and reproduction of wild aninals,'' but provided no detail. In 2000, Mr. Alykulov (*in litt.* to the Service, July 7, 2000) stated that: ''According to hunting guides conducting tours for foreign hunters, the greatest part of the funds received from hunters in 1999 was spent on protection of hunting areas, biotechnical and propagation activities, and development of the hunting industry; 25% of the revenue from trophies is earmarked for a general fund of protection of nature and is spent on nature preservation measures and financial help for local residents; 10% of the revenue is transferred to organs of the Ministry of Environmental Protection of the Kyrgyz Republic to organize and carry out work on scientific/economic topics, selective censusing, and protection and reproduction of wild animals in the territory of the Kyrgyz Republic.''

Argali Conservation Activities

Until recently, we had little information on specific information on specific uses of argali hunting fees for argali conservation activities in Kyrgyzstan. According to T. Alykulov, Minister of Environmental Protection of Kyrgyzstan (*in litt.* to Teiko Saito, Chief, DMA, July 7, 2000), ongoing management activities include: (1) year-round protection of Marco Polo argali habitat; (2) anti-poaching (ranger stations are equipped with radios and vehicles); and (3) wolf control.

Export Control

The exports of sport-hunted argali trophies from Kyrgyzstan are subject to multiple controls. Hunting licenses are issued, consistent with the quota, by the central government. Because Kyrgyzstan has not yet acceded to CITES, the CITES Management Authority of the Russian Federation serves as its Management Authority. This system has been verified with the CITES Secretariat as the currently accepted procedure for CITES-listed species originating from the former Soviet Republics that have not yet acceded to CITES on their own. A CITES re-export certificate is issued by the Russian CITES authorities. U.S. hunters must obtain an endangered species import permit, and must declare their trophy to wildlife inspectors upon entry to the United States. U.S. hunters are required to submit a report with details of their hunting experience, including location where the argali was hunted and length of horns, to the U.S. CITES Management Authority.

Mongolia

Legal Protection

The argali has been ''state-protected'' in Mongolia since 1953, and hunting has been banned since 1975, except for the hunting of a certain number of species ''according to social need,'' which requires the approval of both the Ministry of Nature and Environment (MNE) and adopting of a government

resolution by the Council of Ministers (A. Bolat, Vice-Minister, MNE *in litt.* to Tim Van Norman, DMA, May 9, 2001). In recent years, the ''Law of Hunting'' of 1995 served as the basis for argali sheep conservation and hunting in Mongolia. The hunting law was amended in 2000 (A. Bolat, Vice-Minister, MNE *in litt.* to Tim Van Norman, DMA, May 9,2001). Paragraph 3 of Article 8 of the hunting law authorizes the Government to establish the number of animals that may be hunted for ''special purposes'' based on proposals from the State Administrative Central Organizations. The law specifies various penalties for violating its provisions. A new ''Law of Fauna'' was also adopted in 2000. The Fauna Law lists argali as a ''rare species'' (however, we do not know the definition of ''rare species'' in the law).

Since 1971, hunting concessions operated by the tourism/hunting companies have been established in various areas for hunting of argali by foreign hunters. It appears the argali in government-sanctioned hunting areas are afforded greater protection than argali in other areas. For example, we understand that hunting concessionaires are responsible for enforcing the ban on hunting by locals. Also, the MNE informed us that, for 3 years beginning in 1998, there was to be a complete ban on hunting in certain areas of Hovd aimag, which lies in the range of the Altai argali in western Mongolia. This closure was reiterated in information received from the Government of Mongolia prior to the 1999 hunting season (Director General, Environmental Protection Agency, Mongolia *in litt.* to T. Van Norman, June 28, 1999), and in information received in May 2001 (A. Bolat, Vice-Minister, MNE *in litt.* to Tim Van Norman, DMA, May 9, 2001). In 1997, the MNE banned the export of ''picked-up'' horns (i.e., salvaged horns from sheep that died of causes other than sport hunting).

Trophy Fees and Their Distribution

In response to previous years' requests for information, the Mongolian Government has told us that revenues generated by sport hunting of argali are divided among the Government of Mongolia (70%), the province where the hunt occurs (20%), and the hunting organization (10%) (Director General, Environmental Protection Agency, Mongolia *in litt.* to T. Van Norman, DMA, June 28, 1999). The Government of Mongolia reportedly invests most of its funds into conservation and research programs for argali and other wildlife, however, until recently, the Government has not provided us with a detailed breakdown of how sport-hunting funds are used specifically for argali conservation. In May 2001, Mr. A. Bolat, Vice-Minister, MNE (*in litt.* to Tim Van Norman, DMA, May 9,2001) provided a table with some detail on how argali hunting fees have been used since 1993 (see following section).

Argali Conservation Activities

Until recently, we had little information on specific uses of argali hunting fees for argali conservation activities in Mongolia. We were aware that a portion of the revenue generated from one previous permit was specifically earmarked for a Gobi waterhole project for the benefit of argali (Frisina and Ulziima 1998), but other activities were mentioned in generalities. In May 2001, Mr. A. Bolat, Vice-Minister, MNE (*in litt.* to Tim Van Norman, DMA) provided a table indicating generally how argali hunting fees have been used since 1993 (see following section). Six activity categories are mentioned in the table: (1) Argali habitat and resource surveys; (2) survey of other rare animals; (3) anti-poaching and environmental protection activities; (4) argali habitat management activities (fire prevention, anti-desertification measures, fodder provision, etc.); (5) establishment, management, and protection of strictly protected areas; and (6) administration of the hunting program. By far the greatest percentage of funds went to establishment of the protected areas, followed by anti-poaching activities. According to Mr. A. Bolat, Vice-Minister, MNE (*in litt.* to Tim Van Norman, DMA, May 9, 2001), at present Mongolia has 607 state inspectors, 454 rangers, and 752 volunteer rangers for the purpose of stopping argali poaching.

Export Control

Exports of sport-hunted argali trophies from Mongolia are subject to multiple controls. The Council of Ministers of Mongolia establishes a quota for argali to be sport-hunted by foreign hunters. Hunting licenses are issued, consistent with the quota, by the Mongolian government, and hunting is limited to specific seasons. Mongolia acceded to CITES in 1996. To export a sport-hunted argali trophy from Mongolia, the hunter must obtain a CITES export permit. U.S. hunters must obtain an endangered species import permit, and must declare their trophy to wildlife inspectors upon entry to the United States. U.S. hunters are required to submit a report with details of their hunting experience, including location where the argali was hunted and length of horns, to the U.S. CITES Management Authority.

Tajikistan

Legal Protection

In mid-1999, Dr. A. Latifi, First Deputy Minister, Ministry of Nature Protection/ Conservation (in a written summary titled ''Information on Marco Polo's Sheep Hunting Conducted with Participation of Foreign Tourists During the Hunting Season of 1998–1999''), told us that his Ministry is responsible for wildlife protection and use through the national law entitled ''On Preservation of Wildlife'' (Decree of the Supreme Soviet of the Republic of Tajikistan # 905a of December 27, 1993), the national law entitled ''On Protection and Utilization of Wildlife'' (Decree of the Supreme Soviet of the Republic of Tajikistan # 990 of July 20, 1994), and ''Regulation of Hunting and Hunting Management in the Territory of the Republic of Tajikistan'' (Decree of the Government of the Republic of Tajikistan #324 of July 16, 1997).

Trophy Fees and Their Distribution

Regarding trophy fees and their distribution within Tajikistan, Luschekina et al. (1994) stated that foreign hunters spent about US$25,000 for an argali hunt in Tajikistan: $16,000 for the hunting license, $4,000 to firms in Moscow, Russia, who apparently assist in arranging the hunts, and $5,000 to the local hunting outfitters. Of the $16,000 license fee, 70% was allocated to the Executive Committee of the Murgab District Council and 30% to the local hunting firm, supposedly to be used for conducting surveys and for activities directly benefitting argali, such as supplemental feeding, maintenance of salt licks, predator control, and other measures. A portion of the Executive Committee funds (15%) went to the ''local nature conservation committee in Khorog'' (this appears to refer to the Regional Committee for Nature Protection under the Ministry of Nature Conservation).

In an undated letter (probably 1996), Dr. N. Safarov of the Ministry of Nature Conservation stated that agreements between the hunting firms and local authorities specify that 50–70% of hunting proceeds are allocated to the local budget, which is then distributed according to Decision #220–2s (December 26, 1992) of the Executive Committee of Gorno-Badakhshan. This Decision states that hunting fees should be distributed as follows: 50% to be used for game conservation activities, which would include anti-poaching efforts and other activities directed toward argali; 10% to be placed in a nature conservation fund; 15% to be allocated to the general treasury of

Tajikistan; and 25% to be used for ''social development needs,'' which have been described as providing essential commodities such as coal, kerosene, and wheat flour.

In his October 26, 1998, letter to us, Dr. Safarov described the distribution of funds as follows: 50–70% of hunting proceeds are allocated to the local budget, of which 10% goes to the Fund of Nature Protection of the Republic, 40% is used for social development of the region, and 50% of the money is spent on patrolling the territory of hunting, salaries for inspectors, repair and purchase of vehicles, communication, fuel, inventory work, and wolf predator control. In his mid-1999 communication with us, Dr. A. Latifi repeated Safarov's description of funds distribution: 50–70% of the hunting proceeds are given to local authorities by the hunting firms, and those funds are distributed as follows: 10% to the ''Republican Fund of Wildlife Preservation'; 40% for the social development of the region; and 50% spent exclusively for the protection of the territory of the entity (presumably meaning the hunting concession).

Argali Conservation Activities

Regarding argali conservation activities, both Luschekina et al. (1994) and Fedosenko (1996) stated that argali conservation activities were largely the responsibility of the hunting firms, since funding and other support (e.g., transportation) were lacking to support a government game management staff. Prior to 1995, under the supervision of the local Nature Conservation Committee, annual land leases to hunting firms required that the firms provide supplemental feedings to argali, conduct surveys, and control predators and poaching, but inspections revealed that these obligations were not met. However, in 1995, supervision of the hunting firms was transferred to the Regional Nature Conservation Committee (RNCC) by the Gorno-Badakhshan Regional Executive Committee, and there may be stricter control over the hunting firms to conclude their lease obligations, including the transfer of hunting proceeds to the Committee.

In his mid-1999 communication with us, Dr. A. Latifi stated that local authorities enter into agreements (contracts) with hunting firms, to which are allocated certain sectors where international hunting is conducted. The hunting firm is responsible for conducting various activities including conducting an annual accounting of the game population, fighting poaching, and conducting management activities. No details were provided on specific conservation activities undertaken by the hunting firms, or how their compliance is monitored. In this same communication Dr. Latifi stated that a portion of funds allocated for regional social development is used primarily to support the functioning of ''important objects,'' thus ensuring the interest of the local population and administration in the preservation of Marco Polo's sheep. Dr. Latifi further stated that funds spent on ''protection of the territory'' are used for salaries of inspection personnel, purchase and repair of vehicles, communications equipment, and predator control. Dr. Latifi also stated that in recent years, due to the difficult economic situation, no budget funds have been allocated for conducting wildlife protection activities; the money received from foreign hunters is the only source of financing wildlife protection in the Murgab region.

In his 1999 report, Dr. Fedosenko said that, according to unofficial sources, a foreign hunter spends about $23,000 on an argali trophy hunt in Tajikistan: $5,000 goes to a company in Moscow for arranging the reception in Moscow, providing transportation to the hunting area, and providing an interpreter, while $18,000 is spent in Tajikistan. Of that $18,000, $10,000 goes to local authorities (referred to as the Regional Committee on Nature Conservation) and $8,000 to the firm that organizes the hunting. From the $10,000 given to local authorities, 10% goes to the republican budget, 30% to the regional budget, and 60% to the district budget (that is, directly to the local administration of the Murgab district where most of the hunting takes place). Fedosenko claimed that none of this money actually goes to argali conservation, except to pay the salaries of the Chairman of the Committee and his one employee (Fedosenko 1999; page 21).

As for illegal take (poaching), the Ministry of Nature Protection/Conservation has provided information on prohibitions and fines for illegal take, which for argali has now been increased to 4,000 times the minimum monthly wage (about US$2.00). Based on previous documentation, we understand that fines increase (double or triple) if animals are taken in protected areas, and are even higher (tenfold) if protected species are illegally taken for commercial purposes. At least within the hunting concession lands, the hunting firms are responsible for enforcement of anti-poaching laws. According to Fedosenko (1996), MAK admitted that they did not impose fines because the poachers lacked the means to pay, but they would confiscate a poacher's firearm. More recently, Fedosenko (1999) stated that, although firms are responsible for protecting their lands and carrying out surveys, in practice the lands for most of the firms are protected only during the period of trophy hunting, while workers only occasionally visit the areas during the rest of the year.

Civil Unrest

One of our concerns about the management and effective control of sport hunting and exports of argali trophies was related to the civil unrest in Tajikistan following the dissolution of the Soviet Union. Luschekina and Fedosenko (1994) indicated that, in 1993–1994, when their report was being written, opportunities for sport hunting by foreign hunters in Tajikistan were tenuous due to an unstable political environment and the threat of military activity in the Gorno-Badakhshan region. They also indicated that, at the time (and up until 1995), the bulk of hunting fees were directed to purchase of transportation, weapons, and equipment, with little directed to conservation activities in support of argali.

While reports of conflict between the central Tajik government and Muslim insurgents in Gorno-Badakhshan continued through 1996 (at least until the time we issued our Section 7 consultation on September 23, 1996), a United Nations-sponsored cease-fire was in effect. In early 1996, N. Safarov, Deputy Minister of the Tajik Ministry of Nature Conservation, and A. Lailibekov, Deputy Chairman of the Nature Conservation Committee of Gorno-Bakakhshan (*in litt.* to the Service, February 16, 1996), reported to the Service that ''the situation in Tajikistan has stabilized,'' but that it was ''impossible to finance the conservation agencies and protect the wildlife without international hunting.'' Dr. Safarov (*in litt.* to the Service, October 26, 1998), stated that sport hunting continues to be a major source of funds for nature conservation in Tajikistan and again acknowledged the difficulties caused by the civil war in that country.

Despite these earlier events, U.S. and other hunters have continued to visit Tajikistan for argali sport hunting. The export of argali trophies has always remained under the control of the central government in Dushanbe and, ultimately, the Russian CITES Management Authority, since the argali is listed in Appendix II of CITES and Tajikistan is not yet a CITES Party with its own Management Authority.

Export Control

The exports of sport-hunted argali trophies from Tajikistan are subject to multiple controls. Hunting licenses are issued, consistent with the quota, by the central government in Dushanbe based on recommendations of the local nature conservation authorities. Hunting is limited to specific seasons, based on recommendations of the Tajik Academy of Sciences. To export a sport-hunted argali trophy from Tajikistan, the hunter must have his license marked by local authorities to verify that a trophy was legally taken. This validated license must then be submitted to the Tajik Ministry of Nature Conservation for the issuance of an export license and a Certificate of Authenticity, which is then submitted to the Russian CITES Management Authority in Moscow for a re-export certificate. Because Tajikistan has not yet acceded to CITES, the CITES Management Authority of the Russian Federation serves as its Management Authority. This system has been verified with the CITES Secretariat as the currently accepted procedure for CITES-listed species originating from the former Soviet Republics that have not yet acceded to CITES on their own. A CITES re-export certificate is issued by the Russian CITES authorities. U.S. hunters must obtain an endangered species import permit, and must declare their trophy to wildlife inspectors upon entry to the United States. U.S. hunters are required to submit a report with details of their hunting experience, including location where the argali was hunted and length of horns, to the U.S. CITES Management Authority.

Findings for Factor D

Existing regulatory mechanisms in Kyrgyzstan, Mongolia, and Tajikistan are adequate to ensure that illegally-hunted trophies cannot be readily exported to other countries, while existing regulatory mechanisms in the United States are adequate to ensure that illegally-hunted trophies cannot be readily imported. We do not consider this factor to threaten or endanger argali populations throughout all or a significant portion of the species' range in Kyrgyzstan, Mongolia, or Tajikistan.

E. Other Natural or Manmade Factors

Kyrgyzstan

Winter Weather

Luschekina and Fedosenko (1994) noted that a harsh winter (1992–1993) and cold Spring (1993) likely affected the survival of newborn argali lambs in their Kurumduk valley study area.

Border Barriers

We previously mentioned this issue under Factor A. Although the border barriers may have been beneficial to argali in the ''border zone'' (i.e., between the fences and the border), the barriers also may have had detrimental effects on argali populations by cutting off long-established seasonal migration routes and access to winter or summer pastures, and by affecting genetic exchange among local sub-populations. These effects may no longer be occurring in places where the border barriers have broken down.

Mongolia

Winter Weather

Harsh winter weather periodically takes a severe toll on argali populations in Mongolia. For example, according to Luschekina and Fedosenko (1994), a heavy snowfall killed most of the argali at a place called Khentei in 1831–1832. Hundreds of argali died in the winter of 1983–1984 in Kobdo Aimag, while another disastrous snowfall occurred in the Mongolian Altai in the winter of 1992–1993 (Luschekina and Fedosenko 1994).

Tajikistan

Winter Weather

Especially snowy and cold winters in 1985–1986 and 1987–1988 resulted in high mortality among argali in certain portions of Tajikistan (Fedosenko 1999).

Border Barriers

As in Kyrgyzstan, the border barriers may have had detrimental effects on argali populations of Tajikistan by cutting off long-established seasonal migration routes and access to winter or summer pastures, and by affecting genetic exchange among local sub-populations. These effects may no longer be occurring in places where the border barriers have broken down.

Findings for Factor E

Although severe weather can be a significant mortality factor for argali, we do not believe that this factor threatens or endangers argali populations throughout all or a significant portion of the species' range in Kyrgyzstan, Mongolia, or Tajikistan. We do not consider the border barriers to be a factor that threatens or endangers argali populations in those two countries.

Distinct Vertebrate Population Segment

The definition of ''species'' in section 3(15) of the Act includes ''. . . any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Distinct vertebrate population segments for purposes of listing under the Act are defined in the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment (DPS), three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?).

In accordance with the DPS Policy, a population segment may be considered discrete if it satisfies one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; (2) it is delimited by international boundaries within which differences in the control of exploitation, management of habitat, conservation status, or regulatory mechanisms are significant. In accordance with the DPS Policy, a population segment may be considered significant if, among other possibilities: (1) It is important to the persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) there is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) there is evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or (4) there is evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

All three countries, Kyrgyzstan, Mongolia, and Tajikistan, satisfy the discreteness criterion because they are sovereign nations with defined international boundaries that have implemented national laws to control exploitation and conserve habitats. (Although the genetic distinctiveness of the several argali subspecies remains to be fully elucidated, the existing scientific literature generally recognizes morphological and geographic differences that define approximately eight subspecies. However, because the exact geographic boundaries of the subspecies cannot be delineated precisely, these boundaries are not

useful for defining distinct population segments.)

Kyrgyzstan has adopted laws ''On Environmental Protection'' and ''On Wildlife'' that regulate resource protection and use. In Mongolia, the argali has been ''state-protected'' since 1953, and hunting has been banned since 1975, except for the hunting of a certain number of species ''according to social need,'' which requires the approval of both the Ministry of Nature and Environment and adoption of a government resolution by the Council of Ministers. In recent years, the ''Law of Hunting'' of 1995 served as the basis for argali sheep conservation and hunting in Mongolia; the hunting law was amended in 2000. A new ''Law of Fauna'' was also adopted in 2000. In Tajikistan, the Ministry of Nature Protection/Conservation is responsible for wildlife protection and use through the national law entitled ''On Preservation of Wildlife'' (Decree of the Supreme Soviet of the Republic of Tajikistan #905a of December 27, 1993), the national law entitled ''On Protection and Utilization of Wildlife'' (Decree of the Supreme Soviet of the Republic of Tajikistan #990 of July 20, 1994), and ''Regulation of Hunting and Hunting Management in the Territory of the Republic of Tajikistan'' (Decree of the Government of the Republic of Tajikistan #324 of July 16, 1997). Thus, all three countries have significant regulatory mechanisms that differ from each other, and from other countries within the range of the argali.

All three countries, Kyrgyzstan, Mongolia, and Tajikistan, also satisfy the significance criterion because there is evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon. Kyrgyzstan is generally recognized to have two argali subspecies, the Marco Polo argali (*O. a. polii*) and the Tien Shan argali (*O. a. karelini*). The Tien Shan argali is distributed across approximately the northern half of Kyrgyzstan in the Tien Shan Range west of Lake Issyk-Kul, whereas the Marco Polo argali is distributed across the Pamir Plateau of southeastern Kyrgyzstan. Loss of Kyrgyzstan's argali population would create a significant gap in the distribution of both subspecies, but especially the Tien Shan argali, which has the greatest portion of its geographic range within Kyrgystan.

Mongolia is also generally recognized to have two subspecies: Altai argali (*O. a. ammon*) and Gobi argali (*O. a. darwini*). Altai argali inhabit the high Altai Mountain region of western and southwestern Mongolia; along the main ridge of the Hangai Mountains in central Mongolia; and in the mountains of north and northwest Mongolia. Gobi argali occur in the hills, rocky outcrops, and mountains across the whole of the Transaltai Gobi (the desert and semi-desert zones south of the Altai Range), portions of the Gobi Altai Mountains east almost to 112° E longitude, and also in several isolated ranges of hills in the steppe zone of central Mongolia. Loss of Mongolia's argali population would create a significant gap in the distribution of both subspecies, both of which have a significant portion of their range in Mongolia.

The argali in Tajikistan consists of only one subspecies, the Marco Polo argali, which occurs in the eastern Pamir Plateau, along the border with China. Although this subspecies also occurs on the Pamir Plateau of Kyrgyzstan, the eastern portion of the Wakhan Corridor of Afghanistan, northernmost Pakistan, and the Pamir region of China, its most significant populations are in Tajikistan, and loss of that country's argali population would create a significant gap in the distribution of the subspecies.

Because all three countries satisfy both the discreteness and significance criteria as defined above, we recognize the argali populations of Kyrgyzstan, Mongolia, and Tajikistan as three distinct vertebrate population segments for purposes of listing under the ESA. Accordingly, in previous sections, we have evaluated the conservation status of each country's argali population in relation to the Act's standards for listing (*i.e.,* is the population segment, when treated as if it were a species, endangered or threatened?). Our conclusion is that all three of these distinct population segments are properly listed as threatened.

Summary of Findings

In developing this notice, we carefully assessed the best available scientific and commercial information regarding the past, present, and future threats faced by argali in Kyrgyzstan, Mongolia, and Tajikistan. After reviewing the argali populations of Kyrgyzstan, Mongolia, and Tajikistan in terms of the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments, we have concluded that all three populations are distinct vertebrate population segments for purposes of listing under the ESA. Criteria for reclassification of a threatened or endangered species are found in 50 CFR 424.11(c). Available information indicates that the argali is not endangered under any of the five listing factors throughout all or a significant portion of its range in Kyrgyzstan, Mongolia, or Tajikistan. Available information further indicates that the argali remains threatened in all three countries by Factor A, The present or threatened destruction, modification, or curtailment of its habitat or range and Factor B, Previous or current overutilization. Based upon the findings documented in this notice, we are hereby withdrawing the proposed rule published on April 27, 1993, at 58 FR 25595, that proposed to reclassify the argali in Kyrgyzstan, Mongolia, and Tajikistan from threatened to endangered.

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Author

The primary author of this notice is Dr. Kurt A. Johnson, Division of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 [703–358–1708].

Dated: April 11, 2002.

Steve Williams,

Director.

[FR Doc. 02–12824 Filed 5–21–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 99
Wednesday, May 22, 2002

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

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will hold its fifth meeting.

DATES: The meeting will be held on June 13, 2002, and will begin at 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; EMAIL *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Introductions, (2) Presentation of By-Laws for Approval, (3) Fire Safe Council Report (4) Project Presentations w/ Possible Preliminary Selection, (5) General Discussion, (6) Public Comment, (7) Next Agenda. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 16, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–12780 Filed 5–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Advisory Committee (RAC) will meet on June 3, 2002, in Markleeville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, and Stanislaus National Forests in Alpine County.

DATES: The meeting will be held June 3, 2002 at 6 p.m.

ADDRESSES: The meeting will be held at the Turtle Rock County Park, Markleeville, CA.

FOR FURTHER INFORMATION CONTACT: Laura Williams, Committee Coordinator, USDA, Humboldt-Toiyabe National Forest, 1536 S Carson St., Carson City, NV 89701, (775) 884–8150, E-mail: *ljwilliams@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Old business; (2) Project Criteria Discussion; (3) Camping in Alpine County; (4) Project Proposals; (5) New business & Public comment.

The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 13, 2002.

Laura J. Williams,

Carson Acting District Ranger.

[FR Doc. 02–12808 Filed 5–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review and Revocation, in-Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2002, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. *See Mechanical Transfer Presses from Japan: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke, in-Part,* 67 FR 10363 (March 7, 2002) *(Preliminary Results).* This review was initiated in response to a request by respondents, Komatsu, Ltd. (Komatsu) and Hitachi Zosen Corp. (HZC) and its subsidiary Hitachi Zosen Fukui Corporation, doing business as H&F Corporation (H&F). This review covers shipments of this merchandise to the United States during the period of February 1, 2000 through January 31, 2001.

In the *Preliminary Results,* we found that U.S. sales were not made below normal value (NV) by any of the respondents. We also published our intent to revoke the order, in part, with respect to Komatsu. We gave interested parties an opportunity to comment on our preliminary results. HZC and H&F filed a letter regarding the preliminary results, alleging errors, but stated that they did not wish to challenge the preliminary results. The Department received no other comments and no requests for a hearing. Accordingly, we are affirming the preliminary results in these final results, and will instruct the U.S. Customs Service to liquidate entries for all respondents during the period of review, without regard to antidumping duties, and to terminate the suspension of liquidation for Komatsu, for any merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2001.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Office of Antidumping/

Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3148.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001). The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8462.99.8035, 8462.21.8085, and 8466.94.5040. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive. The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (*See* ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992; and ''Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.,'' U.S. Department of Commerce, October 3, 1996.)

Revocation Determination

In its timely submission of February 28, 2001, Komatsu requested, pursuant to 19 CFR 351.222(e)(1), partial revocation of the order with respect to its sales of MTPs. Komatsu certified that (1) it sold the subject merchandise in commercial quantities at not less than NV for a period of at least three consecutive years; (2) in the future, it will not sell the subject merchandise at less than NV; and, (3) it agreed to immediate reinstatement under the order if the Department determines that, subsequent to revocation, it has sold the subject merchandise at less than NV.

Based upon our findings in this review and the final results of the two preceding reviews, Komatsu has demonstrated three consecutive years of sales at not less than normal value. Furthermore, we have determined that Komatsu's aggregate sales to the United States have been made in commercial quantities during these three segments of this proceeding. *See Preliminary Results.* The company also agreed in writing that it will not sell the subject merchandise at less than NV in the future and to the immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the partial revocation, Komatsu has sold the subject merchandise at less than normal value. Based on the above facts, the Department determines that partial revocation of the order with respect to Komatsu is warranted. Therefore, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2001.

Comments From Interested Parties and Changes Since the Preliminary Results

The Department received a letter from HZC and H&F alleging errors in the preliminary results. More specifically, HZC and H&F alleged that there were methodological errors in the Department's preliminary antidumping margin calculation for H&F. However, according to HZC and H&F, because the correction of these errors would not have altered H&F's zero dumping margin, they did not wish to challenge the preliminary results. The Department has checked these alleged errors and found that, even if we were to agree with HZC's and H&F's allegations, the results of the review would not change. Therefore, we determine that the merits of their arguments need not be addressed.

Final Results of Review

The Department has not altered its determination from the *Preliminary Results.* We determine that the following weighted-average margins exist for the period February 1, 2000 through January 31, 2001:

Manufacturer/exporter	Time period	Margin (percent)
Komatsu, Ltd.	02/01/00—01/31/01	0.00
Hitachi Zosen Corp./Hitachi Zosen Fukui Corp.[1]	02/01/00—01/31/01	0.00

[1]The Department determined to treat HZC and H&F as a single entity under section 351.401(f) of the regulations. *See Preliminary Results,* 67 FR at 10364.

Because the weighted-average dumping margin is zero for all respondents, we will instruct the U.S. Customs Service (Customs) to liquidate entries made during this review period without regard to antidumping duties. Because we have revoked the order with respect to Komatsu, we will order Customs to terminate the suspension of liquidation for Komatsu, for any merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2001, and to refund all cash deposits collected.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of MTPs from Japan 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 rate for the reviewed companies will be the rate shown above (except for Komatsu); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the LTFV investigation, which is 14.51 percent. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Mechanical Transfer Presses from Japan,* 55 FR 5642 (February 16, 1990). These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f)

to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of the administrative review and this revocation, in-part, are issued and published in accordance with sections 751(a)(1), 751(d)(1), and 777(i)(1) of the Act (19 USC 1675(a)(1), 1675(d)(1), and 19 USC 1677f(i)(1)).

Dated: May 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–12862 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Stainless Steel Butt-Weld Pipe Fittings from Italy; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the Antidumping Duty Administrative Review for the period August 2, 2000, through January 31, 2002.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Kramer at (202) 482–0405, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

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. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department)'s regulations are to 19 CFR part 351 (2001).

Background

On February 1, 2002, the Department published in the Federal Register (67 FR 4945) a notice of opportunity to request an administrative review of the antidumping order regarding stainless steel butt-weld pipe fittings from Italy for the period August 2, 2000, through January 31, 2002. In accordance with 19 CFR 351.213(b)(2), on February 28, 2002, two merged producers/exporters of stainless steel butt-weld pipe fittings requested a joint review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy (i.e., Union Piping/ Coprosider S.P.A.).

On March 27, 2002, the Department initiated an administrative review for these companies (67 FR 14696) and issued a questionnaire to them. On April 25, 2002, Union Piping/ Coprosider S.P.A. withdrew their request for review.

Rescission of Review

Union Piping/Coprosider S.P.A. timely withdrew their request for an administrative review for the above-referenced period on April 25, 2002. No other interested party filed a request for review of these companies for this period of review. Consequently, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding this review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy for the period of August 2, 2000, through January 31, 2002. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: May 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–12861 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–013.

Applicant: University of Saskatchewan, 110 Science Place, Saskatoon, SK, Canada, S7N 5C9.

Instrument: Photoelectron Emission Microscope, Model PEEM III.

Manufacturer: ELMITEC GmbH, Germany.

Intended Use: The instrument is intended to be used to study the spatially resolved x-ray absorption spectra for the chemical analysis of complex organic, polymer and environmental materials. Principle experiments to be conducted are: (1) Investigation of protein binding on patterned organic surfaces, (2) tribology—investigation of the anti-wear properties of thin films on metal surfaces, and (3) exploration of the circular dichroism spectroscopy of chiral materials at x-ray wavelengths. The instrument will also be used in the courses CHEM 994 and CHEM 996.

Application accepted by Commissioner of Customs: April 26, 2002.

Docket Number: 02–014.

Applicant: National Renewable Energy Laboratory (NREL), 1617 Cole Boulevard, Golden, CO 80401.

Instrument: Electron Microscope, Model Tecnai G^2 F20 U-TWIN STEM.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used to study the structure and physical chemistry of semiconductors used in photovoltaics (solar cells). The goal of the investigations is to better understand the structural and chemical properties and relate them to the optical and electrical performance of thin film devices. In addition, the instrument will also be used to characterize a variety of nano-structured materials such as single walled carbon nano-tubes used for the development of hydrogen fuel cells.

Application accepted by Commissioner of Customs: April 26, 2002.

Docket Number: 02–015.

Applicant: The Regents of the University of California (Riverside Campus), Materiel Management—056, Riverside, CA 92521–0411.

Instrument: Electron Microscope, Model Tecnai 12 TWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used in the following research programs: (1) Development and evolution of nematode roundworms, (2) development of nerve function in mammals, (3) developmental processes related to plant reproduction, (4) reproductive processes in mice, and (5) the structure, function and processes of cell membranes in various animals. The instrument will also be used for educational purposes in the courses: (1) Bio/Nem 159, (2) MCLB/Biol 121L, (3) Bio 200A, PP 200, (4) Ent 231, (5) Neuro 211, and (6) Nem 226.

Application accepted by Commissioner of Customs: April 26, 2002.

Docket Number: 02–016.

Applicant: Associated Universities, Inc., National Radio Astronomy Observatory (AUI/NRAO), 520 Edgemont Road, Charlottesville, VA 22903.

Instrument: Atacama Large Millimeter Array (ALMA) Radio Telescope.

Manufacturer: Vertex Antennentechnik GmbH, Germany.

Intended Use: The instrument is intended to serve as a test and evaluation instrument. The results of the evaluation will be used to finalize the design basis for the entire array of radio telescopes which will be located in Chile. The antennas of the Atacama Large Millimeter Array will collect millimeter and submillimeter waves from the cosmos and direct them through a series of mirrors into the cooled detectors. The purpose of the array is to collect the waves in such a fashion as to create an image of their source, cool gas and dust in the Universe. From these images the mechanisms of creation of planets stars and galaxies may be hypothesized and studied by astronomers and students.

Application accepted by Commissioner of Customs: May 3, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–12863 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–337–807]

Notice of Final Negative Countervailing Duty Determination: IQF Red Raspberries from Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final negative countervailing duty determination.

SUMMARY: The Department of Commerce (''the Department'') has made a final determination that countervailable subsidies are not being provided to producers and exporters of individually quick frozen red raspberries in Chile.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Jennifer Jones, 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) 482–1778 or 482–4194, 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 2001).

Petitioners

The petition in this investigation was filed by the IQF Red Raspberries Fair Trade Committee (''Committee'') and its members (collectively referred to hereinafter as ''the petitioners''). The Committee is an *ad hoc* association of growers and processors of IQF red raspberries. All of the members of the Committee are producers of IQF red raspberries.

Case History

Since the publication of the preliminary determination in the **Federal Register** (*see Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: IQF Red Raspberries from Chile*, 66 FR 52588 (October 16, 2001) (''*Preliminary Determination*'')), the following events have occurred:

We conducted verification of the questionnaire responses of the Government of Chile (''GOC''), Fruticola Olmue S.A. (''Olmue''), Exportadora Frucol Ltda. (''Frucol'') and Comercial Fruticola S.A. (''Comfrut'') from December 12–19, 2001.

On December 12, 2001, based on a request from Olmue, Frucol and Comfrut (collectively, ''the responding companies''), which are also respondents in the companion antidumping duty investigation, the Department postponed the final antidumping determination until May 15, 2002. 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 May 15, 2002. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: IQF Red Raspberries from Chile*, 66 FR 67510 (December 30, 2001).

On March 25, 2002, we received a combined case brief from the GOC and the three responding companies. No brief or rebuttal brief was filed by the petitioners. No hearing was held because none was requested.

Scope of Investigation

The products covered by this investigation are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the investigation excludes fresh red raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this investigation is classifiable under 0811.20.2020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 2000.

Analysis of Comments Received

All issues raised in the case brief submitted 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 investigation 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 ''Chile.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce, Room B–099.

Summary

The total net countervailable subsidy rates for Olmue, Comfrut, and Frucol are 0.01, 0.16 and 0.65 percent, *ad valorem*, respectively. All of these rates are *de minimis*. Therefore, we determine that countervailable subsidies are not being provided to producers or exporters of IQF red raspberries in Chile.

Suspension of Liquidation

In the *Preliminary Determination*, the total net countervailable subsidy rates for all the responding companies were *de minimis* and, therefore, we did not suspend liquidation. For the instant determination, because the rates for all the responding companies remain *de minimis*, we are not directing the Customs Service to suspend liquidation of IQF red raspberries from Chile.

Notification of the International Trade Commission

In accordance with section 705(d) of the Act, we have notified the International Trade Commission of our determination.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to Administrative Protective Order of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Benchmark Interest Rates
Comment 2: Countervailability of ProChile Export Promotion Assistance Program

[FR Doc. 02–12858 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051702A]

Proposed Information Collection; Comment Request; International Dolphin Conservation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before July 22, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cathy Campbell, 562–980–4060 or Cathy.E.Campbell@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act. The Act allows entry of yellowfin tuna into the United States, under specific conditions, from nations in the Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

NOAA has modified the existing information collection by requiring that any wholesaler or distributer of any tuna or tuna products labeled as ''dolphin-safe'' produce documentary evidence concerning the origin of the tuna or products within 30 days of receiving a written request from the National Marine Fisheries Service (NMFS). NMFS expects that this will result in an annual information burden on 20 additional respondents.

In addition, NMFS has modified the existing information collection by eliminating the requirement that canneries provide 48 hours notice of receipt of tuna shipment and eliminating the requirement that processors provide NMFS with copies of their receiving reports on a real-time basis. This has resulted in an overall reduction in the number of annual burden hours and the estimated annual cost to the public of this information collection.

II. Method of Collection

Paper forms, other paper records, telephone calls, and radio transmissions.

III. Data

OMB Number: 0648–0387.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 58.
Estimated Time Per Response: 30 minutes for a vessel permit application; 10 minutes for an operator permit application; 30 minutes for a request for a waiver to transit the eastern tropical Pacific Ocean without a permit (and subsequent radio reporting); 10 minutes for a notification of vessel departure; 10 minutes for a change in permit operator; 10 minutes for notification of a net modification; 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 10 minutes for notification of vessel arrival; 60 minutes for a tuna tracking form; 10 minutes for

a monthly tuna storage removal report; 60 minutes for a monthly tuna receiving report; and 30 minutes for a special report documenting the origin of tuna (if requested by the NOAA Administrator).

Estimated Total Annual Burden Hours: 144.

Estimated Total Annual Cost to Public: $847.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–12777 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051702B]

Proposed Information Collection; Comment Request; Application for Commission in the NOAA Officer Corps

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before July 22, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lt. Cecile Daniels, 301–713–3444, ext. 119, or Cecile.Daniels@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NOAA Corps is the smallest of the seven uniformed services of the United States and is an integral part of NOAA. The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve in assignments within the five major Line Offices of NOAA. Persons wishing to obtain a NOAA Corps Commission must submit an application package, including an eye test and five references.

II. Method of Collection

Paper forms are submitted via mail in postage-paid envelopes.

III. Data

OMB Number: 0648–0047.

Form Number: NOAA Forms 56–42, 56–42A, 56–42C, 5—-42D.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 130.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 260.

Estimated Total Annual Cost to Public: $5,850.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–12778 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102H]

Taking and Importing of Marine Mammals

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

ACTION: Notice of embargo for Peru.

SUMMARY: On May 17, 2002, the Assistant Administrator for Fisheries, NMFS, acted to prohibit the importation into the United States from Peru of yellowfin tuna and yellowfin tuna products harvested by purse seine in the eastern tropical Pacific Ocean (ETP). NMFS is required to take this action because Peru harvests tuna in the ETP with purse seine vessels with greater than 400 short tons (362.8 metric tons) carrying capacity and has not received an ''affirmative finding'' as required by regulations. This ban remains in effect for Peru until an affirmative finding has been granted by the Assistant Administrator.

DATES: Effective May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Allison Routt, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA, 90802–4213, Phone 562–980–4020, Fax 562–980–4027.

SUPPLEMENTARY INFORMATION: In order to export to the United States yellowfin tuna harvested by purse seine in the ETP, the Marine Mammal Protection Act (MMPA) requires a nation that has purse seine vessels with over 400 short tons (362.8 metric tons) carrying capacity fishing for tuna in the ETP (i.e., a harvesting nation) submit documentary evidence to the Assistant Administrator requesting an affirmative finding. The process for such requests is described in regulations at 50 CFR 216.24(f)(9). Based

upon documentary evidence submitted by the harvesting nation and obtained from the Inter-American Tropical Tuna Commission (IATTC) and/or from the Department of State, the Assistant Administrator will determine whether the nation qualifies for an affirmative finding under section 101(a)(2)(B) of the MMPA. An affirmative finding allows for the importation into the United States of yellowfin tuna and yellowfin tuna products harvested by purse seine in the ETP after March 3, 1999. If a harvesting nation does not provide documentary evidence that shows that the nation meets the standards under section 101(a)(2)(B) of the MMPA, the Assistant Administrator must prohibit imports of yellowfin tuna harvested by purse seine vessels in the ETP.

The application procedures to request an affirmative finding are described in the interim final regulations implementing the International Dolphin Conservation Program Act (65 FR 30, January 3, 2000). Harvesting nations must submit documentary evidence directly to the Assistant Administrator demonstrating that they meet several conditions related to compliance with the International Dolphin Conservation Program (IDCP) and request an affirmative finding. To issue an affirmative finding, NMFS must receive the following information:

1. A statement requesting an affirmative finding;
2. Evidence of membership in the Inter-American Tropical Tuna Commission (IATTC);
3. Evidence that a nation is meeting its obligations to the IATTC, including financial obligations;
4. Evidence that a nation is complying with the IDCP. For example, national laws and regulations implementing the Agreement on the IDCP and information that the nation is enforcing those laws and regulations;
5. Evidence of a tuna tracking and verification program comparable to the U.S. tracking and verification regulations at 50 CFR 216.94;
6. Evidence that the national fleet dolphin mortality limits (DMLs) were not exceeded in the previous calendar year;
7. Evidence that the national fleet per-stock per-year mortality limits, if they are allocated to countries, were not exceeded in the previous calendar year;
8. Authorization for the IATTC to release to the Assistant Administrator complete, accurate, and timely information necessary to verify and inspect Tuna Tracking Forms; and
9. Authorization for the IATTC to release to the Assistant Administrator information about whether a nation is meeting its obligations of membership to the IATTC and whether a nation is meeting its obligations under the IDCP, including managing (i.e., not exceeding) its national fleet DMLs or its national fleet per-stock per-year mortality limits.

To maintain the affirmative finding, the government of a harvesting nation must request an affirmative finding every 5 years and submit the required documentary evidence directly to the Assistant Administrator. A nation may opt to provide this information directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f)(9) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP.

Until such time as the Assistant Administrator receives documentary evidence from the Republic of Peru demonstrating that it is in compliance with the IDCP and issues an affirmative finding, the ban on imports of yellowfin tuna harvested by purse seine in the ETP will continue. This action prohibits the importation into the United States of yellowfin tuna and yellowfin tuna products harvested by purse seine vessels in the ETP after March 3, 1999, and exported from the Republic of Peru.

Dated: May 17, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–12870 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051402A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Monkfish Oversight Committee and Scallop Oversight and Advisory Panel in June, 2002. Recommendations from these committees will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between June 5, 2002 and June 11, 2002.

ADDRESSES: The meetings will be held at the Crowne Plaza Hotel at the Crossings 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732-6000.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas:

Wednesday, June 5, 2002 at 10:00 a.m. and Thursday, June 6, 2002 at 8:30 a.m.—Monkfish Oversight Committee Meeting.

The Committee will review the report of the Scientific and Statistical Committee and the Plan Development Team on options for revising the overfishing definition reference points and status determination criteria. The Committee will finalize its recommendations to the Councils for management alternatives to be analyzed in the Amendment 2 Draft Supplemental Environmental Impact Statement. Alternatives designed to achieve the approved goals and objectives include, but are not limited to: Permit qualification criteria for vessels fishing south of 38°N; management program for a deepwater directed fishery in the southern fishery management area (SFMA); separation of monkfish days-at-sea (DAS) from multispecies and sea scallop DAS programs, including counting of monkfish DAS as 24-hour days; measures to minimize impacts of the fishery on endangered sea turtles; measures to minimize bycatch in directed in non-directed fisheries, including mesh size and other gear requirements; an exemption program for vessels fishing for monkfish outside of the exclusive economic zone (in the Northwest Atlantic Fisheries Organization (NAFO) Regulated Area); alternative areas for essential fish habitat (EFH) designation and measures to minimize impacts of the fishery on EFH; measures to improve data collection and research on monkfish, including mechanisms for funding cooperative research programs. The Committee may develop and

recommend other management alternatives not included in the list above. On Wednesday, Dr. Chris Chambers, Howard Laboratory, Northeast Fisheries Science Center (Sandy Hook), NMFS will speak on his Group's current research on monkfish. Their focus has been on reproductive ecology and behavior of adult monkfish, and the growth and distribution of young life-stages.

Monday, June 10, 2002 at 9:00 a.m.—Scallop Oversight and Advisory Panel Meeting and *Tuesday, June 11, 2002 at 9:00 a.m.*—Scallop Oversight Committee only.

The Oversight Committee will review analyses of potential impacts associated with Draft Amendment 10 alternatives, consider recommendations from the Advisory Committee, and choose preferred alternatives for recommendation to the Council. They may recommend additional analyses or amendments to the alternatives when the Council approves the documents for public hearing. Due to scheduling conflicts for some Oversight Committee members, the committee meeting on June 10 may run late into the evening and the June 11 meeting would be cancelled or shortened if the committee finishes its business early.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 14, 2002.

Richard W. Surdi,

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

[FR Doc. 02–12871 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051602D]

Marine Mammals; File No.981–1578–01

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

ACTION: Receipt of application for amendment to a permit.

SUMMARY: Notice is hereby given that Peter L. Tyack, Ph.D., Woods Hole Oceanographic Institution, Woods Hole, MA 02543, has requested an amendment to scientific research Permit No. 981–1578–01.

DATES: Written or telefaxed comments must be received on or before June 21, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 981-1578, issued on August 31, 2000 (65 FR 57319) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 981–1578–01 authorizes the permit holder to: tag cetaceans in the Mediterranean and Ligurian Seas, as well as in the Gulf of Mexico and off the coasts of the Azores in the North Atlantic, with an advanced digital sound recording tag that can record the acoustic stimuli an animal hears, and measure vocal, behavioral, and physiological responses to sound played back at maximum received levels of 120–160 dB re 1 micronPa. The permit holder requests authorization to: increase the maximum received level for non-airgun sounds to 180 dB re 1 micronPa; test a whale-finding sonar's ability to detect gray whales migrating past the central California coast, and add playbacks of the coda sounds of sperm whales as a control stimulus for controlled exposure experiments involving human-made sounds.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 17, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–12868 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051502D]

Marine Mammals; File Application No. 1004–1656

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, OH 44202, has been issued a permit to import two killer whales (*Orcinus orca*) for the purposes of public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Glouster, MA, 01930–2298 (978/281–9116).

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301/713–2289).

SUPPLEMENTARY INFORMATION: On November 30, 2001, notice was published in the **Federal Register** (66 FR 59781) that a request for a public display permit to import two killer whales (*Orcinus orca*) had been submitted by the above-named organization. Based on substantive comments received during the initial comment period, additional information was requested of the applicant. The comment period was reopened on February 25, 2002 (67 FR 8526) and that comment period was extended on March 27, 2002 (67 FR 14699). The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: May 16, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–12869 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0021, Regulations Governing Bankruptcies of Commodity Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: None.

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 large trader reports.

DATES: Comments must be submitted on or before July 22, 2002.

ADDRESSES: Comments may be mailed to Lawrence B. Patent, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, (202) 418–5439; FAX: (202) 418–5536; email: *lpatent@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 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, 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.

Regulations Governing Bankruptcies of Commodity Brokers, OMB control number 3038–0021—Extension.

The information collected pursuant to this rule is intended to protect, to the extent possible, the property of the public in the case of the bankruptcy of a commodity broker.

The Commission estimates the burden of this collection of information as follows:

Estimated annual reporting burden

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
Part 190	472	7757	0.05	387

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: May 16, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–12812 Filed 5–21–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice and Intent to Renew Collection 3038–0015, Copies of Crop and Market Information Reports

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 large trader report.

DATES: Comments must be submitted on or before July 22, 2002.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX: (202) 418–5527; email: *jpayne@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 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, 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.

Copies of Crop and Market Information Reports, OMB control number 3038–0015—Extension

The information collected pursuant to this rule, 17 CFR part 140, is in the public interest and is necessary for market surveillance.

The Commission estimates the burden of this collection of information as follows:

Estimated annual reporting burden

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
140	30	30	0.16	5

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: May 16, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–12813 Filed 5–21–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Consolidated State Applications Under Section 9302 of the Elementary and Secondary Education Act

AGENCY: Department of Education.

ACTION: Notice of final requirements.

SUMMARY: We announce final requirements for optional State consolidated applications submitted under section 9302 of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001, Pub. L. 107–110 (NCLB). Submitting a consolidated application will allow a State to obtain funds under many Federal programs through a single application, rather than through separate applications for each program. To receive fiscal year (FY) 2002 program funds on a timely basis, a State educational agency's (SEA's) application will need to be received no later than June 12, 2002.

DATES: These requirements are effective June 21, 2002.

FOR FURTHER INFORMATION CONTACT: Marcia Kingman, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E213, Washington, DC 20202–6400. Telephone: (202) 260–2199. 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 contact person for information identified in the preceding paragraph.

SUPPLEMENTARY INFORMATION: President Bush signed The No Child Left Behind Act of 2001 (Pub. L. 107–110) (NCLB) into law on January 8, 2002. NCLB, which substantially revised the Elementary and Secondary Education Act of 1965 (ESEA), is intended to provide all of America's school children with the opportunity and means to achieve academic success. It embodies the four key principles of the President's education reform plan: (1) Accountability for results, (2) expanded

State and local flexibility and reduced ''red tape,'' (3) expanded choices for parents, and (4) focusing resources on proven educational methods, particularly in reading instruction.

These principles aim to produce fundamental reforms in classrooms throughout America. NCLB provides officials and educators at the school, school district, and State levels substantial flexibility to plan and implement school programs that will help close the achievement gap between disadvantaged and minority students and their peers. At the same time, the reauthorized Act holds school officials accountable—to parents, students, and the public—for achieving results. These and other major changes to the ESEA redefine the Federal role in K–12 education to focus on improving the academic performance of all students.

The full text of this law may be found on the Internet at: *http://www.ed.gov/legislation/ESEA02/.*

On March 6, 2002, the Department published in the **Federal Register** a notice of proposed requirements for optional consolidated State applications (67 FR 10166). That notice explains the general purpose of consolidated State applications that Congress has authorized in ESEA sections 9301 and 9302 as an alternative means for States to receive finding under most ESEA programs. These provisions authorize the State, in consultation with the Governor, to apply for ESEA program funds on the basis of a consolidated State application that conforms to the criteria and procedures the Department establishes, rather than by submitting the individual applications or plans that the ESEA otherwise requires.

The March 6 notice also explained our proposal for using this application and the consolidated performance report that States thereafter annually would submit, as the basis for a core system of ESEA accountability for student achievement. Specifically, we proposed that each State adopt (1) six overall ''performance goals'' that cut across the ESEA programs, (2) a minimum core of common performance indicators for measuring progress toward these goals, and (3) State-defined performance targets that define when satisfactory progress occurs. We also proposed that each State then would collect reliable data with which it would determine whether it is meeting its performance targets.

As we explained in the March 6 notice, this proposal was guided by a set of basic principles in the ESEA emphasizing that successful academic performance depends upon schools that—

- Provide instruction that, based on rigorous research, will improve student achievement;
- Have highly qualified teachers and principals;
- Provide a learning environment that is safe, drug-free, and conducive to learning; and
- Are accountable to the public for results.

The final requirements for consolidated State applications contain several significant changes from those we had proposed, which we explain in the Analysis of Public Comments that is available on the Department's web site at *http://www.ed.gov/offices/OESE/esea/regsandguidance.html.*

I. Principal Changes From Our March 6, 2002 Proposal

In response to our request for public comment, we received 53 letters of comments and recommendations. On March 28, 2002, the Department also conducted a listening session where State officials from nine States discussed our proposal. After reviewing all of these comments and recommendations, we have made several changes to our proposal. The principal changes are the following:

ESEA Accountability System: Appendix A

We have reduced the number of Goals from six to five, and the number of indicators from 17 to ten. The ESEA Goals are now:

1. By 2013–2014, all students will reach high standards, at a minimum attaining proficiency or better in reading/language arts and mathematics.
2. All limited English proficient students will become proficient in English and reach high academic standards, at a minimum attaining proficiency or better in reading/language arts and mathematics.
3. By 2005–2006, all students will be taught by highly qualified teachers.
4. All students will be educated in learning environments that are safe, drug free, and conducive to learning.
5. All students will graduate from high school.

The changes in goals and indicators reflect the following:

Goal 1

- Modification of Indicators 1.1 and 1.2 to focus on the percentage of students in all schools, rather than in Title I schools, in each subgroup and in the aggregate who gain proficiency in reading/language arts and mathematics.
- Change of definition of subgroups from those identified in section 1111(b)(2)(C)(v) for adequate yearly progress, to those identified in section 1111(h)(1)(C)(i) for reporting State assessment results—thus bringing in reporting by migrant status and gender.
- Withdrawal of proposed Indicators 1.4 and 1.5: ''The percentage of migrant students who are enrolled in schools in need of improvement,'' and ''The percentage of students that meet or exceed State standards for student literacy in technology.''

Proposed Goal 2

- Withdrawal of proposed Goal 2: ''By 2013–2014, all students will be proficient in reading/language arts and mathematics by the end of the third grade,'' and Indicator 2.1: ''The percentage of students in third grade reading/language arts at grade level or above.''

Goal 2 (Proposed Goal 3)

- Revision of statement of Goal 2 to include goal of reaching high academic standards, at a minimum attaining proficiency in reading/language arts and mathematics.
- Revision of Indicator 2.1 (proposed 3.1) to clarify that the percentage of limited English proficient students who have attained English language by the end of the year is to be determined on a cohort basis.

Goal 3 (Proposed Goal 4)

- Inclusion of a new Indicator 3.3 that focuses on having all paraprofessionals become qualified consistent with the requirements of ESEA section 1119 (c)–(e).
- Withdrawal of proposed Indicator 4.3: ''The percentage of teachers qualified to use technology for instruction.''

Goal 4 (Proposed Goal 5)

- Withdrawal of all proposed indicators except Indicator 5.4 (now 4.1): ''The number of persistently dangerous schools, as defined by the State.''

Goal 5 (Proposed Goal 6)

- Clarification of the two performance indicators, 5.1 and 5.2.

In addition, we have clarified for which indicator States must submit baseline data relative to their performance targets by May 2003, and for which indicators they may do so no later than early September 2003.

State Activities to Implement ESEA Programs: Appendix B

- For item 1 (state system of standards, assessments, and accountability), clarification of information the SEAs must submit

consistent with ESEA section 1111, and, for each item, whether the SEA must do so in June of 2002, no later than May 2003, or at some other time.

• For item 2 (non-formula subgranting), inclusion of a description of definition of key ESEA terms that the SEA adopts for each program.

• For item 5a (assistance for schoolwide programs), inclusion of a description of the SEA's actions to modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate Federal, State, and local funds for schoolwide programs.

• For item 5 (teacher quality), inclusion in a new item 5c of the State's need to describe how it will ensure that all paraprofessionals (excluding those working with parents or as translators) attain the qualifications in section 1119(c) and (d) by the 2005–2006 school year.

• For item 6 (state coordination), inclusion of the State's need to describe briefly how SEA officials and staff consulted with the Governor's office in the development of the State application.

Key Programmatic and Fiscal Information: Appendix C

• *Improving Basic Programs Operated by Local Educational Agencies, Title I, Part A:* Clarification that, for purposes of funds that LEAs distribute to schools for supplemental services under ESEA section 1167(e)(7), States will describe how they will inform LEAs of the procedures LEAs must use to distribute these funds, rather than describe how the State will distribute these funds.

• *Teacher and Principal Training and Recruitment Fund, Title II, Part A:* Establishment of a rule that of the one percent available to the State for administration and planning, absent an agreement between the SEA and the State agency for higher education (SAHE) to the contrary, the Department will award the SAHE the greater of—

1. The amount of FY 2001 funds it had received for administration under the predecessor Title II, ESEA Eisenhower Professional Development Program, or

2. Five percent of the amount available each year for subgrants to partnerships under ESEA section 2113(a)(2).

• *Enhancing Education Through Technology, Title II, Part D:* Addition of a new item 5a that SEAs describe program goals, performance indicators, performance objectives, and data sources for use in assessing program effectiveness in improving access to and use of educational technology by students and teachers in support of academic achievement.

• *English Language Acquisition and Language Enhancement, Title III, Part A:* Addition of a new item 6c that SEAs describe the process for making subgrants under section 3114(d) to eligible entities that have experienced a significant increase in the percentage or number of immigrant children and youth.

• *Safe and Drug-Free Schools and Communities: Reservation of State Funds for the Governor, Title IV, Part A, Subpart 1, section 4112(a):* Addition of new items 8b and 8c that SEAs describe (1) performance measures, performance indicators, timelines, and baseline data for drug and violence prevention programs and activities to be funded under this program, and (2) steps the State will use to implement the Uniform Management Information and Reporting System (UMIRS) required by ESEA section 4112(c)(3).

• *Safe and Drug-Free Schools and Communities: Community Service Grants (Title IV, Part A, Subpart 2, section 4126):* Adoption of the proposed rule that the Department will award grants only to SEAs, after they have consulted with their Governors.

• *21st Century Community Learning Centers (Title IV, Part B):* Addition of new requirement that the SEA, no later than early September 2003—

1. Identify the percentage of students participating in the 21st Century Community Learning Centers program who meet or exceed the proficient level of performance on State assessments in reading/language arts and mathematics;

2. Collect baseline data for the 2002–2003 school year; and

3. Submit all of these data to the Department.

• *Rural and Low-Income Schools, Title VI, Part B, Subpart 2:* Inclusion of a description identifying specific measurable goals and objectives, and how program funds will help the SEA to meet them.

All of the changes above are reflected in the specific requirements for consolidated State applications that are contained in appendices A–D of this notice.

We also have made the following change to the selection criteria for the Enhanced Assessment Instruments Competitive Grant Program (Title VI, section 6112) announced in appendix E:

• Revision of the first proposed competitive preference for ''alternative assessments'' so that it is available for applications that can be expected to advance practice *significantly in the area of increasing the accessibility and validity* of assessments for students with disabilities or limited English proficiency, or both.

Finally, we have made the following change to the optional interim application for FY 2002 funds under the Safe and Drug-Free Schools and Communities State Grants Program, Title IV, Part A, Subpart 1 (appendix F):

• Revision of requirements to conform to the revised core set of ESEA performance indicators identified in appendix A.

We have published on the Department's website at *http://www.ed.gov/offices/OESE/esea/regsandguidance.html* the substantive comments we received, our responses to them, and these changes, as well as more minor or technical changes to the requirements for consolidated State applications. Generally, we do not address technical and other minor changes, or suggested changes in proposed requirements that the law does not authorize the Secretary to make.

II. Requirements for Consolidated State Applications

Each consolidated State application will have four principal components: (1) Elements constituting the foundation for a core system of ESEA accountability, State components and baseline data (see appendix A); (2) a description of key strategies States would use to implement the ESEA programs in order to accomplish program purposes; (see appendix B); (3) key programmatic and fiscal information that the Department needs to review before it awards FY 2002 funds (see appendix C); and (4) assurances of the State's adherence to all requirements of the programs included in the application (see appendix D).

Summary of the ESEA Accountability System

A. ''*ESEA Performance Goals*'' The ESEA performance goals reflect the expectations of the ESEA programs. We have identified in appendix A five ESEA performance goals that each SEA submitting a consolidated application will adopt. These are:

1. By 2013–2014, all students will reach high standards, at a minimum attaining proficiency or better in reading/language arts and mathematics.

2. All limited English proficient students will become proficient in English and reach high academic standards, at a minimum attaining proficiency or better in reading/language arts and mathematics.

3. By 2005–2006, all students will be taught by highly qualified teachers.

4. All students will be educated in learning environments that are safe, drug free, and conducive to learning.

5. All students will graduate from high school.

These performance goals, like the basic purposes of the ESEA programs themselves, fall into three areas: (a) Those that address levels of proficiency that all students would meet; (b) those that address the special needs of certain populations of students, such as limited English proficient students, who are the focus of particular ESEA programs; and (c) those that address such factors as qualified teachers and safety that are critical to a school's success in improving student achievement.

B. " *ESEA Performance Indicators*" States will use performance indicators to measure their progress in meeting the performance goals. Along with adopting the five key performance goals identified above, States that submit a consolidated application will submit a statement that they have adopted, at minimum, a core set of indicators for these five performance goals. For example, as explained in appendix A, relative to the third ESEA performance goal, "By 2005–2006, all students will be taught by highly qualified teachers," all States will adopt and use the following indicator:

EXAMPLE: 3.1. Performance Indicator: "The percentage of classes being taught by "highly qualified" teachers (as the term is defined in ESEA section 9101(23)), in the aggregate and in 'high-poverty' schools (as the term is defined in ESEA section 1111(h)(1)(C)(viii))."

State adoption of the common core indicators listed in appendix A is critical to ensuring that all States are accountable for implementing the ESEA programs in ways that contribute significantly to the achievement of all students. As with the ESEA performance goals, States are free to add their own performance indicators to the core set of indicators that the Department has established.

C. "*Performance targets*" Performance targets define the progress a State expects to make at specified points in time with respect to each indicator. For example, for indicator 3.1, described in the preceding paragraph, a State might adopt as a target: the percentage of classes being taught by highly qualified teachers, in the aggregate and in high-poverty schools, will increase from the baseline of "x" percent in school year 2002–2003 to "y" percent in school year 2003–2004, "z" percent in school year 2004–2005, etc.

While all States submitting a consolidated application must adopt the core set of ESEA performance goals and indicators in appendix A, each State defines and adopts its own performance targets. (See appendix A for some examples of performance targets that States might choose to use.)

Finally, the accountability system relies upon collection of data that document how well States are succeeding in meeting their performance targets. States will describe in their consolidated applications their timelines and benchmarks for securing these data, as well as their data sources. States also will provide their "baseline data." For example, if a State adopted the performance target described above, it would identify as its baseline "the percentage of classes being taught by highly qualified teachers, in the aggregate and in high-poverty schools, in school year 2002–2003." In its annual performance report, a State will provide updated data on its progress in meeting these performance targets.

States may include web site references, electronic files, or other existing documentation to comply with the requirements listed in the application.

Other Requirements for the Consolidated Application

In addition to the framework for ESEA accountability, a State's consolidated application also must include:

A. A description of key strategies States will use to implement the ESEA programs in order to accomplish the purposes of those programs (see appendix B);

B. Key programmatic and fiscal information the Department needs to award FY 2002 funds (see appendix C). The information to be included in the consolidated State application is a small part of what the ESEA program statutes would have a State otherwise provide in individual program plans or applications; and

C. Assurances of the State's adherence to all requirements of the programs included in the application (see appendix D). The final application package for the consolidated application contains a partial list of individual program requirements that are while covered by these general assurances, and that we believe warrant special attention.

III. Documentation of Compliance With Program Requirements

For programs a State chooses to include in a consolidated application, ESEA section 9302(a)(2) relieves the State of the need to either prepare or submit to the Department separate individual State plans or applications that the ESEA would otherwise require in order to receive funding on a program-by-program basis. However, section 9302 contains no authority for the Department to eliminate or waive statutory or regulatory requirements that apply to the funds the Department awards on the basis of a consolidated application.

Therefore, whether or not the ESEA specifies program requirements as elements of a program-specific plan (or application), a State (or LEA) that submits a consolidated application still must (1) comply with all requirements for designing and implementing programs, and (2) maintain documentation of this compliance. These requirements might govern, for example, public input, program implementation, or evaluation. Also, a State must comply with, and maintain records of its compliance with, requirements of the consolidated application announced in this notice.

(**Note:** To the extent consistent with State "open records" statutes, documents demonstrating adherence to ESEA requirements will be available to parents, policymakers, and other members of the public.)

In determining whether the statute, regulations, or requirements governing the consolidated application requires the State to document its plans or planning activities, we suggest that States consider the following:

1. Does the ESEA require the State to develop a plan that is separate from the application for funding? For example, does the ESEA require that the State include a separate plan, or a description of a separate plan, with the application? Or does the ESEA require that a State that has received program funding develop or implement a plan of this kind?

If the answer to any of these questions is yes, the State must develop that plan and maintain it in its written records, even if the State includes the program in its consolidated application.

2. Does the statute require that a State conduct a specified activity? For example, does it require a description of the results of a needs assessment or procedures for consulting with others? If so, it requires that specific activities (expressed as application content requirements) be undertaken—*e.g.,* a needs assessment or consultation, and the State would need to maintain documentation showing that it had conducted the activity.

3. Does the law require that a State's individual program plan or application describe how activities "will" occur only after some precondition, such as a review of scientifically-based research?

If the answer is yes, the State must conduct those program activities after meeting the precondition, and must maintain documentation that it has done so.

IV. Consolidation of Federal Funds

Title VI of the ESEA contains a number of flexibility provisions that permit States and LEAs to treat funds received under some programs as if received under other programs. In addition, sections 9201–9203 continue to permit SEAs and LEAs to consolidate administrative funds under specified programs. However, beyond the flexibility that these provisions offer, our approval of a consolidated State application neither authorizes a State or LEA to combine or commingle program funds nor eliminates State or LEA responsibilities to keep separate records on the use of each program's funds.

V. Data Management Reform

Starting in 2002, we will work with LEAs and SEAs to establish data standards for performance indicators and other information collected from States and districts. Toward that end, we will confer with LEA and SEA officials, the research community, information technology vendors, and other interested parties on ways in which States, LEAs, and schools can collect and record useful baseline and follow-up data through an Internet-based format. The new format will accommodate the measurement of success relative to the various indicators that the Department and States have adopted. Future application and reporting guidelines will encourage electronic reporting and provide States with additional options in fulfilling Federal information requests.

VI. Other Considerations

The requirements for the content of a State's consolidated application recognize that although the NCLB makes significant changes to the ESEA, it also builds upon efforts States had begun under both the ESEA as previously authorized and other Federal and State initiatives. In developing their consolidated applications, States may draw upon relevant information and data gathered through these efforts.

To help States try to save money by working together to implement the core system of ESEA accountability, the Department intends to work with States to see whether development and use of common or consistent data collection systems can reduce costs for each State.

VII. Process for Submitting a Consolidated State Application

As explained in the March 6 notice of proposed requirements (67 FR 10168), we recognize the challenges posed by the January 2002 enactment of the NCLB. States have a limited time to prepare and submit their consolidated applications and to plan for their use of the FY 2002 ESEA program funds the Department will distribute this July. In addition, the ESEA includes a large number of new requirements that govern a State's use of these FY 2002, and the Department needs to ensure that States understand them before it awards these funds.

In balancing thee factors, we have determined that, with the exceptions noted in appendix B, each SEA submitting a consolidated application must provide the Department certain information in the following three stages:

June 2002 No later than June 12, 2002, the State must submit:

A. A statement that it: (a) Has adopted the minimum core ESEA goals and performance indicators that the Department has established, (b) agrees to adopt and include in its May 2003 submission, its own performance targets for these indicators, and (c) agrees to include baseline data for these indicators in May 2003 or September 2003, respectively, as specified in the in the following discussion of the schedule for submissions (appendix A);

B. A description of the key activities and initiatives the State will carry out with State funds or ESEA funds reserved for administration and State-level activities (appendix B) including—

- Activities to help achieve its performance targets, *i.e.,* information about the State's standards, assessments, and accountability system (of which for certain items States will submit only timelines in June 2002);
- Subgranting procedures;
- Technical assistance, monitoring, and professional development, and
- Activities to promote highly-qualified Teachers in all schools, support for schoolwide programs, and effective coordination of Federal programs; and

C. The individual ESEA program descriptions and fiscal information that the Department determines are needed in order to ensure program integrity (appendix C), and the required statutory assurances and certification (appendix D).

May 2003 No later than early May 2003, the State must submit to the Department those performance targets and corresponding baseline data that the ESEA requires the State to establish based on the 2001–2002 school year. The OMB-approved application package identifies those performance indicators for which the State must provide its targets and baseline data in early May 2003. We will announce a specific due date in May 2003 at a later time.

September 2003 No later than early September 2003, the State must submit its performance targets and baseline data that relate to other ESEA requirements. These baseline data must reflect either the 2001–2002 or 2002–2003 school year. The OMB-approved application package identifies those performance indicators for which the State must provide its targets and indicators no later than early September 2003. We will announce a specific due date in September 2003 at a later time.

Other Submission Dates

Appendix B identifies a limited amount of other information that States must submit at a different due date, *e.g.,* submission of the State's definition of adequate yearly progress (AYP), as well as how the State calculated its ''starting point'' as required for AYP by January 31, 2003.

VIII. Programs That May Be Included in a Consolidated Application

A State may include the following programs in its consolidated application:

Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies.

Title I, Part B, Subpart 3: Even Start Family Literacy.

Title I, Part C: Education of Migrant Children.

Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk.

Title I, Part F: Comprehensive School Reform.

Title II, Part A: Teacher and Principal Training and Recruiting Fund.

Title II, Part D: Enhancing Education Through Technology.

Title III, Part A: English Language Acquisition and Language Enhancement.

Title IV, Part A, Subpart 1: Safe and Drug-Free Schools and Communities.

Title IV, Part A, Subpart 2: Community Service Grants.

Title IV, Part B: 21st Century Community Learning Centers.

Title V, Part A: Innovative Programs.

Title VI, Part B, Subpart 2: Rural and Low-Income Schools.

In addition, for reasons states in the March 6 **Federal Register** notice, the Secretary has designated both the

formula and discretionary components of the program supporting development of State assessments, authorized in sections 6111 and 6112 of Title VI, as programs that SEAs may include in their consolidated applications. Section 6111, the State Assessment formula grants program provides grants to States for development of State assessments and related activities. Section 6112, the Enhanced Assessment competitive grants program, provides competitive grants to States for development of ''enhanced assessment instruments.'' These two programs bear a close relationship to the development of a State system of accountability for student achievement that is at the heart of the Title I, Part A program. The Department's selection criteria and other requirements to govern the initial competition under the competitive grant portion of the section 61111 program are contained in appendix E. SEAs that choose to apply for the competitive grant program must submit their applications by September 15, 2002.

IX. Public Participation Requirements

ESEA section 9304(a)(7) provides that a State must provide the public a reasonable opportunity to comment on a consolidated application before it is submitted to the Secretary. The procedures under which SEAs will secure adequate public participation are to be determined under State law. States that are unable to complete their public participation requirements, before the June 12, 2002 deadline for submitting their consolidated applications, must submit appropriate revisions to the applications at the end of the public participation process.

Many of the ESEA program statutes contain provisions that require stakeholder or public input into the process of developing program-specific funding plans or applications. Absent a State's decision to include those programs in its consolidated application, it would have to develop these individual program plans or applications in ways that complied with these public input requirements. The public participation requirement in section 9304(a)(7), rather than those program-specific public or stakeholder participation requirements, govern the development of a consolidated application for all included programs. However, as explained in Section IV, States will still need to comply with those public and stakeholder participation requirements that, under a given program statute, expressly apply to program planning and implementation.

X. Consolidated Local Plans or Applications

ESEA section 9305(a) authorizes LEAs to receive funding from the SEA under more than one ''covered program'' through consolidated local plans or applications. Section 9305(c) and (d) requires the SEA, in consultation with the Governor, to collaborate with LEAs in establishing procedures for submission of these plans or applications, and to require ''only descriptions, information, assurances, and other material that are absolutely necessary for the consideration of the [LEA] plan or application.''

These provisions mirror provisions in section 9302 that govern the content and procedures for consolidated State applications. Consistent with the statutory language, we believe that SEAs in consultation with the Governor and LEAs have wide discretion in fashioning procedures and content for these plans or applications that focus on increased student achievement and other ESEA goals. However, we stress that LEAs submitting consolidated local plans or applications must still implement all of the statutory requirements—including record-keeping requirements—of the programs included in those plans or applications include. See section IV of this notice, ''Documentation of Compliance With All Program Requirements.''

XI. Voluntary Submission of Consolidated State Applications

Development of a consolidated State application is voluntary. It is the SEA's decision whether to submit a consolidated application, which of the eligible programs to include in it if one is submitted, and whether to add, in later submissions, programs that are not included in the consolidated application submitted this June for FY 2002 funds. (Should an SEA choose to submit an individual, program specific application under the Safe and Drug-Free Schools and Communities program, the program statute (Title IV, Part A, Subpart 1) permits SEAs to submit an ''interim'' application in FY 2002, and a comprehensive application by FY 2003. Final rules for this interim program application are included in appendix F.) Moreover, an SEA that submits a consolidated application for FY 2002 funds that does not contain all of the information requested can later decide not to submit that outstanding information and, instead, submit individual program plans or applications that the ESEA, as amended by NCLB, requires.

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits: We do not anticipate that the application requirements proposed in this notice will impose any significant costs on applicants. These proposed requirements provide a basis for the Secretary to award funds from a number of different Federal programs under a single application. Therefore, the requirements would not impose any unfunded mandates on States. The benefits of the program are described in the **SUMMARY** section of this notice.

Regulatory Flexibility Act Certification

The Secretary certifies that the requirements in this notice would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Considerations

The procedures and requirements contained in this notice relate to the consolidated State application package that the Department has developed under ESEA section 9309. The public may obtain copies of this package by calling or writing the individuals identified at the beginning of this notice as the Department's contact, or through the Department's website: *http://www.ed.gov/offices/OESE/esea/regsandguidance.html*.

As required by the Paperwork Reduction Act, OMB has approved the use of these application packages under the following OMB control number 1810–0576, expiration date November 30, 2002.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental

partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

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.

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Program Authority: 20 U.S.C. 7842.

Dated: May 16, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Maria H. Ferrier,

Director of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Appendix A: ESEA Performance Goals, Performance Indicators, and State Performance Targets

State and local accountability for the academic achievement of all students is central to the No Child Left Behind Act of 2001. The consolidated State application builds the framework for a system of overall ESEA accountability that is intended to help the public understand how well the State is meeting its student achievement goals for all students. This system is built around with several key elements:

1. ESEA ''*Performance goals*'' that the Department has established. These goals reflect the basic purposes of the ESEA and the programs included in the consolidated application.

2. ESEA ''*Performance indicators*'' that the Department has established for each ESEA performance goal. States submitting a consolidated State application will use these indicators to measure their progress in meeting the ESEA performance goals.

3. ''*Performance targets*'' that each State will establish. The performance targets define the progress a State expects to make at specified points in time with respect to each indicator. For example, for indicator 3.1, described below, a State might adopt as a target: the percentage of classes being taught by highly qualified teachers, in the aggregate and in high-poverty schools, will increase from the baseline of ''x'' percent in school year 2002–2003 to ''y'' percent in school year 2003–2004, ''z'' percent in school year 2004–2005, etc.

We identify the following five ESEA performance goals that are central to the purposes of the ESEA programs, and performance indicators for each of these performance goals. Each State must adopt this set of five performance goals and corresponding performance indicators. However, a State may include additional performance goals and indicators in its application if it desires to do so.

Performance Goal 1: All Students Will Reach High Standards, at a Minimum Attaining Proficiency or Better in Reading/Language Arts and Mathematics by 2013–2014

1.1 Performance indicator: The percentage of students, in the aggregate and for each subgroup, who are at or above the proficient level in reading/language arts on the State's assessment. (Note: These subgroups are those for which the ESEA requires State reporting, as identified in section 1111(h)(1)(C)(i).)

1.1.1 Example of a State performance target: The percentage of students, in the aggregate and in each subgroup, who will be at or above the proficient level in reading/language arts consistent with the State's annual measurable objectives for ensuring that all students reach this level by the end of the 2013–2014 school year.

Note: The State annual measurable objectives for all students in reading/language are the same as those the State includes in its definition of adequate yearly progress.

1.2 Performance indicator: The percentage of students, in the aggregate and in each subgroup, who are at or above the proficient level in mathematics on the State's assessment. (Note: These subgroups are those for which the ESEA requires State reporting, as identified in section 1111(h)(1)(C)(i).)

1.3 Performance indicator: The percentage of Title I schools that make adequate yearly progress.

1.3.1 Example of a State performance target: The percentage of Title I schools that make adequate yearly progress will increase by ''x'' percent each year from the percentage of schools that made adequate yearly progress in 2001–2002

Performance Goal 2: All Limited English Proficient Students Will Become Proficient in English and Reach High Academic Standards, at a Minimum Attaining Proficiency or Better in Reading/Language Arts and Mathematics

2.1 Performance Indicator: The percentage of limited English proficient students, determined by cohort, who have attained English proficiency by the end of the school year.

2.2 Performance indicator: The percentage of limited English proficient students who are at or above the proficient level in reading/language arts on the State's assessment, as reported for Performance Indicator 1.1.

2.3 Performance indicator: The percentage of limited English proficient students who are at or above the proficient level in mathematics on the State's assessment, as reported for Performance Indicator 1.2.

Performance Goal 3: By 2005–2006, All Students Will Be Taught by Highly Qualified Teachers

3.1 Performance indicator: The percentage of classes being taught by ''highly qualified'' teachers (as the term is defined in ESEA section 9101(23), in the aggregate and in ''high-poverty'' schools (as the term is defined in ESEA section 1111(h)(1)(C)(viii)).

3.1.1. Example of a State performance target: The percentage of classes being taught by highly qualified teachers, in the aggregate and in high-poverty schools, will increase from the baseline of ''x'' percent in 2001–2002 to ''y'' percent in 2002–2003, ''z'' percent in 2003–2004, etc.

3.2 Performance indicator: The percentage of teachers receiving high-quality ''professional development'' as the term is defined in ESEA section 9101(34).

3.3 *Performance Indicator:* The percentage of paraprofessionals (excluding those with sole duties as translators and parental involvement assistants) who are qualified. (See criteria in section 1119(c) and (d).)

Performance Goal 4: All Students Will Be Educated in Learning Environments That Are Safe, Drug Free, and Conducive to Learning

4.1 *Performance indicator*: The number of persistently dangerous schools, as defined by the State.

Note: The lack of other performance indicators from this Goal 4 demonstrates our difficulty in finding good measures that can reliably link indicators of schools that are safe, drug-free, and conducive to quality teaching and academic achievement. Students and teachers plainly need to work in learning environments that are safe and drug-free. Technology, which we had proposed as a subject of performance indicators for this goal, like other instructional tools can be a powerful means of helping teachers and other school staff make a school environment conducive to learning. In determining whether individual States and the Nation as a whole are meeting Goal 4, the Department intends to seek other means of obtaining useful information.

Performance Goal 5: All Students Will Graduate From High School

5.1 Performance indicator: The percentage of students who graduate from high school each year with a regular diploma—disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged—calculated in the same manner as used in National Center

for Education Statistics reports on Common Core of Data.

5.2 Performance indicator: The percentage of students who drop out of high school—disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged—calculated in the same manner as used in National Center for Education Statistics reports on Common Core of Data. (ESEA section 1907 requires States to report all LEA data regarding annual school dropout rates in the State disaggregated by race and ethnicity according to procedures that conform with the National Center for Education Statistics' (NCES') Common Core of Data. Consistent with this requirement, in developing their performance targets for Indicator 5.2 States must use NCES' definition of ''high school dropout,'' *i.e.*, a student in grade 9–12 who—

(a) Was enrolled in the district at some time during the previous school year;

(b) Was not enrolled at the beginning of the succeeding school year;

(c) Has not graduated or completed a program of studies by the maximum age established by a State;

(d) Has not transferred to another public school district or to a nonpublic school or to a State-approved educational program; and

(e) Has not left school because of death, illness, or a school-approved absence.)

Note: As it develops regulations or guidance for the Title I, Part A program, the Department will determine what, if any, modifications to Indicators 5.1 and 5.2 are needed to ensure conformance with Title I requirements.

During 2002, the Department will work with LEAs and SEAs to establish data standards for performance indicators and other information collected from States and districts. Toward that end, the Department will confer with LEA and SEA officials, the research community, information technology vendors, and other interested parties on ways in which States, LEAs, and schools can collect and electronically record useful baseline and follow-up data through an Internet-based format. The new format will accommodate indicators that the Department and States have adopted to measure success. Future application and reporting guidelines will encourage electronic reporting and provide States with additional options in fulfilling federal information requests.

Appendix B: State Activities To Implement ESEA Programs

States will conduct a number of activities to ensure effective implementation of the ESEA programs included in their consolidated applications. Many of the activities may serve multiple programs. For example, a State may develop a comprehensive approach to monitoring and technical assistance that will be used for several (or all) programs. In responding to the items in this section, an SEA will indicate the ESEA programs that will benefit from the activities it describes. Where applicable, States may include web site references, electronic files, or other existing documentation to comply with the requirements listed in the application.

1. Describe the State's system of standards, assessments, and accountability and provide evidence that it meets the requirements of the ESEA. In doing so—

a. In the June 2002 submission, provide a timeline of major milestones for either—

i. Adopting challenging content standards in reading/language arts and mathematics at each grade level for grades 3 through 8, consistent with ESEA section 1111(b)(1), or

ii. Disseminating grade-level expectations for reading/language arts and mathematics for grades 3 through 8 to LEAs and schools if the State's academic content standards cover more than one grade level.

(**NOTE:** This information must be consistent with the final regulations that the Department expects to issue in August 2002.)

By May 1, 2003, provide evidence that the State has adopted standards or disseminated grade-level expectations.

If the State already has content standards or has disseminated grade-level expectations that meet the requirements, provide—

i. A statement to this effect in the June 2002 submission, and

ii. Evidence when the Department requests it, which will likely be in fall 2002 after the Department issues final regulations and guidance.

b. In the June 2002 submission, provide a timeline of major milestones for adopting challenging content standards in science that meet the requirements of section 1111(b)(1).

By May 1, 2003, provide a detailed timeline for the above.

By May 1, 2006, but as soon as available, provide evidence that the State has adopted challenging content standards in science that meet the requirements of section 1111(b)(1).

If the State already has adopted science standards that meet the requirements of section 1111(b)(1), provide—

i. A statement to this effect in the June 2002 submission, and

ii. Evidence when the Department requests it, which will likely be in fall 2002, after the Department issues final regulations and guidance.

c. In the June 2002 submission, provide a timeline of major milestones for the development and implementation, in consultation with LEAs, of assessments that meet the requirements of section 1111(b)(3) in the required subjects and grade levels.

By May 1, 2003, provide a detailed timeline for the above.

No later than indicated in the following schedule, but as soon as available, provide evidence that the State has developed and implemented, in consultation with LEAs, assessments that meet the requirements of section 1111(b)(3) in the required subjects and grade levels.

If the State already has implemented some of these assessments, provide—

i. A statement to this effect in the June 2002 submission, and

ii. Evidence when the Department requests it, which will likely be in the fall of 2002, after the Department issues final regulations and guidance.

Schedule for Assessments

Subject: Mathematics

Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Reading/Language Arts

Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Science

Grades: Elementary (3–5); Middle (6–9); High School (10–12).
Implement by: 2007–2008.
Submit evidence by: December 2008.

d. In the June 2002 submission, provide a timeline of major milestones for setting, in consultation with LEAs, academic achievement standards in mathematics, reading/language arts, and science that meet the requirements of section 1111(b)(1).

By May 2003, provide a detailed timeline for the above.

No later than indicated in the following schedule, but as soon as available, provide evidence that the State, in consultation with LEAs, has set academic achievement standards in mathematics, reading/language arts, and science that meet the requirements of section 1111(b)(1).

If the State already has implemented some of these academic achievement standards, provide—

i. A statement to this effect in the June 2002 submission, and

ii. Evidence when the Department requests it, which will likely be in the fall of 2002 after the Department issues final regulations and guidance.

Schedule for Academic Achievement Standards

Subject: Mathematics

Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Reading/Language Arts

Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Science

Grades: Elementary (3–5); Middle (6–9); High School (10–12).
Implement by: 2007–2008.
Submit evidence by: December 2008.

e. By January 31, 2003, describe how the State calculated its ''starting point'' as required for adequate yearly progress consistent with section 1111(b)(2)(E), including data elements and procedures for calculations.

f. By January 31, 2003, provide the State's definition of adequate yearly progress. The definition must include:

i. For the percentage of students meeting or exceeding the State's proficient level, provide for both reading/language arts and mathematics—

- The starting point percentage;
- The intermediate goals;
- The timeline; and
- Annual objectives.

ii. The definition of graduation rate (consistent with section 1111(b)(2)(c)(vi) and final regulations).

iii. One academic indicator for elementary and for middle schools.

iv. Any other (optional) academic indicators.

g. By January 31, 2003, identify the minimum number of students that the State has determined, based on sound statistical methodology, to be sufficient to yield statistically reliable information for each purpose for which disaggregated data are used and justify the determination. (**Note:** This information must be consistent with final regulations, which the Department expects to issue in August 2002.)

h. In the June 2002 submission, provide a plan for how the State will implement a single accountability system that uses the same criteria, based primarily on assessments consistent with section 1111(b), for determining whether a school has made adequate yearly progress, regardless of whether the school receives Title I, Part A, or other Federal funds.

By May 2003, provide evidence that the State has implemented a single accountability system consistent with sections 1111(b) and 1116.

i. In the June 2002 submission, identify the languages present in the student population to be assessed, the languages in which the State administers assessments, and the languages in which the State will need to administer assessments. Use the most recent data available and identify when these data were collected.

j. In the June 2002 submission, provide evidence that, beginning not later than the school year 2002–2003, LEAs will provide for an annual assessment of English proficiency that meets the requirements of ESEA sections 1111(b)(7) and 3116(d)(4), including assessment of English proficiency in speaking, listening, reading, writing, and comprehension. Identify the assessment(s) the State will designate for this purpose.

k. In the June 2002 submission, describe the status of the State's effort to establish standards and annual measurable achievement objectives under ESEA section 3122(a) that relate to the development and attainment of English proficiency by limited English proficient children. These standards and objectives must relate to the development and attainment of English proficiency in speaking, listening, reading, writing, and comprehension and be aligned with the State academic content and student academic achievement standards as required by ESEA section 1111(b)(1).

If they are not yet established, describe the State's plan and timeline for completing the development of these standards and achievement objectives. Include in the May 2003 submission the State's annual measurable achievement objectives under ESEA section 3122(a).

(**Note:** Descriptions 2–6 must be included with the State's June 2002 submission.)

2. Describe key procedures, selection criteria, interpretations provided for any key ESEA terms, and priorities the State will use to award competitive subgrants or contracts to the entities and for the activities required by the program statutes of applicable programs included in the consolidated application. States should include a description of how, for each program, these selection criteria and priorities will promote improved academic achievement. Applicable included programs are:

- Even Start Family Literacy (Title I, Part B).
- Education of Migrant Children (Title I, Part C).
- Prevention and Intervention for Children Who Are Neglected, Delinquent, or At-Risk—Local Agency Programs (Title I, Part D, Subpart 2).
- Comprehensive School Reform (Title I, Part F).
- Teacher and Principal Training and Recruiting Fund—subgrants to eligible partnerships (Title II, Part A, Subpart 3).
- Enhanced Education Through Technology (Title II, Part D).
- Safe and Drug-Free Schools and Communities—reservation for the Governor (Title IV, Part A, section 4112).
- Community Service Grants (Title IV, Part A, Section 4126).
- 21st Century Community Learning Centers (Title IV, Part B).

3. Describe how the State will monitor and provide professional development and technical assistance to LEAs, schools, and other subgrantees to help these entities implement their programs and meet the State's (and those entities' own) performance goals and objectives. This description should include the assistance the SEA will provide to LEAs, schools, and other subgrantees in identifying and implementing effective instructional programs and practices based on scientific research.

4. Describe the Statewide system of support under section 1117 for ensuring that all schools meet the State's academic content and student achievement standards, including how the State will provide assistance to low-performing schools.

5. Describe the activities the State will conduct to—

a. Help Title I schools make effective use of schoolwide programs to improve the achievement of all students, including specific steps the SEA is taking and will take to modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate Federal, State, and local funds for schoolwide programs;

b. Ensure that all teachers, particularly those in high-poverty areas and those in schools in need of improvement, are highly qualified. This description should include the help the State will provide to LEAs and schools to—

(i) Conduct effective professional development activities;

(ii) Recruit and hire highly qualified teachers, including those licensed or certified through alternative routes; and

(iii) Retain highly qualified teachers;

c. Ensure that all paraprofessionals (excluding those working with parents or as translators) attain the qualifications in ESEA section 1119(c) and (d) by the 2005–2006 school year;

d. Help LEAs with a high need for technology, high percentages or numbers of children in poverty, and low-performing schools to form partnerships with other LEAs, institutions of higher education (IHEs), libraries, and other private and public for-profit and non-profit entities with technology expertise to improve the use of technology in instruction;

e. Promote parental and community participation in schools; and

f. Secure the baseline and follow-up data for the core ESEA accountability system discussed in appendix A.

6. Describe how—

a. SEA officials and staff consulted with the Governor's office in the development of the State application;

b. State officials will coordinate the various ESEA-funded programs with State-level activities the State administers; and

c. State officials and staff will coordinate with other organizations, such as businesses, IHEs, nonprofit organizations, and other State agencies, and with other State agencies, including the Governor's office, and with other Federal programs (including those authorized by Individuals with Disabilities Education Act, the Perkins Vocational and Technical Education Act, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act).

7. Describe the strategies the State will use to determine, on a regular basis, whether LEAs, schools, and other subgrantees are making satisfactory progress in meeting State and local goals and desired ESEA program outcomes. In doing so, the SEA should also describe how it will use data it gathers from subgrantees on how well they are meeting State performance targets, and the actions the State will take to determine or revise interventions for any LEAs, schools, and other subgrantees that are not making substantial progress.

Appendix C: Key Programmatic and Fiscal Information

The Department has an overall responsibility for ensuring the programmatic and fiscal integrity of the ESEA programs. Therefore, before we can award FY 2002 program funds the Department needs to review and approve information on how the State will comply with a few key requirements of the various ESEA programs that the State includes in the application. In particular, the Department will review the SEA responses to the following:

I. Key Program Requirements

1. Title I, Part B, Subpart 3—Even Start Family Literacy

a. Describe how the SEA will use its indicators of program quality to monitor, evaluate, and improve its Even Start projects, and to decide whether to continue operating them.

b. Describe what constitutes sufficient program progress when the SEA makes continuation awards.

c. Explain how the State's Even Start projects will provide assistance to low-income families participating in the program to help children in those families to achieve to the applicable State content and student achievement standards.

2. Title I, Part C—Education of Migrant Children

a. Describe the process the State will use to develop, implement, and document a

comprehensive needs assessment that identifies the special educational and related needs of migratory children.

b. Describe the State's priorities for the use of migrant education program funds in order to have migratory students meet the State's performance targets for indicators 1.1, and 1.2 in appendix A (as well as 5.1 and 5.2 that expressly include migratory students), and how they relate to the State's assessment of needs for services.

c. Describe how the State will determine the amount of any subgrants the State will award to local operating agencies, taking into account the numbers and needs of migratory children, the statutory priority for service in section 1304(d), and the availability of funds from other Federal, State, and local programs.

d. Describe how the State will promote continuity of education and the interstate and intrastate coordination of services for migratory children.

e. Describe the State's plan to evaluate the effectiveness of its migrant education program and projects.

3. Title I, Part D—Children and Youth Who Are Neglected, Delinquent, or At-Risk

a. Describe the program goals, performance indicators, performance objectives, and data sources that the State has established for its use in assessing the effectiveness of the program in improving the academic and vocational and technical skills of students participating in the program.

b. Describe how the SEA is assisting projects funded under the program in facilitating the transition of children and youth from correctional facilities to locally operated programs.

4. Title I, Part F—Comprehensive School Reform

a. Describe the process the SEA will use to ensure that programs funded include and integrate all eleven required components of a comprehensive school reform program.

b. Describe the process the State will use to determine the percentage of Comprehensive School Reform schools with increasing number of students meeting or exceeding the proficient level of performance on State assessments in reading/language arts and mathematics.

5. Title II, Part A—Teacher and Principal Training and Recruiting Fund

a. If not fully addressed in the State's response to the information on performance goals, indicators, and targets in Appendix A, describe the remainder of the State's annual measurable objectives under ESEA section 1119(a)(2).

b. Describe how the SEA will hold LEAs accountable both for (1) meeting the annual measurable objectives described in ESEA section 1119(a)(2), and (2) ensuring that the professional development the LEAs offer their teachers and other instructional staff is consistent with the definition of ''professional development'' in ESEA section 9101(34).

Note: This program, and the financial support it provides to States, LEAs, and schools is vitally important to ensure that all students have teachers who are highly qualified, and who can help them to achieve to their maximum capabilities. The two items identified above supplement other information States need to provide in response to items in Appendix A, Goal 3; Appendix B, item 5b and c; and Appendix C, information on Title II, Part D (Enhancing Education Through Technology program) on how they plan to implement key teacher quality activities.

6. Title II, Part D—Enhanced Education Through Technology

a. Describe the program goals, performance indicators, performance objectives, and data sources that the State has established for its use in assessing the effectiveness of the program in improving access to and use of educational technology by students and teachers in support of academic achievement.

b. Provide a brief summary of the SEA's long-term strategies for improving student academic achievement, including technology literacy, through the effective use of technology in the classroom, and the capacity of teachers to integrate technology effectively into curricula and instruction.

c. Describe key activities that the SEA will conduct or sponsor with the funds it retains at the State level. These may include such activities as provision of distance learning in rigorous academic courses or curricula; the establishment or support of public-private initiatives for the acquisition of technology by high-need LEAs; and the development of performance measurement systems to determine the effectiveness of educational technology programs.

d. Provide a brief description of how—

i. The SEA will ensure that students and teachers, particularly those in the schools of high-need LEAs, have increased access to technology, and

ii. The SEA will coordinate the application and award process for State discretionary grant and formula grant funds under this program.

7. Title III, Part A—English Language Acquisition and Language Enhancement

a. Describe how the SEA will ensure that LEAs use program funds only to carry out activities that reflect scientifically based research on the education of limited English proficient children while allowing those grantees flexibility (to the extent permitted under State law) to select and implement such activities in a manner that they determine best reflects local needs and circumstances.

b. Describe how the SEA will hold LEAs accountable for meeting all annual measurable achievement objectives for limited English proficient children, and for making adequate yearly progress that raises the achievement of limited English proficient children.

c. Describe the process that the State will use in making subgrants under section 3114(d) to LEAs that have experienced a significant increase in the percentage or number of immigrant children and youth.

8. Title IV, Part A—Safe and Drug-Free Schools and Communities

a. Describe the key strategies in the State's comprehensive plan for the use of funds by the SEA and the Governor to provide safe, orderly, and drug-free schools and communities through programs and activities that—

i. Complement and support activities of LEAs under ESEA section 4115(b);

ii. Comply with the principles of effectiveness under section 4115(a); and

iii. Otherwise are in accordance with the purpose of Title IV, Part A.

Note: The reauthorized provisions of the Safe and Drug-Free Schools and Communities (SDFSC) Program clearly emphasize well-coordinated SEA and Governor's Program activities. The statute requires that significant parts of the program application be developed for each State's program, not for the SEA and Governors Programs individually. For this reason, each State must submit a single application for SDFSC SEA and Governors Program funds. States may choose to apply for SDFSC funding through this consolidated application or through a program-specific application.)

B. Describe the State's performance measures for drug and violence prevention programs and activities to be funded under Title IV, Part A, Subpart 1.

These performance measures must focus on student behaviors and attitudes. They must consist of (1) performance indicators for drug and violence prevention programs and activities, and (2) levels of performance for each performance indicator. The description must also include timelines for achieving the levels of performance stated, details about what mechanism the State will use to collect data concerning the indicators, and provide baseline data for indicators (if available).

c. Describe the steps the State will use to implement the Uniform Management Information and Reporting System (UMIRS) required by ESEA section 4112(c)(3). The description should include information about which agency(ies) will be responsible for implementing UMIRS, a tentative schedule for implementing UMIRS requirements, as well as preliminary plans for collecting required information.

9. Title IV, Part B, 21st Century Community Learning Centers

Identify the percentage of students participating in 21st Century Community Learning Centers who meet or exceed the proficient level of performance on State assessments in reading/language arts and mathematics. Baseline data is to be collected for the 2002–2003 school year, and submitted to the Department no later than September 2003 by a specific due date the Department will announce.

10. Title IV, Part B—21st Century Community Leaning Centers

Identify the percentage of students who participate in 21st Century Community Learning Centers who meet or exceed the proficient level of performance on State assessments in reading/language arts and mathematics. The State must collect baseline data for the 2002–2003 school year, and submit these data to the Department no later than early September of 2003 by a date the Department will announce.

11. Title VI, Part A, Subpart 1—grants for State Assessment and Related Activities

Describe how the State plans to use formula funds awarded under section 6113(b)(1) for the development and implementation of State assessments in accordance with section 6111 (1) and (2).

12. Title VI, Part B, Subpart 2—Rural and Low-Income School Program

a. Identify the SEA's specific measurable goals and objectives related to increasing student academic achievement; decreasing student dropout rates; or improvement in other educational factors the SEA may elect to measure, and describe how Rural and Low-Income School program funds will help the SEA meet the goals and objectives identified.

b. Describe how the State elects to make awards under the Rural and Low-Income School Program:

i. By formulas proportionate to the numbers of students in eligible districts;

ii. Competitively (please explain any priorities for the competition); or

iii. By a State-designed formula that results in equal or greater assistance being awarded to school districts that serve higher concentrations of poor students.

(**Note:** If a State elects the third option, the formula must be submitted for Department approval. States that elect this option may submit their State-designed formulas for approval as part of this submission.)

I. Key Fiscal Information

Consolidated Administrated Funds

1. Does the SEA Plan To Consolidate State-Level Administrative Funds?

If yes, please provide information and analysis concerning Federal and other funding that demonstrates that Federal funds constitute less than half of the funds used to support the SEA.

If yes, are there any programs whose funds are available for administration that the SEA will not consolidate?

2. Please Describe Your Plans for Any Additional Uses of Funds

Transferability

Does the State plan to transfer non-administrative State-level ESEA funds under the provisions of the State and Local Transferability Act (sections 6121 to 6123 of the ESEA)? If so, please list the funds and the amounts and percentages to be transferred, the program from which funds are to be transferred, and the program into which funds are to be transferred.

(**Note:** If the State elects to notify ED of the transfer in this document, the State's responses to the application's requests for information should reflect the State's comprehensive plan after the transfer. If the State has not elected to transfer funds at this time, it may do so at a later date. To do so, the State must (1) establish an effective date for the transfer, (2) notify the Department (at least 30 days before the effective date of the transfer) of its intention to transfer funds, and (3) submit the resulting changes to the information previously submitted in the State's consolidated application by 30 days after the effective date of the transfer.)

Program Specific Fiscal Information

1. Title I, Part A—Improving Basic Programs Operated by LEAs

a. Identify the amount of the reservation in section 1003(a) for school improvement that the State will use for State-level activities and describe those activities.

b. For the 95 percent of the reservation in section 1003(a) that must be made available to LEAs, describe how the SEA will allocate funds to assist LEAs in complying with the school improvement, corrective action, and restructuring requirements of section 1116 and identify any SEA requirements for use of those funds.

c. Identify what part, if any, of State administrative funds the SEA will use for assessment development under ESEA section 1004, and describe how those funds will be used.

d. Describe how the State will inform LEAs of the procedures LEAs must use to distribute funds for schools to use for supplemental services under section 1167(e)(7) and the procedures for determining the amount to be used for this purpose.

e. Describe how the State will use formula funds awarded under section 6113(b)(1) for the development and implementation of State assessments in accordance with section 6111.

2. Title I, Part B—Even Start Family Literacy

Identify the amount of the reservation under subsection 1233(a) that the State will use for each category of State-level activities listed in that section, and describe how the SEA will carry out those activities.

3. Title I, Part C—Education of Migratory Children

Identify the amount of funds that the SEA will retain from its Migrant Education Program (MEP) allocation, under section 200.41 of the Title I regulations (34 CFR 200.41), to carry out administrative and program functions that are unique to the MEP, and describe how the SEA will use those funds.

4. Title I, Part D—Children and Youth Who Are Neglected, Delinquent, or At-Risk

Describe how the funds reserved under section 1418 will be used for transition services for students leaving institutions for schools served by LEAs, or postsecondary institutions or vocational and technical training programs.

5. Title II, Part A—Teacher and Principal Training and Recruiting Fund

a. If applicable, of the one percent of the State's program allocation that ESEA section 2113(d) makes available to both the SEA and State agency for higher education (SAHE) for the costs of administration and planning, identify the amount the two agencies have agreed each agency will retain.

Note: In the absence of an agreement between the two agencies to apportion the one-percent in another way, of this amount the Department annually will award to the SAHE for administration and planning the greater of—

1. The amount of FY 2001 funds it had received for administration under the predecessor Title II, ESEA Eisenhower Professional Development Program, or

2. Five percent of the amount available each year for subgrants to partnerships under ESEA section 2113(a)(2).

The Department annually will award the remainder of the one-percent of the State allocation to the SEA for its costs of administration and planning. We will provide further guidance on within-State allocations of Title II, Part A funds reserved for administration in the guidance it is developing for the program.

b. Describe how the SEA will use funds reserved for State activities described in ESEA section 2113(c) to meet the teacher professional development and paraprofessional requirements in section 1119.

6. Title III, Part A—English Language Acquisition and Language Enhancement

a. Specify the percentage of the State's allotment that the State will reserve and the percentage of the reserved funds that the State will use for each of the following categories of State-level activities: professional development; planning, evaluation, administration, and interagency coordination; technical assistance; and providing recognition to subgrantees that have exceeded their annual measurable achievement objectives. A total amount not to exceed 5 percent of the State's allotment may be reserved by the State under ESEA section 3111(b)(2) to carry out one or more of these categories of State-level activities.

b. Specify the percentage of the State's allotment that the State will reserve for subgrants to eligible entities that have experienced a significant increase in the percentage or number of immigrant children and youth. A total amount not to exceed 15 percent of the State's allotment must be reserved by the State under section 3114(d)(1) to award this type of subgrant.

c. Specify the number of limited English proficient children in the State. (See definitions of ''child'' in ESEA section 3301(1), and ''limited English proficient'' in section 9101(25).)

d. Specify the number of immigrant children and youth in the State. (See definition of ''immigrant children and youth'' in ESEA section 3301(6).)

Note: ESEA section 3111 requires that State allocations for the Language Acquisition State grants be calculated on the basis of the number of limited English proficient children in the State compared to the number of such children in all States (80 percent) and the number of immigrant children and youth in the State compared to the number of such children and youth in all States (20 percent). The Department plans to use data from the 2000 Census to calculate State shares of limited English proficient students. However, these data on limited English proficient students will not be available for all States until September 2002. To ensure that States have access to funds as soon as they are available, the Department will provide, for FY 2002 only, an initial distribution of 50 percent of the funds under the limited

English proficient portion of the formula based on State-reported data. As soon as Census data become available, the Department will recalculate and make final State allocations using 2000 Census data.

For the 20 percent of formula funds distributed to States based on State shares of immigrant children and youth, the Department will use the most recent State-reported data in allocating these funds. Census does not collect data that can be used to calculate State allocations for this part of the formula.

7. Title IV, Part A, Subpart 1, Section 4112(a)—Safe and Drug-Free Schools and Communities: Reservation of State Funds for the Governor

a. The Governor may reserve up to 20 percent of the State's allocation under this program to award competitive grants or contracts. Identify the percentage of the State's allocation that is to be reserved for the Governor's program.

b. The Governor may administer these funds directly or designate an appropriate State agency to receive the funds and administer this allocation. Provide the name of the entity designated to receive these funds, contact information for that entity (the name of the head of the designated agency, address, telephone number) and the ''DUNS'' number that should be used to award these funds.

8. Title IV, Part A, Subpart 2, Section 4126—Safe and Drug-Free Schools and Communities: Community Service Grants

Describe how the SEA, after it has consulted with the Governor, will use program funds to develop and implement a community service program for suspended and expelled students.

9. Title V, Part A—Innovative Programs

a. In accordance with ESEA section 5112(a)(1), describe the SEA's formula for distributing program funds to LEAs. Include information on how the SEA will adjust its formula to provide higher per-pupil allocations to LEAs that have the greatest numbers or percentages of children whose education imposes a higher-than-average cost per child, such as —

- Children living in areas with concentrations of economically disadvantaged families;
- Children from economically disadvantaged families; and
- Children living in sparsely populated areas.

b. Identify the amount or percentage the State will reserve for each State-level activity under section 5121, and describe the activity.

Appendix D: Assurances

With its June 2002 submission, an SEA will need to include a signed statement of its agreement to the following sets of assurances and cross cutting declaration:

1. *General and Cross-Cutting Assurances.* Section 9304(a) requires States to have on file with the Secretary, as part of their consolidated application, a single set of assurances, applicable to each program included in the consolidated application, that provide that—

a. Each such program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

b.i. The control of funds provided under each such program and title to property acquired with program funds will be in a public agency, a nonprofit private agency, institution, or organization, or an Indian tribe, if the law authorizing the program provides for assistance to those entities; and

b.ii. The public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer those funds and property to the extent required by the authorizing law;

c. The State will adopt and use proper methods of administering each such program, including—

i. The enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program;

ii. The correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation; and

iii. The adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of the programs;

d. The State will cooperate in carrying out any evaluation of each such program conducted by or for the Secretary or other Federal officials;

e. The State will use such fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each such program;

f. The State will—

i. Make reports to the Secretary as may be necessary to enable the Secretary to perform the Secretary's duties under each such program; and

ii. Maintain such records, provide such information to the Secretary, and afford such access to the records as the Secretary may find necessary to carry out the Secretary's duties; and

g. Before the plan or application was submitted to the Secretary, the State afforded a reasonable opportunity for public comment on the plan or application and considered such comment.

2. *ESEA Specific Assurances and Crosscutting Declaration.* Each SEA also must provide an assurance that it will—

a. Comply with all operational requirements of the ESEA programs included in the consolidated application, whether the program statute identifies these requirements as a description or assurance that States would have addressed, absent this consolidated application, in a program-specific plan or application, and

b. Maintain records of the State's compliance with each of those requirements.

(**Note:** For the Safe and Drug-Free Schools programs, the SEA must have all appropriate assurances from the Governor on record.)

Through the general assurance and assurance (1) in section 9304(a), the SEA agrees to comply with all requirements of the ESEA and other applicable program statutes. While all requirements are important, we have identified in the application package a number of those to which we believe SEAs should pay particular attention in order to ensure the effective use of ESEA program funds in promoting increased student achievement. At the same time we stress that this list of program-specific requirements that the SEA is assuring it will meet is not exhaustive and that States are accountable for all program requirements.

3. *Cross-Cutting Declaration: Certification of Compliance with Unsafe School Choice Option Requirements.*

The State certifies that it has established and implemented a Statewide policy requiring that students attending persistently dangerous public elementary or secondary schools, as determined by the State (in consultation with a representative sample of local educational agencies), or who become victims of violent criminal offenses, as determined by State law, while in or on the grounds of public elementary and secondary schools that the students attend, be allowed to choose to attend a different, safe public elementary or secondary school (which may include a public charter school) within the local educational agency.

Appendix E: Enhanced Assessment Instruments Competitive Grant Program (Title VI, section 6112)—Program Information and Proposed Selection Criteria

Overview. Proficiency on State assessments required under Title I, Part A of the ESEA is the primary indicator in the ESEA of student academic achievement and, hence, the primary measure of State success in meeting the goals of No Child Left Behind. In view of the critical importance of these State assessments, ESEA section 6111 provides formula grants to all SEAs, and section 6112 authorizes the Secretary to make competitive grant awards to State educational agencies (SEAs) to help them enhance the quality of assessment and accountability systems.

Because of the close relationship between this program and Title I, Part A, section 6112 requires States wishing to apply for the competitive portion of the State assessment grants to include their applications for this program in the State plans they prepare under Title I, Part A. For this reason, the Secretary has designated this program for voluntary inclusion in a State's ESEA consolidated application even though it is not a formula grant program. In doing so, the Secretary establishes the following procedures and requirements to govern this competition.

Eligible applicants. By law, all eligible applicants must be SEAs or consortia of SEAs. An application from a consortium of SEAs must designate one SEA as the fiscal agent.

Proposed Award Amounts and Timelines. The statute requires that any funds appropriated in excess of the required amount for State assessment formula allocations (section 6111) be allocated as competitive grants. From the amount appropriated, approximately $17 million is available for the upcoming fiscal year 2002 competition. Subject to the minimum size of award provided in section 6113(b)(2)(A)(ii) (which is based on a State's enrollment of

students ages 5–17), the Department estimates that it will make 20 awards ranging from $300,000 to $2,000,000, with an average size of $850,000.

All applications must be submitted on or before September 15, 2002. We expect to issue grant awards by December 1, 2002. Project periods will run until September 30, 2004.

Application requirements. Section 6112(a) requires that all funded applications demonstrate that States (or consortia of States) will—

1. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for the assessments described in section 1111(b)(3) of Title I, Part A;
2. Measure student academic achievement using multiple measures of student academic achievement from multiple sources;
3. Chart student progress over time; or
4. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance and technology-based academic assessments.

Competitive preferences. Enhancing assessment instruments so that they take into consideration alternatives for assessing students with disabilities and limited English proficient students is one of the pressing needs in the area of assessments. In addition, the complexity of improving assessments calls for collaborative efforts between and among states to yield approaches that can be adapted in varied contexts and for effective dissemination of results to increase the likelihood that the projects funded will contribute to ongoing State efforts to improve their assessment systems.

Toward those ends, the Secretary establishes the following competitive preferences, and will award up to 35 points to an applicant based on how well its application meets these preferences. These preference points are in addition to points an applicant earns under the selection criteria.

1. *Accommodations and alternate assessments* (20 points) Applications that can be expected to advance practice significantly in the area of increasing accessibility and validity of assessments for students with disabilities or limited English proficiency, or both, including strategies for test design, administration with accommodations, scoring, and reporting.
2. *Collaborative efforts* (10 points) Applications that are sponsored by a consortium of States.
3. *Dissemination* (5 points) Applications that include an effective plan for dissemination of results.

Selection criteria. The Secretary establishes the following criteria and weights authorized by sections 75.209–210 of the Education Department General Administrative Regulations (EDGAR):

1. Need for the Project (10 points)

- The magnitude and severity of the problem to be addressed by the proposed project;
- The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure; and
- The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

2. Scope (10 points)

- The extent to which the goals and objectives to be achieved by the proposed project are clearly specified and measurable, and
- The extent to which the goals and objectives are sufficiently broad to be likely to result in significant change or improvement of one or more State assessment systems.

3. Significance (15 points)

- The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies;
- The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study;
- The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations; and
- The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

4. Quality of Project Design (30 points)

- The extent to which there is a conceptual framework underlying the proposed research or demonstration activities, and the quality of that framework;
- The quality of the proposed design and procedures for documenting project activities and results;
- The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project;
- The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance;
- The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice;
- The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements; and
- The quality of the methodology to be employed by the proposed project.

5. Quality of the Management Plan (5 points)

- The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and
- The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of Project Personnel (10 points)

- The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability;
- The qualifications, including relevant training and experience, of the project director or principal investigator;
- The qualifications, including relevant training and experience, of key project personnel; and
- The qualifications, including relevant training and experience, of project consultants or subcontractors.

7. Adequacy of Resources (10 points)

- The adequacy of support, including facilities, equipment, supplies, and other resources from the SEA or the lead applicant SEA;
- The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and
- The extent to which the budget is adequate to support the proposed project.

8. Quality of the Evaluation Plan (10 points)

- The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;
- The extent to which the methods of evaluation are appropriate to the context within which the project operates;
- The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and
- The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other situations.

Appendix F—Optional Interim Application for FY 2002 Funds Under the Safe and Drug-Free Schools and Communities State Grants Program (Title IV, Part A, Subpart 1)

The Safe and Drug-Free Schools and Communities State Grants program authorizes States that desire to submit a program-specific application for FY 2002 funds to do so in either of two ways. A State may either submit (1) the comprehensive State application described in ESEA section 4113(a) or (2) an interim application that, under section 4113(b), offers the State an opportunity to develop and submit the comprehensive application prior to its receipt of fiscal year 2003 funds under the program.

Section 4113(b)(1) provides that the content of the interim application must be consistent with the requirements of that section of the law and contain the information that ''the Secretary may specify in regulations.'' So that States may understand their various options for applying for Safe and Drug-Free Schools and Communities State Grants program, the

Department is using the vehicle of this notice to announce rules for this interim program application for FY 2002 funds.

States that desire to use this interim application to apply for FY 2002 Safe and Drug-Free Schools and Communities State Grants program funds must submit the following:

- A description of how the SEA will coordinate the agency's activities under this subpart with the chief executive office's drug and violence prevention programs and with the prevention efforts of other State agencies and other programs, as appropriate.
- A statement of the State's performance measures for drug and violence prevention programs and activities to be funded under this grant, which will be focused on student behavior and attitudes, derived from the State's needs assessment in section 4113(a)(9). These indicators must be developed through consultation between the State and local officials, and that consists of performance indicators for drug and violence prevention programs and activities, and levels of performance for each indicator. The description must also include timelines for achieving the levels of performance stated, details about what mechanisms the State will use to collect data concerning the stated indicators, and baseline data for indicators if they are available.

In its statement, the State must submit performance measures for (1) the following indicator: the number of persistently dangerous schools, as defined by the State, and for (2) other indicators that it identifies as appropriate based on its analysis of need and its comprehensive plan for use of funds:

- A description of how the State educational agency will review applications from local educational agencies, including how the agency will receive input from parents in such review.
- A description of how the State educational agency will monitor the implementation of activities and provide technical assistance for local educational agencies, community-based organizations, other public entities, and private organizations.
- A description of how the chief executive officer of the State will award funds under section 4112(a) and implement a plan for monitoring the performance of, and providing technical assistance to, grant recipients.

[FR Doc. 02–12865 Filed 5–21–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1571–000]

Big Cajun I Peaking Power LLC; Notice of Issuance of Order

May 16, 2002.

Big Cajun I Peaking Power LLC (Big Cajun) submitted for filing a rate schedule under which (Big Cajun) will engage in the sales of capacity, energy and ancillary services at market-based rates and for the reassignment of transmission capacity. Big Cajun also requested waiver of various Commission regulations. In particular, Big Cajun requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Big Cajun.

On May 13, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Big Cajun 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).

Absent a request to be heard in opposition within this period, Big Cajun is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Big Cajun, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Big Cajun's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 12, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12795 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1366–000]

Hess Energy Power & Gas Company, LLC; Notice of Issuance of Order

May 16, 2002.

Hess Energy Power & Gas Company, LLC (Hess) submitted for filing a rate schedule under which Hess will engage in the sales of capacity, energy and ancillary services at market-based rates and for the reassignment of transmission capacity. Hess also requested waiver of various Commission regulations. In particular, Hess requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Hess.

On April 29, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-West, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Hess 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).

Absent a request to be heard in opposition within this period, Hess is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Hess, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Hess' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 29, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12793 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–107]

Pat Kelleher, Complainant, v. PUD No. 2 of Grant County, WA, Respondent; Notice of Complaint

May 15, 2002.

Take notice that on April 29, 2002, Pat Kelleher filed a complaint pursuant to Rule 218 of the Commission's rules of practice and procedure, 18 CFR 385.218 (2002), and Part I of the Federal Power Act, 16 U.S.C. 791, *et seq.*, against PUD No. 2 of Grant County, Washington, licensee of the Priest Rapids Project No. 2114, located on the Columbia River in Washington. Mr. Kelleher alleges that Grant County is failing to provide free public access to licensee fee-owned lands within the project boundary. Copies of the complaint are on file with the Commission and are available for public inspection in the Commission's Public Reference Room. The complaint may also be viewed on the Internet at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

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 May 28, 2002. 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 May 28, 2002. 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, interventions and answers 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12744 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–337–000]

Maritimes & Northeast Pipeline L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 15, 2002.

Take notice that on May 7, 2002 Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 11 to become effective on June 1, 2002.

Maritimes states that it is making this Interim Fuel Retainage Quantity (FRQ) filing, pursuant to section 20 of the General Terms and Conditions of its FERC Gas Tariff. Maritimes is proposing to reduce its Fuel Retainage Percentages for the Summer Period (June 1, 2002—August 31, 2002) and the Fall Shoulder Period (September 1, 2002—October 31, 2002) to 0.90%. Maritimes states that this reduction is necessary to reflect lower compressor fuel gas usage that is occurring on the Maritimes system as a result of lower throughput for the current gas year than that originally projected in Maritimes October 1, 2001 Annual Fuel Retainage Quantity filing in Docket No. RP02–4.

Maritimes also states that pursuant to section 20.5 of the General Terms and Conditions (GT&C), Maritimes is permitted to make interim filings to adjust the fuel retention percentages as appropriate. Maritimes also states that it will make its Annual FRQ filing in October to reflect the anticipated fuel percentages for the gas year commencing November 1, 2002.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12753 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–338–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 15, 2002.

Take notice that on May 10, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets wit an effective date of June 10, 2002.

Natural states that the purpose of this filing is to make several minor revisions to its Tariff, including changes to the General Terms and Conditions and to a pro forma service agreement. These changes correct, clarify or simplify various provisions of Natural's Tariff.

Natural requests any waivers which may be required to permit these tariff sheets submitted to become effective on June 10, 2002.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12754 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–039]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 15, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 8, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheet proposed to be effective on May 9, 2002:

Fifth Revised Volume No. 1

Seventeenth Revised Sheet No. 66A

The above sheet is being filed to implement a specific negotiated rate transaction with Dynegy Marketing and Trade in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12750 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–040]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 15, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 9, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheet proposed to be effective on May 10, 2002:

Fifth Revised Volume No. 1

Eighteenth Revised Sheet No. 66A

The above sheet is being filed to implement a specific negotiated rate transaction with Dynegy Marketing and Trade in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12751 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.GT02–23–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

May 15, 2002.

Take notice that on May 7, 2002, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Original Volume No. 1, First Revised Sheet No. 6 and Original Sheet No. 7, to be effective June 1, 2002.

Southern Trails states that the filing is being filed in compliance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Southern Trails states that the tendered tariff sheets identify Southern Trails' Statement of Negotiated Rates to reflect negotiated-rate contracts with Duke Energy Trading and Marketing, L.L.C. and BP Energy Company.

Southern Trails stated that a copy of this filing has been served upon all parties to this proceeding, Southern Trails' customers, and the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance

with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12742 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–080]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 15, 2002.

Take notice that on May 8, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective May 8, 2002:

First Revised Sheet No. 631
Second Revised Sheet No. 632

REGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate transactions.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12749 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–007]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 15, 2002.

Take notice that on May 9, 2002, pursuant to 18 CFR 154.7, and in compliance with the April 24, 2002, Commission order (April 24th order) in Docket No. RP99–106–006, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance, the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff.

Original Volume No. 1
First Revised Fifth Revised Sheet No. 20, effective February 1, 2001
First Revised Sixth Revised Sheet No. 20, effective November 1, 2001
First Revised Original Sheet No. 20A, effective November 1, 2001

TransColorado states that the submitted tariff sheets reflect Final Rates approved by the April 24th order. Final Rates are slightly lower than Interim Rates that have been in effect pursuant to the terms of the settlement in Docket No. RP99–106 as approved by the Commission on January 14, 2000, in Docket No. RP99–106–004. For example, TransColorado's interruptible transportation rate drops from the currently effective $0.3340/Dth to $0.3239/Dth.

Article III(F) of the settlement in this proceeding provides that refunds will be required if total revenues exceed the levelized cost of service over the refund period. TransColorado states that it is reviewing its revenues and costs for the refund period but does not anticipate that there will be refunds.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

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 in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12752 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1437–000]

Triton Power Michigan LLC; Notice of Issuance of Order

May 16, 2002.

Triton Power Michigan LLC (Triton Power) submitted for filing a rate schedule under which (Triton Power) will engage in the sales of electric energy and capacity at market-based rates and for the reassignment of transmission capacity. Triton Power also requested waiver of various Commission regulations. In particular, Triton Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Triton Power.

On May 14, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Triton Power 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).

Absent a request to be heard in opposition within this period, Triton Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Triton Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Triton Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 13, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12794 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1764–000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

May 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southern California Edison Company

[Docket No. ER02–1764–000]

Take notice that on May 8, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and Cabazon Wind Partners, LLC (Cabazon).

SCE respectfully requests the Agreements become effective on May 9, 2002. These Agreements specify the terms and conditions under which SCE will interconnect Cabazon's generating facility to its electrical system and provide Distribution Service for up to 42.6 MW of power produced by the generating facility.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Cabazon.

Comment Date: May 29, 2002.

2. Entergy Services, Inc.

[Docket No. ER02–1765–000]

Take notice that on May 8, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Mirant Americas Energy Marketing, LP.

Comment Date: May 29, 2002.

3. Pacific Gas and Electric Company

[Docket No. ER02–1766–000]

Take notice that on May 8, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change in rate schedule, a revised Appendix A to ''Contract No. 88-SAO–40002, United States Department of Energy, Western Area Power Administration, Central Valley Project, California for Sonoma County Water Agency, Contract for Transmission Service with Pacific Gas and Electric Company'' (Sonoma Agreement). The Sonoma Agreement, dated March 21, 1989, was accepted with its appendices for filing by the Commission on April 28, 1989, and designated as PG&E Rate Schedule FERC No. 126, and subsequently designated on November 7, 2001, as PG&E First Revised Rate Schedule FERC No. 126 . The revised Appendix A to the Sonoma Agreement eliminates the distribution component of the transmission charge due to an upgrade to Sonoma's distribution system, updating loss factors and providing a reduced transmission rate.

PG&E is requesting certain waivers. Copies of this filing were served upon Sonoma, Western, the California Independent System Operator and the California Public Utilities Commission.

Comment Date: May 29, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[FERC Docket No. ER02–1767–000]

Take notice that on May 8, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing proposed revisions to Attachment K of its Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1, which seek to modify the manner in which (I) the Midwest ISO institutes the redispatch of generation on the Midwest ISO Transmission System (Transmission System) in order to maintain the reliability of the Transmission System and (ii) the costs of the aforementioned reliability redispatch are allocated to and among transmission customers. The Midwest ISO requests an effective date of June 17, 2002.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading Filings to FERC'' for other interested parties in this matter.

Comment Date: May 30, 2002.

5. Aquila, Inc.

[Docket No. ES02–38–000]

Take notice that on May 7, 2002, Aquila, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to an aggregate of $1 billion of the following securities: (1) Long-term debt (and any like instruments issued in exchange therefore or in refinancing thereof) with a final maturity or maturities of not less than twelve months nor more than 30 years; (2) common stock including shares which may be issued upon conversion of other securities; and (3) forward contracts or other financial instruments and associated common stock to be issued at a future date specified in the forward contract.

Comment Date: May 31, 2002.

6. NorthWestern Corporation

[Docket No. ES02–39–000]

Take notice that on May 8, 2002, NorthWestern Corporation (NorthWestern) submitted an application pursuant to section 204 of the Federal Power Act seeking

authorization to issue up to and including (1) 15 million shares of common stock, par value $1.75 per share, (2) 500,000 shares of cumulative preferred stock, par value $100 per share, and (3) 500,000 shares of preference stock, par value $50.

NorthWestern also requests waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: June 5, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12740 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration Intention and Solicitation of Comments, Motions To Intervene, and Protests

May 15, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI02–3–000.

c. *Date Filed:* April 29, 2002.

d. *Applicant:* AquaEnergy Group, Ltd.

e. *Name of Project:* Makah Bay Project.

f. *Location:* On Makah Bay, near Neah Bay, in Clallam County, Washington, at 48° 19′ 53″ N, 124° 44′ 18″ W. The project will utilize federal and tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825 (r).

h. *Applicant Contact:* Ms Mary Jane Parks, P.O.Box 1276, Mercer Island, WA 98040; telephone: (626) 253–1981, E-Mail address: *aqua@aeg-ltd.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton at (202) 219–2678, or e-mail address: *henry.ecton@ferc.gov*.

j. *Deadline for Filing Comments and/or Motions:* June 17, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments and protests 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 at *http://www.ferc.gov*.

Please include the docket number (DI02–3–000) on any comments or motions filed.

k. *Description of Project:* The proposed project will consist of: (1) Four energy-converting buoys; (2) a sealed power habitat on the floor of Makah Bay, containing a pelton turbine and generator with a maximum output of 1 MW; (3) a 2-mile long transmission cable, connected to a land station containing an inverter and transformer; and (4) appurtenant facilities. The facility will be connected to an interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine whether or not the proposed project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call (202) 208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceedings. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12741 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Solicitation of Comments, Protests, and Motions To Intervene

May 15, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Project No:* JR00–2–000, P–9100–011.

c. *Date Filed:* January 10, 2000.

d. *Applicant:* James M. Knott, Sr.

e. *Name of Project:* Riverdale Mills Project.

f. *Location:* The project is located on the Blackstone River in Worcester County, Village of Riverdale, Massachusetts. This project will not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 USC 817 (b).

h. *Applicant Contact:* Jamy B. Buchanan, Esq., Buchanan & Associates, 33 Mt. Vernon St., Boston, MA 02108, telephone: (617) 227–8410.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 219–2678, or e-mail address: *henry.ecton@ferc.gov*.

j. *Deadline for Filing Comments, Protests, and/or Motions To Intervene:* June 17, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov*. under the ''e-Filing'' link.

Please include the docket number (JR00–2–000, P–9100–011) on any comments, protests, or motions to intervene filed.

k. *Description of Project:* The Riverdale Mills Project consists of: (1) A 142-foot-long, 10-foot-high concrete and steel dam with crest elevation of 262.35 feet m.s.l.; (2) a reservoir with a surface area of 11.8 acres; (3) five collapsible stanchion and one modulator gate located on six bays; (4) a 8-foot-wide, 115-foot-long sluiceway that conveys water to the turbine; (5) a 150 kW generator, located in the mill building; (6) a 231-foot-long tailrace; and (7) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act (FPA), 16 U.S.C. 817 (1), requires the Commission to investigate and determine whether or not the project is required to be licensed. Pursuant to Section 23(b)(1) of the FPA, a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it is located on a navigable water of the United States; occupies lands of the United States; utilizes surplus water or water power from a government dam; or is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce. The purpose of this notice is to gather information to determine whether the existing project meets any or all of the above criteria, as required by the FPA. Copies of ''A Supplement to the Navigation Status Report Blackstone River Massachusetts,'' and ''Materials Discovered in Research'' are available on RIMS on the Web under JR00–2–000.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12743 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Solicitation of Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

May 15, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2153–012.

c. *Date Filed:* April 30, 2002.

d. *Applicant:* United Water Conservation District.

e. *Name of Project:* Santa Felicia Hydro Project.

f. *Location:* On the Piru Creek in Ventura County, California. The project affects 174.5 acres of federal land within the Los Padres and Angeles National Forests.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ms. Dana Wisehart, United Water Conservation District, 106 North Eighth Street, Santa Paula, CA 93060.

i. *FERC Contact:* Jim Fargo, (202) 219–2848 or *james.fargo@ferc.gov.*

j. *Deadline for Filing Additional Study Requests:* June 29, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Santa Felicia Project consists of: (1) A 200-foot-tall, 1200-foot-long earth fill dam; (2) an 88,000 acre-foot reservoir; (3) an ungated spillway and associated works, (4) a powerhouse with two units having a total installed capacity of 1,434-kilowatts and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,300 megawatthours.

m. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the CALIFORNIA STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural Schedule and Final Amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing
Notice of NEPA Scoping
Notice of application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12745 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Solicitation of Comments, Motions To Intervene, and Protests

May 15, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for a Reservoir Drawdown at Centralia Dam.

b. *Project No:* 2255–055.

c. *Date Filed:* March 19, 2002.

d. *Applicant:* Domtar Wisconsin Dam Corp.

e. *Name of Project:* Centralia Dam Project.

f. *Location:* The project is located on the Wisconsin River, in Wood County, Wisconsin.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. David K. Reinke, Domtar Industries Inc., 100 Wisconsin River Drive, Port Edwards, WI 54469, phone 715–887–5111.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Fletcher at (202) 219–1206, or e-mail address: *robert.fletcher@ferc.gov.*

j. *Deadline for Filing Comments and/or Motions:* June 17, 2002.

All documents (original and seven copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2255–055) on any comments or motions filed.

k. *Description of Request:* The licensee is requesting to drawdown the Centralia Dam reservoir on the Wisconsin River for the purpose of performing maintenance and structural repairs below the waterline on the forebay and intake structure located upstream of the powerhouse dam, guardlock structure, and gated and flashboard spillways. The licensee will begin the drawdown on July 5, 2002 and anticipates the reservoir being refilled by November 30, 2002. The licensee will publish a notice in the local paper the day prior to the drawdown, start drawing the impoundment down at a rate of 2-inches per hour (in no case to exceed 6-inches per hour) down to a 10-foot lowering of the headwater pool, and complete a biological survey for stranded aquatic life. The licensee has consulted with the U.S. Fish and Wildlife Service, Wisconsin Department of Natural Resources, and the Wisconsin State Historical Society.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12746 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Solicitation of Comments, Recommendations, Terms and Conditions, and Prescriptions

May 15, 2002.

Take notice that the following hydroelectric application have been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Original License.

b. *Project No.:* 11508–001.

c. *Name of the Project:* Wolf Lake Hydroelectric Project.

d. *Date filed:* March 27, 1998.

e. *Applicant:* Alaska Power & Telephone Company.

f. *Location:* On the east side of Prince of Wales Island, along Wolf Creek, near Hollis, Alaska. The project would affect about 28 acres of the Tongass National Forest, administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Robert S. Grimm, President, Alaska Power & Telephone Company, P.O. Box 3222, 191 Otto Street, Port Townsend, WA 98368, (360) 385–1733

i. *FERC Contact:* Susan O'Brien, E-mail address *susan.obrien@ferc.gov,* or (202) 219–2840.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

j. This application has been accepted, and is ready for environmental analysis at this time.

k. The proposed project would consist of the following features: (1) A screened intake structure 50 feet long by 3 feet high with a 20-foot-wide spillway; (2) a 3.5-acre storage impoundment at elevation 1,088 feet mean sea level; (3) a 6,000-foot-long, 22-inch-diameter steel and high-density polyethylene chloride penstock; (4) a 30-by 40-foot-long prefabricated metal powerhouse along the right bank of Wolf Creek, having a single horizontal twin-jet Pelton turbine with an installed capacity of 2.2 megawatts; (5) a 150-foot-long, 10-foot-wide, by 6-foot-deep tailrace channel; (6) a 12.5-kilovolt, 2.3-mile-long overhead transmission line on wooden poles; (7) a 50-foot-wide by 2.3-mile-long transmission line right-of-way, including an access road; and (8) other appurtenances. The proposed run-of-river project would use natural flows from the 100-acre Wolf Lake and ponds just below the lake to generate 2.2 MW of power to serve various communities on Prince of Wales Island. Water diverted to generate power for this project would bypass about 6,000 feet of Wolf Creek. The project would operate continuously to meet a large portion of the spring, summer, and fall load demand.

l. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item g above.

m. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12747 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Solicitation of Comments, Motions To Intervene, and Protests

May 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Amendment to License.

b. *Project No.:* 77–117.

c. *Date Filed:* May 13, 2002.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Potter Valley Project.

f. *Location:* The Potter Valley hydroelectric project is located on the Eel River and East Fork Russian River, in Mendocino and Lake Counties, California. The project is partially located within the Mendocino National Forest on federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ms. Rhonda Shiffman, Project Manager, Mail Code N11C, Pacific Gas and Electric Co., P.O. Box 770000, San Francisco, CA 94177–0001, (415) 973–5852.

i. *FERC Contact:* Questions about this notice can be answered by John Mudre

at (202) 219–1208 or e-mail address: *john.mudre@ferc.gov*. The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Deadline for Filing Comments, Terms and Conditions, Motions To Intervene, and Protests:* 21 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, 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. k. Pacific Gas and Electric Company (PGE) has filed an application to temporarily reduce, between May 15, and September 15, 2002, the minimum flow requirement set forth in Article 38 to help protect the fishery and recreational resources of Pillsbury reservoir during the 2002 summer season, also to ensure the continued minimum flow releases to the Eel and Russian rivers during the 2003 water-year.

Article 38 requires the following minimum flow releases:

	Dry water-year (cfs)	Normal water-year (cfs)
East Branch Russian River:		
September 16 to May 14 ..	35	35
May 15 to September 15	40	75
Eel River Below Scott Dam:		
December 1 to May 31 ..	40	100
June 1 to November 30	40	60

The 2002 water-year is classified as a normal water-year, as defined by Article 38. Specifically, PGE requests a waiver of the 75 cfs minimum flow to the East Branch Russian River from May 15 to September 15, and proposes to release 40 cfs in its place, conserving approximately 8,600 acre-feet of storage, to be used for the protection of fishery and recreational resources in Pillsbury reservoir and help ensure the continued minimum flow releases to the Eel and Russian rivers are met during the 2003 water-year.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.gov*. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12796 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Annual Change in Producer Price Index for Finished Goods

May 15, 2002.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of annual change in the producer price index for finished goods, minus one percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their July 1, 2001—June 30, 2002 index ceiling levels to compute their index ceiling levels for the period July 1, 2002 through June 30, 2003, in accordance with 18 CFR 342.3(d). This index, which is the percent change (expressed as a decimal) in the annual average Producer Price Index for Finished Goods from 2000 to 2001, minus one percent, is 0.009565. Oil pipelines must multiply their July 1, 2001—June 30, 2002 index ceiling levels by 1.009565 to compute their index ceiling levels for the period July 1, 2002 through June 30, 2003.

FOR FURTHER INFORMATION CONTACT: David Ulevich, Division of Tariffs and Rates Central, Central Group 4, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0678.

SUPPLEMENTARY INFORMATION:

Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent

May 15, 2002.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 2000 was 138.0 and the annual average PPI–FG index figure for

2001 was 140.7.[1] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2000 to 2001, minus one percent, is 0.009565.[2] Oil pipelines must multiply their July 1, 2001—June 30, 2002 index ceiling levels by 1.009565 [3] to compute their index ceiling levels for the period July 1, 2002, through June 30, 2003, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each period beginning January 1, 1995,[4] see Explorer Pipeline Company, 71 FERC 61,416 at n.6 (1995).

Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (*http://www.ferc.gov*) on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2222 or by E-mail to *cips.master@ferc.gov.*

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information online icon. User assistance is available at 202–208–2222, or by E-mail to *rimsmaster@ferc.gov*.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contract; American Electronic Imaging Company, Inc. American Electronic Imaging Company, Inc., is located at 888 First Street, NE., Suite 2A–16, Washington, DC 20426.

Magalie R. Salas

Secretary

[FR Doc. 02–12748 Filed 5–21–02; 8:45 am]

BILLING CODE 6717–01–P

[1] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 691–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes.* The PPI data are also available via the Internet. The Internet address is *[http://www.bls.gov/ppi].* To obtain the BLS data, click on Get Detailed Statistics, then click on Commodity Data under the Create Customized Tables (one screen) heading. At step 1, scroll all the way to the bottom and choose SOP. At step 2, scroll and choose SOP3000. At step 3, check the Not Seasonally Adjusted box and then click on Get Data at step 4.

[2] [140.7 − 138.0]/138.0 = 0.019565 − .01 = 0.009565.

[3] 1 + 0.009565 = 1.009565.

[4] For a listing of all prior multipliers issued by the Commission, see the Commission's website, *www.ferc.gov.* The table of multipliers can be found under the headings ''Oil'' and ''Index''.

ENVIRONMENTAL PROTECTION AGENCY

[CA077–NOD; FRL–7215–1]

Notice of Deficiency for 34 Clean Air Act Operating Permits Programs in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to our authority at Clean Air Act section 504(i) and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this Notice of Deficiency for the following 34 Clean Air Act title V Operating Permits Programs in the State of California: Amador County Air Pollution Control District (APCD), Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. The Notice of Deficiency is based upon EPA's finding that the State's agricultural permitting exemption at Health and Safety Code 42310(e) unduly restricts the local districts' ability to adequately administer and enforce their title V programs, which have previously been granted full approval status. Therefore, EPA finds that the 34 districts' title V programs do not meet the minimum requirements required by Federal law. Publication of this notice is a prerequisite for withdrawal of title V program approval for the 34 districts, but does not effect such a withdrawal. Withdrawal of program approval, if necessary, will be accomplished through subsequent rulemaking.

EFFECTIVE DATE: May 22, 2002. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Gerardo C. Rios, Chief, Permits Office, Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3974.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. Description of Action and Identification of Program Deficiency
II. Effect of Notice of Deficiency
III. Administrative Requirements

I. Description of Action and Identification of Program Deficiency

We are publishing this Notice of Deficiency (NOD) for thirty-four (34) Clean Air Act (CAA or Act) operating permits programs in California. EPA promulgated final full approval of all 34 districts' title V operating permits programs on November 30, 2001. See 66 FR 63503 (December 7, 2001).[1] This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program.

EPA has determined that all 34 local permitting authorities in California that have fully approved title V operating permit programs are not adequately administering or enforcing their programs because state law at Health and Safety Code 42310(e) exempts from permitting, ''equipment used in agricultural operations in the growing of crops or the raising of fowl or animals.''

Title V of the Act does not provide for this exemption and requires that all permitting authorities have the authority to ''issue permits and assure compliance by all sources required to

[1] Although there are 35 separate permitting authorities in California, one permitting authority, Antelope Valley APCD, was not included in our final action because it only recently obtained its authority to issue part 70 permits and is still under its initial interim approval status granted on December 19, 2000 (65 FR 79314).

have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter.'' CAA 502(b)(5)(A). These requirements are echoed in the operating permit program approval regulations promulgated at 40 CFR part 70. *See* 40 CFR 70.4(b)(3)(i).

II. Effect of Notice of Deficiency

40 CFR 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of program deficiency for each of the 34 districts listed above.

If the State of California has not taken significant action to change state law to provide each of the 34 permitting authorities adequate authority to issue permits and assure compliance by all subject sources within 90 days after publication of this notice of deficiency, then EPA will take action to partially withdraw approval of each of the 34 California districts' title V operating permits programs. Such action would only withdraw the portions of the programs that relate to state-exempt major stationary agricultural sources. Also, if the state does not correct the deficiency during the 90-day period, then EPA has the discretion to apply sanctions under section 179(b). Further, 40 CFR 70.10(b)(3) provides that, if a state has not corrected the deficiency within 18 months after the effective date of this notice, EPA will apply the sanctions under section 179(b) of the Act in accordance with section 179(a) of the Act.[2] CAA § 502(i)(1) and (2), 40 CFR 70.4(k) and 70.10(b)(2)–(4).

This notice of deficiency is not itself a proposal to withdraw approval of the title V operating permits program for the 34 districts in California. Consistent with 40 CFR 70.10(b)(2), this notice provides the State of California 90 days to take significant action to assure adequate administration and enforcement of the local districts' programs. As stated above, EPA has determined that significant action in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution. In anticipation that the State of California will not effect the necessary change in state law within 90 days, EPA expects to propose to partially withdraw approval for each of the 34 identified title V operating permits programs before the end of the 90 days provided in this notice; however, consistent with 40 CFR 70.10(b)(4), final action on our proposal will occur only after the 90 days for the state to take significant action has elapsed. EPA will ensure that the public comment period on the proposal to partially withdraw approval will extend beyond the 90-day period for the state to take significant action so that the public will have an opportunity to fully comment on that aspect of our action.

III. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of July 22, 2002.

List of Subjects in 40 CFR Part 70

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

Dated: May 14,2002.

Sally Seymour,

Acting Regional Administrator, Region 9.

[FR Doc. 02–12847 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–P

[2] The EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18-month period.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0060; FRL–7178–9]

Organophosphate Pesticides; Reassessment of Certain Non-Contributing Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As part of its ongoing review of existing organophosphate (OP) tolerances under the Food Quality Protection Act (FQPA), EPA has determined that 275 OP tolerances can be reassessed at this time. These ''non-contributor'' tolerances meet the FQPA safety standard in section 408(b)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA) and can be reassessed for the purposes of FFDCA section 408(q). EPA has concluded that these tolerances make, at most, a negligible contribution to the cumulative risk from OP pesticides. This Notice discusses the concept and basis for this approach to reassessing selected OP tolerances based on available information relating to the OP cumulative risk assessment. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described in this Notice. This Notice also identifies the first non-contributor tolerances that are considered reassessed (certain tolerances for meat commodities, animal feeds, refined sugars, and other uses), and seeks comment on EPA's approach to the identification of other non-contributors.

DATES: Comments, identified by the docket control number OPP–2002–0060, for approaches for identifying other tolerances that make, at most, a negligible contribution to the cumulative risk from OP pesticides must be received on or before June 21, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–2002–0060 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general who are interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. 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/. In addition, copies of this Notice may also be accessed at http: www.epa.gov/pesticides/cumulative under the heading ''Tolerance Activities.''

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0060. 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, Crystal 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–2002–0060 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0060. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Food Quality Protection Act of 1996 significantly amended the FFDCA, creating a new safety standard for judging the acceptability of tolerances for pesticide residues in food. The new statutory standard allows EPA to approve a new tolerance or leave an existing tolerance in place only if the tolerance is ''safe.'' The statute 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 data'' (FFDCA section 408(b)(2)(A)(ii)). In making the safety determination, EPA ''shall consider, among other relevant factors . . . available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity'' (FFDCA section 408(b)(2)(D)(v)). The FQPA amendments not only made the new safety standard applicable to new tolerances, but also to tolerances in existence when FQPA became law. FQPA set a 10–year schedule for EPA to reassess all existing tolerances, with interim deadlines for completion of 33% and 66% of tolerance reassessments 3 and 6 years, respectively, after the date of enactment. Pesticide tolerances subject to reassessment under FQPA section 408(q) may only remain in effect without modification if they meet the section 408(b)(2) safety standard. Finally, FQPA instructed EPA to give priority to the review of tolerances which appear to pose the greatest risk to public health.

Consistent with the FQPA mandate, EPA identified OP pesticides as high priority for tolerance reassessment. EPA has determined that the OPs share a ''common mechanism of toxicity,'' the inhibition of cholinesterase, and therefore the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP

pesticides to determine whether they meet the current health and safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA safety standard, and has presented its determinations in documents called ''Interim Reregistration Eligibility Decisions'' (IREDs). When the pesticide covered by an IRED shares a common mechanism of toxicity with other pesticides, the IRED addresses the aggregate risk of the chemical but does not take a position on the FFDCA standard until the Agency has also considered the potential cumulative risks of the group of pesticides. In addition to its consideration of individual OP pesticides, EPA has also conducted a preliminary cumulative risk assessment (CRA) for all of the OPs and sought public comment on the assessment. The risk assessment documents are available at www.epa.gov/pesticides/cumulative. In addition, EPA presented the assessment to its FIFRA Scientific Advisory Panel (SAP) for expert, independent scientific peer review. The SAP provided a generally favorable review of the preliminary assessment. See http://www.epa.gov/scipoly/sap/index.htm. EPA is in the process of revising the CRA, taking into account public comment and SAP advice.

EPA has raised with stakeholders during a number of public meetings the concept of reassessing selected OP tolerances because, based on available data and assessments, EPA could determine that they make, at most, no more than a negligible contribution to risk. Most recently, the concept of reassessing such ''non-contributors'' was an agenda topic for the February 2002 meeting of the Committee to Advise on Reassessment and Transition (CARAT).

III. What Action is the Agency Taking?

A. Reassessment of Non-Contributor Tolerances

In this Notice, EPA identifies several categories of non-contributor tolerances and considers these tolerances reassessed for the purposes of FQPA section 408(q) as of today's date. Pesticide tolerances subject to reassessment under FQPA section 408(q) may only remain in effect without modification if it meets the section 408(b) safety standard. This standard is met if EPA finds that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.'' In evaluating tolerances under the standard, the FQPA also instructs the Agency to consider the cumulative effects of the pesticide and other substances that have a common mechanism of toxicity. For each of the tolerances being reassessed, the Agency has issued an IRED, which found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has now considered the impact of these cumulative risks in the reassessment of these tolerance and has determined that these tolerances make, at most, only a negligible contribution to the overall risks from OPs. Therefore, these tolerances will be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA believes it is appropriate to consider these tolerances reassessed for the purposes of FQPA section 408(q) as of today's date.

EPA has determined that the tolerances identified in this Notice as reassessed contribute negligible, if any, residues and/or risk to the overall risks from OPs. These OP tolerances have been divided into four broad categories: (1) Certain animal commodities, including milk, eggs, poultry, and other meats (cattle, goats, hogs, horses, and sheep); (2) certain crops that are solely used as animal feeds; (3) certain crops that are refined sugars; and (4) certain other tolerances based on the nature of their use pattern.

In making the determination that these tolerances contribute negligible (if any) residues and/or risk, EPA considered, among other things, the nature of the use of the pesticide, the data used in conducting aggregate risk assessments for each individual OP, the potential for drinking water contamination, and other data and analyses available to the Agency (such as food residue monitoring and other information that the Agency is using for the CRA). The Agency concludes that these pesticide uses result in minimal or no detectable residues in food, and have no or negligible effects through drinking water. No tolerances are herein reassessed as a non-contributor unless all of the raw agricultural commodities (food forms) that are part of that tolerance are also considered to be non-contributors (e.g., the animal feed tolerances are solely for crops fed to animals). EPA also considered the potential impacts of future OP risk management decisions and determined that such decisions would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be negligible. As part of its preliminary CRA, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to overall risk as a result of the presence of residues of such pesticides in drinking water. Because of the nature of the available data, EPA's estimate employs assumptions that are designed not to understate potential drinking water exposure. The OP preliminary CRA concluded that drinking water was not a significant source of potential exposure. In reaching the determination to reassess these tolerances, EPA has considered this analysis, the public comment and SAP advices, as well as the information developed to assess the aggregate exposure from drinking water for each of the individual pesticides being reassessed. The Agency's assessment of these tolerances is effectively complete and the tolerances are considered reassessed. Nothing in this Notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs. Because these tolerances are to remain in effect, all of these pesticide/use pattern combinations that are included in the preliminary CRA will remain in the CRA even though they involve exposures that pose negligible/minimal risk.

No conclusions about reassessment should be drawn about tolerances that are not identified as non-contributors in this Notice. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described here, and that additional tolerances may be reassessed without the need for regulation upon completion of the CRA. In other words, the failure of a tolerance to be identified as a non-contributor in this or any other announcement does not imply that the pesticide/use combination will ultimately be subject to regulatory action. For tolerances reassessed as announced in this Notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of concern.

Categories 1 and 2—Animal Commodities (Meats, Poultry, Milk, and Eggs), and Animal Feeds

The first two categories, tolerances for human foods derived from animal sources (referred to as animal commodities) and tolerances for commodities consumed by animals (referred to as animal feeds), are discussed together because the same

information was used to evaluate the likelihood of exposure and risk for both categories of tolerances.

EPA has determined that certain OP tolerances, listed later in the Notice, on animal commodities and animal feeds are reassessed at this time. Currently, there are OP tolerances for many animal commodities: milk, eggs, poultry, and other meats (cattle, goats, hogs, horses, and sheep). Human exposure to pesticide residues can occur as a consequence of the use of a pesticide on animals or their feed if the residues transfer to the animal commodities that humans consume. EPA examined the potential for the transfer to such human foods of OP residues from animal feeds, and from the direct application of the OP to an animal (e.g., to control nuisance pests such as biting flies), and concludes that residue transfer generally does not occur, or if it does, the transfer is minimal. The following summarizes the factors that the Agency considered in making the decision to reassess these tolerances.

The Agency examined the available study data for the OPs, which includes extensive livestock feeding/metabolism studies. These study results are confirmed by extensive monitoring data on animal commodities reflecting all registered uses. There are very few detectable residues in the OP monitoring data for animal commodities. The extensive monitoring data are from the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) and the U.S. Food and Drug Administration's (FDA) Total Diet Study (TDS) covering residues of multiple OPs in meats and poultry. The residue monitoring data showed infrequent detections, and those residues were detected at low levels. Out of approximately 400 meat samples analyzed by the TDS for multiple OPs from 1991-1999, only nine samples detected any OP residues (the residues ranged between 0.002 parts per million (ppm) and 0.009 ppm). Out of the approximately 500 poultry samples analyzed by PDP for multiple OPs for 1997 - 2000, only one sample detected an OP residue (0.01 ppm) for a pesticide that currently has a tolerance.

For milk and eggs, extensive monitoring data are available from USDA's PDP and FDA's Surveillance Program. The residue monitoring data show no detectable OP residues in milk (there was only one trace sample detected out of approximately 1,800 samples analyzed by PDP for multiple OPs from 1996-1998). The residue monitoring for eggs also showed no detectable OP residues (only 1 trace sample was detected out of approximately 1,300 samples analyzed by FDA's Surveillance Program for multiple OPs from 1992–1998). In addition to an examination of the meat, poultry, milk, and egg monitoring data, as described above, the potential risk associated with the detected residues was addressed in the Agency's preliminary CRA of the OP pesticides. Although EPA concluded that ''OP residues would not be expected to occur in significant amounts'' in meat or milk, EPA nonetheless made the conservative assumption that all meat food forms contained OP residues equal to a level that was the highest found in the FDA monitoring program (TDS). Despite the fact that this assumption would overestimate potential exposure, the analysis in the OP preliminary CRA indicated that animal commodities do not significantly contribute to OP dietary exposure and total OP dietary risk.

In light of all these considerations, the 172 OP meats (cattle, goats, hogs, horses, and sheep), poultry, milk, and egg tolerances listed in Table 1 are considered reassessed. In addition, because animal feeding and metabolism studies indicate that residue transfer to foods that humans eat will be minimal, and because the residues of OPs were detected only very rarely in meats, poultry, milk, and eggs, and only at very low levels, EPA concludes that OPs applied to animal feed crops (such as feed, forage, fodder, nut hulls, vines, and hays) will not be present to any significant extent in human food and such residues will make, at most, a negligible contribution to OP risk. Therefore, the 88 OP tolerances for animal feeds (such as feed, forage, fodder, nut hulls, vines, and hays) listed in Table 2 are also considered reassessed. It is important to note that these tolerances are solely for animal feeds, i.e, the tolerances do not include commodities that are also consumed by humans. EPA expects to announce other meat/poultry/egg/milk and animal feed tolerances as reassessed in future notices as appropriate in light of their individual OP assessments.

In addition, some of these tolerances may be revoked in future Notices in the **Federal Register** if EPA determines that the tolerances are no longer needed. The Agency plans to issue a notice announcing the Agency's intention to revoke several animal meat tolerances because they are no longer necessary.

TABLE 1.—MEATS, POULTRY, MILK, AND EGGS

Chemical	Commodity
Acephate (40 CFR part 180.108)	Cattle, fat Cattle, mbyp Cattle, meat Eggs Goats, fat Goats, mbyp Goats, meat Hogs, fat Hogs, mbyp Hogs, meat Horses, fat Horses, mbyp Horses, meat Milk Poultry, fat Poultry, mbyp Poultry, meat Sheep, fat Sheep, mbyp Sheep, meat
Chlorpyrifos (40 CFR part 180.342)	Cattle, fat Cattle, mbyp Cattle, meat Eggs Goats, fat Goats, mbyp Goats, meat Hogs, fat Hogs, mbyp Hogs, meat Horses, fat Horses, mbyp Horses, meat Milk, fat Milk, whole Poultry, fat (including turkeys) Poultry, mbyp (including turkeys) Poultry, meat (including turkeys) Sheep, fat Sheep, mbyp Sheep, meat
Chlorpyrifos methyl (40 CFR part 180.419)	Cattle, fat Cattle, mbyp Cattle, meat Eggs Goats, fat Goats, mbyp Goats, meat Hogs, fat Hogs, mbyp Hogs, meat Horses, fat Horses, mbyp Horses, meat Milk Milk, fat Poultry, fat Poultry, mbyp Poultry, meat Sheep, fat Sheep, mbyp Sheep, meat

TABLE 1.—MEATS, POULTRY, MILK, AND EGGS—Continued

Chemical	Commodity
Coumaphos (40 CFR part 180.189)	Cattle, fat Cattle, mbyp Cattle, meat Goats, fat Goats, mbyp Goats, meat Hogs, fat Hogs, mbyp Hogs, meat Horses, fat Horses, mbyp Horses, meat Milk, fat (=N in whole milk) Sheep, fat Sheep, mbyp Sheep, meat
Fenamiphos (40 CFR part 180.349)	Cattle, fat Cattle, mbyp Cattle, meat Goats, fat Goats, mbyp Goats, meat Hogs, fat Hogs, mbyp Hogs, meat Horses, fat Horses, mbyp Horses, meat Milk Sheep, fat Sheep, mbyp Sheep, meat
Oxydemeton methyl (40 CFR part 180.330)	Cattle, fat Cattle, mbyp Cattle, meat Goats, fat Goats, mbyp Goats, meat Hogs, fat Hogs, mbyp Hogs, meat Horses, fat Horses, mbyp Horses, meat Milk Sheep, fat Sheep, mbyp Sheep, meat
Phosmet (40 CFR part 180.261)	Cattle, fat Cattle, mbyp Cattle, meat Goats, fat Goats, mbyp Goats, meat Hogs, fat Hogs, mbyp Hogs, meat Horses, fat Horses, mbyp Horses, meat Sheep, fat Sheep, mbyp Sheep, meat

TABLE 1.—MEATS, POULTRY, MILK, AND EGGS—Continued

Chemical	Commodity
Pirimiphos methyl (40 CFR part 180.409)	Cattle, fat Cattle, kidney Cattle, liver Cattle, mbyp Goats, fat Goats, kidney Goats, liver Goats, mbyp Hogs, fat Hogs, kidney Hogs, liver Hogs, mbyp Horses, fat Horses, kidney Horses, liver Horses, mbyp Poultry, fat Sheep, fat Sheep, kidney Sheep, liver Sheep, mbyp
Profenofos (40 CFR part 180.404)	Cattle, fat Cattle, mbyp Cattle, meat Goats, fat Goats, mbyp Goats, meat Horses, fat Horses, mbyp Horses, meat Milk Sheep, fat Sheep, mbyp Sheep, meat
Tribufos (40 CFR part 180.272)	Cattle, fat Cattle, mbyp Cattle, meat Goats, fat Goats, mbyp Goats, meat Milk Sheep, fat Sheep, mbyp Sheep, meat
Trichlorfon (40 CFR part 180.198)	Cattle, fat Cattle, mbyp Cattle, meat

TABLE 2.—ANIMAL FEED

Chemical	Commodity
Acephate (formerly 40 CFR part 186.100)	Cotton, seed, hulls Mint, hay (40 CFR part 180.108)
Azinphos methyl (40 CFR part 180.154)	Alfalfa Alfalfa, hay Almonds, hulls Clover Clover, hay Trefoil, birdsfoot Trefoil, birdsfoot, hay

TABLE 2.—ANIMAL FEED—Continued

Chemical	Commodity
Chlorethoxyphos (40 CFR part 180.486)	Corn, field, Fodder (stover) Corn, field, forage Corn, pop, fodder (stover) Corn, sweet, fodder (stover) Corn, sweet, forage
Chlorpyrifos (40 CFR part 180.342)	Alfafa, green, forage Alfalfa, hay Almonds, hulls Beets, sugar, pulp, dried Beets, sugar, tops Citrus, pulp, dried Corn, fodder Corn, forage Mint, hay Sorghum, fodder Sorghum, forage Soybeans, forage Soybeans, straw Wheat, forage Wheat, straw
Disulfoton (40 CFR part 180.183)	Barley, fodder, green Barley, straw Beets, sugar, tops Peanuts, hay Peas, vines Sorghum, fodder Sorghum, forage Soybeans, forage Soybeans, hay Wheat, fodder, green Wheat, straw
Ethoprop (40 CFR part 180.262)	Corn, fodder Corn, forage Peanuts, hay
Fenamiphos (formerly 40 CFR part 186.295)	Citrus, pulp, dried Pineapples, bran
Methidathion (40 CFR part 180.298)	Alfalfa Alfalfa, hay Almonds, hulls Grasses Grasses, hay Sorghum, fodder Sorghum, forage
Naled (40 CFR part 180.215)	Almonds, hulls Beets, sugar, tops Grasses, forage Legumes, veg foliage

TABLE 2.—ANIMAL FEED—Continued

Chemical	Commodity
Oxydemeton methyl (40 CFR part 180.330)	Alfalfa, green Alfalfa, hay, for seed Beans, lima, forage Beans, snap forage Beets, sugar, tops Clover, chaff, for seed Clover, green Clover, hay, for seed Corn, fodder Corn, forage Mint, hay Sorghum, forage Sorghum, milled fraction (except flour)
Phorate (40 CFR part 180.206)	Beets, sugar, tops Corn, forage Sorghum, fodder Wheat, fodder, green Wheat, straw
Phosmet (40 CFR part 180.261)	Alfalfa Almonds, hulls Peas, forage Peas, hay
Propetamphos (formerly 40 CFR part 186.510)	Animal feed
Terbufos (40 CFR part 180.352)	Beets, sugar, tops Corn, field, fodder Corn, field, forage Corn, pop, fodder Corn, pop, forage Corn, sweet, fodder Corn, sweet, forage Sorghum, fodder Sorghum, forage

Category 3--Refined Sugars

As discussed in the OP preliminary CRA, negligible OP residues are expected to occur for refined sugars produced from beets and sugarcane based on available monitoring data (USDA's PDP and FDA's TDS) and the nature of the refining process. PDP has analyzed high fructose corn syrup and found no pesticide residues. The TDS has analyzed refined sugar and maple sugar and found no OP residues in 26 market basket surveys. Knowledge of the highly refined nature of sugars and syrups also supports the conclusion that negligible residues are expected to occur in refined sugars from sugarcane and sugar beets. The following 10 tolerances listed in Table 3 are considered reassessed:

TABLE 3—REFINED SUGARS

Chemical	Commodity
Chlorpyrifos (40 CFR part 180.342)	Beets, sugar, molasses Beets, sugar, roots
Disulfoton (40 CFR part 180.183)	Beets, sugar, roots Sugarcane
Ethoprop (40 CFR part 180.262)	Sugarcane
Naled (40 CFR part 180.215)	Beets, sugar, roots
Oxydemeton methyl (40 CFR part 180.330)	Beets, sugar
Phorate (40 CFR part 180.206)	Beets, sugar, roots Sugarcane
Terbufos (40 CFR part 180.352)	Beets, sugar, roots

Category 4 -- Use Pattern Consideration

EPA has determined that an additional small number (five) of OP tolerances can be reassessed now based on the way the pesticides are used.

For the following two pesticide active ingredients, cadusafos and propetamphos, negligible, if any, exposures (including in drinking water) are expected due to the nature of their use patterns. Each pesticide has one tolerance, and both are considered reassessed.

- Cadusafos (40 CFR part 180.461): One import tolerance on bananas. Cadusafos is used exclusively on imported bananas. No detectable food residues are expected from this use based on the nature of the use pattern (e.g., when the pesticide is typically applied) and a consideration of the nature of the commodity (i.e., the protective peel of the banana fruit).
- Propetamphos (40 CFR part 180.541): One tolerance for processed food. Propetamphos is used only as a crack and crevice treatment. It is not allowed to be used in structures that children or the elderly occupy, including homes, schools, day-cares, hospitals, and nursing homes with the exception of areas of food service within those structures when food is covered or removed prior to treatment. As the result of these restrictions, exposure is expected to be negligible.

Chlorethoxyfos (40 CFR part 180.486) is a soil insecticide that is applied at planting to corn, and no detectable food residues are expected from this use. The chlorethoxyfos IRED states that field trials showed no residues (less than 0.01 ppm) of the parent in any of the corn raw agricultural commodities analyzed, even after treatment at a 10X rate. Chlorethoxyfos on corn was included in the OP preliminary CRA to assess its potential for contaminating drinking water. In the preliminary CRA, no drinking water risks were indicated even when high relative potency values were used (a screening relative potency factor (RPF) of 25 was used, which is approximately 200 times greater than the recently calculated RPF for this pesticide). Therefore, the following three chlorethoxyfos corn tolerances are considered reassessed: corn, pop, grain; corn, field, grain; and corn, sweet (K+CWHR) (i.e., kernel plus cob with husks removed).

IV. Approach for Identifying Other Non-Contributor Categories

EPA is evaluating other potential non-contributor tolerances. For example, it is possible that non-contributor determinations could be made for certain categories or types of tolerances for foods that are reported to have little or no consumption, or where few or no residues are detected. In evaluating candidate tolerances, EPA would consider all relevant data and factors, including information from the individual OP aggregate risk assessments, before making a reassessment determination.

The Agency seeks comment about the use of the approach described here and the factors that are relevant to reassessment determinations based on this approach. EPA will announce the reassessment of non-contributor tolerances on the Agency's internet website (www.epa.gov/pesticides/cumulative).

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 14, 2002.

Lois Rossi,

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

[FR Doc. 02–12713 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0046; FRL–6836–4]

Notice of Filing a Pesticide Petition To Establish a Tolerance fora Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of the pesticide petition (PP 6F3344) proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number OPP–2002–0046, must be received on or before June 21, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0046 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulation 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/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0046. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0046 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0046. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 3, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material for clarification, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences LLC

PP 6F3344

EPA has received an amendment of the pesticide petition (PP 6F3344) from Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by re-establishing the time-limited tolerances for residues of dichlormid in or on the raw agricultural commodity corn (forage, grain, stover) at 0.05 parts per million (ppm). Zeneca Ag Products requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. A Notice of Filing was submitted and published in the **Federal Register** of September 16, 1998 (63 FR 49568) (FRL–6025–8). Based on the data submitted by Zeneca, the Agency determined that only time-limited tolerances for these residues could be established. The final rule was published on March 27, 2000 (65 FR 16143) (FRL–6498–7) with the time-limited tolerances expiring on March 27, 2002. To establish permanent tolerances the following studies are required: (1) Chronic Feeding Study in Dogs, (2) 2-Generation Reproductive Study in Rats, (3) General Metabolism Study, and (4) Subchronic Neurotoxicity Study, (5) various product chemistry data-color, physical state, water solubility; (6) animal metabolism studies, (7) crop field trials, and (8) rotational crop study (Confined Study). Zeneca committed to fulfill these data gaps. These time-limited tolerances expired on March 27, 2002.

On November 9, 2000, Zeneca Ag Products sold certain parts of its business to Dow AgroSciences. In connection with the sale, Zeneca Ag products tranferred all rights, title, and interest in dichlormid to Dow AgroSciences.Dow AgroSciences has petitioned the Agency to re-establish time-limited tolerances to allow for continued data generation. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residue in plants is adequately understood based on a study depicting the metabolism of dichlormid in corn plants. The metabolism of dichlormid in corn is extensive and occurs via two metabolic pathways. In one pathway dichlormid is de-chlorinated and oxidized to generate *N,N*-diallyl glycolamide. An alternative pathway is the loss of an allyl group followed by oxidation to form dichloroacetic acid. There is also extensive incorporation into natural constituents. EPA has previously determined that dichlormid is the residue of concern for tolerance setting purposes.

2. *Analytical method*. An adequate enforcement method for residues of dichlormid in corn has been developed and validated by the Analytical Chemical Laboratory (ACL) of EPA. Analysis is carried out using gas chromatography with nitrogen selective thermionic detection. The limit of determination is 0.01 ppm.

3. *Magnitude of residues*. Fifteen field trials in field corn with dichlormid were submitted and reviewed. The submitted data support the time-limited tolerance level of 0.05 ppm for all corn commodities.

B. Toxicological Profile

1. *Acute toxicity*. Dichlormid has low acute toxicity as indicated by a range of studies including: A rat acute oral study with an LD_{50} of 2,816 milligram/kilogram (mg/kg) for males and 2,146 mg/kg for females, respectively; a rat acute dermal study with an LD_{50} of >2,040 mg/kg and a rabbit acute dermal study with an LD_{50} of >5,000 mg/kg; a rat inhalation study with an LD_{50} of >5.5 mg/L; a primary eye irritation study in the rabbit showing mild ocular irritation; a primary dermal irritation study in the rabbit showing severe skin irritation; and, a skin sensitization study which showed that dichlormid was a mild skin sensitizer in the guinea pig.

2. *Genotoxicity*. Dichlormid was not mutagenic in a range of *in vitro* assays including the *Salmonella*/microsome (Ames) assay, the human lymphocyte cytogenetic assay (both assays with and without metabolic activation) and an unscheduled DNA synthesis (DNA repair) assay in hepatocytes. In the L5178Y mouse lymphoma assay small increases in mutant frequency were observed only at cytotoxic concentrations and were not considered to be significant. *In vivo*, dichlormid was negative in the mouse micronucleus test and in the rat unscheduled DNA synthesis assay when tested at the maximum tolerated dose.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study, rats were dosed orally by gavage with 0, 10, 40, or 160 mg/kg/day. The no observed adverse effect level (NOAEL) for maternal toxicity was 10 mg/kg/day based on a reduction in bodyweight gain and food consumption at 40 and 160 mg/kg/day. The developmental NOAEL was determined

to be 40 mg/kg/day based on marginal fetotoxic effects, including extra 14th ribs probably due to maternal stress, slight sternebra misalignment and some centra unossified, at 160 mg/kg/day.

In a developmental toxicity study, rabbits were dosed orally by gavage with 0, 5, 30, or 180 mg/kg/day. The lowest observed adverse effect level (LOAEL) for both maternal and fetotoxicity was 180 mg/kg/day characterized by reduced body weight gain and food consumption and a small increase in post-implantation loss, an increased number of early resorptions, a decreased number of fetuses per litter and evidence of fetotoxicity (partial ossification and misshapen/fused sternebrae). The NOAEL for both maternal and developmental toxicity was 30 mg/kg/day.

In a 2–generation reproduction study in rats fed diets of 0, 15, 75, and 500 ppm of dichlormid, dietary administration of 500 ppm dichlormid (48.5 mg/kg/day) for two successive generations resulted in decreased bodyweights and increased liver weights in parents and pups of both generations. There were no effects on reproductive performance or reproductive organs at dose levels up to and including 500 ppm dichlormid. There were no toxicologically significant effects in parents or offspring at a dose level of 75 ppm dichlormid (>7.4 mg/kg/day).

4. *Subchronic toxicity*. In a subchronic toxicity study, groups of 12 male and 12 female Wistar-derived alpk:ApfSD rats were fed diets containing 0, 20, 200, or 2,000 ppm dichlormid for 90 days. Significant reductions in bodyweight gain and food consumption were seen in male and female rats receiving 2,000 ppm dichlormid and, to a lesser degree, in females at 200 ppm. The liver was identified as the principal target organ (enlargement, increased APDM activity in females, centrilobular hypertrophy, increased bile duct pigmentation) in the 2,000 ppm group. The NOAEL was 20 ppm (equivalent to approximately 1.8 mg/kg/day - see discussion under Chronic toxicity in Unit 2.B.5 of this document) and the LOAEL was 200 ppm, based on reduced bodyweight gain and food consumption and a marginal increase in APDM activity in females and liver enlargement in males.

In a 90–day dog feeding study, previously submitted and accepted by EPA, animals were dosed (4 dogs/sex/dose) at 0, 1, 5, 25, and 50 mg/kg/day. The NOAEL was 5 mg/kg/day and the LOAEL 25 mg/kg/day based on reduced bodyweight gain, increased liver weight and degenerative changes in voluntary muscle with an associated increase in plasma creatine kinase and alkaline phosphatase activity between 6 and 10 weeks.

In a 14–week rat inhalation study, groups of 18 male and 18 female Sprague-Dawley CD rats were subjected to a whole body exposure of 0, 2.0, 19.9, or 192.5 mg/m^3 for 6 hours per day, 5 days per week. The NOAEL was 2.0 mg/m^3 based on histopathologic tissue alterations to the nasal olfactory epithelium at 19.9 and 192.5 mg/m^3, suggesting that dichlormid was a mild irritant to the nasal cavity. An increase in relative liver, kidney, and lung weights at 19.9 and 192.5 mg/m^3 was not supported by gross or histopathological observations.

5. *Chronic toxicity*. Rats (64/sex/group) were fed diets containing 0, 20, 100, or 500 ppm dichlormid (0, 1.3, 6.5, 32.8 mg/kg/day for males and 0, 1.5, 7.5, 37.1 mg/kg/day for females) for up to 2 years. At 500 ppm in both males and females, there were treatment-related effects on growth and food consumption, minor reductions in plasma triglycerides and in males, increased liver weights, accompanied by hepatocyte vaculolation and pigmentation effects. In females there was a slight overall increase in malignant tumors, primarily uterine adenocarcinomas, at 500 ppm, but this specific increase was within the spontaneous incidence observed in historical data. It was concluded that there was no evidence of oncogenicity associated with dichlormid treatment. The NOAEL for chronic toxicity was 100 ppm (6.5 and 7.5 mg/kg/day for males and females, respectively).

In an 18-month oncogenicity study, mice (55/sex/group) were fed dichlormid at doses of 0, 10, 50, or 500 ppm (0, 1.4, 7.0, 70.7 mg/kg for males and 0, 1.84, 9.2, 92.4 mg/kg for females). At 500 ppm there was a slight increase in mortality for females from week 64 onwards, and bodyweights and food utilization were reduced in males, and, to a lesser extent in females. Also, mice fed 500 ppm dichlormid showed non-neoplastic changes which were minor and consisted of changes in severity or incidence of common spontaneous findings. Based on these effects, the chronic NOAEL was 50 ppm (7.0 and 9.2 mg/kg/day for males and females, respectively). There was a marginal increase in Harderian gland adenomas in males at 500 ppm, but this was considered to reflect the variable spontaneous tumor rate seen in this strain and sex of mouse. It was concluded there was no evidence of oncogenicity associated with dichlormid treatment.

Based on available chronic toxicity data, the Reference Dose (RfD) for dichlormid is 0.07 mg/kg/day. This RfD is based on the 2–year feeding study in rats with an NOAEL of 7 mg/kg/day. An uncertainty factor of 100 was used to account for interspecies extrapolation and intraspecies variability. The 2–year rat study is consistent with, but supersedes, the 90–day rat study. The 2–year rat NOAEL of 7 mg/kg/day lies between 1.8 and 18 mg/kg/day derived from the NOAEL and LOAEL figures of 20 and 200 ppm, respectively, for the most recent 90-day rat study. Thus, the overall NOAEL in the rat for both chronic and subchronic exposure should be regarded as 7 mg/kg/day. Based on the proposed Guidelines for Carcinogenic Risk Assessment (July 1999), dichlormid is not likely to be a human carcinogen and a margin of exposure (MOE) approach should be used for human risk assessment.

6. *Animal metabolism*. Dichlormid was well absorbed, extensively metabolized and eliminated mainly in the urine within 24 hours. A significant proportion of the dose, up to 11%, was exhaled as CO_2. Two routes of biotransformation have been identified. One route involved the formation of an alcohol *N*,*N*-diallylglycolamide before subsequent oxidation to *N*,*N*-diallyloxamic acid, a major metabolite present in the urine and feces of both sexes. *N*,*N*-diallylglycolamide also undergoes further biotransformation to minor dechlorinated metabolites. In the second metabolic pathway dichloroacetic acid present in the urine of both sexes is formed either directly from dichlormid or indirectly by transformation of *N*-allyl-2,2-dichloro-*N*-(2,3-dihydroxypropyl)acetamide. Entero-hepatic recirculation plays a major role in the distribution, metabolism and excretion of dichlormid. The elimination as CO_2, the even elimination in urine over the first 24 hours, and wide distribution of retained radioactivity indicates some incorporation into endogenous metabolic processes.

7. *Metabolite toxicology*. No unique plant or soil metabolites have been identified that warrant a separate toxicological assessment.

8. *Endocrine disruption*. There is no overall trend in the toxicology database that indicates that dichlormid would have endocrine disrupting activity. The mammalian and ecotoxicology databases do not indicate significant adverse effects associated with endocrine disrupter activity.

C. Aggregate Exposure

1. *Food*. In conducting a chronic dietary risk assessment, reference is made to the conservative assumptions made by EPA: Dichlormid time-limited tolerances (65 FR 16143, March 27, 2000), 100% crop-treated, and that all commodities contain residues at the tolerance or proposed tolerance. The analysis was determined using the Novigen Dietary Exposure Evaluation Model (DEEM Version 6.2) software and the United States Department of Agriculture (USDA) Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) survey that was conducted from 1994 through 1996.

2. *Drinking water*. Dichlormid is very rapidly degraded in soil (laboratory measured aerobic half-life of 8 days) and applied at a maximum rate of 0.5 lb/acre, so despite only exhibiting moderate adsorption to soil (Koc 36-49), the leaching potential for dichlormid to reach ground water is expected to be low. The impact of the interactive processes of adsorption and degradation on leaching have been assessed using EPA mathematical models of pesticide movement in soil. Drinking water estimate concentrations (DWEC) were calculated for ground water using Screening Concentration in Ground Water (SCI-GROW) modeling, and surface water estimate concentrations were calculated using Generic Estimated Environmental Concentration (GENEEC) modeling. These models predict a ground water concentration of 0.05 ppb and surface water concentrations of 27.3 ppb for an instantaneous peak and 26.9 ppb for a 56–day average. However, the interim Agency policy in March 2000, allowed the average 56–day GENEEC values to be divided by 3 (9.0 ppb) to obtain a value for chronic risk assessments. Drinking water levels of concern (DWLOC) were then calculated for both chronic and acute exposure. These DWLOC values are all comfortably below the water exposure estimates obtained from the screening level model GENEEC. Dow AgroSciences does not expect exposure to dichlormid residues in drinking water to be a concern.

3. *Non-dietary exposure*. The general population is not expected to be exposed to dichlormid through non-dietary routes since dichlormid is used only on agricultural crops and is not used in or around the home.

D. Cumulative Effects

The potential for cumulative effects of dichlormid and other substances that have a common mechanism of toxicity have been considered. There is no reliable information to suggest that dichlormid has any toxic effects that arise from toxic mechanisms common to other substances. Therefore, a consideration of common mechanism and cumulative effects with other substances is not appropriate for dichlormid.

E. Safety Determination

1. *U.S. population*—i. *Chronic risk*. Using the conservative exposure assumptions described earlier, and based on the completeness and reliability of the toxicity data base for dichlormid, the theoretical maximum residue concentration (TMRC) for the general U.S. population is calculated to be 0.00009 mg/kg/day, or 4.1% of the cPAD (0.0022 mg/kg/day). The most highly exposed subgroup are children aged 1-6 years with a TMRC of 0.000211 mg/kg/day, or 9.6% of the cPAD. The RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Dow AgroSciences concludes that there is a reasonable certainty that no harm will result from aggregate exposure to dichlormid residues.

ii. *Acute risk*. The acute toxicity of dichlormid is low and there are no concerns for acute-dietary, occupational, or non-occupational exposures to dichlormid.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of dichlormid, data from developmental toxicity studies in the rat and rabbit have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. There was no evidence to suggest that dichlormid was a developmental toxicant in either the rat or rabbit. It was also observed that there was no risk below maternally toxic doses as the NOAEL for developmental effects in the rat was 40 mg/kg/day, compared to the maternal NOAEL of 10 mg/kg/day and, in the rabbit study, the NOAEL for both maternal and developmental effects was 30 mg/kg/day. EPA previously concluded in the March 27, 2000 **Federal Register** that the additional 10x safety factor should be retained due to the qualitative evidence of increased susceptibility demonstrated following *in utero* exposure in the prenatal developmental toxicity in rabbits and an incomplete toxicity data base. It should be noted that in the rabbit developmental toxicity study, the LOAEL for both maternal and developmental toxicity was 180 mg/kg/day. The effects on resorptions at this dose were observed in dams which showed an average weight loss (-3.8 gram) during the treatment period compared with an average weight gain in controls of 272 gram. Also, a multigeneration study has now been completed and, therefore, an additional safety factor should no longer be necessary.

Additional uncertainty factors are not warranted for the safety of infants and children as reliable data support the appropriate use of a 100-fold uncertainty factor (MOE) to account for interspecies extrapolation and intraspecies variability. However, using the conservative exposure assumptions above for the determination in the general population, it is concluded that the percentage of cPAD that will be utilized by aggregate exposure to dichlormid is 9.6% for children aged 1-6 years (the group at highest risk). Therefore, based on the completeness and reliability of the toxicity database and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dichlormid residues.

F. International Tolerances

A Maximum Residue Level has not been established for dichlormid by the Codex Alimentarius Commission.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0050; FRL–6836–8]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under theFederal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period January 1, 2002 to March 31, 2002 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration

Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for authorization under section 18 of FIFRA to use pesticide products which are otherwise unavailable for a given use. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Federal Government	9241	Federal agencies that petition EPA for section 18 pesticide useauthorization
State and Territorial government agencies charged with pesticide authority	9241	State agencies that petition EPA for section 18 pesticide useauthorization

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 166. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of thisdocument, 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/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0050. 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, Crystal 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

Under FIFRA section 18, EPA can authorize the use of a pesticide whenemergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Alabama

Department of Agriculture and Industries

Denial: On February 20, 2002, EPA denied the use of norflurazon on bermudagrass meadows to control annual grassy weeds. This request was denied because a registered alternative is now available; a significant economic loss has not been demonstrated to occur if an additional pesticide is not made available; EPA can no longer determine that reasonable progress toward registration is being made; EPA is unable to reach a ''reasonable certainty of no harm'' finding regarding human health effects which may result if the pesticide use were to occur; and EPA is unable to conclude that use of this product would not result in unacceptable adverse effects to the environment and ground water resources.Contact: (Libby Pemberton).

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; March 22, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of diuron on commercial catfish ponds to control blue-green algae; June 1, 2002 to November 30, 2002. Contact: (Dan Rosenblatt)

Arkansas

State Plant Board

Specific: EPA authorized the use of coumaphos in beehives to control

varroa mites and small hive beetles; February 20, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 7, 2002 to July 31, 2002. Contact: (Dan Rosenblatt)

California

Environmental Protection Agency, Department of Pesticide Regulation

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of s-metolachlor on tomato to control weeds; March 12, 2002 to July 31, 2002. Contact: (Andrew Ertman)

EPA authorized the use of tebufenozide on wine grapes to control grape leaffolder (*Desmia funeralis* (*Hubner*)) and Omnivorous leafroller (*Platynota stultana* (*Walshingham*)); April 1, 2002 to October 31, 2002. Contact: (Barbara Madden)

EPA authorized the use of fludioxonil on stone fruit to control brown rot, gray mold and rhizopus rot; May 1, 2002 to November 1, 2002. Contact: (Andrew Ertman)

Colorado

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 26, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of difenoconazole on sweet corn seed to control fungal pathogens; February 28, 2002 to February 28, 2003. Contact: (Andrea Conrath)

EPA authorized the use of s-metolachlor on spinach to control pigweed; March 19, 2002 to September 30, 2002. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; April 1, 2002 to July 1, 2002. Contact: (Andrew Ertman)

Connecticut

Department of Environmental Protection

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of propiconazole on blueberries to control mummy berry disease; March 19, 2002 to June 15, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of imidacloprid on strawberries to control root feeding beetles; July 1, 2002 to August 7, 2002. Contact: (Andrew Ertman)

Delaware

Department of Agriculture

Denial: On February 14, 2002, EPA denied the use of chloropropham on spinach to control weeds. This request was denied because no progress towards registration has been made and based upon information available to the Agency no progress towards registration will be made for this use. Contact: (Barbara Madden).

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; March 4, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of terbacil on watermelons to control broadleaf weeds; March 27, 2002 to June 15, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of imidacloprid on stone fruit to control aphids; April 1, 2002 to October 15, 2002. Contact: (Andrew Ertman)

Florida

Department of Agriculture and Consumer Services

Specific: EPA authorized the use of pyriproxyfen on legume vegetables to control whiteflies; February 5, 2002 to February 5, 2003. Contact: (Andrea Conrath)

EPA authorized the use of thiophanate methyl on citrus to control Postbloom Fruit Drop; February 22, 2002 to February 22, 2003. Contact: (Andrea Conrath)

EPA authorized the use of fenbuconazole on grapefruit to control greasy spot; March 1, 2002 to November 1, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of tebufenozide on lychee and longan to control Lychee webworm; March 3, 2002 to March 2, 2003. Contact: (Barbara Madden)

Georgia

Department of Agriculture

Specific: EPA authorized the use of fludioxonil on stone fruit to control brown rot; April 15, 2002 to September 1, 2002. Contact: (Andrew Ertman)

Idaho

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of fosetyl-Al on pea seed to control downy mildew; February 4, 2002 to June 30, 2002. Contact: (Andrew Ertman)

EPA authorized the use of oxytetracycline on apples to control fire blight; March 8, 2002 to August 1, 2002. Contact: (Andrea Conrath)

EPA authorized the use of carfentrazone-ethyl on hops to control hop suckers to indirectly control powdery mildew; March 22, 2002 to September 22, 2002. Contact: (Barbara Madden)

EPA authorized the use of myclobutanil on hops to control powdery mildew; March 22, 2002 to September 22, 2002. Contact: (Barbara Madden)

Illinois

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of dimethomorph on squash, cantaloupes, watermelons, cucumbers, and pumpkins to control crown rot,*phytophthora capsici*; March 19, 2002 to September 30, 2002. Contact: (Libby Pemberton)

Indiana

Office of Indiana State Chemist

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 15, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 7, 2002 to July 31, 2002. Contact: (Dan Rosenblatt)

Iowa

Department of Agriculture and Land Stewardship

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; March 4, 2002 to February 1, 2003. Contact: (Barbara Madden)

Kansas

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa*mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of fluroxypyr on range and grass pastures to control sericea lespedeza (*Lespedeza cuneata*); March 4, 2002 to August 31, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of sulfentrazone on sunflowers to control kochia and weeds; April 15, 2002 to July 1, 2002. Contact: (Andrew Ertman)

EPA authorized the use of tebuconazole on sunflowers to control rust (*Puccinia helianthi*); June 1, 2002 to September 15, 2002. Contact: (Dan Rosenblatt)

Kentucky

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

Louisiana

Department of Agriculture and Forestry

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 15, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of 3-chloro-p-touidine hydrochloride on fallow areas to control various birds, including red-winged blackbirds; February 15, 2002 to October 15, 2002. Contact: (Libby Pemberton)
EPA authorized the use of thiophanate methyl on citrus to control Postbloom Fruit Drop; February 22, 2002 to February 22, 2003. Contact: (Andrea Conrath)
EPA authorized the use of coumaphos in beehives to control*varroa* mites and small hive beetles; March 28, 2002 to August 31, 2002. Contact: (Barbara Madden)

Maine

Department of Agriculture, Food, and Rural Resources
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; March 4, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of propiconazole on blueberries to control mummy berry disease; April 15, 2002 to June 15, 2002. Contact: (Dan Rosenblatt)

Maryland

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of dimethomorph on squash, cantaloupes, watermelons, cucumbers, and pumpkins to control crown rot,*phytophthora capsici*; March 19, 2002 to September 30, 2002. Contact: (Libby Pemberton)
EPA authorized the use of imidacloprid on stone fruit to control aphids; April 1, 2002 to November 30, 2002. Contact: (Andrew Ertman)
EPA authorized the use of s-metolachlor on tomatoes to control eastern black nightshade and yellow nutsedge; April 10, 2002 to July 31, 2002. Contact: (Andrew Ertman)

Massachusetts

Massachusetts Department of Food and Agriculture
EPA authorized the use of clopyralid on cranberries to control various weeds; February 1, 2002 to December 31, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of pronamide on cranberries to control dodder; March 20, 2002 to June 15, 2002. Contact: (Andrew Ertman)

Michigan

Michigan Department of Agriculture
Specific: EPA authorized the use of oxytetracycline on apples to control fire blight; March 8, 2002 to June 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of coumaphos in beehives to control*varroa* mites and small hive beetles; March 28, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of s-metolachlor on tomatoes to control eastern black nightshade; April 1, 2002 to July 1, 2002. Contact: (Andrew Ertman)
EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 1, 2002 to September 1, 2002. Contact: (Dan Rosenblatt)
EPA authorized the use of halosulfuron-methyl on asparagus to control yellow nutsedge and pigweed; May 1, 2002 to August 15, 2002. Contact: (Andrew Ertman)

Minnesota

Department of Agriculture
EPA authorized the use of 2,4-D on wild rice to control common waterplantain; February 5, 2002 to July 31, 2002. Contact: (Andrew Ertman)
EPA authorized the use of tetraconazole on sugar beets to control *Cercospora* leafspot; March 7, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of sulfentrazone on chickpeas and field peas to control wild buckwheat; April 1, 2002 to June 30, 2002. Contact: (Andrew Ertman)
EPA authorized the use of sulfentrazone on sunflowers to control kochia; April 15, 2002 to June 30, 2002. Contact: (Andrew Ertman)
EPA authorized the use of clopyralid on canola to control Canada thistle and perennial sowthistle; May 1, 2002 to July 31, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of tebuconazole on barley to control *Fusarium* head blight; May 15, 2002 to September 1, 2002. Contact: (Dan Rosenblatt)
EPA authorized the use of tebuconazole on wheat to control*Fusarium* head blight; May 15, 2002 to September 1, 2002. Contact: (Dan Rosenblatt)

Mississippi

Department of Agriculture and Commerce
Denial: On February 14, 2002, EPA denied the use of glufosinate-ammonium on blueberries to control broadleaf and grass weeds. This request was denied because the situation was determined to be routine and not urgent because adequate alternatives are available and no change in the weed control situation has been demonstrated. Contact: (Libby Pemberton).
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; February 4, 2002 to August 31, 2002. Contact: (Dan Rosenblatt)
EPA authorized the use of diuron on commercial catfish ponds to control blue-green algae; April 1, 2002 to November 30, 2002. Contact: (Dan Rosenblatt)

Missouri

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 26, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on sunflowers to control water hemp and morning glory; April 1, 2002 to July 31, 2002. Contact: (Andrew Ertman)

Montana

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 15, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of tetraconazole on sugar beets to control *Cercospora* leafspot; March 7, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of sulfentrazone on sunflowers to control kochia;April 15, 2002 to June 30, 2002. Contact: (Andrew Ertman)
EPA authorized the use of dimethenamid on sugar beets to control nightshade, redroot pigweed; May 2, 2002 to July 31, 2002. Contact: (Barbara Madden)

Nebraska

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; April 15, 2002 to June 30, 2002. Contact: (Andrew Ertman)

Nevada

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; March 22, 2002 to February 1, 2003. Contact: (Barbara Madden)

New Jersey

Department of Environmental Protection
Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of propiconazole on blueberries to control mummy berry disease; March 15, 2002 to June 30, 2002. Contact: (Meredith Laws)

EPA authorized the use of imidacloprid on stone fruit to control aphids; April 1, 2002 to November 30, 2002. Contact: (Andrew Ertman)

New Mexico

Department of Agriculture

Specific: EPA authorized the use of metsulfuron-methyl on sorghum to control pigweed; June 1, 2002 to September 30, 2002. Contact: (Andrew Ertman)

New York

Department of Environmental Conservation

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of dimethomorph on squash, cantaloupes, watermelons, cucumbers, and pumpkins to control *Phytophthora capsici*; March 28, 2002 to September 30, 2002. Contact: (Libby Pemberton)

EPA authorized the use of dimethenamid on dry bulb onions to control yellow nutsedge and other broadleaf weeds; May 1, 2002 to July 30, 2002. Contact: (Barbara Madden)

EPA authorized the use of desmedipham on red (table) beets to control broadleaf weeds; May 15, 2002 to August 15, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of imidacloprid on stone fruit to control aphids; March 22, 2002 to October 15, 2002. Contact: (Andrew Ertman)

North Carolina

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; March 7, 2002 to July 31, 2002. Contact: (Dan Rosenblatt)

North Dakota

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of tetraconazole on sugar beets to control*Cercospora* leafspot; March 7, 2002 to September 30, 2002. Contact: (Andrea Conrath)

EPA authorized the use of sulfentrazone on sunflowers to control kochia; April 15, 2002 to June 30, 2002. Contact: (Andrew Ertman)

EPA authorized the use of clopyralid on canola to control Canada thistle and perennial sowthistle; May 1 to July 31, 2002. Contact: (Libby Pemberton)

EPA authorized the use of tebuconazole on sunflowers to control rust (*Puccinia helianthia*; July 5, 2002 to September 5, 2002. Contact: (Dan Rosenblatt)

Ohio

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 20, 2002 to December 15, 2002. Contact: (Barbara Madden)

Oklahoma

Department of Agriculture

Specific: EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; April 15, 2002 to July 15, 2002. Contact: (Andrew Ertman)

EPA authorized the use of metsulfuron-methyl on sorghum to control pigweed; June 15,2002 to August 15, 2002. Contact: (Andrew Ertman)

EPA authorized the use of s-metolachlor on spinach to control weeds; August 15, 2002 to March 31, 2003. Contact: (Andrew Ertman)

Oregon

Department of Agriculture

Denial: On February 26, 2002 EPA denied the use of tebuconazole on hazelnuts to control eastern filbert blight. This request was denied because an exemption was issued for a different material, triflumizole, to address this situation, and the request for an exemption for a second material was not justified. Additionally, the Agency is currently reviewing recent data regarding the triazole group of pesticides, of which tebuconazole is a member; because of recently discovered toxicity concerns, the Agency is not considering any new uses of triazoles until the review of this data is completed and a conclusion is reached. Contact: (Andrea Conrath).

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of ethoprop on baby and idle hops only to control garden symphylans (*Scutigerella immaculatta*); February 6, 2002 to May 31, 2002. Contact: (Libby Pemberton)

EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; February 12, 2002 to May 31, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of triflumizole on hazelnuts to control eastern filbert blight; February 26, 2002 to May 30, 2002. Contact: (Andrea Conrath)

EPA authorized the use of oxytetracycline on apples to control fire blight; March 8, 2002 to August 1, 2002. Contact: (Andrea Conrath)

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; March 15, 2002 to February 28, 2003. Contact: (Barbara Madden)

EPA authorized the use of carfentrazone-ethyl on hops to control hop suckers to indirectly control powdery mildew; March 22, 2002 to September 22, 2002. Contact: (Barbara Madden)

EPA authorized the use of myclobutanil on hops to control powdery mildew; March 22, 2002 to September 22, 2002. Contact: (Barbara Madden)

Pennsylvania

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 15, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of imidacloprid on stone fruit to control aphids; April 15, 2002 to October 15, 2002. Contact: (Andrew Ertman)

EPA authorized the use of metolachlor on tomatoes to control eastern black nightshade, puslane, common lambsquarters, and hairy nightshade; April 15, 2002 to July 15, 2002. Contact: (Andrew Ertman)

EPA authorized the use of s-metolachlor on spinach to control weeds; May 1, 2002 to August 30, 2002. Contact: (Andrew Ertman)

Rhode Island

Department of Environmental Management

Specific: EPA authorized the use of clopyralid on cranberries to control various weeds; February 1, 2002 to December 31, 2002. Contact: (Libby Pemberton)

EPA authorized the use of pronamide on cranberries to control dodder; March 20, 2002 to June 15, 2002. Contact: (Andrew Ertman)

South Carolina

Clemson University

Specific: EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; February 4, 2002 to August 31, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of coumaphos in beehives to control*varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

South Dakota

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of sulfentrazone on sunflowers to control kochia; April

15, 2002 to June 30, 2002. Contact: (Andrew Ertman)

Tennessee

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 6, 2002 to February 1, 2003. Contact: (Barbara Madden)

Texas

Department of Agriculture

Specific: EPA authorized the use of metsulfuron-methyl on sorghum to control triazine-resistant pigweed; February 1, 2002 to August 1, 2002. Contact: (Andrew Ertman)

EPA authorized the use of carbofuran on cotton to control cotton aphid; March 15, 2002 to October 31, 2002. Contact: (Meredith Laws)

EPA authorized the use of sulfentrazone on sunflowers to control weeds; March 20, 2002 to June 30, 2002. Contact: (Andrew Ertman)

EPA authorized the use of s-metolachlor on spinach to control weeds; June 29, 2002 to June 29, 2003. Contact: (Andrew Ertman)

Utah

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of oxytetracycline on apples to control fire blight; March 8, 2002 to August 1, 2002. Contact: (Andrea Conrath)

Vermont

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

Virginia

Department of Agriculture and Consumer Services

Specific: EPA authorized the use of s-metolachlor on tomatoes to control eastern black nightshade and yellow nutsedge; March 12, 2002 to August 10, 2002. Contact: (Andrew Ertman)

Washington

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of fosetyl-Al on pea seed to control downy mildew; February 4, 2002 to June 30, 2002. Contact: (Andrew Ertman)

EPA authorized the use of oxytetracycline on apples to control fire blight; March 8, 2002 to August 1, 2002. Contact: (Andrea Conrath)

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; March 15, 2002 to February 28, 2003. Contact: (Barbara Madden)

EPA authorized the use of propiconazole on blueberries to control mummy berry disease; March 19, 2002 to June 15, 2002. Contact: (Dan Rosenblatt)

EPA authorized the use of carfentrazone-ethyl on hops to control hop suckers to indirectly control powdery mildew; March 22, 2002 to September 22, 2002. Contact: (Barbara Madden)

EPA authorized the use of myclobutanil on hops to control powdery mildew; March 22, 2002 to September 22, 2002. Contact: (Barbara Madden)

Wisconsin

Department of Agriculture, Trade, and Consumer Protection

Specific: EPA authorized the use of clopyralid on cranberries to control wild bean, narrow-leaved goldenrod, asters, Joe-Pye weed, ragweed, itchfork or Devil's beggar-tick, smartweed, and clover; January 26, 2002 to December 31, 2002. Contact: (Libby Pemberton)

EPA authorized the use of coumaphos in beehives to control*varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of dimethenamid on dry bulb onions to control yellow nutsedge and broadleaf weeds; April 1, 2002 to July 31, 2002. Contact: (Barbara Madden)

EPA authorized the use of propiconazole on cranberries to control cottonball disease; April 15, 2002 to July 31, 2002. Contact: (Dan Rosenblatt)

Wyoming

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control *varroa* mites and small hive beetles; February 2, 2002 to February 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of tetraconazole on sugar beets to control*Cercospora* leafspot; March 7, 2002 to September 30, 2002. Contact: (Andrea Conrath)

EPA authorized the use of sulfentrazone on sunflowers to control kochia; April 15, 2002 to June 30, 2002. Contact: (Andrew Ertman)

EPA authorized the use of dimethenamid on sugar beets to control nightshade, redroot pigweed and ALS-resistant kochia; May 2, 2002 to July 31, 2002. Contact: (Barbara Madden)

B. Federal Departments and Agencies

Environmental Protection Agency

Office of Solid Waste and Emergency Response

Crisis: On January 2, 2002, for the use of ethylene oxide to determine the efficacy of the ethylene oxide sterilization cycles to decontaminate standard letter mail contaminated or potentially contaminated by *Bacillus anthracis*. This program is expected to end on January 17, 2002. Contact: (Barbara Madden)

On January 30, 2002, for the use of paraformaldehyde to decontaminate a 9,700 square foot area of the Department of Justice Mailroom located at 36001 Pensy Drive, Landover, Maryland as well as machinery and equipment contaminated or potentially contaminated by *Bacillus anthracis*. This program is expected to end on February 14, 2002. Contact: (Barbara Madden)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 3, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

FR Doc. 02–12848 Filed 5–21–02; 8:45 am

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7211–1]

Proposed Addition of a New System of Record

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to create a Privacy Act System of record.

SUPPLEMENTARY INFORMATION: The Child Care Tuition Assistance Program. This pilot program was created as the result of Public Law 107–67, Section 630, which allowed executive agencies to use appropriated funds to provide child care services for Federal civilian employees. The purpose of the records maintained in this system is to establish and verify EPA employee eligibility for child care subsidies to provide monetary assistance to them.

EPA–49

SYSTEM NAME:

Child Care Tuition Assistance Program Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Environmental Protection Agency/Office of Human Resources and

Organizational Services/Employee Services Staff, MC: 3611, Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current employees of the Environmental Protection Agency who voluntarily apply for a child care subsidy, their spouses, and children who are enrolled in a licensed Federal and non-Federal center, and licensed home-based care.

(2) Child-care providers of these employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information collected will include the employee's name, spouse's name, employee's title, grade, home and work telephone numbers, home and work addresses, the organization in which the employee works, the employee's social security number, the spouse's social security number, the employee's tax returns, the spouse's tax returns, the name and social security number of the child on whose behalf the parent is applying for a subsidy, the child's date of birth, the date of entry into the Child Care Subsidy Program, and the amount of subsidy received; the name, address, telephone number, employer identification number (EIN), license and accreditation status of the child care center in which the employee's child(ren) is (are) enrolled, and the dates of attendance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 107–67, Section 630 and Executive Order 9397.

PURPOSE(S):

The primary use of the records maintained in this system is to establish and verify Environmental Protection Agency employee's eligibility for child care subsidies in order to provide monetary assistance to them. Other uses of the records in the system include verifying the eligibility of child care and verifying compliance with regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses applicable to more than one system includes: A; E; F; H; J, as stated in the guidelines for preparing notice for a system of records under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored both in file folders, and in electronic form, in computer systems.

RETRIEVABILITY:

Records are retrieved by the names, regional location and social security numbers of employees applying for child care subsidies.

SAFEGUARDS:

Access to records in the system is limited to authorized personnel whose official duties require such access. Paper records are maintained in locked metal file cabinets and/or in secured rooms. Electronic records are password-protected and maintained with safeguards meeting the security requirements of 40 CFR 16.10—Disclosure of record to person(s) other than the individual to whom it pertains.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration guidelines.

SYSTEM MANAGER(S) AND ADDRESS:

National Program Manager/Office of Human Resources and Organizational Services, U.S. Environmental Protection Agency, MC:3611, Washington, DC 20460.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records contained in the system should be addressed to the System Manager. The request must be in writing, signed by the requester, include the requester's full name and social security number, and must meet the content requirements of 40 CFR 16.3—Procedures for requests pertaining to individual records in a record system.

RECORD ACCESS PROCEDURES:

A request for access to records contained in the system should be addressed to the System Manager. The request must be in writing, signed by the requester, include the requester's full name and social security number, and meet the content requirements of 40 CFR 16.3—Procedures for requests pertaining to individual records in a record system.

CONTESTING RECORDS PROCEDURES:

A petition for amendment for records contained in the system should be addressed to the System Manager. The request must be in writing, signed by the requester, include the requester's full name and Social Security Number, and meet the content requirements of 40 CFR 16.7—Request for correction or amendment of record.

RECORD SOURCE CATEGORIES:

Applications for child care subsidies and supporting records, which are voluntarily submitted by EPA employees applying for child care subsidies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: May 10, 2002.

Kim Nelson,

Assistant Administrator and Chief Information Officer.

[FR Doc. 02–12769 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010168–018.

Title: New Caribbean Service Rate Agreement.

Parties: CMA CGM S.A., Hapag-Lloyd Container Linie GmbH, P&O Nedlloyd Limited/P&O Nedlloyd B.V., Hamburg-Süd KG, Compania Sud Americana de Vapores, S.A.

Synopsis: The proposed agreement amendment deletes ports in and around the Caribbean from the geographic scope; removes space chartering authority, which is now contained in a separate agreement (FMC Agreement No. 011797); and makes other administrative changes.

Agreement No.: 011701–004.

Title: P&O Nedlloyd/FMC Agreement 232–011694 Cross Space Charter and Sailing Agreement.

Parties: China Shipping Container Lines, CMA CGM, S.A., P&O Nedlloyd Limited, P&O Nedlloyd B.V.

Synopsis: The proposed agreement modification increases the size of the vessels the parties may deploy under the agreement and changes the name of the agreement to The Pacific East Coast Express Agreement. When this modification becomes effective, the CMA CGM/China Shipping Container Line Cross Space Charter, Sailing and Cooperative Working Agreement, FMC Agreement No. 011694, will be terminated.

Dated: May 17, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–12857 Filed 5–21–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Kenneth A. and Diane M. Hendricks, both of Janesville, Wisconsin; to acquire voting shares of Blackhawk Bancorp, Inc., Beloit, Wisconsin, and thereby indirectly acquire voting shares of Blackhawk State Bank, Beloit, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Terry Lynn Snodgrass, Vienna, Missouri, as General Partner for the Henderson Family Limited Partnership; to retain control of Maries County Bancorp, Inc., Vienna, Missouri, and thereby indirectly retain voting shares of Belle State Bank, Belle, Missouri; The Maries County Bank, Vienna, Missouri, and Progress Bancshares, Inc., Sullivan, Missouri.

Board of Governors of the Federal Reserve System, May 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12739 Filed 5–21–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 13320.5. The following are those information collections recently submitted to OMB.

1. *Protection of Human Subjects:* Assurance Identification/Certification/Declaration—NEW—This form, which will replace Optional Form 310, is a sample format which may be used by some entities to comply with the requirements of Section __.103(f) of the Common Rule, which requires that institutions submitting applications for Federal support of research involving human subjects submit certification of appropriate Institutional Review Board review and approval. The burden for use of this form, estimated to be 5 minutes, is included under total burden for the Common Rule, approved under OMB Clearance Number 0990–0260.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Report Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: May 10, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–12738 Filed 5–21–02; 8:45 am]

BILLING CODE 4150–28–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:

Robert B. Tracy, Ph.D., University of Southern California and University of California, Davis: Based on Dr. Tracy's admission, the reports submitted by the University of Southern California (USC) and the University of California, Davis (UCD), and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Robert B. Tracy, Ph.D., former doctoral student at UCD, and former postdoctoral student at USC, engaged in scientific misconduct by falsifying and fabricating data in research supported by National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grant R01 AI18987, ''Mechanistic studies of genetic recombination,'' and National Institute of General Medical Sciences (NIGMS), NIH, grant 1 R01 GM56984, ''Mechanism of DNA recombination at class switch sequences.''

Dr. Tracy's doctoral research at UCD involved the analysis of the mechanisms used by various enzymes to repair damaged DNA, while his postdoctoral research at USC dealt with the molecular mechanism used by B-lymphocytes when switching from producing one class of immunoglobulin to another.

Specifically, PHS found that:

(1) In 1996 and 1997, Dr. Tracy falsified research supported by NIH grant R01 AI18987, ''Mechanistic studies of genetic recombination,'' while working on his doctoral dissertation at UCD. Dr. Tracy falsified Figure 6.2 of his Ph.D. thesis by adding discrete bands where there actually had only been a uniform smear of radioactivity, the effect being to suggest a result that had not been observed and was, therefore, falsified. The falsified image was not published.

(2) From 1998 to 2000, Dr. Tracy committed additional scientific misconduct while a postdoctoral fellow at USC in research funded by NIH grant R01 GM56984 ''Mechanism of DNA recombination at class switch sequences.'' Dr. Tracy falsified values in

Table 1 of supplemental web material (*http://www.sciencemag.org/features/data/1049221.shl*) that accompanied a report published in Science (Tracy, R.B., Hsieh, C.–L., & Lieber, M.B., ''Stable RNA/DNA hybrids in the mammalian genome: Inducible intermediates in immunoglobulin class switch recombination.'' Science 288:1058–1061, 2000; the ''Science paper''). In Table 1, Dr. Tracy misrepresented that lymphocytes from mice transgenic for ribonuclease H underwent significantly lower rates of isotope switching, as determined by the level of surface staining for immunoglobulin classes compared to control mice, when the actual data showed no such difference for IgG_1, IgG_{2b}, and IgE isotope classes. Dr. Tracy also falsified Figures 2 and 4 of the supplemental web material published with the Science paper in that the results were not representative of multiple independent experiments as he claimed. In addition, Dr. Tracy falsified Figure 2C of the Science paper, which represented a crucial control to establish his claim that RNA/DNA hybrids were limited to immunoglobulin switch regions, by publishing a blot that was not representative of his overall results.

Dr. Tracy also falsified Figures 4 and 7 of a second paper (Tracy, R.B., & Lieber, M.R. ''Transcription-dependent R-loop formation at mammalian class switch sequences.'' EMBO J. 19:1055–1067, 2000, ''EMBO J. paper''). In both figures, Dr. Tracy used the PhotoShop computer program to move bands or regions of a lane vertically relative to the rest of the gel, thus falsifying the size of molecules described in the paper. Lastly, Dr. Tracy reported these falsified data (as published in the Science and EMBO J. papers) in the progress report for NIH grant 5 R01 56984–03 in May 2000. Dr. Tracy and his coauthors retracted both the Science paper and the EMBO J. paper, in Science 289:1141, 2000, and in EMBO J. 19:4855, 2000, respectively.

Dr. Tracy has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of four (4) years beginning on May 1, 2002:

(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 CFR Part 76 (Debarment Regulations); and

(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. 02–12729 Filed 5–21–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0077]

Agency Information Collection Activities; Announcement of OMB Approval; Emergency Medical Device Shortage Program Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Emergency Medical Device Shortage Program Survey'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: In the **Federal Register** of March 26, 2002 (67 FR 13788), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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 now approved the information collection and has assigned OMB control number 0910–0491. The approval expires on October 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 14, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–12783 Filed 5–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1344]

Determination of Regulatory Review Period for Purposes of Patent Extension; COMTAN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for COMTAN 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 drug 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 V. Grillo, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3565.

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 drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug 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 drug 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 drug product COMTAN (entacapone). COMTAN is indicated as an adjunct to levodopa/carbidopa to treat patients with idiopathic Parkinson's disease who experience the signs and symptoms of end-of-dose ''wearing-off.'' Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for COMTAN (U.S. Patent No. 5,446,194) from Orion Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 17, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of COMTAN 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 COMTAN is 2,937 days. Of this time, 2,281 days occurred during the testing phase of the regulatory review period, while 656 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*: October 6, 1991. The applicant claims November 29, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 6, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: January 2, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for COMTAN (NDA 20–796) was initially submitted on January 2, 1998.

3. *The date the application was approved*: October 19, 1999. FDA has verified the applicant's claim that NDA 20–796 was approved on October 19, 1999.

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 416 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 22, 2002. 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 November 18, 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 (see **ADDRESSES**). 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: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–12784 Filed 5–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01M–0478, 01M–0460, 01M–0454, 01M–0453, 01M–0452, 01M–0456, 01M–0451, 01M–0455, 01M–0578, 01M–0507, 01M–0579, 01M–0535, 01M–0462, 01M–0461, 01M–0536, 01M–0520, 01M–0439, 01M–0509, 01M–0490, 01M–0498, 01M–0479, 01M–0480, 01M–0482, 01M–0508, 01M–0522, 01M–0537, 01M–0523, 01M–0530, 01M–0531, 01M–0534, 01M–0567, 01M–0581]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page at http://www.fda.gov on the Internet, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act.

The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from October 1, 2001, through December 31, 2001. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE OCTOBER 1, 2001, THROUGH DECEMBER 31, 2001

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P990050/01M–0478	Spectrascience, Inc.	Optical Biopsy System	November 14, 2000
P000020/01M–0460	C.R. Bard, Inc.	Stinger Ablation Catheter Templink Extension Cable	November 29, 2000
P990043/01M–0454	Diasorin, Inc.	DIASORIN ETI–EBK PLUS Assay	February 8, 2001
P990042/01M–0453	Diasorin, Inc.	DIASORIN ETI–AB–AUK PLUS Assay	March 30, 2001
P990041/01M–0452	Diasorin, Inc.	DIASORIN ETI–AB–EBK PLUS Assay	March 30, 2001
P990045/01M–0456	Diasorin, Inc.	DIASORIN ETI–AB–COREK PLUS Assay	March 30, 2001
P990038/01M–0451	Diasorin, Inc.	DIASORIN ETI MAK–2 PLUS Assay	March 30, 2001
P990044/01M–0455	Diasorin, Inc.	DIASORIN ETI–CORE IGMK PLUS Assay	March 30, 2001
P000040/01M–0578	Bei Medical Systems Co., Inc.	HYDROTHERMABLATOR Endometrial Ablation System	April 20, 2001
P990012/01M–0507	Roche Diagnostics Corp.	Elecsys Hbsag Immunoassay, Elecsys Hbsag Confirmatory, and Precicontrol Hbsag	June 1, 2001
P000053/01M–0579	American Medical Systems, Inc.	AMS SPHINCTER 800 Urinary Control System	June 14, 2001
P930027(S004)/01M–0535	Diagnostic Products Corp.	Immulite PSA, Immulite Third Generation PSA, Immulite 2000	June 19, 2001
P880086(S083)/01M–0462	St. Jude Medical, Inc.	Integrity AFX DR Model 5346 Dual Chamber Pulse Generator and Programmer Software Model 3307, V2.2a	July 11, 2001
P830045(S076)/01M–0461	St. Jude Medical, Inc.	Integrity AFX DR Model 5346 Dual Chamber Pulse	July 11, 2001
P010021/01M–0536	Ortho-Clinical Diagnostics, Inc.	Vitros Immunodiagnostic Products Anti-HCV Reagent Pack and Calibrator	August 30, 2001
P890057(S014)/01M–0520	Sensor Medics Corp.	Model 3100b High Frequency Oscillatory Ventilator (HFOV)	September 24, 2001
P000029/01M–0439	Q-Med Ab	Deflux Injectable Gel Ren	September 24, 2001
P010017/01M–0509	Fisher Imaging Corp.	SENOSCAN Full Field Digital Mammagraphy System	September 25, 2001
P980008(S005)/01M–0490	Lasersight Technologies, Inc.	Lasersight Laserscan Lsx Excimer Laser System For Laser-Assisted In Situ Keratomileusis (LASIK)	September 28, 2001
P000036/01M–0498	Advanced Tissue Sciences	Dermagraft	September 28, 2001
P010019/01M–0479	Ciba Vision Corp.	Focus Night And Day (Lotrafilcon A) Soft Contact Lenses	October 11, 2001
P000030/01M–0480	Ciba Vision Corp.	Focus Night & Day (Lotrafilcon A) Soft Contact Lenses	October 12, 2001
H010002/01M–0482	Stryker Biotech	OP–1 Implant	October 17, 2001
P000052/01M–0508	Guidant Corp.	Galileo Intravascular Radiotherapy System	November 2, 2001
P930016(S014)/01M–0522	VISX, Inc.	VISX STAR Excimer Laser System	November 6, 2001
P010007/01M–0537	Diagnostic Products Corp.	Immulite/Immulite 2000 Afp Assays	November 9, 2001
P990015/01M–0523	Lifecore Biomedical, Inc.	Intergel Adhesion Prevention Solution	November 16, 2001
P000057/01M–0530	Ascension Orthopedics, Inc.	Ascension Mcp	November 19, 2001
P980006(S004)/01M–0531	Bausch & Lomb, Inc.	Purevision (Balafilcon A) Visibility Tinted Contact Lenses	November 20, 2001
P010032/01M–0534	Advanced Neuromodulation System, Inc.	Genesis Neurostimulation (Ipg) System	November 21, 2001
P010003/01M–0567	Cryolife, Inc.	BIOGLUE Surgical Adhesive	December 3, 2001
P010020/01M–0581	American Medical Systems, Inc.	AMS Acticon Neosphincter	December 18, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: May 10, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–12728 Filed 5–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Community-Based Dental Partnership Program Grant Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds; correction.

SUMMARY: In notice document FR Doc. 02–9617, Vol. 67, No. 76, Friday, April 19, 2002, make the following correction:

On page 19440 in the second column under OBTAINING APPLICATION GUIDANCE AND KIT, correct the website address to be: *www.hab.hrsa.gov/grant.htm.*

Dated: May 16, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–12786 Filed 5–21–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Title III Early Intervention Services Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds; correction.

SUMMARY: In notice document FR Doc. 02–9814, Vol. 67, No. 78, Tuesday, April 23, 2002, make the following correction:

On page 19761 in the second column under OBTAINING APPLICATION GUIDANCE AND KIT, correct the website address to be: *www.hab.hrsa.gov/grant.htm.*

Dated: May 16, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–12785 Filed 5–21–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: June 6, 2002.

Time: 8:30 AM to 4:30 PM.

Agenda: Topics proposed for discussion include but are not limited to: Science Education and Career Development; Bioterrorism and Emerging Infections; and an Update on Implementation of an Awards Using Human Embryonic Stem Cell Lines.

Place: 31 Center Drive, Building 31, Room 4C32 (NIAMS Conference Room), Bethesda, MD 20892.

Contact Person: Janice C. Ramsden, Committee Mgmt. Officer, Office of the Director, NIH, Building 1, Room 333, Bethesda, MD 20892, 301–496–0959.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12763 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Disparities Research Partnerships Plan.

Date: June 19, 2002.

Time: 8:30 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room F, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12756 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Highly Active Antiretroviral Therapy (HAART) Cardiovascular Toxicities.

Date: June 27, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Irina Gordienko, PhD, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892; 301–435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12757 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel. Special Emphasis Panel/Research Core (P30).

Date: June 19, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency of Bethesda, MD 20814.

Contact Person: Ali A Azadegan, DVM, Phd., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, DHHS, Bethesda, MD 20892–7180, (301) 496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institute of Health, HHS)

Dated: May 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12755 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Bioinformatics Integration Support Contract (BISC).

Date: June 12–13, 2002.

Time: 8:00 a.m. to 6:15 p.m.

Agenda: To review and evaluate contract proposals.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anthony Macaluso, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Allergy and Infectious Diseases, Scientific Review Program, 6700B Rockledge Drive, Room 2212, Bethesda, MD 20892, 301–496–7465, amacaluso@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12758 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research, Review of Pain and Neurosensory Mechanisms Branch.

Date: May 30–31, 2002.
Open: May 30, 2002, 8:30 a.m. to 12:15 p.m.
Agenda: Branch Presentations by Principal Investigators.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.
Closed: May 30, 2002, 12:30 p.m. to 5:00 p.m.
Agenda: To review and evaluate—executive session.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.
Open: May 31, 2002, 9 a.m. to 10 a.m.
Agenda: Laboratory Walk Through.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.
Closed: May 31, 2002, 10 a.m. to 1 p.m.
Agenda: To review and evaluate/Interview-Lab Personnel and Lab Chief.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.
Contact Person: J. Ricardo Martinez, MD, MPH; Assoc. Director for Program Development, Office of the Director, National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892.

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 intramural research review cycle.

Information is also available on the Institute's/Center's home page: www.nidcr.nih.gov/discover/bscmtgs.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12759 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, NIDDK, June 5, 2002, 6:00 PM to June 7, 2002, 5:00 PM, National Institutes of Health, Building 5, Room 127, Bethesda, MD, 20892 which was published in the Federal Register on April 18, 2002, 67 FR 19200.

The meeting will be held June 5, 2002 from 6:00 p.m. until adjournment on June 6, 2002. The meeting is partially Closed to the public.

Dated: May 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12762 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Stantin Clinical Trial.
Date: May 24, 2002.
Time: 8:30 AM to 1:00 PM.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Tommy L. Broadwater, PHD, Chief, Review Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building/MSC 6500, 45 Center Drive, Room 5AS–25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meetings due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12764 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Research Subcommittee.
Date: June 10, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jon M. Ranhand, PHD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Assistance Program Nos. 93.209, Contraception and infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12765 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Children's Study of Environmental Effects on Health Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study of Environmental Effects on Health Advisory Committee.

Date: June 13–14, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: Presentations for the second meeting will be made by the Inter-Agency Coordinating Committee and the NCSAC's Working Groups. For additional information, as it becomes available, please visit http://NationalChildrensStudy.gov. An opportunity will be provided for public comments. The time available for each individual to speak will be determined by the Chair.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Peter M. Scheidt, MD, Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 7B03, Bethesda, MD 20892, (301) 451–6421, *ncs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12766 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Brain Disorders and Clinical Neuroscience 1 (01).

Date: June 10–11, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David M. Armstrong, PHD, Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1253, *armstrda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience 1 (25).

Date: June 10, 2002.

Time: 1:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Elliot Postow, PHD, Acting Chief, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4160, MSC 7806, Bethesda, MD 20892, (301) 435–0911, *postowe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 12, 2002.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 2.

Date: June 13–14, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Gillian Einstein, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, (301) 435–4433.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Prevention and Health Behavior 1.

Date: June 13–14, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–9012, *levin@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section,

Date: June 13–14, 2002.

Time: 8 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P. Street, NW, Washington, DC 20037.

Contact Person: Dennis Leszczynski, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Study Section–H (01).

Date: June 13–14, 2002.

Time: 8 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue NW, Washington, DC 20037.

Contact Person: George W. Chacko, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Pharmacology Study Section.

Date: June 13–14, 2002.

Time: 8 AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 7.

Date: June 13–14, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology and Disease Control—3(01).
Date: June 13–14, 2002.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Madison Hotel, Fifteenth & M Streets NW, Washington, DC 20005.
Contact Person: Mary Ann Guadagno, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

Name of Committee: Oncological Sciences Integrated Review Group Experimental Therapeutics Subcommittee 1.
Date: June 13–14, 2002.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.
Contact Person: Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *perskins@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neurosciences 4.
Date: June 13–14, 2002.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.
Contact Person: Ann E. Schaffner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *schaffna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk, Prevention and Health Behaviors—3(01).
Date: June 13–14, 2002.
Time: 8:30 AM to 6:30 PM.
Agenda: To review and evaluate grant applications.
Place: George Washington University Inn, 824 New Hampshire Ave, NW., Washington, DC 20037.
Contact Person: Lee S. Mann, PHD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Visual Sciences A Study Section.
Date: June 13–14, 2002.
Time: 8:30 AM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, *custerm@csr.hih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.
Date: June 13–14, 2002.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Alicia J. Dombroski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, 301–435–1149, *dombrosa@scr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 3.
Date: June 13–14, 2002.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspeckg@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 2, Biobehavioral & Behavioral Processes–2.
Date: June 13–14, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Inner Harbor, 300 South Charles Street, Baltimore, MD 21201.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *tathamt@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Mammalian Genetics Study Section.
Date: June 13–14, 2002.
Time: 9 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biobehavioral and Behavioral Processes–5.
Date: June 13–14, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–9 (38) Shared Instrumentation.
Date: June 14, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mammalian Genetics (01).
Date: June 14, 2002.
Time: 1:30 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Virology (01).
Date: June 14, 2002.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Rona L. Hirschberg, PhD, MS, BS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–5 (1) Research Resource.
Date: June 16–17, 2002.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, *shinowan@drg.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12761 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center, Executive Committee.

Date: June 7, 2002.

Time: 9 a.m. to 12 p.m.

Agenda: Updates on organizational planning and budget issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: www.cc.nih.gov/, where an agenda and any additional information for the meeting will be posted when available.

Dated: May 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–12760 Filed 5–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessment of Soy Unica Materials—New—By the year 2025 almost one in four children will be of Hispanic/Latino origin. Hispanic girls currently make up 16.2 percent of the total number of American girls. Serious threats to the well-being of American girls—pregnancy, depression, suicide attempts, alcohol and drug abuse, and delinquency—are more prevalent among Hispanic girls than among non-Hispanic White or African-American peers. Hispanic girls also have higher school dropout rates than non-Hispanic White, African-American or Asian-American girls. Studies have shown that depression and low self-esteem are strongly linked to risky behaviors among girls. Despite the fact that threats to health and well-being are highest for Hispanic girls, fewer prevention or treatment services reach them than reach girls in any other racial or ethnic group. Phase II of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Hispanic/Latino Initiative, ¡Soy Unica! ¡Soy Latina!, was developed in response to a need for a national, comprehensive, multimedia bilingual campaign that addresses the mental health needs of Hispanic/Latinas aged 9–14.

The ¡Soy Unica! ¡Soy Latina! campaign is designed to help Latinas ages 9–14 build and enhance their self-esteem, mental health, and decision-making and assertiveness skills, and to prevent the harmful consequences of alcohol, tobacco, and illicit drugs. The secondary target audience are mothers and caregivers of girls ages 9–14. The dissemination of these materials was initiated in October 2001 through SAMHSA's National Clearinghouse for Alcohol and Drug Information (NCADI). This public education campaign has the following components in both English and Spanish: Poster for Latinas ages 9–11 called Rainbow Road; Poster for Latinas ages 12–14 called Hot-Air Balloon; Activity book for Latinas ages 9–11; Activity book for Latinas ages 12–14; Book of advice for mothers of Latinas ages 9–14; Brochure for mothers of Latinas ages 9–14.

The data collection plans include a survey of girls, a survey of mothers/caregivers, and in-depth interviews with representatives of schools or organizations that run programs based on the materials. The findings will be employed by SAMHSA's Center for Substance Abuse Prevention (CSAP) to assess the effectiveness of the materials in helping young girls: to know themselves better; to develop a better appreciation for their heritage; to learn to make positive, healthy decisions for their future; and to enhance their confidence in their power to shape their lives. This information will be instrumental in highlighting areas that should be addressed in future CSAP prevention/education materials targeting Hispanic/Latino audiences.

The adequacy of the prevention messages will be assessed by collecting data on five major areas: (1) The degree to which the materials help girls get to know themselves better and to become comfortable with who they are; (2) the degree to which the materials help girls gain appreciation of their heritage; (3) the degree to which the materials increase awareness in girls of their ability to make sound decisions and plan for the future; (4) the quality of the materials (clarity of the messages, cultural adequacy, and attractiveness of the materials); and (5) whether there are aspects to be modified and/or enhanced in the development of future materials focusing substance use/abuse targeted to Hispanic/Latino audiences. The survey study population will be composed of girls aged 9–14 who have obtained the materials from NCADI via their schools. A separate survey will target mothers of girls ages 9–14 who ordered materials through NCADI. The in-depth interview study population is composed of youth leaders/mentors who deliver the materials and related programs to girls.

The following table presents the response burden for this project.

	No. of Respondents	Responses/respondent	Hours/response	Total burden (hours)
Survey of Girls Ages 9–14	900	1	.25	225
Survey of Mothers/Caregivers	500	1	.25	125
In-Depth Interviews—Youth Leaders/Mentors	5	1	4.0	20
In-depth Interviews—Girls	20	1	.75	15
Total	1,425			385

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 15, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–12775 Filed 5–21–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4732–N–04]

Statutory and Regulatory Waivers Granted to New York State for Recovery from the September 11, 2001 Terrorist Attacks

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers granted.

SUMMARY: This notice advises the public of waivers of regulations and statutory provisions granted to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose. This notice lists the provisions being waived and alternative requirements specified.

DATES: Effective Date: May 28, 2002.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority to Grant Waivers

Chapter 13 of division B of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (Publ. L. 107–117, approved January 10, 2002) appropriates $2.0 billion in Community Development Block Grant funds and makes applicable the first six provisos of section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Publ. L. 107–73, approved November 26, 2001). Section 434 provides for the use of CDBG funds made available from the Emergency Response Fund by the fifth proviso under the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Publ. L. 107–38, approved September 18, 2001) to New York State for properties and businesses damaged by, and economic revitalization related to, the September 11, 2001 terrorist attacks on New York City. Prior to the $2.0 billion appropriation, $700 million was made available from the Emergency Response Fund. The third proviso of section 434 authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment.

The Department finds that the following waivers and alternative requirements are necessary to facilitate the use of both the $700 million awarded to New York State's Empire State Development Corporation and the $2.0 billion awarded to New York State's Lower Manhattan Development Corporation. This notice of waivers granted and alternative requirements supersede those published on January 28, 2002, at 67 FR 4164, and the correction published on February 7, 2002, at 67 FR 5845. (This notice does not supersede waivers and alternative requirements published on March 18, 2002, at 67 FR 12042, with respect to payment of compensation for economic loss.) The Department also finds that such uses of funds, as described below, are not inconsistent with the overall purpose of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Except as noted by published waivers and alternative requirements, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR subpart I, shall apply to the use of these funds.

Description and Justification of Requirements Waived or Alternative Requirements Specified and Note of Applicability

1. Waive the requirement that 70% of the CDBG funds received by the state over a one-to-three year period be for activities that benefit persons of low and moderate income. 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(ii) with respect to the 70% overall benefit requirement are waived with respect to CDBG funds appropriated under the Emergency Response Fund. HUD expects the grantee will make a good faith effort to maximize benefit to low- and moderate-income persons, and maintain documentation of such efforts.

2. Streamline citizen participation requirements. Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 540.486, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings, but do provide for a reasonable opportunity for citizen comment and for ongoing citizen access to information about the use of grant funds. The streamlined requirements for this grant are:

a. Before the State adopts the action plan (or a part of an action plan) for this grant or any substantial amendment to this grant, the State will publish the proposed plan or amendment (including the information required in waiver eight (8)). Publication will be carried out in a manner that affords citizens, New York

City and other interested parties a reasonable opportunity to examine the plan or amendment's contents and to submit comments. The State's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan. Subsequent to publication, the State must provide a reasonable period to receive comments on the plan or substantial amendment.

b. In the action plan, the State will specify the criteria for determining what changes in the State's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change.

c. The State must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of these comments and the State's response with the action plan or substantial amendment.

d. The State must make the action plan, any substantial amendments, and all performance reports available to the public, on request. Also on request, the State must make these documents available in a form accessible to persons with disabilities. During the term of this grant, the State will provide citizens, New York City, and other interested parties reasonable and timely access to information and records relating to the action plan and the State's use of this grant.

e. The State will provide a timely written response to every citizen complaint. Such response will be provided within 15 working days of the complaint, if practicable.

3. Modify requirement for consultation with local governments. Currently, the statute and regulations require consultation with affected units of local government in the non-entitlement area of the State regarding the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the State consult with New York City in determining the use of funds.

4. Remove requirements for consistency with the consolidated plan. Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that require that housing activities undertaken with CDBG, HOME, ESG, and HOPWA funds be consistent with the strategic plan, are waived. Also, 24 CFR 570.903, which requires HUD to annually review grantee performance under the consistency criteria, is also waived.

5. Clarifying note on the process for environmental release of funds when a State carries out activities directly. Usually, a State distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, waiver seven (7) below allows New York State to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for request of funds to HUD for approval.

6. Allow reimbursement for pre-agreement costs. The provisions of 24 CFR 570.489(b) are applied to permit New York State or New York City to reimburse itself for otherwise allowable costs incurred on or after September 11, 2001.

7. Distribution and use of funds to and in a metropolitan city. Provisions of 42 U.S.C. 5306 currently require a State to distribute CDBG funds to units of general local government in nonmetropolitan areas for use in nonmetropolitan areas rather than carrying activities out directly. These provisions are waived with alternative requirements with respect to CDBG funds appropriated under the Emergency Response Fund to permit the State of New York to carry out activities directly in New York City and to permit the State to distribute these funds to New York City. Additionally, because New York State may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining the State has failed to carry out its certifications so that such basis shall be that the State has failed to carry out its certifications in compliance with applicable program requirements. Also, 24 CFR 570.494 regarding timely distribution of funds is waived. However, HUD expects New York State to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

8. Action Plan for Disaster Recovery. Current State CDBG requirements for an action plan envision a State using a method for distributing substantially all CDBG funds received to other governments and not carrying out activities directly. This waiver allows the State to submit an action plan that may include activities directly undertaken by the State. With respect to CDBG funds appropriated under the Emergency Response Fund, the last sentence of 42 U.S.C. 5304 (a)(1), and provisions of 42 U.S.C.12705, 24 CFR 570.485, 24 CFR 91.320 and 91.325(a)(5) are waived with alternative requirements that the State submit an action plan for disaster recovery that includes the following:

a. Information specified at 24 CFR 91.220(a), (b), (d) and (g).

b. A description of the activities the state will assist with grant funds. This description of activities shall estimate the number and type of beneficiaries of the proposed activities, proposed accomplishments, and a target date for completion of each activity. This information must be submitted in a form prescribed by HUD.

9. Change the limitations on administrative and planning expenses. The current law and regulations require that 50 percent of any administrative expenses, in excess of $100,000, that do not exceed 2 percent of the grant be paid from the grant. Provisions at 42 U.S.C. 5306(d)(3)(A), 24 CFR 570.489(a)(1)(i) and 24 CFR 570.489(a)(3) are waived to allow use of CDBG disaster grant funds for planning and administrative expenses that do not exceed 10 percent of the grant amount plus program income with respect to the $700 million grant and 5 percent of the grant amount plus program income with respect to the $2.0 billion grant.

10. Administrative costs and reimbursement. To facilitate the use of funds for administrative costs of the Lower Manhattan Development Corporation incurred in relation to revitalization and redevelopment of lower Manhattan in New York City, New York in response to the September 11, 2001 terrorist attacks on New York City including such costs not directly related to this CDBG disaster assistance but related to revitalization of lower Manhattan, section 105(a)(13) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5305(a)(13) is modified solely to the extent necessary for this use of administrative costs. Temporary use of funds under HUD grant number B–01–DW–36–0001 for payment of administrative costs incurred prior to award of HUD grant number B–02–DW–36–0001, and reimbursement of such costs paid from HUD grant number B–01–DW–36–0001 with funds awarded under HUD grant number B–02–DW–36–0001 is authorized.

11. Permitting a further range of eligible economic revitalization activities. The limitation at 42 U.S.C. 5305(a) on eligible activities in the CDBG program to the list of activities in section 105(a) is waived, in recognition of the requirements of section 434 of

Public Law 107–73 that funds be used, in part, for economic revitalization related to the September 11, 2001 terrorist attacks on New York City for the affected area. This change also establishes an alternative requirement by adding the following to the list of eligible activities:

a. Provision of assistance directly to individuals and entities for purposes of economic revitalization of lower Manhattan by retaining and attracting residents.

b. Provision of assistance to nonprofit organizations for purposes of economic revitalization of lower Manhattan by creating and retaining jobs.

12. Public benefit standards for economic development activities. Currently, grantees are limited in the amount of CDBG assistance per job retained or created, or amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity, that will be considered to meet public benefit standards. Public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

13. Underwriting Requirements for Certain Economic Development Activities. To facilitate the use of funds for economic development activities identified in an action plan submitted by the Empire State Development Corporation or the Lower Manhattan Development Corporation as the ''WTC Job Creation and Retention Program,'' ''Small Firm Attraction and Retention Grants,'' and the ''WTC Business Recovery Loan Fund'' the project cost and financial requirements at section 105(e)(2) of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5305(e)(2)) for eligible activities under section 105(a)(14), (15), and (17) in the CDBG program are waived, and the following alternative requirements are established:

WTC Job Creation and Retention Program

For the WTC Job Creation and Retention Program (JCRP), in determining the amount of assistance, Empire State Development Corporation must consider:

a. Other existing incentive transactions and offers received by the business;

b. Alternative locations the business may be considering;

c. Analysis of the risk that:

- The business if located South of Canal Street at the time of the disaster will not remain within lower Manhattan;
- The business if located South of Canal Street at the time of the disaster and that has temporarily relocated elsewhere because of the disaster would not return;
- The New York City business that suffered significant economic dislocation because substantial numbers of its major customers were businesses south of Canal Street would not remain in New York City; or
- The business seeking to locate new operations and create new jobs in lower Manhattan would not otherwise locate there;

d. Employment and economic benefit/cost analysis; and

e. The fiscal impact on State and city revenues.

Small Firm Attraction and Retention Grants

For the Small Firm Attraction and Retention Grants (SFARG), in determining eligibility and funding level of firms, Empire State Development Corporation's decision shall be based on the location, minimum lease terms, and assistance per full-time equivalent employee, as stated in the action plan for the use of funds under the SFARG program. (A description is available on the web at *www.nylovesbiz.com/wtc/sfarg-program.htm)*

WTC Business Recovery Loan Fund

For the WTC Business Recovery Loan Fund (BRLF), in which financing will be provided by experienced institutional, quasi-public, and nonprofit lenders, the amount, terms, and conditions for CDBG and CDBG-backed loans shall be established through standard, generally accepted underwriting analyses. Such underwriting analysis shall, among other factors, include reasonableness of project costs, and project financial feasibility with recognition of the potential for enhanced levels of risk.

13. Duplication of benefits. The CDBG funds appropriated under the Emergency Response Fund may not be used to provide funds for the same specific uses as disaster loans made available by the Small Business Administration (SBA), in compliance with 15 U.S.C. 636(b)(1)(A). If the needs for assistance are more than the SBA disaster loan amount, CDBG disaster assistance may be used to fund such additional need. New York State should encourage the use of SBA physical damage and economic injury disaster loans; they offer low interest rates and favorable terms. Additionally, CDBG disaster assistance may not be used for the same specific uses as disaster assistance made available by the Federal Emergency Management Agency, e.g., for public works and facilities, in compliance with duplication of benefits prohibitions of 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended).

14. Use of subrecipients. The State CDBG program rule does not make specific provision for the treatment of subrecipients. CDBG entitlement communities frequently use subrecipients and the rule for that program specifically describes the requirements for subrecipient agreements and financial requirements. The waiver allowing the state to carry out activities directly creates a situation in which the state is more likely to use Subrecipients to carry out activities in a manner similar to entitlement communities. Therefore the following alternative requirement applies:

a. 24 CFR 570.503, except that specific references to 24 CFR 85 need not be included in subrecipient agreements.

b. 570.502(b).

15. Recordkeeping. Recognizing that the State will carry out activities directly, 24 CFR 570.490(b) is waived and this provision shall apply:

> State records. The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG funds under § 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at § 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.''

24 CFR 570.490(c) and (d) shall also apply.

16. Performance reports. Generally, grantees submit an annual performance report ninety days after the jurisdiction's program year. The conferees for Public Law 107–73 requested that HUD submit reports to the Committees on Appropriations

quarterly on the obligation and expenditure of the CDBG funds appropriated under the Emergency Response Fund. Therefore, 42 U.S.C. 12708(a)(1) and 24 CFR 91.520 are waived with respect to these funds, and HUD is establishing an alternative requirement that the State must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, Federal source and funds (other than CDBG disaster funds), numbers and North American Industry Classification System (NAICS) codes of businesses assisted by activity, total number of jobs created and retained by activity, numbers of such jobs by salary ranges (to be defined by HUD), numbers of properties and housing units assisted; for activities benefiting low- and moderate-income persons, the number of jobs taken by persons of low- and moderate-income, and numbers of low- and moderate-income households benefiting. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Grant Reporting system. Annually (*i.e.,* with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the status of administrative costs.

17. Allow flexibility in use of program income during grant and provide for disposition at grant closeout. A combination of CDBG provisions limits the flexibility available to the State and city for the use of program income. Generally, program income earned on disaster grants has been program income to the regular CDBG program of the applicable entitlement or State and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the State CDBG program rule and law are designed for a program in which the State distributes all funds rather than carrying out activities directly and the law specifically provides for local governments receiving grants to retain program income if they use it for additional eligible activities under the regular CDBG program. This waiver and the alternate requirements allow program income to the disaster grant to be governed by the original grant's requirements and waivers and to remain the State's until grant closeout, at which point any program income on hand or received subsequently will become program income to New York City's regular entitlement CDBG program. Therefore, 42 U.S.C. 5304(j), 24 CFR 570.481(a) to the extent it relates to defining program income, and 24 CFR 570.489(e) are waived and the following alternative requirements apply:

a. Program income is defined at 24 CFR 570.500(a);

b. 24 CFR 570.504(a) and (c);

c. Program income received before grant closeout may be retained by the recipient if the income is treated as additional funds under this grant subject to all of this grant's applicable requirements;

d. Substantially all program income other than any held in revolving funds shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury. Program income in the form of repayments to, or interest earned on, a revolving fund as defined in 24 CFR 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity; and

e. Program income on hand at the time of grant closeout and program income received after grant closeout shall be program income to the ongoing CDBG entitlement program of New York City.

18. Modification of the anti-pirating clause to permit assistance to help a business return. 42 U.S.C. 5305(h) is hereby waived only to allow the State to provide assistance under this grant to any business that was operating in the covered disaster area before September 11, 2001, and has since moved in whole or in part from the affected area to continue business.

19. Change of use of real property. This section is written in the context of the regular State CDBG program in which the State distributes funds to units of general local governments and does not carry out activities directly. This change grants a waiver allowing the State to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), ''unit of general local government'' shall be read as ''unit of general local government or State.''

20. Responsibility for State review and handling of noncompliance. This change conforms the rule with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies:

The State shall make reviews and audits including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Act.

In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence. The State shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

Section 434 of Public Law 107–73 requires HUD to publish these waivers in the **Federal Register** no later than five days before their effective date. The effective date of these waivers is May 28, 2002.

Dated: May 14, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02–12715 Filed 5–21–02; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the final environmental impact statement (EIS) for the proposed Liberty Development and Production Project in Beaufort Sea, Alaska.

SUMMARY: MMS announces the availability of the final EIS prepared by MMS for the Liberty Project in Foggy Island Bay offshore Beaufort Sea, Alaska.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing the final EIS ''OCS EIS/EA, MMS 2002–19'' (Volumes I-IV) can contact the MMS Alaska OCS Region. The documents are available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, telephone: (907) 271–6070, or (907) 271–6621, or toll free at 1–800–764–2627. Requests may also be sent to MMS at *akwebmaster@mms.gov.* You may obtain single copies of the final EIS, or a CD/ROM version, or the Executive Summary from the same address.

You may look at copies of the final EIS in the following libraries:

Alaska Pacific University, Academic Support Center Library, 4101 University Drive, Anchorage, Alaska;
Alaska Resources Library and Information Service, U.S. Department of the Interior, 3150 C Street, Suite 100, Anchorage, Alaska;
Alaska State Library, Government Publications, State Office Building, 333 Willoughby, Juneau, Alaska;
Canadian Joint Secretariat Librarian, Inuvikon Northwest Territories, Canada;
Department of Indian and Northern Affairs, Yellowknife, Northwest Territories, Canada;
Fairbanks North Star Borough, Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska;
Ilisaavik Library, Shishmaref, Alaska;
Juneau Public Library, 292 Marine Way, Juneau, Alaska;
Kaveolook School Library, Kaktovik, Alaska;
Kegoyah Kozpa Public Library, Nome, Alaska;
National Oceanic and Atmospheric Administration, Information Services Division, Seattle, Washington;
North Slope Borough School District, Library/Media Center, Barrow, Alaska;
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska;
Tikigaq Library, Point Hope, Alaska;
Tuzzy Consortium Library, Barrow, Alaska;
University of Alaska Anchorage, Consortium Library, 3211 Providence Drive, Anchorage, Alaska;
University of Alaska Fairbanks, Elmer E. Rasmuson Library, Government Documents, 310 Tanana Drive, Fairbanks, Alaska;
University of Alaska Fairbanks, Geophysical Institute, Government Documents, Fairbanks, Alaska;
University of Alaska Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska;
University of Alaska, Southeast, 11120 Glacier Highway, Juneau, Alaska;
U.S. Army Corps of Engineers Library, U.S. Department of Defense, Elmendorf Air Force Base, Anchorage, Alaska;
U.S. Fish and Wildlife Service Library, 1011 East Tudor Road, Anchorage, Alaska;
Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska;
Z.J. Loussac Library, 3600 Denali Street, Anchorage, Alaska.

SUPPLEMENTARY INFORMATION: *Proposal.* The British Petroleum Exploration (Alaska) (BPXA) Inc. submitted a proposal to develop the Liberty oil field from a manmade gravel island constructed on the Federal OCS in Foggy Island Bay in approximately 22 feet of water inside the barrier islands. The Liberty Project, which is located approximately 5 miles offshore the central Beaufort coast, is about midway between Point Brower to the west and Tigvariak Island to the east. The proposed island would be located in federal waters between McClure Islands and the coast. The overall project includes a gravel island, associated infrastructure, subsea buried oil pipeline (6.1 miles long), and an above-ground onshore pipeline (approximately 1.5 miles long) south to tie in with the Badami common carrier pipeline system, a new onshore gravel mine site, and ice roads.

The Development and Production Plan (DPP) for the Liberty Project requires approval by MMS, the lead permitting agency, and by the U.S. Army Corps of Engineers (COE), Alaska District Office, and the U.S. Environmental Protection Agency (EPA), Region 10, which are cooperating agencies. Together, these agencies have federal jurisdiction over the development and production of the oil resources, including construction, drilling, production, and transportation from the project to a common carrier pipeline. Additional permits from the State of Alaska and from the North Slope Borough would be required.

MMS held a series of scoping meetings in Alaska. Based on the most significant issues raised in those meetings, MMS identified and evaluated a variety of alternatives in the EIS. Including BPXA's proposal, these alternatives examine: three island locations and pipeline routes; four pipeline designs; two types of upper slope protection for the production island; two gravel mine sites; two pipeline burial depths; and some combinations of these possibilities. The final EIS also examines the No Action alternative. MMS and the cooperating agencies held public hearings in Alaska in February 2000. MMS received both written and oral comments, which were incorporated in the final EIS.

Change in Status

In January 2002, BPXA publicly announced they were putting the Liberty Project on hold pending an ongoing re-evaluation of project configuration and costs. On March 5, 2002, BPXA sent a letter to MMS and other agencies stating that pending completion of project re-evaluation, affected agencies should consider submitted permit applications incomplete and recommended processing of these applications be suspended. Also in March, BPXA indicated informally that submission of a modified DPP for the Liberty Project would likely take 6 months or more.

MMS has decided to publish and file with EPA this final EIS for the Liberty DPP because it includes substantial changes made in response to comments on the draft EIS. Also, MMS expects this final EIS will serve as a reference document for future projects. The COE and EPA, as cooperating agencies, had intended to use this final EIS as the National Environmental Policy Act (NEPA) document supporting permitting decisions by these agencies.

The COE and EPA hereby solicit comments on the adequacy of, and alternatives considered in, this final EIS. Due to the applicant's re-evaluation of the project design, and the incomplete status of permit applications, the COE and EPA are not soliciting comments on their permit decisions at this time. When revised permit applications are received with project changes, the COE and EPA will issue public notices to request comments on the project proposal. Depending on the changes made, comments received, and any new information available, the three agencies will evaluate whether or not to use this final EIS as the primary NEPA documentation, issue a supplemental EIS, or issue new environmental documentation to meet the agencies' respective NEPA compliance and permit evaluation requirements.

Any written comments on this final EIS should be provided to MMS. Address your comments to the Regional Director, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4363. Our practice is to make comments, including the names and home address of respondents, available for public review. An individual commenter may ask that we withhold their name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations or businesses or by individuals identifying themselves as representatives of organizations or businesses.

Dated: May 16, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 02–12787 Filed 5–21–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–417–421 and 731–TA–953, 954, 956–959, 961, and 962 (Final)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: Effective April 10, 2002, the Commission established a schedule for the conduct of the final phase of the subject investigations (67 FR 22105, May 2, 2002) based on the scheduled date of the earliest final determination by the Department of Commerce (Commerce) in the subject investigations. Commerce aligned the final countervailing duty determinations with the earliest final determination in the subject antidumping duty investigations (67 FR 12524, March 19, 2002) and subsequently extended the date for its final determinations in the subject antidumping duty investigations from June 17, 2002, to August 23, 2002 (67 FR 17367, April 10, 2002; 67 FR 17379, April 10, 2002; 67 FR 17389, April 10, 2002; 67 FR 18165, April 15, 2002; 67 FR 20728, April 26, 2002; and 67 FR 32013, May 13, 2002). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than August 19, 2002; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on August 22, 2002; the prehearing staff report will be placed in the nonpublic record on August 14, 2002; the deadline for filing prehearing briefs is August 21, 2002; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on August 27, 2002; the deadline for filing posthearing briefs is September 4, 2002; the Commission will make its final release of information on September 18, 2002; and final party comments are due on September 20, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: May 17, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–12820 Filed 5–21–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–414 and 731–TA–928 (Final)]

Softwood Lumber From Canada

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, [2] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from Canada of softwood lumber, provided for in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Canada and sold in the United States at less than fair value (LTFV). The Commission further determines that it would not have found material injury but for the suspension of liquidation.

Background

The Commission instituted these investigations effective April 2, 2001, following receipt of a petition filed with the Commission and Commerce by the Coalition for Fair Lumber Imports Executive Committee,[3] Washington, DC; the United Brotherhood of Carpenters and Joiners, Portland, OR; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Nashville, TN. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of softwood lumber from Canada were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 26, 2001 (66 FR 59027). The hearing was held in Washington, DC, on March 26, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 16, 2002. The views of the Commission are contained in USITC Publication 3509 (May 2002), entitled Softwood Lumber from Canada: Investigations Nos. 701–TA–414 and 731–TA–928 (Final).

Issued: May 16, 2002.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Bragg not participating.

[3] The Coalition for Fair Lumber Imports Executive Committee is comprised of Hood Industries, International Paper Co., Moose River Lumber Co., New South, Inc., Plum Creek Timber Co., Potlatch Corp., Seneca Sawmill Co., Shearer Lumber Products, Shuqualak Lumber Co., Sierra Pacific Industries, Swift Lumber, Inc., Temple-Inland Forest Products, and Tolleson Lumber Co., Inc.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–12788 Filed 5–21–02; 8:45 am]

BILLING CODE 7020–20–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: new collection; technology initiative grant application kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 22, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Technology Initiative Grant Application Kit.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: U.S. Department of Justice, Office of Community Oriented Policing Services (COPS), *Form Number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement entities. Other: None. Abstract: The information collected by the Technology Initiative Grant Application Kit is requested to obtain a comprehensive understanding of project objectives in accordance with the Federally appropriated mandate and grant program policies of the COPS Office.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is 25 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are estimated 5,200 annual burden hours associated with this information collection:

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: May 16, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–12832 Filed 5–21–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of information Collection Under Review; reinstatement, with change, of a previously approved collection for which approval has expired; Budget Detail Worksheet.

The Department of Justice, Office of Justice Programs, Office of the Comptroller, has submitted the following information collection request for review and clearance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 22, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202–307–0623, Office of the Comptroller, Office of Justice Programs, U.S. Department of Justice, 810 7th street, NW., Washington, DC 20531.

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 function of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Budget Detail Worksheet.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: None. Office of Justice Program, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: All potential grantee partners who are possible recipients of our discretionary grant programs. The eligible recipients include state and local government, Indian tribes, profit entities, non-profit entities, educational institutions, and individuals. The form is not mandatory and is recommended as a guide to assist the recipient in preparing the budget narrative as authorized in 28 CFR parts 66 and 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 2500 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the forms is 10,000 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW, Washington, DC 20530.

Dated: May 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–12833 Filed 5–21–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program, FY 2002 Budget

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. This notice announces grant availability for two different categories of Susan Harwood Training Grants. The Targeted Topic grants will support training in occupational safety and health on topics selected by OSHA. The Institutional Competency Building grants will assist organizations in expanding their occupational safety and health training, education and related assistance capacity. The two categories of grants are described below.

1. Targeted Topic Grants

Two topics have been selected for the Targeted Topic grants.

The training topics are:

- Ergonomic hazards
- Homeland security.

Targeted Topic category grants will be awarded for 12 months. There is approximately $1.2 million available for this grant category. The average award will be $150,000.

2. Institutional Competency Building Grants

Grants are available to nonprofit organizations to assist them in expanding their safety and health training, education and related assistance capacity. To be eligible to apply for this grant category, organizations must serve clients nationally or in multi-state areas, and provide safety and health training, education and services to their clients.

Organizations will be expected to institutionalize safety and health training, education, and related assistance in their organization in order to assist workers and employers on an ongoing basis.

Institutional Competency Building grants will be awarded for 12 months. There is approximately $5.4 million available for this grant category and an average Federal award will be $250,000.

This notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. All applicants must obtain the detailed grant application instructions mentioned later in the notice before submitting an application.

Separate grant applications must be submitted by organizations interested in applying under more than one grant category or for more than one training topic.

The Occupational Safety and Health Act of 1970 and the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, Pub. L. 107–116, authorize this program.

DUE DATE: Grant applications must be received by 4:30 p.m. central time, Friday, June 21, 2002.

ADDRESS FOR MAILING APPLICATIONS: Submit one signed original and three copies of each grant application to the attention of Grants Officer, U.S. Department of Labor, OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ernest Thompson, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810. This is not a toll-free number. E-mail: *cindy.bencheck@osha.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of the Susan Harwood Training Grant Program?

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through its Strategic Plan, or as part of an OSHA special emphasis program.

Grantees are expected to provide occupational safety and health training programs, develop safety and health training and/or educational programs, recruit workers and employers for the training, and conduct the training. Grantees are also expected to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What Are the Two Grant Categories Being Announced This Year?

1. Targeted Topic grants.
2. Institutional Competency Building grants.

What Are the Training Topics for the Targeted Topic Grants?

Two training topics were chosen for this grant announcement. Applicants wishing to apply for more than one grant topic must submit a separate grant application for each topic. Each grant application must address one of the following training topics.

1. Ergonomics. Programs that train workers and employers in the recognition and prevention of workplace ergonomic risk factors in industries that have a high incidence rate for ergonomic injuries. The training program should follow established best practices or follow a combination of effective practices for addressing the ergonomic risk factors for the industry being targeted to receive this training. The applicant must demonstrate in the grant application that the industry being targeted for the ergonomics training has

a high incidence rate for ergonomic injuries.

2. Homeland Security (emergency preparedness and response). Programs that train workers and employers on preparing to respond to emergency situations at their workplaces. Applicants may propose training programs that address emergency preparedness for any industry covered by the Occupational Safety and Health Act.

Training programs should include information on developing and maintaining comprehensive emergency action plans and focus on occupational safety and health requirements such as egress, evacuation policies and procedures, and fire safety protection plans. Other relevant workplace emergency preparedness topics that can be included or proposed under this topic include biological hazards, chemical hazards, and workplace violence.

What Is the Purpose of the Institutional Competency Building Grants?

These grants are intended to assist nonprofit organizations in expanding their safety and health training, education, and related assistance capacity. To be eligible to apply for this grant program category, organizations must be nonprofit, serve clients nationally or in multi-state areas, and provide safety and health training, education and services to their clients.

Organizations will be expected to institutionalize safety and health training, education, and related assistance in their organization in order to assist workers on an ongoing basis.

Who Is Eligible To Apply for a Grant?

Any nonprofit organization is eligible to apply. Private nonprofit community-based organizations, which may be faith-based, are also eligible to apply. State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS).

What Can Grant Funds Be Spent on?

Grant funds can be spent on the following:

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in the training.

Are There Restrictions on How Grant Funds Can Be Spent?

Grant funds may not be used for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include State and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers or employers in arbitration cases or other actions against employers, or that provide assistance to employers and workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

What Other Grant Requirements Are There?

1. OSHA review of educational materials. OSHA will review all educational materials produced by the grantee for technical accuracy during development and before final publication. OSHA will also review training curricula and purchased training materials for accuracy before they are used. Grantees developing training materials must follow all copyright laws and document that their materials are free from copyright infringements.

When grant recipients produce training materials, they must provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program will be included in this lending program. In addition, all materials produced by grantees must be provided to OSHA in hard copy as well as in a digital format (CD Rom) for possible publication on the Internet by OSHA. Three copies of the materials must be provided to OSHA. Acceptable formats for training materials include Microsoft Word 2000 and Microsoft PowerPoint 2000.

2. OMB and regulatory requirements. Grantees are required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- OMB Circular A–133, 29 CFR parts 96 and 99, which provide information about audit requirements.
- 29 CFR parts 31 and 36 as applicable.

3. Certifications. All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. Students. The training program must serve multiple employers and their employees.

5. Other. In compliance with the President's Executive Orders 12876 as amended, 12928, 13230, and 13021 as amended, the grantee is strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

6. The restrictions on expenditures of Federal funds in appropriations acts, Pub. L. 107–67 and 107–117, to the extent those restrictions are pertinent to the award.

7. Acknowledgment of Federal Funds. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds included in the Act, (Pub. L. 107–117), including but not limited to State and local governments and recipients of Federal research grants, shall clearly state: (1) The percentage of the total costs of the

program or project that will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program; and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

What Information Must My Application Contain?

To be considered for a Harwood grant, an application must include all of the information listed in this notice. In addition, all applicants should obtain and review the grant application package before preparing and submitting their grant application. A complete application will contain the following forms and narrative.

1. Application for Federal Assistance form (SF 424).
2. Program Summary. The program summary is a short one-to-two page abstract that summarizes the proposed project and provides information about the applicant organization.
3. Budget Information forms (SF 424A).
4. Detailed Budget Backup.
5. Program Narrative, not to exceed 30 pages in length, which includes: Problem Statement/Need for Funds; Managerial Experience; Program Experience; Workplan.
6. Assurances form (SF 424B).
7. Certifications form (OSHA 189).
8. Supplemental Certification Regarding Lobbying Activities form.
9. Organization Chart.
10. Evidence of Non-Profit Status, if applicable.
11. Accounting System Certification, if applicable.

How Are Applications for the Targeted Topic Grants Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and education program addresses one of the two selected training topics. Please refer back to the What are the training topics for the Targeted Topic grants? section for details on the selected training topics.

i. Ergonomics. Programs that train workers and employers in the recognition and prevention of workplace ergonomic risk factors in industries that have a high incident rate for ergonomic injuries. The programs should follow established best practices or follow a combination of effective practices for addressing these ergonomic risk factors for the industry being targeted to receive this training.

ii. Homeland Security (emergency preparedness and response). Programs that train workers and employers on preparing to respond to emergency situations at their workplaces.

OSHA will give preference to applications that:

- Train managers or supervisors in addition to workers.
- Contribute a non-Federal matching share towards the grant. While applicants are not required to do so, preference will be given to organizations that contribute a non-Federal share.

b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained, and clearly identifies the types of workers and employers to be trained. The training will reach workers and employers from multiple employers.

c. If the proposal contains a train-the-trainer program, the following information must be provided:

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers;
- The outline of the course curriculum that will be used by the new trainers to teach their students;
- The estimated number of courses to be conducted by the new trainers;
- The estimated number of students to be trained by these new trainers; and
- A description of how the new trainers will report back to the grantee about their classes and student numbers.

d. The planned activities and training are tailored to the needs and levels of the workers and employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

g. There is a plan to evaluate the program's effectiveness and impact to determine if the safety and health services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

h. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health. Nonprofit community-based organizations, which may be faith-based, must partner with an established safety and health organization or must demonstrate that their organization has prior experience in providing safety and health training to workers or employers.

b. The organization applying for the grant demonstrates experience in training adults in work-related subjects or in providing services to its target audience.

c. The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

c. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Are Applications for the Institutional Competency Building Grants Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed competency building program will provide ongoing safety and health training, education and services.

OSHA will give preference to applications that:

- Train managers or supervisors in addition to workers.
- Contribute a non-Federal matching share towards the grant. While applicants are not required to do so, preference will be given to organizations that contribute a non-Federal share.
- Propose to reach and serve one or more categories of workers within the target audience. The target audience includes non-English speaking workers, small business employers and employees, and workers who are employed in high hazard industries and industries with high fatality rates.
- Propose to develop, validate, and evaluate occupational safety and health training materials for use by employers in traditional classroom settings or workplace settings. OSHA will make these materials available to the public.
- Organizations that plan to institutionalize safety and health training, education, and related assistance in their organization in order to assist workers and employers on an ongoing basis.

b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained, and clearly identifies the types of workers and employers to be trained. The training will reach workers and employers from multiple employers.

c. If the proposal contains a train-the-trainer program, the following information must be provided:

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers;
- The content outline of the course curriculum that will be used by the new trainers to teach their students;
- The estimated number of courses to be conducted by the new trainers;
- The estimated number of students to be trained by these new trainers; and
- A description of how the new trainers will report back to the grantee about their classes and student numbers.

d. The planned activities and training are tailored to the needs and levels of the workers and employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

g. There is a plan to validate and evaluate the program's effectiveness and impact to determine if the safety and health services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

h. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health. Nonprofit community-based organizations, which may be faith-based, must partner with an established safety and health organization or must demonstrate that their organization has prior experience in providing safety and health training to workers.

b. The organization applying for the grant demonstrates experience in training adults in work-related subjects or in providing services to its target audience.

c. The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

c. The cost per trainee and the cost per training hour are reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money Is Available for Grants?

Targeted Topic grants. There is approximately $1.2 million available for these grants. The Federal award will average $150,000.

Institutional Competency Building grants. There is approximately $5.4 million available for these grants. The Federal award will average $250,000.

How Long Are Grants Awarded for?

Grants are awarded for a twelve-month period. The period of performance begins September 30, 2002, and ends September 30, 2003. The grant applicant's workplan should coincide with these dates.

How Do I Get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at *http://www.osha.gov/fso/ote/training/sharwood/sharwood.html.*

When and Where Are Applications To Be Sent?

The application deadline is 4:30 p.m. central time, Friday, June 21, 2002.

Submit one signed original and three copies of each application to Grants Officer, U. S. Department of Labor, OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, IL 60018.

How Will I Be Told if My Application Was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant

Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 16th day of May, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–12851 Filed 5–21–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–11077]

Proposed Amendment to Prohibited Transaction Exemption (PTE) 2000–58 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al.

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of a proposed amendment to certain of the Underwriter Exemptions.[1]

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to certain of the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment, if granted, would permit the trustee of the trust to be an affiliate of the underwriter of the certificates. If adopted, the proposed amendment would affect the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such Plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before 45 days from the date of the publication in the **Federal Register** of this notice of proposed amendment. If granted, the amendment will be effective as of March 13, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW, Washington, DC 20210, (attention: Application No. D–11077; Proposal to Amend Underwriter Exemptions). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to ''*moffittb@pwba.dol.gov*'' or by FAX to (202) 219–0204, by the end of the scheduled comment period. 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.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend certain of the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act), as amended, and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), as amended, by reason of certain provisions of section 4975(c)(1) of the Code. All of the Underwriter Exemptions were amended by Prohibited Transaction Exemption 97–34 (62 FR 39021, July 21, 1997) and by Prohibited Transaction Exemption 2000–58 (65 FR 67765, November 13, 2000).

On March 28, 2002, the Department granted a final exemption to J.P. Morgan Chase & Company (J.P. Morgan Chase) which amended three of the Underwriter Exemptions granted to J.P. Morgan Chase and certain of its affiliates.[2] (See PTE 2002–19, 67 FR 14979). The Department subsequently contacted The Bond Market Association, a trade association which represents securities firms and banks that underwrite, trade and sell debt securities, which confirmed that a majority of its members currently possessing Underwriter Exemptions desire the same relief provided to J.P. Morgan Chase under PTE 2002–19. Accordingly, the Department has determined to amend the remaining Underwriter Exemptions on its own motion.

The Underwriter Exemptions permit Plans to purchase certain securities representing interests in asset-or mortgage-backed investment pools. The securities generally take the form of certificates issued by a trust (the Trust). The Underwriter Exemptions permit transactions involving a Trust (including the servicing, management and operation of the Trust) and certificates evidencing interests therein (including the sale, exchange or transfer of certificates in the initial issuance of the certificates or in the secondary market for such certificates). The entities covered include the sponsor of

[1] The term ''Underwriter Exemptions'' refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November 13, 2000).

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999); and William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

[2] The exemptions are PTE 90–23 (55 FR 20545, May 17, 1990), PTE 90–31 (55 FR 23144, June 6, 1990), and PTE 90–33 (55 FR 23151, June 6, 1990).

the Trust as well as the underwriter for the certificates issued by the Trust when the sponsor, servicer, trustee or insurer of the Trust, the underwriter of the certificates issued by the Trust, or an obligor of the receivables contained in the Trust, is a party in interest with respect to an investing Plan.[3]

One of the requirements of the Underwriter Exemptions (except as amended by PTE 2002–19) is that the trustee of the Trust not be an affiliate of any member of what the Underwriter Exemptions define as the ''Restricted Group;'' i.e., in addition to the trustee, each underwriter, each servicer, each insurer, the sponsor, any more than 5% obligor with respect to receivables included in the Trust, each counterparty in an Eligible Swap Agreement, and any affiliate of such persons.

Like PTE 2002–19, the amendment proposed herein would permit the trustee of a Trust to be an affiliate of the underwriter of the securities issued by the Trust. The Bond Market Association represents that the facts and circumstances presented in the amendment requested by J.P. Morgan Chase are equally relevant and applicable with respect to other situations in which underwriters possessing an Underwriter Exemption may have trustee affiliates.

In connection with its application to amend its Underwriter Exemptions, J.P. Morgan Chase represented that, while the provision requiring an independent trustee was not a major issue in 1989, developments in the banking industry over the past twelve years have caused the requirement to become onerous and disadvantageous to investors, including Plans. As the banking industry has consolidated, the number of banks participating in the corporate trust business has shrunk dramatically. This trend has been due to a number of factors which have made participation in the trust business less attractive to banks. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional float income due to the growth in book entry securities. On the expense side, the cost of entry into the corporate trust business and the cost of remaining in the business have increased dramatically. This increase includes both technological and personnel costs. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions.

J.P. Morgan Chase represented that the changes in the securities underwriting business are equally significant. These include the increased participation by banks and bank affiliates, and consolidation within the industry. As of the calendar year 2000, four of the top ten underwriters for structured finance transactions had affiliated corporate trust businesses. Eight of the top ten trustees, a group with a combined market share of over 76 percent in 2000, were affiliates of underwriters active in the structured finance sector. The trend in the market to broadly syndicate underwriting exacerbates the problem: the Underwriter Exemptions prohibit affiliation not only between the trustee and the lead underwriter, but between the trustee and any underwriter, without regard to the amount underwritten.

J.P. Morgan Chase stated that currently, most providers of corporate trust and related services in the structured finance marketplace are large banks that have the requisite staff and systems resources to efficiently serve this marketplace. Most of these same banks, particularly those that are profitable and well-capitalized, have expanded into the securities underwriting business, including underwriting of structured finance transactions. Not only will investors (including Plans) be disadvantaged if banks and their affiliates which underwrite securities continue to be precluded from providing trust services, but further, it is clearly not in the best interest of investors, including Plan investors, to eliminate those banks—often the most competent in the servicing of structured finance transactions—from the pool of available corporate trust providers.

A trustee in a structured finance transaction, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements so that the intent of the crafters of the transaction may be carried out. These functions are essentially ministerial, such as establishing accounts, receiving funds, making payments and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, there is no need for trustees in structured finance transactions to assume discretionary functions in order to protect the interests of debt holders in the event of default or bankruptcy, because structured finance entities are bankruptcy remote vehicles. There is no ''issuer'' outside the structured transaction to pursue for repayment of the debt. The trustee's role is defined by a contract, which provides an explicit structure spelling out the action to be taken upon the happening of specified events. There is no opportunity or incentive for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter or otherwise, to take or not to take actions which might benefit the underwriter to the detriment of Plan investors.

J.P. Morgan Chase represented that the role of the underwriter in a structured financing involves, among other things, assisting the sponsor or originator in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to the public, in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter has no further role in the transaction. The trustee has no opportunity to take or not take action, or to use information in ways which might advantage the underwriter to the detriment of Plan investors. In fact, from the point of view of enhancing its reputation, the underwriter clearly wants the transaction to succeed as it was structured, which includes the trustee performing in a manner independent of the underwriter. Accordingly, J.P. Morgan Chase requested a modification to its Underwriter Exemptions in order to permit the trustee of the Trust to be an affiliate of the underwriter.

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 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 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 require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of

[3] Interested persons should review the Department's regulations at 29 CFR 2510.3–101 (Definition of ''plan assets''—plan investments) for the reasons a Plan's investment in certificates issued by a Trust may raise prohibited transaction issues with respect to parties in interest.

the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act 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, August 10, 1990), the Department proposes to modify the following individual Prohibited Transaction Exemptions (PTEs), as set forth below: PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November 13, 2000), each as subsequently amended by PTE 97–34 and PTE 2000–58.

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999); and William J. Mayer Securities, FAN 01–25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

The first sentence of section II.A.(4) of these exemptions is amended to read:

> The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter.

If granted, the amendment will be effective as of March 13, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Underwriter Exemptions, refer to the proposed exemptions and the grant notices that are cited above.

Signed at Washington, DC, this 17th day of May, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–12831 Filed 5–21–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–11000]

Prohibited Transaction Exemption 2002–26; Grant of Individual Exemptions; Holt Fleck & Free P.A. Profit Sharing Plan (the Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Holt, Fleck & Free P.A. Profit Sharing Plan (the Plan) Located in Noblesville, Indiana

[Prohibited Transaction Exemption No. 2002–26; Exemption Application No. D–11000]

Exemption

The restrictions of sections 406(a) and 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 (the Sale) by the Plan to a Plan fiduciary of two parcels of improved real property (the Parcels). This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The Sales price is the greater of $165,000 or the fair market value of the Parcels as of the date of the Sale;

(c) The fair market value of the Parcels has been determined by an independent, qualified appraiser;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan does not pay any commissions, costs or other expenses in connection 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 March 18, 2002 at 67 FR 12064.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Prudential Insurance Company of America and Its Affiliates (collectively, Prudential) Located in Newark, NJ

[Prohibited Transaction Exemption 2002–27; Exemption Application No. D–11051]

Exemption

Section I. Exemption for the Acquisition, Holding and Disposition of Prudential Stock

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,[1] shall not apply, effective December 13, 2001, to the acquisition, holding and disposition of common stock issued by Prudential Financial, Inc. (the Prudential Financial Stock) and/or common stock issued by a Prudential affiliate (the Prudential Affiliate Stock; together, the Prudential Stock), by Index and Model-Driven Funds that are managed by Prudential, in which client plans of Prudential invest, provided that the following conditions and the General Conditions of Section II are met:

(a) The acquisition or disposition of Prudential 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 Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) Whenever Prudential 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 Prudential 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 Prudential Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section III(k) below), (ii) through an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (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 III(j) below) that is operated by a recognized U.S. securities exchange (as defined in Section III(k) 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 Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints a fiduciary which is independent of Prudential to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model pursuant to the restrictions described in Section I(b) above, all aggregate daily purchases of Prudential Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

[1] For purposes of this exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

(2) 15 percent of the trading volume for Prudential 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 Prudential Stock not otherwise described above in Section I(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 Prudential 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 III(j) below) operated by a broker-dealer independent of Prudential 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 III(k) 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 III(k) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Prudential (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 Prudential Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Prudential.

(g) Prudential 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 Prudential authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the Prudential directs the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Section II. General Conditions

(a) Prudential 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 II 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 Prudential, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Prudential 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 II and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section II 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 II(b)(1) shall be authorized to examine trade secrets of Prudential or commercial or financial information which is considered confidential.

Section III. Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, 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 III(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 Prudential 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 Prudential or any party in which Prudential may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, 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 Prudential, to transform an independently maintained Index, as described in Section III(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 Prudential or any party in which Prudential 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 Prudential; and,

(3) The index is a generally-accepted standardized index of securities which

is not specifically tailored for the use of Prudential.

(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 Prudential 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 ''Prudential'' refers to Prudential Insurance Company of America, its indirect parent and holding company, Prudential Financial, and any current or future affiliates, as defined below in paragraph (h).

(g) The term ''Prudential Financial'' refers to Prudential Financial, Inc., the indirect parent and holding company of Prudential Insurance Company of America.

(h) An ''affiliate'' of Prudential 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.

(i) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) 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 USC 8c(a)(51)(A) (ii)].

(k) 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 USC 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: This exemption is effective as of December 13, 2001.

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 January 18, 2002 at 67 FR 2692.

Written Comments

The Department received two written comments with respect to the proposed exemption and no requests for a public hearing. The comments, which were submitted by representatives of two Prudential client plans, expressed concern that allowing Index and Model-Driven Funds managed by Prudential to invest in Prudential Stock would create a conflict of interest for Prudential. One of the commenters also referred to the ''Enron situation'' and the general concerns of the public with respect to conflicts of interest in large company 401(k) plan investments.

In response to these comments, Prudential notes that it applied to the Department for exemptive relief because of the possibility of conflicts of interest where Prudential manages Index and Model-Driven Funds that invest in Prudential Stock. However, Prudential believes that the conditions imposed by the proposed exemption effectively protect investing plans from these conflicts. Prudential points out that at their core, the conditions of the proposed exemption are designed to eliminate any exercise of discretion by Prudential in determining when and how Prudential Stock is bought or sold in connection with Index or Model-Driven Funds. By operating in accordance with these conditions, Prudential states that it has none of the discretion that would permit it to engage in conflicts of interest. Prudential also explains that in the first condition of the proposal, the sole purpose for the acquisition of Prudential Stock is to maintain ''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 Prudential Stock which is intended to benefit Prudential or any party in which Prudential has an interest.'' Further, Prudential states that the proposed exemption includes numerous other conditions that limit any potential for conflicts of interest.

In addition, Prudential notes that the Department has issued several exemptions to financial institutions permitting the purchase of their own stock by index and model-driven funds they manage, subject to nearly identical conditions. Therefore, Prudential argues that it would be unfair if the Department were not to grant it the same exemptive relief its competitors have received.

Finally, Prudential notes that the proposed exemption does not raise Enron-type concerns because the proposal does not cover investments by Prudential's in-house plans in Prudential Stock. Also, Prudential explains that the proposal does not present the investment diversification issue that was raised in connection with Enron's 40l(k) plan since Prudential Stock will always constitute a small portion of the stock held by the Index and Model-Driven Funds and Prudential Stock will always comprise a small fraction of the indexes these Funds track.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the clarifications described above. 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–11051) 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 Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (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 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) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of May, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–12829 Filed 5–21–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10987]

Proposed Exemption; Metropolitan Life Insurance Company (MetLife)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemption 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 requests 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 requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), 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. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. 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) Located in New York, NY

[Application No. D–10987]

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). If the exemption is granted, the restrictions of sections 406(a), 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, effective January 20, 2000 until May 18, 2000, to (1) the holding, by MetLife Separate Account R.I. (the Separate Account), an index fund managed by MetLife which holds plan assets, of 523 shares of common stock (the Common Shares), issued by the Conning Corporation (Conning), an affiliate of MetLife; (2) the acquisition, by MetLife, of certain certificates, representing 523 shares of cancelled Conning Common Shares (the Cancelled Conning Shares), from the Separate Account, pursuant to the terms of a tender offer (the Tender Offer) and merger agreement (the Merger Agreement); and (3) the delivery of the certificates representing the 523 Cancelled Conning Shares to ChaseMellon Shareholder Services, LLC (the Disbursing Agent), in exchange for certain cash consideration.

This proposed exemption is subject to the following conditions:

(a) The decision by a Plan to invest in the Separate Account was made by a Plan fiduciary which was independent of MetLife and its affiliates.

(b) At all times, the Conning Common Shares represented less than one percent of the assets of the Separate Account and less than one percent of the value of the assets of the ERISA-covered Plans investing therein.

(c) The exchange of the Cancelled Conning Shares by the Separate Account was a one-time transaction for cash.

(d) The Separate Account and the Plans received the fair market value for each Cancelled Conning Share on the date of the exchange.

(e) The consideration received by the Separate Account for its Cancelled Conning Shares was the same consideration that was received by (i) all shareholders who validly tendered their Conning Common Shares pursuant to a Tender Offer and (ii) all holders of Cancelled Conning Shares.

(f) The Separate Account paid no commissions, fees or other expenses with respect to the exchange of the Cancelled Conning Shares for cash.

(g) After the expiration of the Tender Offer and the consummation of the Merger, the Separate Account delivered certificates representing the Cancelled Conning Shares to the Disbursing Agent to exchange with MetLife and its affiliates for cash.

(h) The terms of the exchange were no less favorable to the Separate Account and the Plans than those obtainable in an arm's length transaction engaged in by other similarly-situated holders of the Cancelled Conning Shares.

Effective Date: If granted, this proposed exemption will be effective from January 20, 2000 until May 18, 2000.

Summary of Facts and Representations

1. The parties to the transactions are described as follows:

a. *MetLife,* which maintains its principal executive offices at One Madison Avenue, New York, New York, is a New York corporation that is subject to supervision and examination by the Superintendent of Insurance of the State of New York. MetLife is a wholly owned subsidiary of MetLife, Inc., a Delaware corporation. Through its subsidiaries and affiliates, MetLife, Inc. is a leading provider of insurance and other financial services to individual and group customers. MetLife and its affiliates serve approximately 9 million households in the U.S. and companies and institutions with 33 million employees and members.

MetLife also has international insurance operations in 12 countries. Among the variety of insurance products and service it offers, MetLife and certain of its affiliates provide funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act.

MetLife maintains pooled and single customer separate accounts in which Title I pension, profit sharing, welfare benefit plans and thrift plans invest. MetLife and/or its affiliates manage all or a portion of the assets of such separate accounts. Additionally, MetLife has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services to Plans.

In their capacities as fiduciaries of Plans, MetLife and its affiliates may be either directed by an independent Plan fiduciary or a Plan participant that has the ability to direct investments in his or her Plan account under the Plan document. Alternatively, in those cases in which a MetLife affiliate manages investments, such as the Separate Account described herein, MetLife represents that the affiliate does not exercise any discretionary authority over the decision to invest the Plan's assets in the Separate Account. Instead, an independent Plan fiduciary is responsible for such investment decisions.

b. *Conning,* a Missouri corporation located in St. Louis, Missouri, provides asset management services primarily to insurance companies and institutional investors. In addition, Conning manages private equity funds investing in insurance and insurance-related companies and it conducts in-depth research on the insurance industry. On April 19, 2000, as a result of a merger, Conning became an indirect, wholly owned subsidiary of MetLife and a privately-held corporation.

c. *CC Merger Sub, Inc. (CC Merger Sub),* a Missouri corporation, was an indirect, wholly owned subsidiary of MetLife. Through CC Merger Sub, MetLife offered to purchase all of the outstanding Conning Common Shares that were not owned by MetLife or its affiliates under the terms of a Tender Offer and Merger described in detail below. On April 19, 2000, CC Merger Sub was merged with and into Conning. As a result of the merger, CC Merger Sub ceased to exist.

d. *ChaseMellon Shareholder Services, LLC,* otherwise referred to in this proposed exemption as the ''Disbursing Agent,'' was appointed by MetLife and Conning for purposes of receiving certificates representing Cancelled Conning Shares and transmitting cash payments to the holders of the surrendered certificates.

2. MetLife is the investment manager of the Separate Account, which is an insurance company pooled separate account that seeks to replicate the performance of the Russell 2000 Index and is available for investment by Plans subject to the Act. The Separate Account is passively-managed in that the choice of stocks purchased and sold, and the volume purchased and sold, are made according to the Russell 2000 Index rather than according to the active evaluation of investments.

MetLife represents that the process for the establishment and operation of the Separate Account is disciplined in that objective rules are established. Moreover, MetLife states that the Separate Account is managed utilizing an analytical computer program that determines the appropriate rebalancing necessary to meet the investment objective.

3. At the time of the transactions described herein, nine ERISA-covered Plans (none of which were sponsored by MetLife and its affiliates) invested in the Separate Account, along with certain municipal plans that were not subject to ERISA. These Plans held undivided, *pro rata* interests in the Separate Account's assets, including the Conning Common Shares, which were acquired by the Separate Account on January 20, 2000 in an open market transaction. As of April 19, 2000, the Separate Account had total assets of approximately $45.6 million. Of the total assets, the Conning Common Shares represented 0.014 percent of the assets in the Separate Account and 0.075 percent of the value of the ERISA-covered Plans that were invested in such account.

4. The Separate Account acquired the Conning Common Shares in a Nasdaq transaction that was executed by the program trading desk at Credit Suisse First Boston, which acted as broker. The Conning Common Shares were purchased on the same day as part of the regular portfolio rebalance occurring on that day. Of the 73,400 shares of Conning Common Shares traded on January 20, 2000, the Separate Account purchased 523 shares of stock for an acquisition price of $11.239 per share or an aggregate acquisition price of $5,877.98.

MetLife represents that the Conning Common Shares were purchased by the Separate Account in order to avoid a tracking error and to conform the Separate Account with the Russell 2000 Index. MetLife also represents that at no time did the Conning Common Shares represent more than 5 percent of the value of the Russell 2000 Index.

5. MetLife requests an administrative exemption from the Department with respect to the holding of 523 Conning Common Shares (and subsequently, 523 Cancelled Conning Shares) by the Separate Account. As discussed below, MetLife also requests exemptive relief with respect to the delivery of certificates representing 523 Cancelled Conning Shares to the Disbursing Agent in exchange for cash consideration of $12.50 per Cancelled Conning Share, resulting in the acquisition of such shares by MetLife. If granted, the exemption will be effective from January 20, 2000 until May 18, 2000.

MetLife believes that retroactive exemptive relief is appropriate given the beneficial nature of the exchange, the fact that the transaction could not be avoided if applicable provisions of the Federal securities laws and relevant provisions of the Act that are the subject of this application were complied with, and the fact that the Conning Common

Shares held by the Separate Account constituted a *de minimus* portion of the exchange transaction.

6. Prior to the Separate Account's acquisition of the Conning Common Shares, MetLife acquired control of 8.3 million Conning Common Shares when it purchased all of the issued and outstanding shares of capital stock of GenAmerica Corporation from General American Mutual Holding Company, a Missouri mutual holding company. The transaction took place on January 6, 2000. At the time of the transaction, GenAmerica Corporation owned all of the issued and outstanding shares of capital stock of General American Life Insurance Company, which owned all of the issued and outstanding shares of capital stock of GenAm Holding Company, the record owner of the 8.3 million Conning Common Shares. The Conning Common Shares acquired by MetLife represented approximately 60.4 percent of the outstanding Conning Common Shares.

7. In accordance with the terms of the Merger Agreement by and between Conning, MetLife and CC Merger Sub, on March 20, 2000, MetLife (through CC Merger Sub) commenced the Tender Offer to acquire the remaining 39.6 percent of the outstanding Conning Common Shares that MetLife did not control. The purchase price was established at $12.50 per Conning Common Share and the consideration was payable in cash. April 17, 2000 was fixed as the expiration date of the Tender Offer. However, this date could be extended by MetLife.

Under the Merger Agreement, MetLife's acceptance of and payment for all of the Conning Common Shares tendered and not validly withdrawn in the Tender Offer were subject to the condition that Conning shareholder approval of the Merger would be ensured if the number of tendered Conning Common Shares, when combined with the Conning Common Shares that MetLife already controlled, exceeded two-thirds of the outstanding Conning Common Shares. Thus, the objective of the Tender Offer and the Merger was to make Conning an indirect, wholly owned subsidiary of MetLife.

8. MetLife and CC Merger Sub believed that the consideration to be received in the Tender Offer and the Merger was fair (both in terms of price and procedure) to the Conning stockholders that were unaffiliated with MetLife for the following reasons:

- The Conning Special Committee, which concluded that the Tender Offer and the Merger were fair to, advisable and in the best interests of Conning and its stockholders, had approved the Tender Offer and the Merger Agreement, following a thorough review with independent financial and legal advisers.
- Based upon the recommendation of the Conning Special Committee and other considerations, the Conning Board of Directors determined that the Tender Offer and the Merger were fair to, advisable and in the best interests of Conning stockholders and unanimously approved the Tender Offer and the Merger Agreement.
- On March 9, 2000, the Conning Special Committee received a written fairness opinion from Salomon Smith Barney to the effect that, subject to the various assumptions and limitations set forth in that opinion, as of the date thereof, the cash consideration of $12.50 per Conning Common Share which was to be received by Conning stockholders in the Tender Offer and the Merger was fair to Conning stockholders (other than MetLife or Conning and their respective wholly owned subsidiaries) from a financial point of view.
- The Merger Agreement was negotiated at arm's length for over six weeks with the Conning Special Committee, which acted independently, with the assistance of financial and legal advisers and on behalf of Conning stockholders unaffiliated with MetLife.
- Conning's historical financial performance and MetLife's projections of Conning's future financial performance took into account MetLife's assumption of investment management responsibility over the general account assets of General American Life Insurance Company.
- Conning's business and earnings prospects, near- and long-term business risks, the competitive business environment in which Conning operated and business and valuation trends in Conning's business industry were considered.
- The cash consideration of $12.50 per share to be paid in the Tender Offer and the Merger for the Conning Common Shares would represent (a) a premium of approximately 30.7 percent above the closing price of Conning Common Shares on the last trading day before MetLife announced its initial proposal to acquire Conning; (b) a premium of approximately 44 percent above the average of the closing prices for Conning Common Shares over the 20 trading days immediately before MetLife publicly announced the proposal to acquire Conning; and (c) a premium of approximately 48.1 percent above the closing price for Conning Common Shares on each of December 14, 15 and 16, 1999, approximately one month before MetLife announced its initial proposal to acquire Conning.
- The structure of the transaction was designed to result in Conning stockholders, other than MetLife and its affiliates, receiving the consideration in the Tender Offer and the Merger at the earliest possible time; and
- MetLife's internally-prepared financial analysis was considered. This analysis included the development of projections, a review of Credit Suisse First Boston's review of comparable current market prices and historical transaction prices of Conning's peer group, and a discounted cash flow analysis to determine the value of Conning Common Shares as supporting the fairness of the Tender Offer and the Merger to stockholders that were not affiliated with MetLife.

9. At the expiration date of the Tender Offer on April 17, 2000, 5.3 million Conning Common Shares were validly tendered and not withdrawn. When combined with the 8.3 million Conning Common Shares that MetLife already controlled, such shares then gave MetLife control of approximately 98 percent of the outstanding Conning Common Shares. Accordingly, pursuant to the Merger Agreement and Missouri law, on April 19, 2000, MetLife acquired all remaining Conning Common Shares that were the subject of the Tender Offer by consummating the Merger. In this regard, all outstanding Conning Common Shares that were the subject of the Tender Offer (except for those shares where the shareholders asserted their dissenters' rights under Missouri law) were automatically cancelled, retired and converted into the right to receive cash consideration equivalent to $12.50 per former Conning Common Share. (Such cancelled shares are referred to as the ''Cancelled Conning Shares.'') Also, the separate corporate existence of CC Merger Sub was terminated and Conning, as the surviving corporation in the Merger, became an indirect, wholly owned subsidiary of MetLife.

Moreover, on April 19, 2000, MetLife caused Conning's share transfer books to be closed and all Conning Common Shares to be de-listed from Nasdaq and de-registered under the Securities Exchange Act of 1934, as amended. As a result of these actions, there was no public market for any Conning Common Shares (all of which were now controlled by MetLife) or any Cancelled Conning Shares (523 of which were held by the Separate Account).

10. To comply with applicable provisions of the Federal securities laws, MetLife deemed it inappropriate for the Separate Account to sell its Conning Common Shares on the open

market. Instead, the Separate Account continued to hold its 523 Conning Common Shares and it did not tender these shares in the Tender Offer. Subsequently, the 523 Conning Common Shares held by the Separate Account were converted into 523 Cancelled Common Shares.

On May 18, 2000, the Separate Account delivered its 523 Cancelled Conning Shares to the Disbursing Agent in exchange for the same $12.50 per share consideration that was received by all other Conning shareholders in the Tender Offer and the Merger. Thus, the Separate Account received $6,538 in cash from MetLife.[1] The exchange caused the ERISA-covered Plans that were participating in the Separate Account to receive a premium for such shares. Had the Separate Account disposed of the Conning Common Shares on the open market at $8.44 per share approximately one month before MetLife announced its initial proposal to acquire all of the outstanding shares of such stock, the Separate Account would have received only $4,414. MetLife represents that this amount would have been further reduced by sales commissions.

11. In summary, it is represented that the transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The decision by a Plan to invest in the Separate Account was made by a Plan fiduciary which was independent of MetLife and its affiliates.

(b) The Conning Common Shares represented less than one percent of the assets of the Separate Account and less than one percent of the assets of the ERISA-covered Plans investing therein.

(c) The exchange of the Cancelled Conning Shares by the Separate Account was a one-time transaction for cash.

(d) The Separate Account and the Plans received the fair market value for each Cancelled Conning Share on the date of the exchange.

(e) The consideration received by the Separate Account for its Cancelled Conning Shares was the same consideration received by (i) all shareholders who validly tendered their Conning Common Shares pursuant to a Tender Offer and (ii) all holders of Cancelled Conning Shares.

(f) The Separate Account paid no commissions, fees or other expenses in connection with the exchange of the Cancelled Conning shares to MetLife and its affiliates for cash.

(g) After the expiration of the Tender Offer and the consummation of the exchange, the Separate Account delivered certificates to the Disbursing Agent representing the Cancelled Conning Shares.

(h) The terms of the exchange were no less favorable to the Separate Account and the Plans than those obtainable in an arm's length transaction engaged in by other similarly-situated holders of the Cancelled Conning Shares.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (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 17th day of May, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–12828 Filed 5–21–02; 8:45 am]

BILLING CODE 4510–29–P

[1] The Separate Account had also received $26.15 in dividends from MetLife that were attributable to its ownership of the Conning Common Shares. This meant that the Separate Account's total net earnings with respect to the Conning Common shares was $685.68 (6,537.50 − $5,877.98 + $26.15).

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption (PTE) 2002–21; Exemption Application No. D–11005]

Pacific Investment Management Company LLC (PIMCO), Located in Newport Beach, CA; Employee Benefit Plans: Prohibited Transaction Exemptions

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of technical correction.

On March 28, 2002, the Department published PTE 2002–21 in the **Federal Register** at 67 FR 14988. PTE 2002–21 permits an employee benefit plan (the Plan), whose assets are held by PIMCO, as trustee, investment manager or discretionary fiduciary, to purchase shares of one or more open-end management investment companies registered under the Investment Company Act of 1940, to which PIMCO or any affiliate of PIMCO serves as investment adviser and may provide other services, in exchange for securities held by the Plan in an account or sub-account with PIMCO. PTE 2002–21 is effective as of February 5, 2002.

On page 14989 of the notice granting PTE 2002–21, the Department hereby corrects the last sentence of Section I(g) to read as follows in order to reflect standard industry practice:

* * * Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the Purchase Transaction determined on the basis of reasonable inquiry from at least two market makers or one pricing service that is independent of PIMCO.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department at (202) 693–8556. (This is not a toll-free number.)

Signed at Washington, DC, this 17th day of May, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–12830 Filed 5–21–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–063]

U.S. Centennial of Flight Commission; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission.

DATES: Wednesday, June 19, 2002, 1 p.m. to 5 p.m.

ADDRESSES: Federal Aviation Administration, 3rd Floor Auditorium, 800 Independence Avenue, SW., Washington, DC. Attendees must check in at the Security Desk to be cleared to the 3rd floor auditorium.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Farmarco, Code I–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Comments
—Centennial Partner Applications
—Centennial of Flight Kick-Off Plans
—Centennial Updates
—First Flight Centennial Federal Advisory Board
—Carter Ryley Thomas Update
—Closing Comments
—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 16, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–12867 Filed 5–21–02; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35870; License No. 29–28358–02; EA–02–103]

In the Matter of United Evaluations Services, Inc. (Formerly Accurate Technologies, Inc.), Beachwood, NJ 08722; Order Suspending License (Effective Immediately) and Demand for Information

I

United Evaluations Services, Inc., formerly Accurate Technologies Incorporated (Licensee) is the holder of byproduct nuclear material license No. 29–28358–02, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34. Accurate Technologies Incorporated was the holder of Byproduct Nuclear Material License No. 29–28358–01, also issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34.

License No. 29–28358–01 was originally issued by the NRC on June 16, 1989, and authorized possession and use of certain byproduct material for industrial radiography at temporary job sites of the Licensee anywhere in the United States where the NRC maintains jurisdiction for regulating the use of licensed material. The license was revoked by the NRC on December 12, 2000, for nonpayment of fees, although the Licensee has represented that it never received the Order revoking the license. The Licensee subsequently paid the required fees from the previous year over the period April–August 2001.

The Licensee submitted a new application, with required fees, on November 6, 2001. The new license (No. 29–28358–02) was subsequently issued on November 16, 2001, and is due to expire on November 30, 2011. License No. 29–28358–02 initially authorized possession and use of certain byproduct material for industrial radiography at temporary job sites. Amendment No. 1 to License No. 29–28358–02, issued on December 20, 2001, changed the name of the Licensee from Accurate Technologies Incorporated to United Evaluations Services Inc.

II

On September 25, 2001, an event occurred at the McShane facility in Baltimore, Maryland, involving a radiation injury to one of the Licensee's radiographers. This event was discussed with the Licensee on October 4, 2001. During the discussions, the NRC learned that the radiographer received a very significant radiation exposure to his hands in excess of regulatory limits (at a minimum, approximately 250–300 rem) while performing radiography at that facility. Since the facility was located in Maryland, an NRC Agreement State, the activities related to that exposure were within the jurisdiction of the State of Maryland.

In its discussions with the NRC, the Licensee indicated that the injury occurred when the radiographer, who completed one radiographic exposure of equipment at the facility and was in the process of preparing for another exposure, handled the device's guide tube with the radioactive source located therein. The source remained in the guide tube after failing to fully retract to the shielded position following the first radiographic exposure. The exposure occurred because the radiographer approached the device without a survey meter and without wearing an alarming ratemeter, either of which would have alerted him that the source was not in a shielded position. Although this event occurred while the radiographer was performing activities in an NRC Agreement State, the same equipment is possessed and used pursuant to an NRC license. As a result, the NRC initiated an investigation and inspection into this matter.

Based on the NRC investigation and inspection, which are still ongoing, the NRC has determined that:

1. The radiographer who was exposed in Maryland had not received the annual refresher training as required by 10 CFR 34.43(d), and had not taken an annual refresher training exam. Instead, an assistant radiographer completed the annual refresher exam for that radiographer. In addition, the President/Radiation Safety Officer certified the training record, which was inaccurate, and provided the certified record to the NRC, in violation of 10 CFR 34.79(b) and 30.9. The date listed on the certified record was approximately three weeks before the occurrence of the significant hand exposure that occurred in Maryland. These violations are particularly egregious and may provide, in part, a causal link to the significant exposure that occurred in Maryland on September 25, 2001;

2. The former Operations Manager knowingly transported and used a radiographic device in New Jersey without the required end cap (which ensures proper positioning and shielding of the source in the camera), in violation of 10 CFR 34.31. Records indicate that this occurred in September 2001.

3. The President/Radiation Safety Officer, in a written response to an NRC

October 4, 2001 Confirmatory Action Letter (CAL), and during the inspection, deliberately provided inaccurate information to the NRC, regarding the status and use of equipment at the facility, in violation of 10 CFR 30.9. Specifically, Item 3 of the CAL documented the Licensee's commitment to inspect all radiographic exposure devices and associated equipment to verify they were in good working order. In an October 9, 2001 supplemental response to the CAL, sent to the NRC by facsimile, the Licensee included a document signed by the President/RSO which stated that the locking mechanisms were checked for proper operation and all locks were in proper working condition, and all end caps were checked and cleaned. This statement was deliberately inaccurate in that on October 10, 2001, during an NRC inspection, as well as during the subsequent investigation, the NRC learned that one of the radiographic devices did not have the end cap in place, and it had not been in place since at least September 25, 2001, and consequently the locking mechanism was inoperable. The Licensee was aware that the device did not have the end cap in place prior to its October 9, 2001 supplemental response.

During the October 10, 2001 inspection, the inspector was informed by the President/Radiation Safety Officer, that an end cap for one of the radiographic devices had been missing for three weeks, but that the device had not been used during that time. This statement was also deliberately inaccurate in that radiation reports and testimony show that the device with the missing end cap had been used on more than one occasion during that three week period, including use by the President/Radiation Safety Officer on October 2, 2001.

4. With the acquiescence of Licensee management, an assistant radiographer performed the duties of a radiographer, knowing that he was not certified to do so, as required by 10 CFR 34.43(a)(1).

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements and to ensure that radiographers do not perform licensed activities unless they have completed all required training and that radiographic equipment not be used if it is found to be defective. The NRC must also be able to rely upon information provided by the Licensee to be complete and accurate in all material respects. In this regard, it appears that the Licensee has deliberately failed to comply with NRC requirements, as indicated herein, and has deliberately provided inaccurate information to the NRC. These actions by the Licensee have raised serious doubt as to whether the Licensee can be relied upon in the future to comply with NRC requirements.

Consequently, given these findings, and the significant impacts that can result from violations of radiography requirements, as evidence by the significant exposure that occurred in Maryland on September 25, 2001, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 29–28358–02 in compliance with the Commission's requirements, and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the health, safety and interest of the public require that License No. 29–28358–02 be suspended. Furthermore, pursuant to 10 CFR 2.202, I find that, given the safety significance of conducting radiography by personnel who have not completed all required training and certification, the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 34, *it is hereby ordered, effective immediately, that license* No. 29–28358–02 *is suspended as follows,* pending further Order.

A. All NRC-licensed material in the Licensee's possession shall be placed in secured storage.

B. All activities under License No. 29–28358–02 to use licensed material shall be suspended. All other requirements of the license remain in effect.

C. No material authorized by the license shall be ordered, purchased, received, or transferred by the Licensee while this Order is in effect.

D. All records related to licensed activities and materials shall be maintained in their original form and must not be removed or altered in any way.

The Director of the Office of Enforcement, the Director of the Office of Nuclear Materials Safety and Safeguards, or the Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued.

Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the individual's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest isadversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or a written approval of an

extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

VI

In addition to issuance of this Order suspending License No. 29–28358–02, the Commission requires further information from the Licensee in order to determine whether the Commission can have reasonable assurance that in the future the Licensee will conduct its activities in accordance with the Commission's requirements.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR parts 30 and 34, in order for the Commission to determine whether your license should be further modified or revoked, or other enforcement action taken, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 20 days of the date of this Order and Demand for Information, in writing and under oath or affirmation:

1. An explanation as to why, in light of the findings set forth in Section II of this Order and Demand for Information, that License No. 29–28358–02 should not be revoked.

2. If the Licensee believes that the license should not be revoked, the Licensee, in its response, should address at a minimum, why the NRC should have reasonable assurance that the Licensee, in the future, will ensure appropriate management and oversight of licensed activities (this shall include a description of who will be responsible for assuring such activities are conducted in accordance with 10 CFR parts 30 and 34 requirements).

Copies also shall be sent to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

Dated this 14th day of May 2002.

For the Nuclear Regulatory Commission.

Martin Virgilio,

Acting Deputy Executive Director for Materials, Research and State Programs.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 AND 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact Related to a Proposed License Amendment To Increase the Maximum Rated Thermal Power Level

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–71 and DPR–62, issued to Carolina Power & Light Company (CP&L), for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP), located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow CP&L, the operator of BSEP, to increase the maximum thermal power level by approximately 15 percent, from 2558 Megawatts-thermal (MWt) to 2923 MWt. The change is considered an extended power uprate (EPU) because it would raise the reactor core power level more than 7 percent above the original licensed maximum power level. The original licensed maximum power level was 2436 MWt, and the NRC staff approved an increase in the licensed maximum power level to 2558 MWt (approximately 5 percent increase) on November 1, 1996. This increase in power was implemented at BSEP in 1997. Therefore, this proposed action would result in an increase of approximately 20 percent over the original licensed maximum power level. The amendment would allow the heat output of the reactor to increase, which would increase the flow of steam to the turbine. This would allow the turbine generator to increase the production of power and increase the amount of heat dissipated by the condenser. Moreover, this would result in an increased temperature in the water being released into the Atlantic Ocean.

The NRC previously published a draft environmental assessment of the proposed action in the **Federal Register** (67 FR 16132, April 4, 2002) and offered an opportunity for public comment. No comments were received.

Need for the Proposed Action

CP&L forecasts a 40-percent increase in the demand for electrical power by 2015 in its service area in North Carolina and South Carolina. CP&L can meet this projected increase in power demand by increasing the number of natural gas-fired combustion turbines or by purchasing power from other sources. The cost of adding the additional generating capacity at BSEP is roughly equivalent to the cost of constructing several small combustion turbine units, each producing approximately 50 Megawatts-electrical (MWe). The proposed EPU would increase the electrical output for BSEP Unit 1 from 841 MWe to 958 MWe and for BSEP Unit 2 from 835 MWe to 951 MWe. However, the cost of nuclear power generation is approximately one-third of the cost of natural gas power generation. Therefore, the proposed EPU would increase power production capacity at a lower economic cost than the fossil fuel alternatives, such as natural gas, and would not result in additional land disturbances or other environmental impacts that could result from new plant construction.

Environmental Impacts of the Proposed Action

At the time of issuance of the operating licenses for BSEP, the NRC staff noted that any activity authorized by the license for each unit would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of BSEP, which was issued in January 1974. The original operating licenses allowed a maximum reactor power of 2436 MWt. CP&L was granted amendments to the BSEP licenses to increase maximum reactor power level by approximately 5 percent on November 1, 1996. The NRC staff published an Environmental Assessment and Finding of No Significant Impact (EA) in support of this uprate in the **Federal Register** on October 28,1996 (61 FR 55673). As part of the application dated August 9, 2001, CP&L submitted a supplement to the BSEP Environmental Report supporting the proposed EPU and providing a summary of its conclusions concerning both the radiological and non-radiological environmental impacts of the proposed action. Based on the NRC staff's independent analyses and the information provided by CP&L, the NRC staff concludes that the environmental impacts of the EPU are bounded by the environmental impacts previously

evaluated in the FES because the EPU would not involve extensive changes to plant systems that directly or indirectly interface with the environment. This EA summarizes the non-radiological and radiological impacts on the environment that may result from the proposed amendments.

Non-Radiological Impacts

Land Use Impacts

The proposed EPU would not modify the current land use at the site significantly over that described in the FES. Three small mechanical draft cooling towers would be erected on the roof of the radwaste building to service the new condensate cooling system. No other expansion of buildings, roads, parking lots, equipment storage or laydown areas, or onsite transmission and distribution equipment, including power line rights-of-way, is anticipated to support this action. No new construction outside of the existing facilities would be necessary. The EPU would not significantly affect material storage, including chemicals, fuels, and other materials stored aboveground or underground.

Cooling Tower Impacts

Each of the three new mechanical draft cooling towers, which would service the condensate cooling system, are approximately 7 meters (m) by 7 m [24 feet (ft) by 24 ft], with a height of approximately 5 m (16 ft). They will be installed on the roof of the radwaste building at an elevation of approximately 20 m (64 ft). The cooling towers would not be readily visible offsite, so there would be no visual or aesthetic impact. The towers are modular in design and construction, and a similar kind of construction is performed onsite during almost every refueling outage without noticeable additional impacts from noise, dust, odors, vibration, traffic, or vehicle exhaust. Therefore, there would be no significant impact from construction of the cooling towers. Each cooling tower would be designed to reject a maximum of approximately 15 MWt (51 million BTU/hr). The expected level of noise from operation of a cooling tower fan would be 84 dBA at a distance of 1.5 m (5 ft); however, the towers would be located on a roof top near the middle of the protected area. Therefore, no added impact from noise is expected offsite. Existing cooling towers, similar in design to the condensate cooling towers, have been in operation for years on the roof of the turbine building at BSEP. No significant fogging, icing, or drifting plumes carrying chemicals or particulate matter have been experienced from these existing cooling towers; therefore, no significant impact would be expected from operation of the condensate cooling towers.

Transmission Facility Impacts

The proposed EPU would not require any physical modifications to the transmission lines. Increased current would be the only change in design or operation of the transmission lines needed to support the EPU. CP&L's transmission line right-of-way maintenance practices, including the management of vegetation growth, would not be affected. No new requirements or changes to onsite transmission equipment, operating voltages, or transmission line rights-of-way would be necessary to support the EPU. The main plant transformers will be modified and replaced to support the uprate; however, replacement of the transformers would have been required before the end of plant life as part of the licensee's ongoing maintenance program; therefore, no significant environmental impact beyond that considered in the FES is expected from this kind of replacement of onsite equipment.

The increased electrical current would cause an increased electromagnetic field around the transmission lines, and the potential for chronic effects from these fields continues to be studied and no scientific consensus has been reached. However, since the increase in power level is approximately 15 percent, the impact of exposure to electromagnetic fields from the offsite transmission lines would not be expected to increase significantly over the current impact.

The transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the National Electric Safety Code. Therefore, even with the slight increase in current attributable to the EPU, adequate protection is provided against hazards from electrical shock.

Impacts on Terrestrial Biota

The proposed EPU would not involve any land disturbance; all construction will be on the roof of the pre-existing radwaste building. Also, once construction is completed, the uprate would not increase noise levels outside the plant site or increase the size of the workforce, nor would CP&L's transmission line rights-of-way maintenance practices change. Therefore, the uprate would not disturb the habitat of any terrestrial plant or animal species. In 1998, CP&L conducted a study to update information about the potential existence of sensitive plant and animal species in the plant environs. Two endangered perennial herbs, rough-leaved loosestrife and Cooley's meadowrue, occur in the BSEP transmission line rights-of-way. The red-cockaded woodpecker, an endangered bird, occurs in the mature pine forests in Brunswick County. The uprate would not disturb the habitat of any of these species, and CP&L has instituted measures to protect and manage the two endangered herbs by agreement with the North Carolina Natural Heritage Program. Therefore, no significant impact on terrestrial biota would be expected from the uprate.

Water Use Impacts

BSEP uses a once-through cooling system to remove heat from the reactor coolant in the condensers. An intake canal approximately 5 kilometers (km) (3 miles) in length feeds water from the Cape Fear River to the BSEP intake structure. The water passes through tubes in the condensers removing heat from the reactor coolant. Then the water passes through a discharge canal 10 km (6 miles) in length to Caswell Beach. At Caswell Beach, the water is pumped approximately 600m (2000 ft) offshore and discharged at the bottom of the Atlantic Ocean.

The proposed EPU would not involve any increase in the rate of withdrawal of water from the intake canal or the Cape Fear River. Makeup water for the new condensate cooling system would be obtained from the Brunswick County water system; the maximum anticipated flow of makeup water would be approximately 23.7 liters per second [375 gallons per minute (gpm)]. CP&L consulted with Brunswick County water system management officials, who indicated that the additional water use would be well within the capacity of the County water system. Therefore, the uprate would not have a significant impact on water usage by BSEP and would not create a water use conflict.

Discharge Impacts

Surface water and wastewater discharges at BSEP are regulated by the State of North Carolina via a National Pollutant Discharge Elimination System (NPDES) permit. This permit is periodically reviewed and renewed by the North Carolina Department of Environment and Natural Resources (NCDENR). The EPU would increase the temperature of the water discharged to the Atlantic Ocean. Also, the blowdown from the new cooling towers would be piped to the existing storm drain system and empty into a storm drain basin.

Water from the storm drain basin is pumped into a stabilization pond; discharges from the stabilization pond flow into the BSEP intake canal.

In 2001, CP&L analyzed the effect of the proposed EPU on the water temperatures in the Atlantic Ocean in the area of the BSEP discharge. First, historical data, such as intake temperatures, discharge temperatures, plant operating conditions, and meteorological conditions, were used to develop isothermal distribution maps. Then, isothermal distribution maps were projected using the expected heat rejection rates for the uprate condition. Based on these analyses, CP&L submitted an application to the NCDENR for renewal of the BSEP NPDES permit with the following revisions to support the uprate:

1. Area of surface water temperature increase up to 7 degrees Fahrenheit (F) [3.9 degrees Celsius (C)] in the plume extending from the discharge point in the Atlantic Ocean shall not exceed 120 acres [50 hectares (ha)]. The current limit is approximately 60 acres (24 ha).

2. Area of surface water temperature increase up to 1.44 degrees F (0.8 degrees C) during June–August [3.96 degrees F (2.2 degrees C) during September–May] should not exceed 2000 acres (800 ha). The current limit is 1000 acres (400 ha).

3. Area of bottom water temperature increase up to 7 degrees F (3.9 degrees C) shall not exceed 4 acres (1.6 ha). The current limit is 2 acres (0.8 ha).

4. Bottom water temperature increase shall not exceed 7 degrees F (3.9 degrees C) beyond a distance of 1000 ft (300 m) from the discharge point. The current limit is 500 ft (150 m).

BSEP has been operating within the current limits; therefore, these limits represent an upper bound of the current impact on ocean water temperatures in the vicinity of the discharge. The proposed limits to support the uprate similarly represent the expected upper bound of the impact on ocean water temperatures if the uprate were fully implemented.

The maximum blowdown flow from all three condensate cooling towers into the storm drain system would be approximately 8.2 liters per second (130 gpm). Water treatment chemicals would be added to the condensate cooling system—approximately 409 liters (108 gallons) per year of ChemTreat CL–216 (a biocide) and approximately 1567 liters (414 gallons) per year of ChemTreat CL–4800 (a dispersant). These chemical additions were included in the application to NCDENR for the renewed NPDES permit. The volume of the blowdown would be small compared to the volume of the storm drain basin, and it would be diluted even further in the stabilization pond and the intake canal. The blowdown from the existing cooling towers on the roof of the turbine building follows the same discharge path. Therefore, no significant additional impact would be expected from the blowdown discharged from the condensate cooling system.

Impacts on Aquatic Biota

The flow rate of water being withdrawn from the intake canal at the intake structure would not increase, and no change would be made in the design of the intake structure screens. Therefore, no increase in the entrainment of planktonic organisms or in the impingement of fish, shellfish, or sea turtles would be expected.

CP&L has conducted thermal studies in the Atlantic Ocean in the vicinity of the BSEP discharge for over 25 years; no adverse impacts on fish and shellfish have been observed. The expected increase in water temperature would be expected to be small and limited to a relatively small area in the Brunswick County coastline. The increase in water temperature would not be expected to exceed 4 degrees C (7 degrees F) beyond an area of 50 ha (120 acres) at the surface, and the increase would not be expected to exceed 2 degrees C (4 degrees F) beyond an area of 800 ha (2000 acres). The affected area would be expected to be even smaller near the bottom. There is no critical habitat in the vicinity of the ocean discharge; the ocean floor is sandy flats with no natural features that would attract fish and invertebrates. Some of the more abundant organisms (brown shrimp, white shrimp, and croaker) in the vicinity of the discharge point tolerate temperatures of up to 86 degrees F without experiencing loss of equilibrium, and most organisms could avoid the area of higher water temperature. There is a net westward drift of the near-shore coastal waters in the vicinity of the discharge point; therefore, most larvae would enter the estuary from offshore waters to the east and would not be expected to be affected by the discharge plume. Therefore, the uprate would not be expected to significantly impact aquatic biota in the vicinity of BSEP.

CP&L's 1998 study indicated that three Federally listed aquatic species could be potentially affected by BSEP: loggerhead sea turtle (threatened), green sea turtle (threatened), and Kemp's ridley sea turtle (endangered). Of the three, the loggerhead sea turtle has been most commonly collected in the intake canal, although all three of these turtle species have been collected. CP&L employs protective measures, such as blocker panels in the diversion structure, to prevent turtles from entering the canal and patrols of the intake canal to remove turtles. The National Marine Fisheries Service (NMFS) reviewed data from BSEP on incidental takes of sea turtles and the protective measures employed at BSEP. In January 2000, NMFS concluded that BSEP operation ''is not likely to jeopardize the continued existence of the loggerhead, leatherback, green, hawksbill, or Kemp's ridley sea turtles.'' Since the withdrawal rate of water from the intake canal would not increase due to the EPU and the sea turtles can easily swim around the small higher-temperature discharge plume, no increased impact would be expected for the sea turtles beyond that considered in the NMFS Biological Opinion of January 2000.

Social and Economic Impacts

The NRC staff has reviewed information provided by the licensee regarding socioeconomic impacts. CP&L is a major employer in the community with approximately 750 full-time employees and 235 contract employees. CP&L is also a major contributor to the local tax base. CP&L personnel also contribute to the tax base by paying sales and property taxes. The proposed EPU would not significantly affect the size of the BSEP labor force and would have no material effect upon the labor force required for future outages after all stages of the modifications needed to support the uprate are completed. Because the plant modifications needed to implement the uprate would be minor, any increase in sales tax and additional revenue to local and national business will be negligible relative to the large tax revenues generated by BSEP. The EPU would increase the plant's equalized assessed value, which would result in increased tax revenues for Brunswick County. It is expected that the proposed uprate will reduce incremental operating costs, enhance the value of BSEP as a power-generating asset, and lower the probability of early plant retirement. Early plant retirement would be expected to have a significant negative impact on the local economy and the community as a whole by reducing tax revenues and limiting local employment opportunities, although these effects could be mitigated by decommissioning activities in the short term.

Summary

In summary, the proposed EPU would not result in a significant change in non-radiological impacts in the areas of land use, water use, waste discharges, cooling tower operation, terrestrial and aquatic biota, transmission facility operation, or social and economic factors. No other non-radiological impacts were identified or would be expected. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at BSEP.

Table 1: Summary of Non-Radiological Environmental Impacts

Land Use: No change in land use or aesthetics; three small cooling towers on top of radwaste building.

Cooling Tower: No change in visual or aesthetic impact; no added impact on noise level; no significant impact from modular construction of the cooling towers; no significant fogging, icing, or drifting plumes.

Transmission Facilities: No physical modifications to the transmission lines and facilities; meet shock safety requirements; no changes to right-of-ways; small increase in electrical current would cause small increase in electromagnetic field around the transmission lines.

Terrestrial Biota: No additional impact on endangered herbs and birds or other terrestrial biota.

Water Use: No increase in the rate of withdrawal of water from the Cape Fear River; up to an additional 23.7 liters per second (375 gpm) of water from Brunswick County supply system, approved by County.

Discharge: Increase in area of plume in Atlantic Ocean with increased water temperature from 400 to 800 ha (from 1000 to 2000 acres) [area of 0.8 degrees C (1.44 degrees F) isotherm in Summer]; up to an additional 8.2 liters per second (130 gpm) of blowdown water discharged to storm drain system with small amount of biocide and dispersant chemicals; application for revised NPDES permit under review by State of North Carolina.

Aquatic Biota: No expected increased impact on endangered sea turtles or other aquatic biota.

Social and Economic: No significant change in size of BSEP workforce.

Radiological Impacts

Radioactive Waste Stream Impacts

BSEP uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid wastes that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of 10 CFR part 20, ''STANDARDS FOR PROTECTION AGAINST RADIATION,'' and 10 CFR part 50, ''DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES,'' Appendix I. These radioactive waste streams are discussed in the FES. The proposed EPU would not result in changes in the operation or design of equipment in the gaseous, liquid, or solid waste systems. The uprate would not introduce new or different radiological release pathways and does not increase the probability of an operator error or equipment malfunction that would result in an uncontrolled release of radioactive material. The uprate will not affect the environmental monitoring of any of these waste streams or the radiological monitoring requirements contained in licensing basis documents.

Gaseous Radioactive Waste and Offsite Doses

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the environs, including small quantities of noble gases, halogens, particulates, and tritium, such that the doses to individuals offsite are maintained within the limits of 10 CFR part 20 and the dose design objectives of Appendix I to 10 CFR part 50 (10 CFR part 20 includes the requirements of the U.S. Environmental Protection Agency (EPA) regulation 40 CFR Part 190, ''ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR NUCLEAR POWER OPERATIONS''). The gaseous waste management systems include the offgas system and various building ventilation systems. CP&L estimates that the resulting increase in gaseous radioactive effluents would be bounded in direct proportion to the increase in power—15 percent. CP&L indicated that a 15-percent increase in the amount of gaseous radioactive material released annually from BSEP in the last several years would still be well below the estimates presented in the FES. The NRC staff has independently reviewed the information presented by the licensee and confirmed the licensee's conclusion.

CP&L also calculated the potential increase in the maximum radiation dose to a member of the public in the environs offsite at BSEP from the proposed EPU. A 15-percent increase applied to the release data for the worst year in the 5-year timeframe from 1996 to 2000 would still result in doses below 1 percent of the dose design objectives of Appendix I to 10 CFR part 50. Therefore, the increased impact of the uprate on offsite doses from gaseous effluents would not be significant.

Liquid Radioactive Waste and Offsite Dose

During normal operation, the liquid effluent treatment systems process and control the release of liquid radioactive effluents to the environs, such that the doses to individuals offsite are maintained within the limits of 10 CFR part 20 and the dose design objectives of Appendix I to 10 CFR part 50. The liquid radioactive waste systems are designed to cleanup and recycle as much water as practicable; the liquid effluents that are released are continuously monitored and discharges terminated if effluents exceed preset levels of radioactive material. CP&L estimates that the amount of radioactive material released in liquid effluents would not increase significantly. CP&L indicated that the amounts of liquid radioactive material that have been released from BSEP in the last several years are well below the estimates presented in the FES. CP&L expects little or no increase in the quantity of radioactive material released in liquid effluents as a result of the uprate. The NRC staff has independently reviewed the information presented by the licensee and confirmed the licensee's conclusions. In addition, the calculated doses to members of the public offsite associated with these levels of release of radioactive liquid are below 1 percent of the dose design objectives of Appendix I to 10 CFR part 50. Therefore, the increased impact of the uprate on offsite doses from liquid effluents would not be significant.

Solid Radioactive Wastes

The solid radioactive waste system collects, processes, packages, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite and permanent disposal. The largest volume of solid radioactive waste at BSEP is low-level radioactive waste; sources of this low-level waste include spent resins, filters, charcoal, sludges from water processing, oil, and dry active waste, which is essentially contaminated trash. During the last several years, CP&L has implemented waste handling procedures to reduce the volume of low-level waste generated at BSEP. The volume of low-level radioactive waste generated in 2000 was approximately 389 cubic meters (13,877 cubic ft). The proposed EPU would increase the volume of spent resins, filters, and sludges because the uprate would produce more radioactive material that would have to be removed by processing systems such as the

demineralizers in the condensate system. The licensee estimates that the volume of such wastes could increase by as much as 15 percent, consistent with the EPU. Even with such an increase, the expected volume of low-level radioactive waste would be well below the value in the FES. No significant increase would be expected in the production of the other types of low-level waste.

In addition to the low-level wastes, the proposed EPU would result in replacement of 135 control rod blades at each unit. This replacement would occur in stages during the next several refueling outages. The removed control rod blades would be stored in the spent fuel pool, as is commonly done with irradiated reactor components, until they can be prepared for shipping and disposal offsite. These control rod blades would not contribute significantly to the overall volume of solid radioactive waste handled at BSEP.

The proposed EPU would also result in a greater percentage of the fuel assemblies being removed from the reactor core and replaced with new fuel assemblies during each refueling outage. Currently, 212 fuel assemblies (approximately 39 percent) are replaced during each refueling; 256 fuel assemblies (approximately 47 percent) would be replaced each refueling to support the uprated power level. Since CP&L limits the amount of spent fuel stored at BSEP and stores the rest of the spent fuel from BSEP in the spent fuel storage pools at CP&L's Shearon Harris Nuclear Power Plant (SHNPP), no increased volume of spent fuel would be expected to be stored at BSEP as a result of the uprate. By letter dated December 21, 2000, the NRC granted CP&L an amendment to the operating license for SHNPP to allow storage of spent fuel in all four spent fuel storage pools at SHNPP. CP&L has stated that the pools at SHNPP have sufficient storage capacity to handle the additional spent fuel assemblies that would be generated as a result of the proposed EPU at BSEP. An EA was published in the **Federal Register** on December 21, 1999 (64 FR 71514), to address the environmental impact of fully utilizing the storage capacity of all four spent fuel pools at SHNPP. The NRC staff concludes that the 1999 EA bounds the impact of storage of the additional spent fuel assemblies that would be generated by the BSEP uprate in the SHNPP spent fuel pools.

In-Plant Radiation Doses

The proposed EPU would result in the production of more radioactive material and higher radiation dose rates in some areas at BSEP. Potentially, the increase could be as much as 15 percent, consistent with the proposed 15-percent increase in reactor power. However, CP&L expects that the BSEP radiation protection staff will be able to minimize the resultant increase in radiation doses to the plant staff to a level well below the 15-percent upper-bound estimate by using commonly known methods, such as installation of additional shielding or more effective systems to remove more radioactive material from process streams such as the condensate system. BSEP has reduced the amount of radiation dose received by the plant workers over the last several years. The collective occupational dose for year 2000 at BSEP (including both units) was approximately 3.22 person-Sieverts (Sv) (322 person-rem); the average dose for a boiling-water reactor unit in the U.S. in year 2000 was 1.74 person-Sv (174 person-rem). The FES did not discuss occupational dose; however, other FESs published shortly after the BSEP FES estimated the environmental impact from occupational dose to be 500 person-rem (Sievert unit did not exist at that time) of collective occupational dose per year per reactor unit. Therefore, the collective dose at BSEP would not be expected to increase significantly as a result of the uprate and would be well within the impact commonly estimated in FESs in the 1970s.

Direct Radiation Doses Offsite

Direct radiation from radionuclides (mainly nitrogen-16) in the main steam system components in the turbine building is scattered by the air above the site and provides another offsite public dose pathway (skyshine) from an operating boiling-water reactor. CP&L has routinely monitored the whole body dose rate offsite using thermoluminescent dosimeters; the licensee has also performed surveys offsite with pressurized ion chambers. Data from these monitoring methods indicated that the highest annual offsite dose from skyshine at the site boundary from 1999 to 2001 was 7 millirem (mrem) (.07 mSv). Nitrogen-16 production is increased by routine hydrogen gas injection into the reactor feedwater (hydrogen water chemistry) in an effort to prevent intergranular stress corrosion cracking of reactor internals. The annual whole body dose equivalent to a real member of the public (beyond the site boundary) is limited to 25 mrem (0.25 mSv) by 40 CFR part 190. Assuming a 15-percent increase in the doses from skyshine (consistent with a 15-percent EPU), the expected annual dose would be expected to increase to approximately 8 mrem (.08 mSv), still well below the annual dose limit of 40 CFR part 190. The licensee will continue to perform surveys as the proposed EPU is implemented to assess the combined impact of hydrogen water chemistry with the uprate to ensure continued compliance with the requirements of 40 CFR part 190. Therefore, the increased impact of the uprate on offsite doses from direct radiation sources would not be significant.

Postulated Accident Doses

The NRC staff has reviewed the licensee's analyses and performed confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. As a result of implementation of the proposed EPU, there could be an increase in the source term used in the evaluation of some of the postulated accidents in the FES. The inventory of radionuclides in the reactor core is dependent on power level; therefore, the core inventory of radionuclides could increase by as much as 15 percent. The concentration of radionuclides in the reactor coolant may also increase by as much as 15 percent; however, this concentration is limited by the BSEP Technical Specifications and is more dependent on the degree of leakage occurring through the fuel cladding. The overall quality of fuel cladding has improved since the mid-1970s when the FES was published, and BSEP has been experiencing very little fuel cladding leakage in recent years. Therefore, the reactor coolant concentration of radionuclides would not be expected to increase significantly. This coolant concentration is part of the source term considered in some of the postulated accident analyses. Finally, as previously discussed above, some of the radwaste streams and storage systems evaluated for postulated accidents may contain slightly higher quantities of radionuclides. For those postulated accidents where the source term increased, the calculated potential radiation dose to individuals at the site boundary (the exclusion area) and in the low population zone would be increased over the values presented in the FES. Any such increase in calculated accident doses would not be expected to be more than 15 percent higher, and the calculated doses would still be below the acceptance criteria of 10 CFR part 100, ''Reactor Site Criteria,'' and the Standard Review Plan (NUREG–0800). Also, no modifications in the plant design or operation would be made that would significantly increase

the probability of an accident. Therefore, the NRC staff concludes that the uprate would not significantly increase the probability or consequences of accidents and would not result in a significant increase in the radiological environmental impact of BSEP under accident conditions.

After many years of reactor experience and research, the NRC approved an alternative radiological source term methodology for power reactors. The alternative source term is codified in 10 CFR 50.67 and described in Regulatory Guide 1.183, ''Alternative Radiological Source Term for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' which was published in July 2000. This methodology also uses the Total Effective Dose Equivalent methodology, which is recommended by the International Commission on Radiation Protection and the National Council on Radiation Protection and Measurements. CP&L submitted a proposal to the NRC to implement the alternative source term for the BSEP accident analyses; therefore, the application for the proposed EPU assessed the postulated accidents discussed in the FES using the new methodology. CP&L concluded that the new calculated doses for the uprate met all the applicable acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. The results of the NRC staff's calculations will be presented in the safety evaluation to be issued with the license amendments.

Fuel Cycle and Transportation Impacts

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic EA (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycle and concluded that there is no significant change in environmental impact from the parameters evaluated in Tables S–3 and S–4 for fuel cycles with uranium enrichments up to 5 weight percent uranium-235 and burnups less than 60,000 megawatt (thermal)-days per metric ton of uranium-235 (MWd/MTU). CP&L has concluded that the fuel enrichment at BSEP will increase to approximately 4.4 percent as a result of the proposed EPU with burnup remaining at approximately 45,000 MWd/MTU. Because the fuel enrichment for the uprate will not exceed 5 weight percent uranium-235 and the rod average discharge burnup for the uprate will not exceed 60,000 MWd/MTU, the environmental impacts of the uprate will remain bounded by the conclusions in Tables S–3 and S–4 and are not significant.

Summary

The proposed EPU would not significantly increase the probability or consequences of accidents, would not introduce any new radiological release pathways, would not result in a significant increase in occupational or public radiation exposure, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the proposed EPU at BSEP.

Alternatives to Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (i.e., the ''no-action alternative''). Denial of the application would result in no change in the current environmental impacts; however, other fossil-fueled generating facilities would be built in CP&L's service area in North Carolina and South Carolina in order to maintain sufficient power-generating capacity. Construction and operation of a fossil-fueled plant would create impacts in air quality, land use, and waste management. Implementation of the proposed EPU would have less impact on the environment than the construction and operation of a new fossil-fueled generating facility and does not involve environmental impacts that are significantly different from those presented in the 1974 FES and the 1996 EA for BSEP.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the 1974 FES and the 1996 EA for BSEP.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Gaseous Effluents & Doses	Up to 15-percent increase in amount of radioactive material in gaseous effluents; within FES estimate; offsite doses would continue to be well within NRC criteria.
Liquid Effluents & Doses	No significant increase in amount of radioactive material in liquid effluents; within FES estimate; offsite doses would continue to be well within NRC criteria.
Solid Radioactive Waste	Up to 15-percent increase in volume of low-level solid radwaste; increases in amount of spent control rod blades and spent fuel assemblies.
In-plant Dose	No significant increase in collective occupational dose expected.
Direct Radiation Dose	Up to 15-percent increase in dose rate offsite from skyshine; expected annual dose continues to meet NRC/EPA criteria.
Postulated Accidents	Up to 15-percent increase in calculated doses from some postulated accidents; calculated doses within NRC criteria.
Fuel Cycle & Transportation	Fuel enrichment and burnup would continue to be within bounding assumptions for Tables S–3 and S–4 in 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions' conclusions of tables regarding impact would remain valid.

Agencies and Persons Consulted

In accordance with the its stated policy, on March 29, 2002, the NRC staff consulted with the North Carolina State official , Mr. J. James, of the North Carolina Department of Environment, Commerce and Natural Resources, Division of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the EA, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated August 9, 2001, as

supplemented October 17, November 1, 7, 28, and 30, December 4, 10, 17 (2 letters), and 20, 2001, January 20, February 1, 4, 13, 14, 21 (2 letters), and 25 (3 letters), March 4, 5, 7, 14, 20, 22, and 25, and April 26 and 29, 2002. Documents may be examined and/or copied for a fee at the NRC's Public Document Room (PDR), 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 Web site, *http://www.nrc.gov* (the Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of May 2002.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–12834 Filed 5–21–02; 8:45 am]

BILLING CODE 7950–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–20681]

E.I. Du Pont de Nemours & Co., Inc., Environmental Assessment and Finding of No Significant Impact, Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental and Assessment and Finding of No Significant Impact for E.I. Du Pont de Nemours & Co., Inc.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the authorization of the use of carbon-14 (C–14) in field studies at the E.I. Du Pont de Nemours & Co., Inc., Stine-Haskell Research Center located in Newark, Delaware.

The NRC contact for this licensing action is Pamela J. Henderson, who may be contacted at (610) 337–6952 or by e-mail at *pjh1@nrc.gov.* for more information about the licensing action.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission is considering amending E.I. Du Pont de Nemours & Co., Inc. Byproduct Materials License Number 07–13441–02 to authorize the use of carbon-14 (C–14) in field studies at the E.I. Du Pont de Nemours & Co., Inc., Stine-Haskell Research Center located in Newark, Delaware.

Environmental Assessment

1.0 Introduction

1.1 Background

This environmental assessment (EA) is being prepared to identify and evaluate the environmental impacts of the proposed amendment to E.I. Du Pont de Nemours & Co., Byproduct Materials License Number 07–13441–02, to permit the use of carbon-14 (C–14) in field studies at the E.I. Du Pont de Nemours & Co., Inc., Stine-Haskell Research Center (hereafter referred to as the Center). The Center is located on Elkton Road (Route 2) in Newark, Delaware.

1.2 Proposed Action

The proposed action is to amend NRC Byproduct Materials License No. 07–13441–02, issued to E.I. Du Pont de Nemours & Co., Inc. on December 23, 1983 (as amended), to allow the performance of outdoor field studies with C–14 labeled radiochemicals having agricultural activity at the Center. The Center proposes to use a maximum of 10 millicuries (mCi) of C–14 labeled radiochemicals per year, applied to one 24.2 meters by 30.5 meters test plot. The objectives of the small-plot field studies is to identify the metabolic pathway, stability and environmental fate of agricultural chemicals and associated products following application to a given crop or the soil in which the crop is grown.

1.3 Need for the Proposed Action

In the current amendment request, the licensee proposes to perform studies at the Center similar to field studies that have been performed by similar Companies. The studies at the Center are required by the Environmental Protection Agency (EPA) in order to make regulatory decisions relative to the registration of biologically active chemicals according to the criteria set forth in the amended Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The use of radiolabeled materials is specifically required in 40 CFR 158.240 and 158.290 to determine (1) the nature of residue in crops after treatment with a biologically active chemical and (2) the uptake of a soil-applied biologically active chemical by crops grown in the treated soil. The analytical sensitivity afforded through the use of radioisotope labels in field studies is essential for isolation and identification of metabolites present in trace amounts in complex biological matrices. In the absence of such radiolabeled molecules, it would be extremely difficult to trace, isolate, and identify a single chemical in these complex matrices. No alternatives are given in the EPA regulations.

1.4 Alternatives to the Proposed Action

As required by Section 102(2)(E) of the National Environmental Policy Act (NEPA), possible alternatives to the final action have been considered. One possible alternative to the field studies is the treatment of greenhouse-grown plants with the radiolabeled chemical. However, this alternative is not feasible because the required studies must evaluate the behavior of the agricultural chemical under normal agricultural conditions. Greenhouse studies provide an unnaturally stable environment without the normal variations in weather and other field conditions, and may lead to non-representative metabolic profiles.

Another alternative considered was the no-action alternative. Under this alternative the NRC would not grant the licensee's request to use radiolabeled C–14 compounds. As discussed below, there are minimal, if any, effects from the proposed action. Additionally, if the licensee does not perform these studies, the Environmental Protection Agency (EPA) will not consider registering the chemicals as required by FIFRA and new products will not be available in that regulated area. Therefore, the no-action alternative is not a viable alternative and is not further considered in this environmental assessment.

2.0 Affected Environment

The Center is located on Elkton Road, in Newark, Delaware. The Center is situated on a five hundred thirty five (535) acre site at approximately 39 degrees and 40 minutes north latitude and 75 degrees and 45 minutes west longitude. Of the 535 acres, 267 acres of open fields and woodlands are in Cecil County, Maryland, with the remaining 268 acres of fields, woods and all buildings are in New Castle County, Delaware. No radiological activities will be carried out in the portion of the site located in the State of Maryland.

Currently, numerous laboratories and greenhouses are located at the site which are used for toxicology and safety testing, and research and development of agricultural products and pharmaceuticals. Agricultural fields surround theses structures and are used for testing experimental herbicides and pesticides under natural climatic conditions. The site currently employs approximately 800 personnel.

The site is bounded to the east and south by woodlands, homes, light industry, and businesses, and to the north and west by the Baltimore & Ohio Railroad tracks. Topographically, the site is at an approximate elevation of 120 feet above mean sea level, although the western portion of the site rises to an elevation of 170 feet above mean sea level.

Surface drainage patterns are controlled regionally by the Delaware River. The site lies within the drainage basin of the Christina River. At the site, surface drainage patterns are controlled by an unnamed tributary of the West branch of the Christina River, which bisects the site and flows in a southerly direction connecting with the West branch south of the property boundary. The East branch of the Christina River meanders briefly through the northeast corner of the site, flows eastwardly before turning southwardly, joins the West branch and discharges into the Delaware River. A surface-water intake located near Smalley's Pond, on the Christina River approximately 8 to 10 miles downstream of the site, is operated by the Wilmington Suburban Water Authority as a potable-water source for nearby communities.

Radiological tests will be conducted in one small test plot, 24.2 meters by 30.5 meters, surrounded by a four (4) foot high fence, located southwest of farm building 250. The location of the closest off-site human dwelling is approximately 182 meters from the test plot.

3.0 Environmental Impacts of the Proposed Action

The objectives of the small-plot outdoor field studies is to identify the metabolic pathway, stability and environmental fate of agricultural chemicals and associated products following application to a given crop or the soil in which the crop is grown. The maximum radioactivity released in one year will be 10 mCi of C–14. Using this information, impact to water supplies and the dose to the maximally exposed individual is calculated. The radiological impact from the performance of field studies with radiolabeled materials at the Center has been calculated using both the EPA's Gaussian Dispersion model, SCREEN 3, and the EPA's COMPLY model. SCREEN 3 is a computer code that employs worst case scenario parameters, including worst case meteorological conditions, to estimate potential concentrations of radionuclides at a specific receptor, the nearest off-site residence, positioned in the downwind direction from the test plot area. COMPLY is a computer code that calculates the maximum dose to an individual residing outside of the facility and considers dose from all pathways including inhalation, ingestion of contaminated food, immersion, and ground deposition to estimate the worst-case dose.

3.1 Impact on Food Chain

The plants grown in radiolabled studies will not be available for incorporation into the food chain. The test area is enclosed by a 4-foot tall chain link fence, and wire mesh or bird netting will be used to restrict bird and small rodent access to the plot. All plant material generated will be used for laboratory research purposes or disposed of as radioactive waste. Soil will be removed from the plot to a level where the soil radioactivity is at background. Removed soil will be disposed of per 10 CFR 20.2001 or in accordance with specific license conditions. Due to the precautions taken during application, the physical barriers in place to prevent wildlife access, and the removal of all soil and plant materials at the conclusion of the study, it is reasonable to assume that the radiolabled plant material will not enter the food chain by the ingestion process.

3.2 Groundwater Impacts

The procedure for application results in a very low potential for overspray and contamination of soil. For plants in pots, a plastic bag is placed over the entire setup. The spraying is conducted through a slit in the plastic bag. For plots, plastic is wrapped around stakes, which are placed at each corner of the plot. Any drift will be contained by the plastic.

At the conclusion of the testing, all vegetation is removed and disposed. Core soil samples are taken to depths of 18'' and analyzed for C–14. Soil is removed from the plot to a level where the soil radioactivity is at background.

Given the application procedures, and the soil testing at the conclusion of the test, it is not considered likely that the radiolabeled material from the plot will contaminate the groundwater.

3.3 Surface Water Runoff

An unrealistic, worst case of radioactivity released by surface runoff can be estimated based on a severe rain fall event which washes all of the applied activity from the plant and/or soil. The maximum activity used per application will be 10 mCi with no more than 10 mCi total in a year. The annual average rainfall in Newark, Delaware is 45 inches. The largest monthly rainfall from 1972 to 2000 in Newark Delaware, occurred in July 1989, and was 13.58 inches. The plot area plus the surface drainage area immediately around the plot is approximately 109 meters by 91 meters. If 13.58 inches of rain fell over the 109 by 91 meter area, a volume of 2.567×108 milliliters (ml) would runoff the immediate surface area. If 100% of a 10 mCi application were lost to surface runoff during this rainfall, the activity concentration of this surface runoff would be 3×10^{-6} microcuries/milliliters (uCi/ml), below the Appendix B, Table 2, Column 2, Part 20 limits for C–14 water effluent limit of 3×10^{-5} uCi/ml. In addition, the runoff from the area would be significantly diluted, as the complete site drainage area into the tributary is large. Since the concentration values in Appendix B, Table 2, Column 2, of Part 20 are equivalent to concentrations which, if ingested continuously over the course of year, would produce a total effective dose equivalent (TEDE) of 50 millirem or 0.5 millisieverts, and the 3×10^{-6} uCi/ml runoff from the area would be significantly diluted, the TEDE would be considerably less than 50 millirem.

3.4 Dose to the Maximally Exposed Individual

SCREEN 3 modeling was employed using the maximum amount of 10 mCi of C–14 applied in one year, and the specific activity value for C–14 of 4.5×10^{-6} uCi/gram (from 10 CFR Part 71, Appendix A, Table A–1). A worst case annual concentration of 4.872×10^{-7} micrograms/cubic meter (2.19×10^{-12} uCi/ml) is estimated for an individual at the nearest off site receptor location (182 meters). The Appendix B, Table 2, Column 1, of Part 20 limit of 3×10^{-7} uCi/ml, which, if ingested continuously over the course of year, would produce a TEDE of 50 millirems or 0.5 millisieverts. Since 2.19×10^{-12} uCi/ml is a small fraction of the 10 CFR Part 20, Appendix B limit (3×10^{-7} uCi/ml), the TEDE would be considerably less than 50 millirems.

The COMPLY model was also used to evaluate dose to the general public with the assumption that 10 mCi of C–14 was released over one year, at a distance of 182 meters to the nearest residence. The COMPLY program, level 2, calculated the maximum effective whole body dose for the maximally exposed individual to be 0.045 millirem/year. This dose is a very small fraction of the 100 millirem/year dose limit for individual members of the public required by 10 CFR 20.1301.

The results of both the SCREEN 3 and COMPLY codes agree that doses will be considerably less than the dose limit for

individual members of the public required by 10 CFR 20.1301.

3.5 Endangered Species

Due to the small size of the test plot (24.2 meters by 30.5 meters), the precautions taken during application, the physical barriers in place to prevent wildlife access, and the removal of all soil and plant materials at the conclusion of each study, it is considered unlikely that the proposed action would have any impact on threatened and endangered species and therefore no further consultation under Section 7 of the Endangered Species Act is required.

3.6 Historic and Cultural Resources

Due to the small size of the test plot (24.2 meters by 30.5 meters) and previous disturbances of the ground at the site of the proposed action, it is considered unlikely to have any potential effect on historic or cultural properties and therefore no further consultation under Section 106 of the National Historic Preservation Act is required.

4.0 Agencies and Persons Contacted

Letter from Allan C. Tapert, Program Administrator, Office of Radiation Control, Delaware Health and Social Services, dated July 19, 1995, to the Center. Mr. Tapert declined to review the Center's plans for field studies because the radioactive material in question is not NARM rather byproduct material.

U.S. Fish and Wildlife Service was not consulted since the licensing action involves a small plot of land and will not affect endangered or threatened species. The State Historic Preservation Officer was not consulted since there is no potential to affect historic properties.

5.0 List of Preparers

John D. Kinneman, Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, Health Physics Review.

Pamela J. Henderson, Senior Health Physicist, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, Health Physics Review.

6.0 Identification of Sources Used

Draft NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' published September 2001.

Letter dated March 15, 2002, to the U.S. Nuclear Regulatory Commission, Region I; from Joseph Montovino, Facilities Manager, Stine-Haskell Research Center, DuPont Agricultural Products.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the proposed action to use C–14 labeled radiochemicals in outdoor field studies and amendment of License No. 07–13441–02. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Electronic Reading Room).

Opportunity for a Hearing

Based on the EA and accompanying safety evaluation, NRC is preparing to issue a FONSI. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Office of the Secretary either:

1. By delivery to the Document Control Desk or may be delivered to the Commission's Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Additionally, in accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, E.I. Du Pont de Nemours & Co., Inc., DuPont Agricultural Products, Stine-Haskell Research Center, Elkton Road, PO Box 30, Newark, Delaware, 19714–0030, ATTN: Norman W. Henry III; or

2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A request for hearing, filed by a person other than an applicant, must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

Dated at King of Prussia, Pennsylvania this 15th day of May, 2002.

For the Nuclear Regulatory Commission,

John D. Kinneman,

Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 02–12836 Filed 5–21–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 15c2–5, SEC File No. 270–195, OMB Control No. 3235–0198
Rule 15Ba2–5, SEC File No. 270–91, OMB Control No. 3235–0088

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 15c2–5 (17 CFR 240.15c2–5) prohibits a broker-dealer from arranging or extending a loan to customers, not subject to Regulation T (12 CFR 220), in connection with the offer or sale of securities unless, before entering the

transaction, the broker-dealer: (1) Delivers to the customer a written statement containing specific information concerning the terms, obligations, risks and charges of the loan; (2) obtains from the customer sufficient financial information to determine that the entire transaction is suitable for the customer; and (3) retains on file and makes available to the customer a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the rule is necessary to execute the Commission's mandate under the Securities Exchange Act of 1934 (''Exchange Act'') to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 50 respondents that require an aggregate total of 600 hours to comply with the rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $ 24.00 (based on an annual salary of $ 32,050 for clerical labor plus an additional 35% to account for overhead costs, totaling $43,268), resulting in a total compliance cost of $14,400 (600 hours @ $24.00 per hour).

On July 7, 1975, effective July 16, 1975 (*see* 41 FR 28948, July 14, 1975), the Commission adopted Rule 15Ba2–5 (17 CFR 240.15Ba2–5) under the Exchange Act to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of approximately $80 (*i.e.,* 4 hours x $20).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: May 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12767 Filed 5–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation S–T, OMB Control No. 3235–0424, SEC File No. 270–375.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–T sets forth the filing requirements relating to the submission of documents in electronic format on the Electronic Data Gathering Analysis and Retrieval (''EDGAR'') system.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: May 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12803 Filed 5–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45943; File No. SR–NASD–2002–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Rule 6200 Series or the TRACE Rules

May 16, 2002.

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 April 3, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD submitted Amendment No. 1 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change on May 13, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Rule 6200 Series of the Rules of the NASD, which series provide for the reporting and dissemination of transaction information in eligible corporate debt securities (''TRACE rules''): (1) To extend the reporting period from one hour to one hour and fifteen minutes; (2) to incorporate standards in Rule 6250 regarding Non-Investment Grade securities;[4] (3) to require members to provide information at an earlier time under Rule 6260; (4) to clarify existing provisions in the TRACE rules, especially Rule 6210(a) regarding ''TRACE-eligible securities'' and certain reporting provisions in Rule 6230(c) and (d); and (5) to make other minor modifications to the existing requirements before the initiation of TRACE. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

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6200. Trade Reporting and Compliance Engine (TRACE)

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) The term ''TRACE-eligible security'' shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private corporations; and: (1) registered with the Securities and Exchange Commission; or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased or sold pursuant to Rule 144A *of the Securities Act of 1933.* The term ''TRACE-eligible security'' excludes *debt issued by government-sponsored entities,* mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. *For purposes of the Rule 6200 Series, the term ''money market instrument'' means a debt security that at issuance has a maturity of one year or less.*

(b) The term ''Trade Reporting and Compliance Engine'' or ''TRACE'' shall mean the automated system *developed*[owned and operated] by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities.[and which may submit ''locked-in'' trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a ''locked-in'' trading environment.]

(c) The term ''reportable TRACE transaction'' shall mean any *secondary market* transaction in a TRACE-eligible security *except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly, or transactions in convertible debt securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.*

(d) The term ''time of execution'' for a transaction in a TRACE-eligible security shall be the time when the parties to the transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading ''when issued'' on a yield basis shall be when the yield for the transaction has been agreed to by the parties to the transaction. *For a transaction in a TRACE-eligible security in which the actual yield for the transaction is established by determining the yield from one or more designated securities (e.g., a ''benchmark security'' such as a U.S. Treasury security maturing in 5 years, or a combination of such ''benchmark securities'') and adding the agreed upon ''yield spread'' (e.g., 150 basis points above the benchmark security), the ''time of execution'' occurs when the yield has been agreed to by the parties to the transaction.*

(e) The term ''parties to the transaction'' shall mean the *introducing broker-dealer, if any, and the executing broker-dealer.*[executing broker/dealer, introducing broker/dealer, and clearing brokers, if any.]

(f) The term ''TRACE Participant'' shall mean any NASD member that *reports transactions to the TRACE system, directly or indirectly.*[uses the TRACE system.]

(g) The term ''Introducing Broker'' shall mean the *NASD* member [firm] that has been identified in the TRACE system as a party to the transaction, but does not execute or clear [trades] *the transaction.*

(h) No change.

(i) The term ''Non-Investment Grade'' shall mean any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below *Investment Grade),*[investment grade),] or *otherwise* does not meet the definition of Investment Grade in paragraph (h) above.

6220. Participation in TRACE

(a) Mandatory Member Participation—No Change.

(b) Participant Obligations in TRACE

[(1) Access to TRACE]

Upon execution and receipt by the Association of the TRACE Participant application agreement, a TRACE Participant may commence input [and validation] of trade information in TRACE-eligible securities. TRACE Participants may access the service via an NASD-approved facility during the hours of operation.

[(2) Clearing Obligations]

[If at any time a TRACE Participant fails to maintain a clearing arrangement, it shall be removed from the TRACE system until such time as a clearing arrangement is re-established and notice of such arrangement is provided to the Association. If, however, the Association finds that the TRACE Participant's failure to maintain a clearing arrangement is voluntary, the withdrawal will be considered voluntary and unexcused. This section shall not apply to TRACE Participants whose trading activity obviates the need for maintaining a clearing relationship.]

6230. Transaction Reporting

(a) When and How Transactions are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within one hour and fifteen minutes of the time of execution, except as otherwise provided below, or the transaction report will be ''late.'' The member must transmit the

[3] In Amendment No. 1, the NASD revised the language of the proposed rule change regarding the time frame in which the managing underwriter must deliver CUSIP information to the TRACE Operations Center, and a member's obligations in instances in which the member is not required to report yield data to the NASD. *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 13, 2002 (''Amendment No. 1'').

[4] The term ''Non-Investment Grade'' is defined in the TRACE rules at Rule 6210(i).

report to TRACE during the hours the TRACE system is open (''TRACE system hours''), which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

(1) *Transactions Executed During TRACE System Hours*

[(A) Members that are required to report transaction information pursuant to paragraph (b) below shall, within one hour] *Transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within one hour and fifteen minutes* of the time of execution. *If a transaction is executed on a business day less than one hour and fifteen minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within one hour and fifteen minutes after the TRACE system opens. If reporting the next business day, the member must indicate ''as/of'' and provide the actual transaction date.* [transmit through TRACE during system hours, or if TRACE is unavailable due to system or transmission failure, by telephone to the TRACE Operations Center, reports of transactions in TRACE-eligible securities executed between 8:00 a.m. and 6:30 p.m. Eastern Time. Transactions not reported within one hour after the time of execution shall be designated as late; provided, however, that if inadequate time remains prior to system close to allow a timely report, the member may report the transaction the next day at system open designated ''as/of.'']

[(B) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.]

(2) *Transactions Executed At or After*[Transaction Reporting Between] 6:30 *P.M. Through 11:59:59 P.M. Eastern Time*[p.m. and 8:00 a.m. Eastern Time]

[(A) Reports of t]*T*ransactions in TRACE-eligible securities executed [after] *on a business day at or after* 6:30 p.m. Eastern Time [and before 12:00 a.m.] *through 11:59:59 p.m.* Eastern Time [shall] *must* be reported *the next business day within one hour and fifteen minutes after the TRACE system opens. The member must indicate ''as/of'' and provide the actual transaction date.*[on the next day and be designated ''as/of.'']

(3) *Transactions Executed At or After 12:00 A.M. Through 7:59:59 A.M. Eastern Time*

[(B)][Reports of t]*T*ransactions in TRACE-eligible securities executed [after] *on a business day at or after* 12:00 a.m. Eastern Time [and before 8:00] *through 7:59:59* a.m. Eastern Time [shall] *must* be reported *the* [that] same day *within one hour and 15 minutes after the TRACE system opens.*[beginning at 8:00 a.m. Eastern Time within the maximum time frame mandated.]

(4) Transactions Executed on a Non-Business Day

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within one hour and fifteen minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be ''12:01:00 a.m. Eastern Time'' (stated in military time as ''00:01:00''); and the modifier, ''special price,'' must be selected. In addition, the transaction must not be designated ''as/of''. When the reporting method chosen provides a ''special price memo'' field, the member must enter the actual date and time of the transaction in the field.

(5) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

(6) A member may be required to report as soon as practicable to the Market Regulation Department on a paper form, the transaction information required under Rule 6230 if electronic submission into TRACE is not possible. Transactions that can be reported into TRACE, including transactions executed on a Saturday, Sunday or holiday as provided in (a)(4) above, and trades that can be submitted on the trade date or on a subsequent date on an ''as/of'' basis, shall not be reported on a paper form.

(b) Which Party Reports Transaction—No Change.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) CUSIP number or NASD symbol;

(2) Number of bonds as required by paragraph (d) below;

(3) Price of the transaction *(or the elements necessary to calculate price, which are contract amount and accrued interest)* as required by paragraph (d) below;

(4) A symbol indicating whether the transaction is a buy[,] *or a* sell[or cross];

(5) Date of Trade Execution (as/of trades only);

(6) Contra-party's identifier;

(7) Capacity—Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;

(8) Time of trade execution;

(9) Reporting side executing broker as ''give-up'' (if any);

(10) Contra side Introducing Broker in case of ''give-up'' trade;

(11) Stated commission;

(12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide; and

(13) *The lower of yield to call or yield to maturity.*[Yield as required by SEC Rule 10b–10.] *A member is not required to report yield when the TRACE-eligible security is a security that is in default, a security for which the interest rate is floating; a security for which the interest rate will be or may be increased (e.g., certain ''step-up bonds'') or decreased (e.g., certain ''step-down bonds'') and the amount of increase or decrease is an unknown variable; a pay-in-kind security (''PIK''); any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that the Association designates if the Association determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.*

(d) Procedures for Reporting Price, Capacity, Volume

(1) For[agency and] principal transactions, report the price, *which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and the accrued interest.)* [including the mark-up, mark-down] *For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and the accrued interest.)* [or commission (commission entered separately). Do not include accrued interest.] *Then, report the commission, stated in points per bond, with 1 point equal to $10.00 per bond.*

(2) For agency and principal transactions, report the actual number of

bonds traded[.], *with $1,000 par value equal to 1 bond. If a bond has a par value of less than $1,000 (''baby bond'') or the par value is not an even multiple of $1,000, report the fractional portion of $1,000 in decimals.* [Baby bonds (those with a face value of less than $1,000) should be reported as a decimal.]

(3) For in-house cross transactions, *a member must report two transactions, which are the member's purchase transaction and the member's sale transaction.*[report as follows: Agency cross—report once as an agency trade; Principal cross—report twice, once as an individual principal buy and once as an individual principal sell.]

(4)(A) Special Price Modifier

If a transaction is not executed at a price that reflects the current market price, select the modifier, ''special price.'' When the reporting method chosen provides a ''special price memo'' field, state why the transaction was executed at other than the current market price in the ''special price memo'' field (e.g., when a debt security is traded conventionally and in the current market does not have a due bill and/or a warrant attached, but in the transaction to be reported is traded with a due bill and/or warrant attached, the price of the transaction is a ''special price''). Do not select the modifier, ''special price,'' where the transaction price is determined using a weighted average price.

(B) Settlement Modifiers

If a transaction is to be settled other than the regular way, report the settlement terms by selecting the appropriate modifier. If the parties agree to settlement on the same day the transaction is executed (i.e., cash settlement), select the modifier, ''.c.'' If a trade will be settled the next day, select the modifier, ''.nd.'' If a trade will be settled other than on the date of trade, the next day, or T+3, select the modifier, ''.sNN,'' and enter the appropriate number of days (e.g., if a trade will be settled in 5 business days, the reporting party will enter ''.s05'' in the data field).

(C) Weighted Average Price Modifier

If the price of the transaction is determined using a weighted average price method, select the modifier, ''.w.'' If one of the settlement modifiers and the weighted average price modifier apply to the transaction, select the modifier, ''.w'' for weighted average price, and do not report the applicable settlement modifier.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be required to be reported:

(1) Transactions that are part of a primary distribution by an issuer;

(2) Transactions in[listed] securities that are *listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in convertible debt securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly; and* [both executed on, and reported to, a national securities exchange; and]

(3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (*e.g.*, to allow the seller to make a gift).

(f) Compliance With Reporting Obligations—No Change.

6240. Termination of TRACE Service—No Change.

6250. Dissemination of Corporate Bond Trade Information

(a) *General Dissemination Standard*

Immediately upon receipt of transaction reports *received at or after*[between] 8:00 a.m. [and 6:30] *through 6:29:59* p.m. Eastern Time, the Association will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. *Eastern Time*) relating to transactions in:

(1) a TRACE-eligible security having an initial issuance size of $1 billion or greater that is Investment Grade at the time of receipt of the transaction report; and

(2) a *TRACE-eligible* security that is [denominated] *designated for dissemination according to the following criteria and is Non-Investment Grade at the time of receipt of the transaction report.* [as a ''Fixed Income Pricing System (FIPS)'' security under NASD Rules relating to FIPS securities immediately prior to the time that such rules are rescinded.]

(A) *The staff of NASD will designate fifty of the most actively traded Non-Investment Grade securities that are TRACE-eligible securities for dissemination under this rule, based on (i) the security's volume; (ii) the security's price; (iii) the security's name recognition; (iv) the research following of the security; (v) the security having a minimum number of bonds outstanding; (vi) the security being traded routinely by at least two dealers; and (vii) the security contributing to a representation of diverse industry groups in the group of securities designated for dissemination.*

(B) *A Non-Investment Grade security will not be designated, and may be immediately withdrawn from designation, for dissemination under this rule if the security: (i) has matured; (ii) has been called; (iii) has been upgraded to Investment Grade; or (iv) has been downgraded to an extent that the security's trading characteristics do not warrant designation for dissemination.*

(b) *Transactions Excluded From Market Aggregate, Last Sale*

All trade reports in TRACE-eligible securities *that are* approved for dissemination and submitted to TRACE *at or after 8:00 a.m. Eastern Time and* prior to 5:15 p.m. Eastern Time will be included in the calculation of market aggregates and last sale except:

(1) trades reported on an ''as/of'' basis,

(2) ''when issued'' trades executed on a yield basis,

(3) trades in baby bonds with a par value of less than $1,000, [or]

(4) trades in which the price is determined by a weighted average *price*[.]*; and*

(5) trades in which the price is a ''special price,'' as indicated by the use of the special price modifier.

(c) *Dissemination of Certain Trades Executed on A Business Day*

(1) Reports of transactions in TRACE-eligible securities *that are subject to dissemination, are* executed *on a business day at or* after 6:30 p.m. Eastern Time [and before 12:00 a.m.]*through 11:59:59 p.m.* Eastern Time*, and are*[that are] reported pursuant to *Rule 6230(a)(2)*[Rule 6230(a)(2)(A)] on the next *business* day and designated ''as/of'' [will not be included in daily market aggregates and] will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt. *The reported information will not be included in the calculation of the day's market aggregates.*

[(d)] *(2)* Reports of transactions in TRACE-eligible securities *that are subject to dissemination, are* executed *on a business day at or* after 12:00 a.m. Eastern Time [and before 8:00]*through 7:59:59* a.m. Eastern Time, and *are* reported *pursuant to Rule 6230(a)(3) on the*[that] same day beginning at 8:00 a.m. Eastern Time [pursuant to Rule 6230(a)(2)(B)] will be *disseminated upon receipt. The reported information will be included in the calculation of the day's market aggregates, except as otherwise provided in Rule 6250(b)(1) through (5).*[included in that day's market aggregates and disseminated upon receipt.]

(d) Dissemination of Trades Executed on Non-Business Days

Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a non-business day at any time during the day, and are reported pursuant to Rule 6230(a)(4) on the next business day will be disseminated upon receipt. The reported information will not be included in the calculation of the day's market aggregates.

6260. [Lead] *Managing* Underwriter [Information] Obligation *To Obtain CUSIP*

In order to facilitate trade reporting of secondary transactions in TRACE-eligible securities, the member that is the [lead] *managing* underwriter of any newly issued TRACE-eligible security shall *obtain the CUSIP number for the TRACE-eligible security and provide it to the TRACE Operations Center not later than 5:00 p.m. on the business day preceding the day that the registration statement will become effective, or, if registration is not required, the day that the securities will be priced initially.*[provide to the TRACE Operations Center the CUSIP number of any debt issue no later than on the effective date of the offering.] *If a managing underwriter is not appointed, the group of underwriters has an obligation to obtain and provide the CUSIP number to the TRACE Operations Center within the time required. A member must make a good faith determination that a security is a TRACE-eligible security before submitting the CUSIP number for such security to the TRACE Operations Center.*

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD 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

Introduction

The proposed amendments to the Rule 6200 Series [5] are intended to extend the reporting period from one hour to one hour and 15 minutes, to incorporate certain FIPS standards in Rule 6250, to require members to provide new CUSIP numbers to TRACE at an earlier time under Rule 6260, to clarify existing provisions in the Rule 6200 Series, especially Rule 6210(a) regarding ''TRACE-eligible securities'' and certain reporting provisions in Rule 6230(c) and (d), and to make other minor modifications to the existing requirements. Many of these changes are in response to industry requests for additional guidance and extended response times.

Extension of the Reporting Period to One Hour and 15 Minutes

The most significant proposed change is the NASD's proposal to extend the maximum time frame for reporting a transaction. The NASD is proposing to extend the reporting period from one hour to one hour and 15 minutes. Rule 6230(a). The proposed amendment will allow certain portions of the industry to engage a major industry participant as an agent for TRACE reporting. The proposed change will allow the NASD and members to achieve certain short-term operational efficiencies as reporting is initiated. In the future, the NASD expects to reduce the reporting period substantially.

Inclusion of FIPS Standards for Designating Certain Securities for Dissemination

The NASD is proposing to incorporate in Rule 6250(a)(2) the actual standards in the FIPS rules currently used to designate certain securities as ''FIPS securities'' (which then subjects certain transaction information in such securities to dissemination), and to delete the specific reference in Rule 6250 to ''FIPS securities.''[6] The NASD proposes this amendment because the standards now in use in the FIPS rules are intended to be the applicable standards under the TRACE rules.

The Association will use the standards, as needed, to designate Non-Investment Grade securities for dissemination under TRACE. On July 1, 2002, the first day of TRACE, approximately 50 securities will already be designated for dissemination because they were previously designated FIPS 50 securities. If, after the FIPS rules are rescinded, there are fewer than 50 Non-Investment Grade (high yield) securities for which transaction information is being disseminated, the NASD will designate additional Non-Investment Grade securities, up to 50, to be disseminated. The NASD will do so using the standards set forth in the FIPS rules, which the NASD proposes to incorporate in the TRACE rules.[7]

The actual standards in the current Rule 6200 Series were not included previously in the TRACE rules because when TRACE was filed originally, the Association planned to release bonds for dissemination on a substantially different timetable and plan. In that environment, standards for designating only 50 Non-Investment Grade securities for dissemination were unnecessary. Under the current rules for

[5] The Rule 6200 Series providing for reporting and dissemination of transaction information in eligible debt securities (''TRACE rules'') was approved by the SEC on January 23, 2001. Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (approval order) (File No. SR–NASD–1999–65). The Commission approved additional amendments to the TRACE rules on March 5, 2001. Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (approval order) (File No. SR–NASD–2001–04). In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE rules had become effective on filing. Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (notice of filing and immediate effectiveness of proposed rule change) (File No. SR–NASD–2001–91). As noted above, the TRACE rules will not become effective until July 1, 2002. On that day, members must begin to report transactions in TRACE-eligible securities, and the TRACE system will begin the dissemination of certain reported information. (The Rule 6200 Series that is currently in effect establishes the reporting requirements for members engaged in trading high yield securities, describes the Fixed Income Pricing System (''FIPS''), and requires the dissemination of certain transaction information through FIPS (''FIPS rules'').) When the TRACE rules take effect on July 1, 2002, the FIPS rules will be rescinded and the FIPS system will cease operating.

[6] Fifty FIPS securities are selected as representative of the most liquid high yield securities. Certain price and volume information for the 50 securities that are designated is disseminated on an hourly basis and at the end of the day. The list of designated securities is updated and published approximately every four months.

[7] On July 1, 2002, those securities that were designated the FIPS 50 securities prior to the termination of FIPS will be subject to dissemination under TRACE Rule 6250. However, from time to time after July 1, 2002, a security designated may cease trading or may no longer meet the standards for dissemination (*e.g.,* a security that was designated as a FIPS 50 security may mature or may be upgraded to an Investment Grade security, or the issuer may file for bankruptcy or otherwise default on its obligations). When this occurs, the Association staff will replace the security with another Non-Investment Grade security using the standards incorporated in the TRACE rules to maintain dissemination of transaction information relating to 50 Non-Investment Grade securities.

dissemination of certain TRACE-eligible securities transactions, however, the Association believes that it should have transparent standards or criteria for maintaining the list of 50 Non-Investment Grade securities that will be subject to dissemination, and, therefore, is proposing that the standards be incorporated in the TRACE rules.

Requirement To Timely Provide CUSIP Numbers

The Association is proposing to reduce the period during which an underwriter of a security must obtain and notify TRACE of the CUSIP number(s) of newly issued or distributed securities. Rule 6260 currently requires that the lead underwriter provide to the ''TRACE Operation Center'' the CUSIP number of any debt issue no later than on the effective date of the offering. The NASD proposes to shorten the period to not later than the end of the business day prior to the effective date of the offering, or, if registration is not required, the end of the business day prior to the day the securities will be priced initially. In addition, in those offerings in which there is no lead or managing underwriter, the group of underwriters has an obligation to obtain and provide the CUSIP number to the TRACE Operations Center within the period described above.

''TRACE-Eligible Security''

The Association has received a number of queries concerning the scope of the exclusions to the term, ''TRACE-eligible security,'' in Rule 6210(a). Generally, unless a debt security is excluded from the definition set forth in Rule 6210(a), a transaction in the security must be reported to TRACE by any member that is a party to the transaction. To further clarify which securities are subject to the TRACE rules, the Association proposes to amend Rule 6210(a) to specifically exclude from the definition of ''TRACE-eligible security'' a debt security issued by a government-sponsored entity (''GSE'').

Money Market Instrument. In addition, for purposes of Rule 6210(a), the Association clarifies that ''money market instrument'' means an instrument that at issuance has a maturity of one year or less. For purposes of the TRACE rules, the term excludes those instruments that were originally issued with longer maturities, but may be treated by certain market participants as short term instruments in certain trading contexts as the instruments approach maturity. For example, a five year security would not be considered a ''money market instrument'' for purposes of TRACE if there were only 6 months remaining until the instrument matured.[8]

Other Changes

A series of additional, minor proposed changes are explained briefly below, including the Association's proposed clarification of certain defined terms.

Rule 6210 Proposed Changes

Rule 6210(b), ''Trade Reporting and Compliance Engine.'' Previously, the NASD modified the name of the TRACE system to ''Trade Reporting and Compliance Engine.''[9] The NASD amended the name to more accurately reflect the compliance purposes that TRACE will further and to eliminate references to the functions that are no longer part of the TRACE initiative. In this proposed rule filing, the Association is also deleting those functions that are no longer within TRACE from the definition, ''Trade Reporting and Compliance Engine.'' Rule 6210(b).

Rule 6210(c), ''Reportable TRACE Transaction.'' The Association has proposed amendments to the term, ''reportable TRACE transaction,'' to make clear that a limited class of transactions in certain debt securities will not be subject to reporting (and dissemination) under TRACE. These are transactions in debt securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in convertible debt securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly. The NASD is also proposing parallel changes to Rule 6230(a)(2). The NASD does not intend to capture transactions in debt securities that are listed, currently subject to reporting for regulatory purposes to another self-regulatory organization (''SRO''), and disseminated by such SRO. This is consistent with the underlying purpose of TRACE, which is to increase transparency in those debt securities transactions for which there is currently no regulatory reporting mechanism and no dissemination.

Rule 6210(d), ''Time of Execution.'' The NASD proposes additional language to the definition of ''time of execution'' to clarify when the time of execution of a transaction occurs for securities that are priced off, or for which yield is determined by, reference to a benchmark security. The NASD proposes that the time of execution for these securities transactions shall be deemed to occur when the yield for the security is agreed upon by the parties to the transaction. For example, if the parties agree to determine the specific yield of Security A based upon a spread that is 150 points ''off'' (above) or ''through'' (below) the yield of a comparable U.S. Treasury security, and agree to measure the yield of the comparable U.S. Treasury security at 3:30 p.m. on the day of the transaction, the parties will be expected to agree upon the yield of Security A at 3:30 p.m. when the information becomes available. As of that time, the parties have knowledge of all of the elements of the trade necessary to calculate the dollar price of the trade and are obligated to report the trade within 1 hour and 15 minutes.

TRACE Time Frames

The TRACE rules recognize that transactions in TRACE-eligible securities may occur at any time during a 24 hour period. The times set forth in Rule 6230 and related rules have been clarified. Generally, the business day is broken into three periods for purposes of the reporting provisions in Rule 6230 and the dissemination provisions in Rule 6250. The three periods of a business day are: (a) At or after 8:00 a.m. through 6:29:59 p.m. Eastern Time (the period during a business day that the TRACE system will be ''open'' and receiving reports); (b) at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time; and (c) at or after 12:00 a.m. Eastern Time (midnight) through 7:59:59 a.m. Eastern Time. Holidays and weekends are treated separately, as discussed further below. Requirements for reporting generally, designation of ''late'' trades and ''as/of'' trades, and the timetables for dissemination are governed generally by these three periods. *See, e.g.,* proposed changes to the structure of Rule 6230 in paragraphs (a)(1), (2) and (3).

Reporting Transactions Executed on Weekends and Holidays

In proposed Rule 6230, the Association is proposing an additional paragraph, new paragraph (a)(4), to clarify how to report transactions that are executed during a weekend or on a holiday. At the initiation of TRACE, the

[8] The term, ''TRACE-eligible security,'' as currently approved, excludes sovereign debt. Also, the Association intends to exclude any debt security that is issued by a supranational organization, such as the World Bank, the International Monetary Fund, and the European Bank for Reconstruction and Development.

[9] *See* SR–NASD–2001–91.

TRACE system will not be able to recognize, and would reject a transaction report that included, a calendar date that is a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed. In addition, the system would reject a date in the ''as/of'' field for the same reason. Therefore, the actual date of transactions that are executed on a non-business day cannot be captured electronically at this time. Until the system is revised, the Association proposes to require members to report transactions that are executed on a non-business day as follows under proposed Rule 6230(a)(4). A member must report the transaction on the first business day following the actual date of the transaction, and the transaction must be reported within one hour and fifteen minutes of the opening of the TRACE system. The transaction date must be reported as the first business day after which the transaction occurred (the same day of the report). The time of execution must be reported as ''00:01:00'' (Eastern Time) (which is the military time for ''12:01:00'' a.m. Eastern Time). This will distinguish these limited number of weekend and holiday transactions from transactions actually occurring on the business day. The modifier, ''special price,'' must be selected. In addition, when the reporting method chosen provides a ''special price memo'' field, the member must enter the actual date and time that the transaction occurred. Rule 6230(a)(4).

The Association is also proposing parallel clarifying changes regarding the dissemination of such trades in proposed Rule 6250(d).

Other Clarifications to Rule 6230 Reporting Provisions

The Association made several clarifying changes to Rule 6230 in addition to the changes regarding the reporting extension and periods that are discussed above. Several questions and issues arose with respect to reporting price, mark-ups, mark-downs, and commissions. The changes have been proposed to respond to an operational issue raised by the industry and reduce the industry's costs of participating in TRACE, to clarify the provisions, and answer various questions.

Rule 6230(c)(3), Alternative ''Price'' Reporting. First, in order to address basic software differences identified in certain external systems in widespread use in the industry, the NASD has agreed to provide an alternative to the reporting of ''price'' in Rule 6230(c)(3). The proposed change to Rule 6230(c)(3), if approved, will allow a member to report either the ''price of the transaction'' or ''the elements necessary to calculate price, which are contract amount and accrued interest.'' This change will increase the efficiencies and reduce the costs of complying with TRACE for a substantial number of TRACE participants.

Rule 6230(d)(1), Reporting Price, Capacity and Volume. In addition, the NASD proposes several clarifying changes to Rule 6230(d). None of these changes are substantive. In Rule 6230(d)(1), the NASD proposes changes to describe more clearly how to report principal transaction prices (*i.e.,* the price reported must include the mark-up or mark-down) and agency transaction prices (*i.e.,* the price must exclude a commission, if any, and the commission must be reported in a second, separate field). In addition, where a party will use an external system that does not allow for the reporting of price (as described above), the NASD has clarified the language in paragraph (d)(1) to make it consistent with the proposed changes to Rule 6230(c)(3).

Rule 6230(d), ''Special Price,'' ''Weighted Average Price,'' and ''Cash,'' ''T + 1'' and Other Settlement Modifiers. In Rule 6230(d)(4)(A) through (C), the NASD has clarified that a member must report transactions using modifiers, if applicable, to report certain aspects of a transaction. The modifiers are used to designate a special price, pricing determined by using weighted average pricing, and settlement that will occur other than regular way.

Special Price. In Rule 6230(d)(4)(A), the Association has specified that a member must indicate on a trade report when a non-market price, *i.e.,* a ''special price,'' applies to the trade (other than when a weighted average price applies to the trade, which is indicated using a different modifier). In addition, the reporting party must explain in the memo field, when available, why the transaction was executed at other than a current market price. For example, if a debt security is traded conventionally and in the current market with neither a due bill nor a warrant attached, but, in the relevant transaction, is traded with a due bill and/or warrant attached, the price of the transaction is a ''special price,'' which reflects the special conditions of the trade.

Weighted Average Price. If the price of a transaction is determined using a weighted average price method, the Association proposes that a member must indicate this with the modifier ''.w.'' in Rule 6230(d)(4)(C). The member is required to select the modifier ''.w'' and may not select the ''special price'' modifier. The weighted average price modifier has priority over the modifiers indicating settlement other than regular way, which are discussed below. If both the weighted average price modifier and one of the settlement term modifiers are applicable to the transaction, the weighted average price modifier must be selected when reporting the transaction.

Settlement Other Than Regular Way. If a transaction is to be settled other than regular way, the Association proposes the member must report the settlement term by selecting the appropriate modifier, as set forth in Rule 6230(d)(4)(B). If the transaction will settle the same day (*i.e.,* same day cash settlement), the member must use the modifier ''.c''; if the transaction will settle the next day, the member must use the modifer ''.nd''; or, if the transaction will settle other than on the same day, the next day or T+ 3, the member must use the modifier ''.sNN'' and enter the appropriate number of days (*e.g.,* ''.s05'' indicates that settlement will occur 5 business days after the transaction is executed). Finally, as noted above, if one of the settlement modifiers *and* the weighted average price modifier apply to the transaction, the member must select the modifier, ''.w,'' for weighted average price, and the applicable settlement modifier is not reported.

Rule 6230(c)(13), Yield. The industry sought additional guidance on how to report yield as required in Rule 6230(c)(13). The Association proposes clarifying changes to Rule 6230(c)(13) to eliminate the ambiguity of the prior provision. The Association proposes that a member report the lower of yield to call or yield to maturity.

Reporting the yield is mandatory. However, in response to questions, the Association has identified a number of instances where it is appropriate to provide an exception to the mandatory yield reporting requirement. The exception is stated in the proposed amendment. For example, a member is not required to report yield when the TRACE-eligible security is a security that is in default, a security for which the interest rate is floating or the interest rate will be or may be increased (*e.g.,* certain ''step-up bonds'') or decreased (*e.g.,* certain ''step-down bonds'') and the amount of increase or decrease is an unknown variable, the security is a pay-in-kind (''PIK''), or any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable. The NASD has not assumed that the Association may identify, before each occurrence, all the

instances in which it is not appropriate or useful to report yield. Instead, the Association has clarified that in those instances where the reported yield would provide inaccurate or misleading information concerning the price of, or trading in the security, yield is not required to be reported.

There were several other minor amendments to Rule 6230. In paragraph (d)(3) of Rule 6230, the Association proposes to eliminate the reporting of certain transactions as ''crosses.'' A corresponding change is proposed to Rule 6230(c)(4). In addition, in paragraph (d)(2) of Rule 6230, the Association has clarified the term ''baby bond'' and how to report a fractional par value of a debt instrument.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, if approved, will amend rules for the reporting of information on eligible debt securities transactions that will provide the NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate the debt securities markets in order to prevent fraudulent and manipulative acts and practices. The proposed rule change, by requiring reporting of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the fixed income markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

While comments were neither solicited nor received concerning this rule proposal, several commenters on SR–NASD–99–65 indicated that the NASD should consider proposing reporting rules that would allow the members of the fixed income markets to use, with modifications, some of the reporting arrangements and linkages in place for the reporting of municipal securities transactions. In light of these comments, the Association is proposing that the one hour reporting period set forth in Rule 6230(a) be amended to one hour and 15 minutes and an alternative method for reporting ''price'' be provided in Rule 6230(c)(3) and (d)(1). The proposed extension of the reporting period and the alternative for reporting ''price'' will allow certain firms that have communication links to a registered clearing agency to report to TRACE using the reporting processes that are in place through the registered clearing agency. Otherwise, written comments were neither solicited nor received.

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 such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–46 and should be submitted by June 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12807 Filed 5–21–02; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45946; File No. SR–OCC–2001–16]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Certain Commodity Futures and Options Thereon

May 16, 2002.

I. Introduction

On October 24, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2001–16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1]. Notice of the proposal was published in the **Federal Register** on December 20, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

1. Introduction

Pursuant to the proposed rule change being approved, OCC will provide clearance and settlement services for futures on broad-based stock indexes and options on such futures under the same basic rules and procedures currently applicable to the clearance and settlement of other OCC-cleared contracts, including options and security futures.[3] There is no significant difference between the mechanics for

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45152 (December 12, 2001), 66 FR 65770.

[3] Because such contracts are within the exclusive jurisdiction of the Commodity Futures Trading Commission (''CFTC''), on October 9, 2001, OCC submitted to the CFTC an application for registration as a derivatives clearing organization (''DCO'') under Section 5b(c) of the Commodity Exchange Act (''CEA'') and under 17 CFR Part 39 of the CFTC's regulations. The CFTC granted OCC's application for registration on December 10, 2001. The Commission notes that although futures on broad-based stock indexes and options on these futures fall within the exclusive jurisdiction of the CFTC, the Commission retains its authority to inspect and examine OCC with respect to OCC's clearance and settlement of these products by virtue of its status as a registered clearing agency under Section 17A of the Act.

the clearance and settlement of a future on a narrow-based stock index (a security future) and the mechanics for the clearance and settlement of a future on a broad-based stock index.[4] Accordingly, many of the changes being made merely expand the provisions applicable to security futures to include commodity futures. Likewise, futures options are substantially similar in most respects to other options cleared and settled by OCC, and accordingly, futures options will be governed by many of the same by-laws and rules applicable to other options. Where special provisions for futures options are needed, they are contained primarily in Article XII of the By-Laws and Chapter XIII of the Rules which, as discussed below, are being amended so that they apply to commodity futures and futures options as well as to security futures.

2. New and Amended Definitions

OCC is adding new definitions for several terms applicable to commodity futures and futures options and is including those terms in Article I of the By-Laws. New futures terms have been adopted and defined to correspond as closely as possible to the terminology used in the existing futures markets while also being consistent with terminology in OCC's rules. Various existing security futures definitions have been amended so that they are applicable to commodity futures as well as to security futures. The new definitions are mostly self-explanatory, but a few terms that are of particular significance are described below.

The term ''commodity future'' is added to distinguish these products from security futures and is defined as a futures contract within the exclusive jurisdiction of the CFTC that is traded on or through the facilities of a futures market or is subject to the rules of a futures market. The term ''future'' is defined so that it encompasses both security futures and commodity futures where, as is most often the case, no distinction is needed. A ''futures market'' is defined to mean a contract market registered with the CFTC as such. OCC does not currently propose to clear commodity futures products traded on markets other than registered contract markets. The definition of ''option contract'' has been amended to include a ''futures option'' which is defined as an option to buy or sell any commodity future traded on or through the facilities of a futures market or is subject to the rules of a futures market. The term ''cleared contract'' is defined as a security, commodity future, or futures option that is cleared by OCC.[5] Changes to the definitions of ''commencement time'' and ''series marker'' are discussed below.

3. Clearing Member Qualifications

Section 1 of Article V of OCC's By-Laws is amended to permit futures commission merchants (''FCMs'') that are not notice-registered as broker-dealers under Section 15(b)(11)(A) of the Act to become clearing members. Interpretation .06 under Section 1 was added in SR–OCC–2001–07 to provide that OCC may give expedited review and may waive certain non-financial criteria where appropriate in order to admit affiliates of existing clearing members for the purpose of clearing security futures.[6] OCC will extend the same consideration to such affiliates that become clearing members for the purpose of clearing commodity futures and futures options. As stated in SR–OCC–2001–07, OCC believes that it is appropriate to give special consideration to such affiliates to the extent that their affiliation with an existing clearing member provides access to competent and experienced personnel able to assist the affiliate in meeting OCC's operational requirements.

OCC's financial requirements will remain substantially the same for all clearing members whether regulated primarily or exclusively as broker-dealers or as FCMs. In the case of a clearing member regulated primarily or exclusively as an FCM, OCC will permit such FCM to compute its net capital in accordance with the CFTC's regulations. OCC Rules 301(c), 303(c), and 307 have been modified to provide appropriate references to CFTC regulations governing FCM financial requirements in order to provide as nearly as practicable requirements that are parallel to those applicable to clearing members regulated primarily as broker-dealers.

4. Accounts

OCC By-Law Article VI, Section 3, is amended to clarify that commodity futures and futures options positions of futures customers may not be carried in the firm account. Additionally, Interpretation and Policy .01 has been added to require a clearing member carrying a customer account pursuant to Article VI, Section 3(e) (*i.e.,* an account holding positions of securities customers) to be fully registered as a broker-dealer and to require a clearing member carrying a segregated futures account under Article VI, Section 3(f) (*i.e.,* an account holding positions of futures customers) to be fully registered as an FCM. Whether a person is a futures customer or a securities customer is determined by (i) the agreement between the intermediary carrying the customer's account, subject to the provisions of the Act, the CEA, and regulations under either or both of those statutes as applicable to the particular intermediary (*i.e.*, broker-dealer, FCM, or dual registrant), (ii) the types of cleared contracts involved (*i.e.,* securities, security futures, or commodity futures products), and (iii) the identity of the person whose account is carried (including the nature of any affiliation such person has with the intermediary). Article VI, Section 3(a) has been modified to provide that positions in commodity futures and futures options of persons who are not futures customers (and whose accounts are therefore proprietary within the meaning of CFTC Regulation 1.3(y)) may be carried in the firm account regardless of that person's status under the Commission's hypothecation rules or Rule 15c3–3.

5. Amendments to Article XII of the By-Laws

Article XII sets out the basic provisions for security futures, including both physically-settled and cash-settled stock futures. Article XII is amended to apply to commodity futures and futures options as well. The major change is the addition of subparagraph (b) to Section 2, which governs the rights and obligations of buyers and sellers of futures options. When a futures option is exercised, OCC will: (a) in the case of a call, open in the account from which the call was exercised the number of long futures contracts and open in the account to which the exercise was assigned the number of short futures contracts equal to the unit of trading for the option and (b) in the case of a put, open in the account from which the put was exercised the number of short futures contracts and open in the account to which the exercise was assigned the number of long futures contracts equal to the unit of trading for the contract. Futures contracts that are

[4] The Commission recently approved OCC's rules and procedures for the clearance and settlement of security futures. Securities Exchange Act Release Nos. 44434 (June 15, 2001), 66 FR 33283 [File No. SR–OCC–2001–05] and 44727 (August 20, 2001), 66 FR 45351 [File No. SR–OCC–2001–07].

[5] While many of the changes made by this ruling have been broadly made to facilitate the clearance and settlement by OCC of transactions in commodity futures and futures options no matter what the underlying interests, this rule filing approves only OCC's proposal to clear and settle futures on broad-based indexes and options thereon. In the event that OCC undertakes a clear additional CFTC-regulated products in the future, OCC will file a proposed rule change under Section 19(b) of the Act regardless of whether OCC needs to amend or add specific language to its By-Laws or Rules.

[6] *Supra* note 4.

opened in settlement of the exercise of a futures option contract will be deemed to have been opened on the day of exercise, and the exercise price for the futures option will be the contract price for the futures contract. After the futures contract is opened, the buyer and seller will have the same rights and obligations as the holders of other futures contracts.

6. Adjustments

As with security futures, adjustments to commodity futures and futures options that are necessary to reflect certain events affecting the underlying index will be determined by OCC. Futures on broad-based stock indexes and futures options thereon will be subject to the same adjustment provisions in Article XII, Sections 3 and 4 of the By-Laws that are applicable to narrow-based stock index futures. These adjustment provisions were patterned after similar provisions in Section 3 of Article XVII which are applicable to index options. Paragraph (b) of Article XII, Section 4 has been modified and new paragraph (c) has been added to update and to conform to changes in the adjustment provisions applicable to index options that were approved by the Commission last year.[7] New paragraph (d) of Article XII, Section 4 has been added in order to provide for appropriate adjustments to outstanding futures options when the underlying index future is adjusted. In that case, the futures option will be adjusted to provide for delivery of the adjusted future. Where appropriate, the exercise prices and the number of outstanding options may be adjusted. Section 6 of Article XII, which provides that the final settlement price for any futures contract at maturity is determined by a method approved by the market listing the future, is made applicable to both security futures and commodity futures. Interpretation .01 is being added to make clear that any such method of determining final settlement prices must be consistent with applicable regulations. This interpretation is added in light of the rules proposed by the Commission and the CFTC that would require that final settlement prices for security futures ordinarily be based on opening prices.[8]

7. Trade Reporting and Matching

Trade reporting and matching will occur for commodity futures in the same manner as for security futures and for futures options in generally the same manner as for other options. OCC however, will not require transactions in commodity futures and futures options to be identified as opening or closing as it requires for security futures and for other options. If a futures market elects to submit trade information without identification as to whether the transaction is opening or closing, OCC will treat all transactions as opening transactions. Each clearing member then will have to submit gross position adjustment information at the end of the day to reduce its positions to reflect the actual open interest in accounts carried by the clearing member. These procedures are consistent with current practice on many futures exchanges. As with security futures, commodity futures and futures options may include, if a futures market so elects, a series marker that prevents contracts traded on that market from being treated as fungible with otherwise identical futures contracts traded on other markets cleared by OCC. The definition of a ''series marker'' in Article I of the By-Laws has been amended to make clear that a series marker can be shared by mutual consent among more than one exchange or market. As a result, contracts may be fungible when traded on any market within a group but not fungible with contracts traded on markets outside the group. This is intended as a clarification of, rather than a change in, the existing rule.

Rule 401 is also being amended to provide that non-competitively executed transactions, such as block trades and exchange-for-physicals, must be identified as such in the matched trade report.[9] These provisions would apply to futures options as well as commodity futures and security futures. As defined in Article I, Section 1, the ''commencement time'' for trades designated as non-competitively executed does not occur until OCC has received the premium or initial variation payment on the transaction. This provision would allow OCC to reject the trade if the clearing member fails to make such payment. These trades are treated differently from other trades because when a transaction is effected at a price other than the current market price, OCC's loss may be greater in the event of a clearing member default.

8. Margins

OCC Rule 602, which contains the calculation used to determine the margin required for each account of a clearing member for narrow-based index futures, index options, and other non-equity options, is amended to include commodity futures and futures options. Margin will be calculated for these new products in exactly the same way as for other futures and options subject to OCC Rule 602.

9. Clearing Fund Contributions

Commodity futures and futures options will be covered by the same clearing fund that stands behind all options and security futures cleared by OCC. Clearing activity in commodity futures and futures options will be taken into consideration in calculating the amount of a clearing member's contribution in the same way that activity in other contracts is considered. OCC Rule 1001 provides that affiliates of existing clearing members that become clearing members of OCC solely for the purpose of clearing transactions in broad-based index futures or futures options need not put up an additional $150,000 minimum clearing fund contribution. This merely expands the existing provision applicable to clearing member affiliates that become clearing members solely for the purpose of clearing security futures.

10. Discipline

OCC Rule 1202, dealing with disciplinary proceedings, is amended to provide that if an OCC disciplinary proceeding relates solely to the clearing member's activities as an FCM, OCC must notify the clearing member in writing that it may have a right to appeal under Section 8c of the CEA. As a result of this change, clearing member disciplinary proceedings that relate to violations of customer segregated funds rules and other violations of the CEA or regulations thereunder will be subject to CFTC review.

11. Amendments to Chapter XIII

OCC proposed and the Commission approved a new Chapter XIII of its Rules to govern security futures. [10] With the current filing, OCC is simply amending that Chapter so that it applies to commodity futures and futures options as well.

III. Discussion

In Section 17A of the Act, Congress stated its finding that the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on

[7] Securities Exchange Act Release 44184 (April 16, 2001), 66 FR 20342 [File No. SR–OCC–99–12].

[8] Securities Exchange Act Release 44743 (August 24, 2001), 66 FR 45904 [File No. S7–15–01].

[9] CFTC regulations require the identification of non-competitive trades. 17 CFR 1.38(b).

[10] Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 [File No. SR–OCC–2001–07].

behalf of investors.[11] Congress then directed the Commission to facilitate the establishment of coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures, and options on futures.[12] By providing clearance and settlement services for futures on broad-based stock indexes and options on such futures under the same basic rules and procedures applicable to the clearance and settlement of other OCC-cleared contracts such as options and security futures, OCC is establishing itself as a facility capable of providing coordinated clearance and settlement services for transactions in both securities and futures. Therefore, the Commission finds that the approval of OCC's rule change is consistent with the directive of Congress.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2001–16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12805 Filed 5–21–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78q–1(a)(1)(D).

[12] 15 U.S.C. 78q–1(a)(2)(A)(ii).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45928; File No. SR–Phlx–2001–27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto Relating to Disengagement of Auto-Ex Due to Extraordinary Circumstances

May 15, 2002.

I. Introduction

On March 7, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to the disengagement of AUTO–X, the automatic execution feature of the Exchange's Automated Options Market (''AUTOM'').[3] On March 28, 2001, December 20, 2001, March 1, 2002 and March 8, 2002, Phlx submitted Amendment Nos. 1,[4] 2,[5] 3,[6] and 4,[7] respectively. The proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4, was published for comment in the **Federal Register** on April 12, 2002.[8] The Commission received no comments on the amended proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to amend Options Floor Procedure Advice (''OFPA'') A–13, Auto Execution Engagement/Disengagement Responsibility, and Phlx Rule 1080(e), Extraordinary Circumstances, to provide for a re-evaluation of the disengagement of AUTO–X[9] during extraordinary circumstances. Specifically, when AUTO-X is disengaged due to extraordinary circumstances, the Exchange would be required to review and confirm that such circumstances still exist five minutes after the initial declaration of extraordinary circumstances, and every fifteen minutes thereafter. Additionally, the Exchange proposes to amend Phlx Rule 1080(e) to specify the definition of extraordinary circumstances under which AUTO–X may be disengaged, or operated in a manner other than the normal manner set forth in the Exchange's rules.[10] The Exchange also proposes record keeping requirements to be kept when AUTO-X is disengaged and reengaged.

Currently, in order to obtain AUTO-X disengagement relief for a specific class of option due to extraordinary circumstances, the specialist must promptly notify the Phlx Market Surveillance Department that relief is requested.[11] The specialist must also obtain authorization from two Floor Officials. Currently, OFPA A–13 and Phlx Rule 1080(e) do not provide a specified time frame to re-evaluate the conditions under which a continuation of extraordinary circumstances may continue. Nor do they provide for substantial participation of Market Surveillance staff.

Under the proposed rules, the specialist would be required to notify the Phlx Market Surveillance Department that relief is requested to ensure proper notification to AUTOM users in accordance with Phlx Rule 1080(f)(v). The specialist also would be required to obtain authorization from two Floor Officials for relief. Two Floor Officials would continue to determine if relief is warranted.[12] Under the proposal, five minutes after the initial determination, and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect, the requesting specialist and two Floor Officials, with the concurrence of a designated Market Surveillance staff person, must re-evaluate whether extraordinary circumstances still exist.

The proposed rule changes, among other things, would codify the Exchange's current practice as described in this paragraph. If at any time the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Phlx (as well as the other floor-based options exchanges) to adopt new, or amend existing rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automated execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282.

[4] *See* letter from Diana Tenenbaum, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 27, 2001 (''Amendment No. 1'').

[5] *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 19, 2001 (''Amendment No. 2''). Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety.

[6] *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 (''Amendment No. 3'').

[7] *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 (''Amendment No. 4'').

[8] *See* Securities Exchange Act Release No. 45710 (April 9, 2002), 67 FR 18295 (April 12, 2002).

[9] AUTO–X is a feature of AUTOM, the Exchange's electronic order delivery and reporting system that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options.

[10] *See* Exchange Rule 1080(c) generally. *See also* SR-Phlx-2001–24, a proposed rule change to set forth the circumstances in which AUTO–X will be operated in a manner other than the normal manner. Securities Exchange Act Release No. 45436 (February 12, 2002), 67 FR 7728 (February 20, 2002).

[11] *See Exchange Rule 1080(f)(v).*

[12] If such relief is granted, surveillance staff would announce to the Options Floor, and the AUTOM desk, that the particular option is in extraordinary circumstances.

specialist determines to re-engage AUTO–X, he/she may re-engage the system. The specialist must notify the Market Surveillance staff that the conditions supporting the extraordinary circumstances no longer exist, and that the specialist is re-engaging AUTO–X. This may be done after AUTO–X is re-engaged.

Currently, in the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/her designee may determine to disengage the AUTO–X feature floor-wide. Under the proposal, five minutes after the initial declaration and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect floor wide, two Floor Officials, the Chairperson of the Options Committee or his/her designee, with the concurrence of a designated Market Surveillance staff person, must re-evaluate the circumstances to determine if the floor-wide extraordinary circumstances still exist.

The Exchange also proposes to define ''extraordinary circumstances'' under which AUTO–X may be disengaged and to specify in the rules the requirement that certain relevant information is documented by the Exchange upon actual disengagement and re-engagement of AUTO–X. Currently, extraordinary circumstances that justify disengagement include ''fast market conditions, systems malfunctions, and other circumstances that limit the Exchange's ability to disseminate or update market quotations in a timely and accurate manner.'' [13] The proposal would amend and clarify this definition, which was used in the original proposed rule change adopting Exchange Rule 1080.[14]

The proposed rule would define extraordinary circumstances to include market occurrences and system malfunctions that impact a specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions, such as increased volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems, such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The proposed rule changes, among other things, would codify the Exchange's current practice as described in this paragraph. With respect to record keeping requirements, the Exchange maintains an electronic audit trail, called an AUTO–X Disengagement Log, that electronically monitors and electronically records every situation in which AUTO–X is disengaged. With respect to any request for AUTO–X disengagement relief, the Exchange currently records: (1) Any action taken to disengage AUTO–X or to operate it in any manner other than normal; (2) the date of the specialist's request to disengage AUTO–X; (3) the time the specialist's request was granted, and the time of re-engagement; (4) the reason for the request to disengage (*e.g.,* extraordinary circumstances or other); (5) whether another market has implemented comparable relief; (6) the specialist's name; (7) the specialist unit's name; (8) the options class (except in a case of floor-wide disengagement); (9) the particular problem that the specialist experienced; and (10) the two Floor Officials' signatures (in case of floor-wide disengagement, the Options Committee Chairperson or his designee's signature is also required). Under the proposed rule, the Exchange would codify its practice of maintaining this documentation pursuant to the Exchange's record retention requirements under Section 17 of the Act.[15]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [16] and, in particular, the requirements of Section 6 of the Act [17] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] because it provides objective criteria and well-defined procedures for disengaging and reengaging AUTO–X, which should increase the likelihood that AUTO–X will not be disengaged in a discriminatory manner. Moreover, the record keeping requirements and other proposed procedures are not unreasonable.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR-Phlx-2001–27), as amended by Amendment Nos. 1, 2, 3, and 4, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12804 Filed 5–21–02; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Securities Exchange Act Release No. 38792 at note 17 (June 30, 1997), 62 FR 36602 (July 8, 1997).

[14] *Id.*

[15] 15 U.S.C. 78q.

[16] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45942; File No. SR–Phlx–2002–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Various Option Fees

May 16, 2002.

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 May 1, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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 Phlx proposes to amend its schedule of dues, fees, and charges for its equity option transaction charges in the following three ways: (1) To reinstate a $.08 per contract Firm/Proprietary Facilitation Transaction charge,[3] (2) to increase the Firm/

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A facilitation transaction occurs when a Floor Broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. *See* Securities Exchange Act Release No. 44893 (October 2, 2001), 66 FR 51485 (October 9, 2001) (eliminating Firm/Proprietary Facilitation Transaction charge); Phlx Rule 1064.

Proprietary charge[4] from $.08 to $.15 per contract, and (3) to increase the Broker/Dealer charge[5] from $.25 to $.30 per contract.

All three charges continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members.[6]

The proposed amended fees will be implemented for transactions settling on May 1, 2002 and thereafter.

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 Phlx 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 Phlx 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 Exchange proposes to amend its schedule of dues, fees and charges for its equity option transaction charges in the following three ways: to reinstate the Firm/Proprietary Facilitation Transaction charge, to increase the Firm/Proprietary charge, and to increase the Broker/Dealer charge. The purpose of the proposed rule change is to generate additional revenue.

The Exchange does not currently impose any Firm/Proprietary Facilitation Transaction charge on Floor Brokers that hold an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, execute both orders as a facilitation cross. A Floor Broker engaging in a facilitation transaction must announce that he/she holds an order subject to facilitation prior to the execution, and must mark the floor ticket for the public customer's order with a legible ''F.'' The Exchange proposes to reinstate this charge, which it eliminated in 2001, at $.08 per contract.[7]

Currently, the Exchange imposes an $.08 per contract Firm/Proprietary Transaction charge on members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. Firms are required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report that was prepared in accordance with Generally Accepted Accounting Principles.[8] The Exchange proposes to increase this charge to $.15 per contract.

Currently, the Exchange imposes a $.25 per contract Broker/Dealer equity option transaction charge on members for orders entered from other than the floor of the Exchange, for any account where the holder of beneficial interest is a member or non-member broker-dealer, or where the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer.[9] This includes broker/dealer orders for the account of a Registered Options Trader (''ROT'') entered from off-floor.[10] The Exchange proposes to increase this charge to $.30 per contract.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in particular, because it is an equitable allocation of reasonable charges among the Exchange's members. The proposal to amend the three charges is intended to generate additional revenue and the Exchange believes the proposal is reasonable and proper.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2) thereunder.[14] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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

[4] The Firm/Proprietary charge applies to members for orders for the proprietary account of any member or non-member broker/dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (adopting Firm/Proprietary charge).

[5] The Broker/Dealer equity option transaction charge is applied to members for orders, entered from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. *See* Securities Exchange Act Release Nos. 45185 (December 21, 2001), 66 FR 67614 (December 31, 2001) (SR–Phlx–2001–113) (increasing Broker/Dealer equity option transaction charge from $.20 to $.25) and 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (adopting Broker/Dealer equity option transaction charge).

[6] *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (adopting monthly credit).

[7] *See* Securities Exchange Act Release No. 44893 (October 2, 2001), 66 FR 51485 (October 9, 2001).

[8] *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

[9] Recently, the Exchange began accepting broker-dealer orders over its Automated Options Market System (''AUTOM''). *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002).

[10] *See* Securities Exchange Act Release Nos. 45185 (December 21, 2001), 66 FR 67614 (December 31, 2001) and 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

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 Phlx. All submissions should refer to File No. SR–Phlx–2002–32 and should be submitted by June 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12806 Filed 5–21–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4023]

Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (Public Law 90–629), as added by section 330 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) (22 U.S.C. 2771 *et seq.*), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba
Iran
Iraq
Libya
North Korea
Sudan
Syria

This determination and certification shall be transmitted to the Congress and published in the **Federal Register.**

Dated: May 15, 2002.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 02–12826 Filed 5–21–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

Overseas Buildings Operations

[Public Notice 3985]

Industry Advisory Panel Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Wednesday, June 19, 2002 from 9:45 until 11:45 a.m. and 1:00 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1408 at the Department of State, 2201 C Street NW (entrance on 23rd Street), Washington, D.C. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Sandra Piech at 703/516–1968 before Wednesday, June 12, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Sandra J. Piech 703/516–1968.

Dated: May 15, 2002.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 02–12825 Filed 5–21–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 4026]

Universal Postal Union Issues

AGENCY: Department of State.

ACTION: Notice of Briefing.

The Department of State will host a briefing on Thursday, June 13, 2002, to provide an update on recent decisions and reform initiatives at the Universal Postal Union (UPU).

The briefing will be held from 2 p.m. until approximately 4 p.m., on June 13, 2002, in Room 1406 of the Department of State in Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

The briefing will provide information on the results of the recent meetings of the Postal Operations Council and the new UPU private-sector Advisory Group, as well as on the status of UPU terminal dues, extra-territorial offices of exchange (ETOEs), customs issues and postal security coordination with the UPU. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on June 11, 2002, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–1044. This request applies to both government and non-government individuals.

All attendees must use the Department of State entrance on 23rd Street, between C and D Streets, N.W. For security reasons, C Street is closed to vehicular traffic, but taxis may reach the 23rd Street entrance. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card. Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647–1044 or via email at *boyerna@state.gov.*

Dated: May 16, 2002.

Margaret C. Jones,

Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 02–12827 Filed 5–21–02; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Aerodynamics, Inc., for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause Order Dockets OST–01–10985 and OST–01–10986.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Aerodynamics, Inc., fit, willing, and able and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail as a certificated air carrier.

Responses: Objections and answers to objections should be filed in Dockets OST–01–10985 and OST–01–10986 and addressed to the Department of Transportation Dockets, PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections

[15] 17 CFR 200.30–3(a)(12).

should do so no later than May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: May 16, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–12735 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Publication of Index of Administrator's Decisions and Orders in Civil Penalty Actions; Discontinuation Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of discontinuation of publication of index.

SUMMARY: The agency will no longer publish in the **Federal Register** an index of the Administrator's civil penalty decisions and orders. The agency has determined that such publication is unnecessary and impracticable, given that indexes of the decisions and orders are now available on the agency's Internet website and through commercial publishers. The agency will continue to provide copies of the index to members of the public upon request.

FOR FURTHER INFORMATION CONTACT: Vicki Leemon, Manager, Adjudication Branch (AGC–430), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590, Telephone: (202) 366–4118.

SUPPLEMENTARY INFORMATION: In 49 U.S.C. 46301, Congress authorized the FAA Administrator to assess civil penalties against those who violate the FAA's governing status or any regulations issued under that statute. Likewise, in 49 U.S.C. 5123, Congress authorized the Administrator to assess civil penalties against those who violate the Federal hazardous materials transportation statute or the hazardous materials regulations. Under the rules of practice governing hearings and appeals of civil penalty actions (14 CFR part 13, subpart G), the Administrator or the Administrator's delegate is designated as the FAA decisionmaker to review and decide appeals of initial decisions issued by administrative law judge who hold adjudicatory hearings in these civil penalty actions. The Administrator, as the decisionmaker, issues the final decisions and orders of the agency in these cases.

The Administrative Procedure Act (APA) requires Federal agencies to publish, at least quarterly, current indexes of the agencies' final opinions and orders. 5 U.S.C. 552(a)(2)(A) and (E). To this end, since October 31, 1990, the FAA has published indexes of the agency's final opinions and orders in civil penalty cases in the **Federal Register.** The agency published the last index in the **Federal Register** on January 23, 2001. 66 FR 7532, January 23, 2001.

The APA provides one exception to the requirement that agencies publish indexes of final agency orders and decisions. The exception is for situations in which the agency determines by order published in the **Federal Register** that publication of the indexes is unnecessary and impracticable. 5 U.S.C. 552(a)(2)(E).

Since the FAA began publishing indexes of the Administrator's civil penalty decisions and orders in 1990, the agency has created a website on the Internet that contains the indexes and other resources. The address for the website is: *www.faa.gov/agc/cpwebsite.*

The FAA is making available through its website more information than has been included in the quarterly indexes in the **Federal Register.** The website includes all of the Administrator's decisions in FAA civil penalty cases. In addition, the website provides access to cumulative indexes of decisions and orders by: (1) Case name; (2) order number; (3) subject matter; and (4) regulation. The website has information about civil penalty cases appealed to Federal courts of appeals or Federal district courts, as well as information about the FAA Hearing Docket and the Department of Transportation's Docket Management System. The Administrator's delegations of authority to FAA officials, the Rules of Practice in Civil Penalty Cases, and other pertinent information are also available on the website. The FAA updates the website on a monthly basis.

A number of commercial publishers also publish indexes of the Administrator's orders and decisions. Two such publications are *Federal Aviation Decisions,* which is published by Clark Boardman Callaghan, a subsidiary of West Group, 50 Broad Street East, Rochester, NY 14694, Telephone: (716) 546–1490; and *Hawkins Civil Penalty Cases Digest Service,* published by Hawkins Publishing Company, PO Box 480, Mayo, MD 21106, Telephone: (410) 798–1677. The electronic databases LEXIS (TRAN library, FAA file), WestLaw (F–TRAN library), CompuServe, and FedWorld include the Administrator's civil penalty orders and decisions. Finally, the Administrator's civil penalty orders and decisions are available on CD–ROM through Aeroflight Publications, PO Box 854, 433 Main Street, Gruver, TX 79040, Telephone: (806) 733–2483.

Given the time and resources that the agency is now expending in updating the civil penalty website, and given that indexes of the orders and decisions are readily available through the website and other sources, the agency has determined that it is unnecessary and impracticable to continue publishing the indexes in the **Federal Register.** The agency will, however, provide copies of the indexes upon request, as required by 5 U.S.C. 552(a)(2)(E). Persons wishing copies of the indexes should contact Vicki Leemon, Manager, Adjudication Branch (AGC–430), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590, Telephone: (202) 366–4118.

Issued in Washington, DC on May 15, 2002.

David G. Leitch,

Chief Counsel.

[FR Doc. 02–12856 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at East Texas Regional (formerly Gregg County) Airport, Longview, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at East Texas Regional 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 June 21, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies of the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division,

Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James Loomis, Manager of East Texas Regional Airport at the following address: Mr. James Loomis, Airport Director, East Texas Regional Airport, Route 3, Highway 322, Longview, Texas.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at East Texas Regional 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 May 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2002.

Proposed charge expiration date: January 1, 2011.

Total estimated PFC revenue: $699,232.

PFC application number: 02–02–C–00–GGG.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Renovate ARFF Facility, Phase I
2. Reconstruct Terminal Apron, Phase IV
3. Renovate ARFF Facility, Phase II
4. Reconstruct Terminal Apron, Phase V
5. Improve Runway Safety Areas
6. Construct Taxiway M and associated improvements
7. Airfield Electrical Improvements
8. Conduct Pavement Study
9. Convert Runway 4–22 to Taxiway N
10. PFC Administrative Costs

Proposed class or classes of air carriers to be exempted from collecting PFC's: Part 135 AT/CO filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the aplplication in person at East Texas Regional Airport.

Issued in Fort Worth, Texas on May 8, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–12855 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Navigation Sensors Using the Global Positioning System Augmented by the Wide Area Argumentation System

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a revised draft Technical Standard Order (TSO) C–145a, Airborne Navigation Sensors Using the Global Positioning System (GPS) Augmented by the Wide Area Augmentation System (WAAS). The draft TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their airborne navigation sensors, using GPS augmented by the WAAS must meet to obtain approval and be identified with the applicable TSO marking.

DATES: Comments submitted must be received on or before July 15, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mary Grice, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9897, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the draft TSO listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments must be marked ''Comments to TSO C–145a.'' Comments received on the draft TSO may be examined, both before and after the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

How To Obtain Copies

A copy of the revised draft TSO may be obtained via Internet (*http://www.faa.gov/avr/air/airhome.htm*) or on request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 15, 2002.

Brian A. Yanez,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–12733 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is herby given that the Office of Hazardous

Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 21, 2002.

ADDRESSES COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the application See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 16, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of Exemption thereof
12988–N	RSPA–02–12215	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.304	To authorize the transportation in commerce of a non-DOT specification cylinder for use in transporting hydrogen chloride, anhydrous, Division 2.3. (modes 1, 3)
12990–N	RSPA–02–12218	Technifab Products, Inc., Brazil, IN.	49 CFR 178.57(1)	To authorize the manufacture, mark, sale and use of cryogenic tanks equipped with alternative openings and testing criteria for use in transporting hazardous materials. (mode 1)
12991–N	RSPA–02–12219	General Plastics Manufacturing Company, Tacoma, WA.	49 CFR 174.64 (i) & (j)	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (mode 2)
12994–N	RSPA–02–12221	Air Liquide American Corporation, Houston, TX.	49 CFR 173.34(d)	To authorize the transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification without pressure relief devices. (modes 1, 3)
12995–N	RSPA–02–12220	The Dow Chemical Company, Midland, MI.	49 CFR 173.306(a)(3)(v).	To authorize the transportation in commerce of inner metal receptacles which have been subjected to an alternative testing procedure for use in transporting limited quantities of compressed gases. (modes 1, 2, 3, 4)
12997–N	RSPA–02–12214	Albemarle Corporation, Baton Rouge, LA.	49 CFR 173.24(g)(4)	To authorize the transportation in commerce of hazardous materials in a vented bulk packaging (an intermediate bulk container) when venting is not authorized. (modes 1, 2, 3)
12998–N	RSPA–02–12278	Safety-Kleen Services, Inc., Columbia, SC.	49 CFR 173.12(b)(1)	To authorize the transportation in commerce of non-waste material from one location to another location for various customers in lab packs. (mode 1)
13001–N	RSPA–02–12282	The J.C. Smith Co., San Saba, TX.	49 CFR 178.346	To authorize the transportation in commerce of a non-DOT specification tank similar to a DOT 406 for use in transporting various hazardous materials. (mode 1)
13010–N		Continuum Chemical Corporation, Houston, TX.	49 CFR 173.243	To authorize the manufacture, mark, sale and use of certain non-DOT specification cargo tanks for transporting hazardous wastes. (mode 1)

[FR Doc. 02–12737 Filed 5–21–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–4: OTS Nos. H–3728 and 17777]

Brookline Bancorp, Inc., Brookline, Massachusetts; Approval of Conversion Application

Notice is hereby given that on, May 15, 2002, the Director, Examination Policy, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Brookline Savings Bank, Brookline, Massachusetts, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW, Washington DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 17, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–12792 Filed 5–21–02; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–3: OTS Nos. H–3859 and 15953]

Pacific Trust Bank, Chula Vista, CA; Approval of Conversion Application

Notice is hereby given that on, May 15, 2002, the Director, Examination Policy, Office of Thrift Supervision

(''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Pacific Trust Bank, Chula Vista, California, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW, Washington, DC 20552, and the OTS West Regional Office, Pacific Plaza, 2001 Junipero Serra Boulevard, Suite 650, Daly City, California 94014–1976.

Dated: May 17, 2002.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–12791 Filed 5–21–02; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Wednesday,
May 22, 2002

Part II

Department of Commerce

International Trade Administration

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Softwood Lumber Products From Canada

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Charles Riggle, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–0650, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations last codified at 19 CFR part 353 (April 1, 2001).

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (Final Determination) (see comment 53, item D, page 116, and comment 57, item B–7, page 126), available at WWW.IA.ITA.DOC.GOV, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below :

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the U.S. Customs Service upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the Customs Service may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

Amended Final Determination

On March 21, 2002, in accordance with section 735(a) of the Act, the Department made a final determination that certain softwood lumber products from Canada are being, or are likely to be, sold in the United States at less than fair value. *See Final Determination* (April 2, 2002). Five of the six respondents [2] and the petitioners [3] filed timely allegations that the Department had made ministerial errors in its final determination.

We have determined, in accordance with 19 CFR 353.28, that certain ministerial errors were made in the final determination. For Abitibi Consolidated, we re-coded certain grades for the dumping margin computer program (computer program) and corrected our treatment of freight rebates, a mistaken freight figure reported by the company, and the exchange rate conversions for packing expenses, early payment discounts and billing adjustments.

For Slocan Forest Products Limited, we regrouped a grade of structural lumber and adjusted the computer program to prevent it from matching products across grade groupings.

For Tembec Corporation, we corrected a coding error which had prevented price-to-price comparisons of spruce-pine-fir products. We adjusted the computer program to prevent it from matching products across grade groups. We also corrected our treatment of billing adjustments, which affected several data fields, included random width and length sales in the calculation of the final margin, and corrected the company's credit expense.

For West Fraser Mills Ltd., we corrected packing and U.S. inventory carrying costs and certain credit expense ratios. We also adjusted the computer program to prevent it from matching products across grade classifications. Finally, we adjusted the costs allocated to species and grade groupings to remove costs for groupings that were not present in the company's sales file.

For Weyerhaeuser, we excluded sales of merchandise not produced by the company and revised the variable and total cost-of-manufacturing data fields to conform with the costs as recalculated for the final determination. We also disaggregated certain products with different machine stress ratings to give these products different grades. Finally, we corrected the computer program to include Weyerhaeuser's re-packing expenses, to correct the currency conversion for the level-of trade adjustment, and to recalculate certain warehousing expenses.

For a detailed discussion of the Department's analysis of the parties' allegations of ministerial errors, *see* Memorandum to Farrar Shirzad, Assistant Secretary, Import Administration, from Christopher Smith, AD/CVD Office 5, Ministerial Error Allegations, dated April 25, 2002. Therefore, in accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of certain softwood lumber products from Canada to correct these ministerial errors.

The revised final weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Amended weighted-average margin percentage
Abitibi (and its affiliates Produits Forestiers Petit Paris Inc., Produits Forestiers La Tuque Inc., Scieries Saguenay Ltee., Societe En Commandite Sciere Opticwan)	14.60	12.44
Canfor (and its affiliated Lakeland Mills Ltd., The Pas Lumber Company Ltd., Howe Sound Pulp and Paper Limited Partnership)	5.96	*5.96
Slocan	7.55	7.71
Tembec (and its affiliates Marks Lumber Ltd., Excel Forest Products)	12.04	10.21
West Fraser (and its affiliates West Fraser Forest Products Inc., Seehta Forest Products Ltd.)	2.26	2.18
Weyerhaeuser (and its affiliates Monterra Lumber Mills Ltd., Weyerhaeuser Saskatchewan Ltd.)	15.83	12.39
All Others	9.67	8.43

*No change.

Antidumping Duty Order

On May 16, 2002, pursuant to section 735(b)(1)(A)(ii) of the Act, the International Trade Commission (ITC) notified the Department of its final determination that the industry in the United States producing softwood lumber products is threatened with material injury by reason of imports of the subject merchandise from Canada.

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all entries of softwood lumber products from Canada. In accordance with section 736(b)(2) of the

[2] The six respondents are identified below. Of these companies, only Canfor did not allege that the Department had made ministerial errors.

[3] The petitioners are the coalition for Fair Lumber Imports Executive Committee, the United Brotherhood of Carpenters and Joiners, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union.

Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires the Customs Service to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is based on a threat of material injury.

Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) is applicable to this order. Therefore, the Department will direct the Customs Service to assess, upon further advice, antidumping duties on all unliquidated entries of softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and terminate the suspension of liquidation for entries of softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct the Customs Service to refund any cash deposits made, or bonds posted, between the publication date of the Department's preliminary antidumping determination and the publication of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, the Customs Service will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the amended weighted-average antidumping margins noted above.

Pursuant to section 735(a) of the Act, this notice constitutes the antidumping duty order with respect to Certain Softwood Lumber Products from Canada.

This order is published pursuant to section 736(a) of the Act and 19 CFR 351.211.

Dated: May 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–12988 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds at 202–482–6071, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (2000).

Scope of Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*See* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at WWW.IA.ITA.DOC.GOV, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits*: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be

substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the U.S. Customs Service upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the Customs Service may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

Exclusion of Maritime Products

On July 27, 2001, we amended our *Initiation Notice,* to exempt certain softwood lumber products from the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland (the Maritime Provinces) from this investigation. This exemption does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other Province. *See Amendment to the Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada,* 66 FR 40228 (August 2, 2001).

Company Exclusions

In the *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada,* 67 FR 15545, 15547 (April 2, 2002) (*Final Determination*), we granted exclusions to the following companies: Armand Duhamel et fils Inc., Bardeaux et Cedres, Beaubois Coaticook Inc., Busque & Laflamme Inc., Carrier & Begin Inc., Clermond Hamel, J.D. Irving, Ltd., Les Produits. Forestiers. D.G., Ltee, Marcel Lauzon Inc., Mobilier Rustique, Paul Vallee Inc., Rene Bernard, Inc., Roland Boulanger & Cite., Ltee, Scierie Alexandre Lemay, Scierie La Patrie, Inc., Scierie Tech, Inc., Wilfrid Paquet et fils, Ltee, B. Luken Logging Ltd., Frontier Lumber, and Sault Forest Products Ltd. For further discussion of this issue, *see* the ''Company Exclusions'' section of the *Issues and Decision Memorandum.*

Amended Final Determination

On March 21, 2002, in accordance with section 705(a) of the Act, the Department made a final determination that countervailable subsidies were being provided with respect to certain softwood lumber products from Canada. *See Final Determination.*

On April 8, 2002, the Coalition for Fair Lumber Imports Executive Committee (petitioners) and the Governments of Canada, Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, and Quebec (collectively, respondents) alleged ministerial errors in the calculations of the *Final Determination.* On April 15, 2002, petitioners and respondents submitted rebuttal comments regarding the allegations.

On April 25, 2002, we issued a memorandum concerning these allegations in which we amended the *ad valorem* rate calculated in the *Final Determination.* These ministerial error allegations and the Department's responses to the allegations are summarized below. For a more detailed discussion of these ministerial error allegations, *see* the April 25, 2002, Memorandum to Faryar Shirzad, Assistant Secretary for Import Administration, through Bernard T. Carreau, Deputy Assistant Secretary for Import Administration (*Ministerial Error Memorandum*), a public document on file in room B–099 of the main Commerce Building.

I. General Allegations

A. Treatment of Company-Specific Sales Data in the Country-Wide Rate Calculations

Respondents explain that the initial version of the Department's final

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

calculations failed to bracket business proprietary data pertaining to the Province of Ontario. They state that to correct this inadvertent disclosure of business proprietary data, the Department erased the data in question from the final calculations. Respondents argue that rather than remove the business proprietary data from the calculations, the Department should include the information in question with the necessary brackets and recalculate the country-wide rate consistent with the Department's *Final Determination*.

Department's Position: We disagree with respondents. The data in question pertained only to a single cell in our spreadsheet calculations. However, redacting that single cell would not have adequately prevented the general public from deriving the proprietary figure. Therefore, to appropriately protect the proprietary data in question and to provide the general public with a meaningful summary of the country-wide rate section of the final calculations, we determined to remove the proprietary data at issue. We find our decision is the best solution as the removal of the proprietary figure from the calculations did not alter the final, country-wide rate nor did it change the portion of the country-wide rate attributable to Ontario.

B. Inclusion of Sales Values of Excluded Companies From the Yukon Territory in the Country-Wide Rate Calculation

Respondents allege that the Department inadvertently neglected to add the sales of excluded companies from the Yukon Territory in the country-wide rate section of the final calculations. They argue that if the Department did not intend to use the excluded sales from the Yukon Territory, then the Department should add all excluded company shipments in the calculation.

Department's Position: We disagree with respondents that the Department should have included excluded sales of the Yukon Territory and total shipment values for the Yukon and Northwest Territories in the country-wide section of the final calculations. In the March 21, 2002 *Issues and Decision Memorandum* that accompanied the *Final Determination*, we explained that although petitioners alleged that stumpage programs from the Yukon and the Northwest Territories conferred countervailable subsidies upon producers of subject merchandise, we were not examining those programs in the *Final Determination* ''because the amount of exports to the United States from the two Territories is insignificant.'' *See* the ''Provincial Stumpage Programs Determined to Confer Subsidies'' section of the March 21, 2002, *Issues and Decision Memorandum to Faryar Shirzad, Assistant Secretary, for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary, for Import Administration* (*Issues and Decision Memorandum*), a public document on file in room B–099 of the main Commerce Building. Consistent with the approach explained in the *Issues and Decision Memorandum,* we did not calculate separate benefits for the two Territories.

C. Inclusion of Sales Values From the Yukon and Northwest Territories in the Country-Wide Rate Calculation

Respondents allege that the Department inadvertently neglected to add the total shipment values of lumber from the Yukon and Northwest Territories in the country-wide rate calculations. Respondents argue that though the Yukon and the Northwest Territories did not provide data from total shipment values of softwood lumber, the Government of Ontario (GOO) did report export shipments for those territories. Respondents assert that the export shipments for the Yukon and the Northwest Territories should be inserted into the total lumber shipment values column (the third column of the table on page 3 of the final calculation memorandum) of the country-wide rate calculations.

Department's Position: As explained above, we determined not to calculate provincial benefits (*i.e.,* numerators) and, thus, provincial rates for the Yukon and Northwest Territories. Consequently, including sales of lumber shipments from the these two territories, which could only be used in the denominator of a provincial rate calculation for each province, cannot mathematically affect the country-wide rate.

D. Inflation Adjustment of Figures Used To Derive the POI Value of Remanufactured Products

In the *Final Determination,* the Department used 1997 figures from Exhibit 15 of the February 15, 2002 Statistics Canada Verification Report to derive the value of remanufactured products during the POI. *See* the ''Inclusion of Remanufactured Products in the Denominator of the Subsidy Calculation'' section of the *Issues and Decision Memorandum.* Respondents claim that the Department's final calculations indicate that the data were inflation adjusted. They further claim that the final calculations do not adjust for inflation. To correct this error, they argue that the Department should adjust the 1997 values included in Verification Exhibit 15. They further argue that if the Department does not make this correction, then it should strike the words ''Inflation Adjusted'' from the table on page 5 of its final calculations.[2]

Petitioners also argue that the Department should adjust the values on page 5 of the final calculations. They claim that it is clear that the Department intended to use an inflation-adjusted figure when deriving the value of remanufactured products during the POI.

Department's Position: We disagree that the value of remanufactured products during the POI should be adjusted for inflation. Our intention in the *Final Determination* was not to adjust the values in Verification Exhibit 15 for inflation. This is evident in our description of how we used the values from Verification Exhibit 15: ''we determined the percentage relationship between the total value of remanufactured products and the total value of first-mill shipments for the 1997 ASM and applied this percentage to the reported total value of softwood lumber shipments.'' *See* the ''Inclusion of Remanufactured Products in the Denominator of the Subsidy Calculation'' section of the *Issues and Decision Memorandum.*

Regarding the calculation of the value of remanufactured products during the POI, we ackowledge that our calculations contain a clerical error. In the *Final Determination,* we intended to use a ''percentage relationship'' (*i.e.,* the ratio of in-scope merchandise outside of SIC 2512 but inside Group 25 to products inside Group 25) to derive the value of remanufactured lumber products. However, in the final calculations, instead of using the data from Verification Exhibit 15 to derive a percentage relationship, we inadvertently used actual values to derive a remanufactured figure. For an explanation of the formula we used to correct this error, see *Ministerial Error Memorandum* at 5.

E. Value of In-Scope Remanufactured Products as Reported by the Pacific Forestry Center (PFC)

In the *Final Determination,* the Department chose not to use the values

[2] On this matter, respondents appear to alter their argument in their rebuttal comments. Respondents claim that the *Issues and Decision Memorandum* makes clear that the Department did not intend to adjust for inflation as petitioners suggest. They further argue that nothing in the final calculations indicates that the Department adjusted for inflation. Thus, they contend that the Department did not intend to adjust for inflation.

from the PFC study to estimate the value of remanufactured lumber shipments produced by Canadian firms during the POI because it found the study flawed in several important respects. *See* the ''Use of the Pacific Forestry Center's Study of Remanufactured Products from British Columbia'' section in the *Issues and Decision Memorandum.* Respondents allege that the grounds on which the Department dismissed the study are not supported by the facts on the record and, thus, the Department should amend its *Final Determination* to reflect that the PFC study provides an appropriate estimate of the value of remanufactured products produced in Canada during the POI.

Department's Position: Respondents' allegation does not meet the standard for a ministerial error as defined by section § 351.224(f) of the Department's regulations; rather, the allegation challenges a methodological choice. Therefore, the Department is not addressing respondents' allegations on this matter.

F. *Ad Valorem* Rate Calculations for Federal and Other Non-Stumpage Programs

In the *ad valorem* rate calculations for the federal and other non-stumpage programs, the Department included in the denominator ''total lumber shipments, inclusive of remanufactured products.'' Respondents contend that the values in the calculation inadvertently exclude the value of ''by-products'' that is in the *ad valorem* rate calculations of the stumpage programs. Respondents argue that the Department should recalculate the *ad valorem* rates for the federal programs and other non-stumpage programs using a divisor that consists of total lumber shipments, inclusive of remanufactured products, and by-products.

Department's Position: We disagree with respondents that the Department inadvertently excluded the value of by-products in the calculation of the federal and other non-stumpage programs. Each of the programs for which we were able to quantify a benefit was designed to benefit lumber producers or sawmill operators. Accordingly, we calculated the provincial rates for these non-stumpage programs by dividing the benefit amounts ''by the f.o.b. value of total sales of softwood lumber for the POI * * *'' *See e.g.,* the ''Forest Renewal B.C.'' section in the *Issues and Decision Memorandum.* Therefore, the Department's decision to calculate the *ad valorem* rates for these non-stumpage programs using a denominator that did not include by-products was intentional and, thus, does not constitute a ministerial error within the meaning of section § 351.224(f) of the Department's regulations.

II. Province-specific Allegations

A. Alberta

1. Billed Volume and Holding and Protection Charge

Petitioners argue that two ministerial errors were made when the Department calculated the benefit conferred by the stumpage program in Alberta. First, petitioners maintain that on page A–7 of the Calculation Memorandum, the second row of charts incorrectly used the SPF billed volume for each tenure type to calculate the per-unit reforestation levy for all species, while the third row of charts incorrectly used the all-species billed volume for each tenure type to weight the SPF administered stumpage rate calculation.

Second, petitioners argue that on page A–7 of the Calculation Memorandum, the calculation of the per-unit holding and protection charge was derived by dividing the total cash payments as provided by the Government of Alberta (GOA) by the harvested volume in each tenure type when the payments should have been divided by billed volume. Petitioners maintain that when the Department divided the total holding and protection charges by a volume figure to convert the lump sum payment to a per-unit charge, it should have used the same volume that it used when converting the per-unit benefit to a total provincial benefit (*i.e.,* billed volume).

Department's Position: Regarding the first point, we agree with petitioners. We have corrected this error.

Regarding petitioners' second point, we disagree. Holding and protection charges are assessed by the GOA on harvested, not billed, volume (*see* page AB–IV–9 of the GOA's June 28, 2001 questionnaire response), and, therefore, we are correct in dividing by the harvested volume to arrive at the per-unit holding and protection charge.

2. In-kind Costs Relating to DTLs and DTPs

Respondents argue that, with respect to Alberta, the Department made a ministerial error in calculating the total stumpage payments made for coniferous timber harvested under deciduous timber licenses (DTLs) and deciduous timber permits (DTPs). Respondents maintain that the Department inadvertently failed to include the in-kind costs associated with harvesting this wood in its calculations.

Department's Position: We disagree with respondents that we inadvertently failed to include the in-kind costs associated with harvesting coniferous timber under DTLs and DTPs. Although respondents are correct in stating that the GOA supplied the costs applied to DTLs and DTPs, we note that it failed to break out these costs into costs associated with harvesting coniferous timber on deciduous stands and costs associated with harvesting deciduous timber on the same stands. Because these are deciduous timber tenures and most of the timber harvested from them is deciduous timber (*i.e.,* non-subject merchandise), and because respondents did not provide a breakdown of costs, we have chosen not to include the costs associated with harvesting coniferous timber under DTLs and DTPs in our stumpage calculations.

B. British Columbia

1. Calculation of Softwood Logs Used for Sawmilling

Petitioners assert that the Department made a ministerial error in calculating an estimate of the Crown softwood timber harvest used for sawmilling. Petitioners state that the Government of British Columbia (GBC) did not disclose the volume of ''sawlogs'' used by sawmills and the Department, therefore, attempted to derive the total POI sawlog harvest from the total volume of logs harvested and sent to sawmills in 2000. Petitioners allege the Department ''mistakenly'' multiplied the harvest for sawlogs by the percentage of total logs harvested, including pulp and veneer, to determine the benefit.

Respondents claim that the Department specifically rejected petitioners' argument in the *Issues and Decision Memorandum*, thus, the Department made no inadvertent mistake in its calculations. *See* the ''Calculation of the Subsidy'' section for the Province of British Columbia in the *Issues and Decision Memorandum.*

Department's Position: For the *Final Determination*, the Department multiplied the sawlog harvests for the Coast and Interior by the respective percentages of total logs going to sawmills, and multiplied the resulting figures by the calculated price differentials (inclusive of adjustments) to arrive at the benefits, separately for the Coast and Interior. The Department did not mistakenly use the percentage of total logs to determine the sawlog harvest that goes to sawmills. Moreover, the Department clearly stated its approach on this issue in the *Issues and Decision Memorandum. Id.*

2. The Department Inadvertently Failed To Include Allocated G&A Expenses in the Adjustment for Coastal Logging Camp Expenses

Respondents assert that the Department inadvertently failed to include an allocation of G&A expenses for logging camps, as evidenced by the fact that there is no line entitled ''Allocation of G&A'' under the Logging Camp Expenses category in the Calculation Memorandum. Respondents claim that this inadvertent error resulted in the Department understating the logging camp adjustment used in the final calculations.

Petitioners state that the Department declined to make an adjustment for differences in total operating costs between Coastal B.C. and Western Washington, and only made adjustments for particular costs where differences existed (and were quantified to the Department's satisfaction). Further, petitioners argue that the adjustment, attributable to ''Camp Operations and Overhead,'' already includes G&A costs.

Department's Position: It was the Department's intent to allocate G&A expenses only to those cost categories that clearly did not incorporate administrative expenses within the reported costs associated with the activity. For costs associated with logging camps, petitioners correctly note that ''overhead'' is included within the reported costs, and has therefore been accounted for in the Department's calculations. Thus, respondents' allegation does not constitute a ministerial error.

3. The Department Inadvertently Used the Wrong Denominator When Calculating the Margin for the Forest Renewal Program

Respondents allege that the Department inadvertently excluded sales of by-products from the denominator when it calculated the benefit for the GBC's Forest Renewal program. They claim that the Department's decision not to include by-products in the denominator is inconsistent with its decision to include by-products in the subsidy calculations of B.C.'s stumpage programs.

Department's Position: We disagree with respondents' contention that the Department inadvertently excluded by-products from the denominator of the subsidy calculations for the Forest Renewal program. The Department found in the *Final Determination* that under the Forest Renewal program the GBC provides benefits directly to softwood lumber producers. *See* the ''Forest Renewal B.C.'' section of the *Issues and Decisions Memorandum.* Accordingly, to calculate the benefit under this program, we divided the amount of benefits lumber producers received by B.C.'s f.o.b. value of total sales of softwood lumber for the POI. *Id.* Thus, our decision to use this denominator was intentional and does not constitute a ministerial error.

4. The Department Inadvertently Failed To Include the Prices and Volume for ''Other Merchantable'' Timber in the Eastern Washington United States Forestry Service (USFS) Data

Respondents allege that the Department, in creating species-specific prices for use as a benchmark, inadvertently failed to include prices and volumes for timber in the ''Other Merchantable'' category reported in the *Stumpage Price Report* for USFS sales in Eastern Washington. They claim this failure to include these prices resulted in a benchmark price that was overstated.

Petitioners disagree. They contend that there is no way to tell the proportion of species and prices associated with ''Other Merchantable'' timber and, thus, no way for the Department to use such data to make direct species or species group comparisons.

Department's Position: Respondents' allegation does not constitute a ministerial error. The Department deliberately excluded ''Other Merchantable'' timber in the *Stumpage Price Report* from consideration for our benchmark data because the record simply does not indicate with any degree of certainty which species are included in this category and because there is no evidence of the prices and volumes associated with particular species.

C. Ontario

1. Conversion of Michigan Volumes From Cords to MBF

Petitioners explain that the Department correctly converted from cords to MBF the pulplog volumes for purposes of calculating the benchmark prices. These volumes were taken from Michigan data sources. However, they argue that the Department improperly did not convert the corresponding prices for those data. They argue that the Department should convert the corresponding pulplog prices by dividing them by the same conversion factor that was used to convert the volumes.

Department's Position: We agree with petitioners. Therefore, we converted the pulplog prices that were used in the calculation of the benchmark prices from USD/cord to USD/MBF by dividing them by the same conversion factor that we used to convert the volumes.

2. Silviculture Overhead Calculation

Respondents argue that the Department erred in the calculation of the Ontario silviculture overhead reimbursement. In the *Final Determination*, we multiplied the total Forest Renewal Trust Fund disbursements during the POI—C$69,707,124.5—by ten percent, calculating that tenure holders were reimbursed 10 percent for silviculture overhead. Respondents argue that we should have calculated the overhead reimbursement according to the following formula: X = Total Silviculture Reimbursement – (Total Silviculture Reimbursement/1.1). Using this formula would result in an overall reimbursement amount of C$6,337,011.32 and an adjustment of C$0.45/m3.

Department's Position: We agree with respondents that a different formula should be used to calculate silviculture overhead reimbursement. Because Ontario tenure holders are reimbursed for 100 percent of eligible silvilculture costs plus an additional 10 percent for silviculture overhead, they are, in effect, reimbursed for 110 percent of their eligible silviculture costs. As such, to derive the 10 percent figure for silviculture overhead reimbursement, we have used the formula above, and derived a new figure for per unit silviculture overhead reimbursement of C$0.45/m3.

3. Total Silviculture Costs Calculation

Respondents argue that the Department should have adjusted for those total silviculture costs incurred by Ontario harvesters, but not reimbursed by the Crown. Respondents claim that in the ''Silviculture'' section for the Province of Ontario in the *Issues and Decision Memorandum,* we stated that we would make adjustments for silviculture costs actually incurred by Ontario harvesters. Respondents claim that Ontario tenure holders incurred an additional C$0.05 per m3 cost as a result of fulfilling Crown mandates that was not reimbursed by the Crown. Respondents argue that the Department should make this adjustment.

Department's Position: We disagree with respondents. We addressed this issue in the ''Silviculture'' section for the Province of Ontario in the *Issues and Decision Memorandum.* The Department's decision to reject this

adjustment was intentional and, thus, does not constitute a ministerial error within the meaning of section 351.224(f) of the Department's regulations.

4. Forest Management Planning Cost Adjustment

Respondents claim that in the *Issues and Decision Memorandum,* the Department stated its intention to make an adjustment for forest management planning costs actually incurred by harvesters, which they claim are C$0.32 per m3. In the final calculations, however, we made an adjustment of only C$0.16 per m3 for forest management planning costs. Respondents claim that this C$0.16 figure was mistakenly based on an estimate of in-kind revenue to the Crown for such expenses, rather than actual costs incurred by Ontario harvesters.

Department's Position: Respondents' allegation does not meet the standard for a ministerial error as defined by section § 351.224(f) of the Department's regulations; rather, the allegation challenges a methodological choice. As explained in the ''Forest Management and Planning'' section for the Province of Ontario in the *Issues and Decision Memorandum,* the Department made an upward adjustment of half of the reported forest management planning costs. Therefore, the Department is not addressing respondents' allegations on this matter.

5. Road Cost Adjustment

Respondents claim that we mistakenly adjusted for only half of secondary road construction costs, made no adjustments for tertiary road construction costs, and adjusted for only a portion of the road maintenance costs incurred by Ontario tenure holders. Respondents argue that the road cost data they placed on the record from Michigan and Minnesota was not used by the Department. They claim that the Department should have adjusted the actual road costs faced by Ontario harvesters *net* of the actual road costs incurred in Michigan and Minnesota.

Department's Position: We disagree with respondents. By adjusting for primary and secondary road construction costs, but not for tertiary costs we are adjusting for those road costs borne by Ontario tenure holders as a result of government obligations that purchasers of public stumpage in the benchmark states do not face. The decision to allow 50 percent of secondary road construction and maintenance was based on information contained in Ontario's questionnaire responses and based on information we discussed with GOO personnel at verification. *See* the ''Road Construction and Maintenance'' section for the Province of Ontario in the *Issues and Decision Memorandum.* The Department's decision to calculate the road cost adjustment in this manner was intentional and, thus, does not constitute a ministerial error within the meaning of section 351.224(f) of the Department's regulations.

D. Alberta, Manitoba, Ontario, and Saskatchewan

1. Use of General Conversion Factor, Rather Than Conversion Factor Derived From Information on Minnesota 2000 Corrected Public Stumpage Price Review and Price Index

Respondents argue that we should have used a conversion factor of 6.25 m3/MBF for the Minnesota stumpage price data based on information contained in the Minnesota 2000 Corrected Public Stumpage Price Review and Price Index (*Minnesota Price Index and Review*). Specifically, they argue that the report contains a conversion factor of 400 board feet per cord for softwoods on the cover. They further argue that because there are 2.5 m3 in a cord, a conversion factor of 400 board feet per cord will yield a m3/MBF conversion factor of 6.25 for softwood sawtimber and 2.5 m3/cord for pulpwood sawtimber.

Respondents acknowledge that the figure of 2.5 m3 in a cord has been challenged by petitioners, but note that petitioners have proposed using a figure of 2.41 m3/cord. *See* Dewey Ballantine, *Legal Memorandum Concerning the Countervailability of the Provincial Stumpage Programs and Subsidy Methodology* at 64 (February 14, 2002). Respondents argue that the choice between these two positions could be viewed as a policy decision, but failure to use one or the other, ''as the Department has done,'' is a ministerial error. *See* Weil, Gotshal, and Manges, *Ministerial Error Comments*, at 8 (April 8, 2002). They add that this information is published information prepared in the ordinary course of business by public agencies and, as such, should be used by the Department.

Petitioners argue that the choice of a conversion factor was heavily debated during the course of the investigation and that the Department's selection of a conversion factor was a methodological choice and, thus, cannot constitute a minesterial error. They further argue that the conversion factor advocated by respondents, (*e.g.,* the factor from the *Minnesota Price Index and Review*) is not appropriate because it was not used in actual transactions and because it is a conversion factor used with sawlogs and sawtimber.

Department's Position: We clearly stated the reasons for our selection of a conversion factor in the *Final Determination. See* the ''Conversion Factor'' section of the *Issues and Decision Memorandum.* Thus, respondents' allegations are methodological and do not identify a ministerial error.

E. Alberta and Saskatchewan

1. Composition of Species Groups in the Benchmark

In the *Final Determination,* Minnesota was used as a benchmark for Alberta, Saskatchewan and Manitoba. The species found in Minnesota were categorized to make direct comparisons to the species groups found in the respective Provinces. Eastern white pine, found in Minnesota, was included in the SPF category for Alberta and Saskatchewan, but excluded from the SP category in Manitoba.

Respondents argue that the Department made a ministerial error by including Eastern white pine in Minnesota's SPF category to compare with the SPF found in Saskatchewan and Alberta. They state that Eastern white pine is not found in either Province, referring to information previously submitted on the record.

Petitioners state that the Department consistently made comparisons between species that were not identical. They further argue that these comparisons constitute deliberate methodological decisions, which are not ministerial errors. Also, petitioners mention that Alberta did not provide the data necessary to make species specific calculations.

Department's Position: We agree with respondents. The methodology we employed, when possible, was to use species-specific comparisons, *see, e.g.,* the ''Comparability of U.S. Timber Stands'' section of the *Issues and Decision Memorandum.* This resulted in different ''species comparison baskets'' in each Province because of a different mix of species in each Province and U.S. benchmark state (*see* Calculation Memorandum.) For Alberta and Saskatchewan, we stated that we had constructed an SPF basket. However, white pine is not in the basket of species for which we were attempting to construct a benchmark using Minnesota data. Therefore, the inclusion of white pine in the SPF species mix for the Minnesota benchmark that was used for Alberta and Saskatchewan was inadvertent, and a ministerial error.

Accordingly, we have removed the white pine species from Minnesota's SPF mix for the benchmark used for Alberta and Saskatchewan.

F. Quebec

1. Weighting of Sawlog Prices

In the final calculations, the Department weighted stumpage prices for sawlogs per county in Maine using county-specific, sawlog volume data from the Maine Forest Service (MFS). Respondents allege that weighting stumpage prices for sawlogs in this manner seriously overstates the price of sawlogs in Maine because the volume data from the MFS includes other log types (*i.e.,* veneer, boltwood, studwood, and palletwood). Respondents argue that because the volume data from the MFS includes studwood, palletwood, and other wood categories under the heading ''sawlog,'' the Department must correct its weighting so that the price variable matches the weighting criteria. They assert that the Department can correct this error by incorporating prices for other log types into the country-specific sawlog prices.

Petitioners assert that respondents' allegations do not identify a ministerial error but rather address a methodological decision adopted by the Department in the *Final Determination.*

Department's Position: In the preliminary calculations, we stated that we used weighted-average stumpage prices to derive the benchmark price for each species in Maine. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada,* 66 FR 43186, 43200 (August 17, 2001)(*Preliminary Determination*). However, though stumpage prices in the MFS Stumpage Price Report are weighted by county, the county-wide prices included in the report are not weighted across all counties. Rather, those county-wide prices are simple averages of the prices in each county. As explained in the ''Choice of Maine as Source of Benchmark'' section for the Province of Quebec in the *Issues and Decision Memorandum,* we opted to move away from basing the benchmark stumpage prices on a simple average and, instead, chose to weight the prices using volume data, as reported by the MFS. Respondents contest the manner in which we used the volume data from the MFS. But, as we have explained, our decision to use the volume data from the MFS represented a methodological choice and not an inadvertent error. Therefore, we find that respondents' allegation on this point does not meet the standard of a ministerial error.

Countervailing Duty Order

As a result of our corrections, the estimated net countervailable subsidy rate attributable to certain softwood lumber products from Canada is as follows:

Producer/exporter	Original net subsidy rate	Amended net subsidy rate
All Producers/Exporters [3]	19.34 Percent *Ad Valorem.*	18.79 Percent *Ad Valorem.*

[3] Other than exempted or excluded products and/or companies.

On May 16, 2002, pursuant to section 705(d) of the Act, the International Trade Commission (ITC) notified the Department of its final determination that under section 705(b)(1)(A)(ii) of the Act the industry in the United States producing softwood lumber products is threatened with material injury by reason of imports of the subject merchandise from Canada.

In accordance with section 706(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, countervailing duties equal to the amount of the net countervailable subsidy determined to exist for all entries of softwood lumber products from Canada not explicitly exempted or excluded by the Department. In accordance with section 706(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's *Preliminary Determination.* In addition, section 706(b)(2) of the Act requires the refund of any cash deposits and release of any bonds of estimated countervailing duties posted since the Department's *Preliminary Determination* if the ITC's final determination is based on threat of material injury.

Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's *Preliminary Determination,* section 706(b)(2) of the Act is applicable to this order. Therefore, the Department will direct the Customs Service to assess, upon further advice, countervailing duties on all unliquidated entries of softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and terminate the suspension of liquidation for entries of softwood lumber products from Canada entered or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct the Customs Service to refund any cash deposit made and release any bonds posted, between the publication date of the Department's *Preliminary Determination* and the publication of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, the Customs Service will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the amended net subsidy rate mentioned above. However, as indicated above, the Department exempted certain softwood lumber products from the Maritime Provinces from this investigation. This exemption, however, does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other province. Additionally, as explained above, the following companies are excluded from this order:

- Armand Duhamel et fils Inc.
- Bardeaux et Cedres.
- Beaubois Coaticook Inc.
- Busque & Laflamme Inc.
- Carrier & Begin Inc.
- Clermond Hamel.
- J.D. Irving, Ltd.
- Les Produits. Forestiers. D.G., Ltee.
- Marcel Lauzon Inc.
- Mobilier Rustique.
- Paul Vallee Inc.

- Rene Bernard, Inc.
- Roland Boulanger & Cite. Ltee.
- Scierie Alexandre Lemay.
- Scierie La Patrie, Inc.
- Scierie Tech, Inc.
- Wilfrid Paquet et fils, Ltee.
- B. Luken Logging Ltd.
- Frontier Lumber.
- Sault Forest Products Ltd.

Therefore, we will direct the U.S. Customs Service to exempt from the application of the order only entries of softwood lumber products from Canada which are accompanied by an original Certificate of Origin issued by the Maritime Lumber Bureau (MLB), and those of the excluded companies listed above. The MLB certificate will specifically state that the corresponding entries cover softwood lumber products produced in the Maritime Provinces from logs originating in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, and the state of Maine.

Pursuant to sections 705(a) and 706(a) of the Act, this notice constitutes the amended *Final Determination* and countervailing duty order with respect to certain softwood lumber products from Canada.

Notice of Review

Pursuant to section 751(a) of the Tariff Act of 1930, as amended, Canadian exporters of subject merchandise to the United States, subject to this order, may submit requests for expedited reviews for the purpose of establishing individual cash deposit rates within 30 days from the date of publication of this order. Each request must be accompanied by a completed application, which will be posted on IA's web site on the internet (*WWW.IA.ITA.DOC.GOV*). The eligibility criteria to request an expedited review of this order are included in the application form.

This order is published pursuant to section 706(a) of the Act and 19 CFR 351.211.

Dated: May 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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