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# Federal Register

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# Rules and Regulations

Federal Register
Vol. 67, No. 236
Monday, December 9, 2002



## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 93

**[Docket No. 02–024–1]**

### Stall Reservations at Import Quarantine Facilities

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations. Under the new fee structure, persons who cancel a reservation at least 30 business days prior to the reservation date will be charged 25 percent of the reservation fee; persons who cancel a reservation 15 to 29 business days prior to the reservation date will be charged 50 percent of the reservation fee; and persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee. We are taking this action to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and, therefore, the efficiency of import quarantine facilities.

**DATES:** This interim rule is effective December 9, 2002. We will consider all comments that we receive on or before February 7, 2003.

**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. 02–024–1, 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. 02–024–1. 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. 02–024–1'' 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. Andrea Morgan, Staff Veterinarian, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR part 93 restrict the importation of certain animals and animal products into the United States to prevent the introduction of communicable animal diseases. Subpart C—Horses (§§ 93.300 through 93.326, referred to below as the regulations), regulates the importation of horses into the United States. Section 93.304 of the regulations contains, among other things, specific provisions for reservation fees for space at quarantine facilities maintained by the Animal and Plant Health Inspection Service (APHIS).

Under the current regulations in § 93.304(a)(3), the importer or importer's agent must pay or ensure payment of a reservation fee for each lot of horses to be quarantined in a facility maintained by APHIS. The reservation fee is 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge. Any reservation fee will be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse or horses for which the reservation was made. However, a reservation fee will not be forfeited if written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility during regular business hours (8:00 a.m. to 4:30 p.m. (local time) Monday through Friday, excluding holidays) no later than 5 business days prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required. When a reservation is canceled, a $40 cancellation fee is charged.

Recently, stall space for imported horses at the United States Department of Agriculture (USDA) quarantine facilities has been in high demand. Importers or their agents can sometimes expect to wait up to 2 to 4 months to obtain stall space. Some importers or their agents have been making speculative reservations far in advance of the projected date of arrival of the imported horses, and then canceling those reservations with 5 business days notice if they have no horses to import. While 5 business days' notice is what is required under the regulations to avoid forfeiture of the total reservation fee, this period does not allow sufficient time to offer the canceled space to other prospective importers. Five business days also does not allow sufficient time for another importer who might be able to make use of the available stall space to make the necessary arrangements for importing horses. We believe the current cancellation fee does not provide sufficient deterrent against speculative reservations and does not recover the fixed cost associated with operating quarantine facilities when stall space goes unused.

Therefore, we are amending the regulations to establish a graduated fee schedule for cancellations. Under this

schedule, the fee depends on when the reservations are canceled prior to the reservation date. Persons who cancel a reservation 30 business days or more prior to the reservation date will be charged 25 percent of the reservation fee. Persons who cancel a reservation 15 to 29 business days prior to the reservation will be charged 50 percent of the reservation fee. Persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee.

We believe that a cancellation fee of 100 percent of the reservation fee is appropriate when a cancellation occurs less than 15 days prior to the expected date of arrival because it is rarely possible to find other horses to take the space in that short a time. It takes at least 15 days to prepare a horse for importation into the United States. Brokers are required to have certain diagnostic tests performed on their horses and these tests must be processed at National Veterinary Services Laboratories. The reduced cancellation fees for more notice reflects the increased likelihood of the space being filled.

We are taking this action to discourage importers from reserving space they may not use and cancelling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and, therefore, the efficiency of the quarantine facilities. Furthermore, the increased cancellation fee will recover a larger portion of the fixed costs associated with operating quarantine facilities when stall space goes unused.

**Alternatives Considered**

We considered an alternative in which APHIS would refund brokers their cancellation fee if we were able to fill the stall space with other horses. We also considered charging a set cancellation fee greater than $40 per reservation regardless of when notice is provided. We are not adopting these alternatives for the following reasons:

As noted, it is generally not feasible to fill spaces canceled within 15 days. In cases where cancellation occurs 15 or more days in advance, we may be able to fill the space. However, a refund procedure would be very complex due to the nature of scheduling shipments and arranging stall space. There are times when an entire shipment of 20 horses may be canceled and we may be able to fill only 10 of those slots. There may also be times when the space that becomes available may be inappropriate for a new shipment due to size or location of the newly available stalls. In addition, we do not have the staffing or infrastructure to track and control refunds, especially refunds that must be prorated because there would not be an even exchange. We also were concerned that providing refunds would mean that the fees would no longer be a deterrent to canceling stall space for brokers who can arrange for another importer to fill their canceled space. Such arrangements also could limit which brokers might have an opportunity to use the stall space.

Regarding the other alternative, which would set a flat fee of above $40, we decided instead to establish a graduated fee schedule for cancellations. Under this schedule, the fee would depend on when the reservations were canceled prior to the reservation date, therefore, there would be a greater deterrent to cancelling reservations close to the reservation date, while the lower cancellation fees for more notice reflects the increased likelihood, but no certainty, of the space being filled.

**Immediate Action**

Immediate action is necessary to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. APHIS put a freeze on taking reservations for stall space from importers until this issue is resolved. Because we wish to resume taking stall space reservations at these facilities by December 2002, it is important to make this action effective as quickly as possible. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**Executive Order 12866 and Regulatory Flexibility Act**

This 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 amending the regulations regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations. Under the new fee structure, persons who cancel a reservation at least 30 business days prior to the reservation date will be charged 25 percent of the reservation fee; persons who cancel a reservation 15 to 29 business days prior to the reservation date will be charged 50 percent of the reservation fee; and persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee. We are taking this action to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and therefore the efficiency of import quarantine facilities.

In 1999, the U.S. horse industry directly produced goods and services of $25.3 billion and had a total economic impact of $112.1 billion on the U.S. gross domestic product.[1] Racing, showing, and recreation each contributed more than 25 percent to the total value of goods and services produced by the industry. Activities related to the horse industry generated approximately $1.9 billion in tax revenues, most of which were generated in States where parimutuel betting was allowed.[2]

The horses quarantined at USDA's New York and Florida quarantine facilities include horses that are valued at up to $1 million. The average value of these horses in 2001 was $10,400 per horse. The number and total value of horses imported into the United States has been increasing over the last 8 years (table 1).

[1] American Horse Counci, 2000 House Industry Statistics.

[2] American Horse Council, the Economic Impact of the U.S. Horse Industry, Executive Summary, Washington, DC January 2000.

TABLE 1.—ALL HORSE IMPORT VALUES AND QUANTITIES

[Harmonized Schedule Code 0101]

| | 1993 | 1999 | 2001 |
|---|---|---|---|
| Value | $61,000,000 | $326,000,000 | $319,000,000 |
| Quantity | 20,725 | 31,758 | 37,836 |

**Source:** World Trade Atlas, United States—General Imports—Customs Value.

Due to this increase in imported horses and the limited space available at USDA horse quarantine facilities, it is important that reservation space be fully utilized.

Horses are quarantined at a USDA facility for either 3 or 7 days before being cleared. European horses are quarantined for 3 days; South American and Caribbean horses are quarantined for 7 days. The user fee for a 3-day quarantine is $792 per horse. The user fee for a 7-day quarantine is $1,556 per horse (Table 2).

TABLE 2.—CURRENT STALL FEES FOR IMPORTED HORSES

| | Equine stall daily user fee |
|---|---|
| 1st through 3rd day (fee per day) | $264 |
| 4th through 7th day (fee per day) | 191 |
| 8th and subsequent days (fee per day | 162 |

Daily user fee Oct. 1, 2002–Sept 30, 2003 (9 CFR 130.7).

Eighty to ninety percent of the quarantine reservations cancelled 5 business days before a reservation are not refilled. The 5-day period does not allow sufficient time to find a replacement. The USDA quarantine facilities in Florida and New York each lose approximately $300,000–$470,000 each year in forgone user fees. In addition, the horse industry as a whole incurs additional costs through delays in being able to import horses. The result is fewer imports than would otherwise occur.

The current practice of charging $40 for a cancellation allows horse brokers to reserve stall space even before securing clients for the space. Brokers with significant capital resources may make several reservations and simply forfeit the $40 reservation fees if a client is not found to fill them. This practice of reserving stall space before securing a client has led to stall reservations being bartered on the open market even though the program receives Federal funding. Some brokers have complained that a $40 reservation fee is not an effective deterrent to prevent brokers from reserving stall space before a client is found.

The graduated fee schedule for canceled reservations will provide greater deterrence against late cancellations. Under a graduated fee schedule, brokers and horse owners will lose 25 percent of the reservation fee if they cancel at least 30 days prior to the reservation. Thirty days notice will provide opportunity for APHIS to refill the stall space. Brokers and horse owners who cancel 15–29 days prior to the reservation will lose 50 percent of the reservation fee. Brokers and horse owners who cancel less than 15 days prior to the reservation will be charged 100 percent of the reservation fee due to the insufficient time to refill the stall space (Table 3).[3]

TABLE 3.—GRADUATED RESERVATION FEES.

| Cancellation time period prior to reservations | 3-day quarantine cancellation fee | 7-day quarantine cancellation fee |
|---|---|---|
| 30 days or longer (25 percent) | $198 | $389 |
| 15–29 days (50 percent) | 396 | 778 |
| Less than 15 days (100 percent) | 792 | 1,556 |

**Economic Efforts on Small Entities**

Increasing the cancellation fee and the time-period required for cancellation has potential to affect both horse owners and brokers. Horse brokers who cancel space will incur additional cancellation fees. While the cost of cancellations will most likely be borne by the horse owners, the effects on those owners should be minimal compared to the high values of the horses being quarantined.[4]

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no

[3] While most equines undergo a 3 or 7 day quarantine, the new graduated fee schedule will apply to all quarantine periods for which user fees are charged under 9 CFR 130.2. Calculations of graduated fee schedule: (GF) = ((a*d)+(b*d)+(c*d)) * Z, where a = 1st through 3rd day (fee per day) $264, b = 4th through 7th day (fee per day) $191, c = 8th and subsequent days (fee per day) $162, d = number of days, and Z = percentage determined from the cancellation date prior to stall reservation 25% , 50% , and 100%.

[4] SBA lists horse owners as small if they have less than $750,000 per head in revenue (NAICS 112920). Census information is not available for individual horse owners' sales.

retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This 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 93**

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

## PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

**Authority:** 7 U.S.C. 1622, 8303, 8306–8308, 8310, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 93.304 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(vi), and by adding a new paragraph (a)(3)(vii) to read as follows:

**§ 93.304 Import permits for horses from regions affected with CEM and for horse specimens for diagnostic purposes; reservation fees for space at quarantine facilities maintained by APHIS.**

(a) * * *

(3) * * *

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse for which the reservation was made: *Except* that a reservation fee shall not be forfeited if the Administrator determines that services, other than provided by carriers, necessary for the importation of the horses within the required period are unavailable because of unforeseen circumstances as determined by the Administrator (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

* * * * *

(vi) If a reservation is canceled, the importer or the importer's agent will be charged a fee according to the following schedule:

| Cancellation date | Fee |
|---|---|
| 30 or more days before the scheduled reservation date | 25 percent of the reservation fee. |
| 15–29 days before the scheduled reservation date | 50 percent of the reservation fee. |
| Less than 15 days before the scheduled reservation date | 100 percent of the reservation fee. |

(vii) If the reservation fee was ensured by a letter of credit, the Department will draw the amount of the cancellation fee against the letter of credit unless the cancellation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

* * * * *

Done in Washington, DC, this 4th day of December 2002.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–31009 Filed 12–6–02; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 21, 91, 121, 125, and 129

**[Docket No. FAA–1999–6411; Amendment Nos. 21–82, 91–272, 121–285, 125–140, 129–35, Special Federal Aviation Regulation No. 88–1]**

**RIN 2120–AG62**

## Extension of Compliance Times for Fuel Tank System Safety Assessments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This final rule extends the compliance deadline for supplemental type certificate holders to complete safety assessments of their fuel tank systems, and any system that may affect the fuel tank system, and to develop design changes and maintenance programs needed to correct unsafe conditions. It also extends the compliance time for the affected operators to incorporate instructions for maintenance and inspection of the fuel tank system into their maintenance or inspection programs. This action is needed to allow supplemental type certificate holders additional time to complete their compliance submittals using a newly identified method of completing their safety assessments and identifying corrective actions without acquiring information from the type certificate holders. Because the operators are dependent upon the supplemental certificate holders for showing compliance with the operating rules, this rule allows them the same time extension.

**DATES:** This final rule is effective December 9, 2002. Comments must be submitted on or before February 7, 2003.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–1999–6411 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mike Dostert, Transport Airplane Directorate, Propulsion/Mechanical Systems Branch, ANM–112, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2132.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134, February 26, 1979), however, provide that, to the maximum extent possible,

operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this amendment. The most helpful comments reference a specific portion of the amendment, explain the reason for any recommended changes, 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 this rulemaking. 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.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on this amendment, 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 to you.

**Availability of Final Rule**

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page, typing in the last four digits of the Docket number shown at the beginning of this final rule, and clicking on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, clicking on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm,* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov.*

**Background**

*Amendment 25–102 and SFAR 88*

Following the 1996 TWA 800 accident, which was caused by an explosion in the center wing fuel tank, the FAA issued regulations to establish several new transport airplane fuel tank safety requirements (66 FR 23086, May 7, 2001). The final rule, which was effective June 6, 2001, included:

1. Amendment 21–78 (SFAR 88) which requires type certificate (TC) and supplemental type certificate (STC) holders to:

- Conduct a revalidation of the fuel tank system designs on the existing fleet of transport category airplanes carrying 30 or more passengers or a payload of 7,500 lbs. or more;
- Develop all design changes required to demonstrate they meet the new ignition prevention requirements; and
- Develop fuel tank maintenance and inspection instructions,

2. Amendments 91–266, 121–282, 125–36, and 129–30, which require certain operators to incorporate FAA-approved fuel tank maintenance and inspection requirements into their maintenance or inspection programs, and

3. Amendment 25–102, which adopts new airworthiness standards for future designs to impose ignition prevention design and maintenance requirements (§ 25.981(a) & (b) and paragraph H25.4 of appendix H), and fuel tank flammability requirements (§ 25.981(c)).

*Amendment to SFAR 88 To Allow Equivalent Safety Findings*

On September 10, 2002, the FAA amended SFAR 88 by incorporating provisions into the rule that allow for findings of equivalent safety (Amendment 21–82, 67 FR 67490). This amendment added a paragraph that allows the FAA to approve a type certificate holder's required submission based on a finding that it provides an equivalent level of safety to full compliance with the SFAR. SFAR 88 is a part 21 rule which did not provide certificate holders the ability to make compliance findings based upon a finding of equivalent safety, as is available when making findings of compliance with part 25 for new or amended type certificates. Therefore, Amendment 21–82 provides a ''level playing field'' between pending applicants and current holders of TCs. It also allows applicants to propose other means to achieve the safety goals of the SFAR such as flammability reduction using polyurethane foam or nitrogen inerting.

*Discussion of SFAR 88 and This Amendment*

SFAR 88 requires that holders of type certificates and supplemental type certificates review the designs of fuel tank systems of large transport category airplanes, and develop design changes and maintenance and inspection programs based on the findings of those reviews. The reviews are conducted using the ignition prevention requirements that were adopted for new or amended type designs in § 25.981. Reports documenting compliance must be submitted to the FAA by December 6, 2002.

When the SFAR was written, the FAA believed that, to the extent that STC holders would be dependent upon the TC holders for the information needed to show compliance with the SFAR, this information would be available either from the original certification data or through business agreements with the TC holders. For a variety of reasons, this information has generally not been made available to the STC holders.

Since issuance of SFAR 88, we have gained experience and now recognize that STC holders can show compliance without access to data from the TC holders. On August 27, 2002, about 3 months prior to the compliance date for the SFAR, we conducted a seminar in Chicago with STC holders where methods for showing compliance without TC data were presented. (Presentations from this seminar can be accessed at the following Web site: *http://www.faa.gov/certification/aircraft/sfar88/index.htm).* These methods allow STC holders to conduct the safety assessment of their STC up to the interface with the TC holder's design, and to define service information (both maintenance instructions and design changes) needed to correct any deficiencies identified in

the assessment. For all safety issues associated with the interface between the STC and the TC holder's design, the STC holder can reference the design configuration control limitations defined by the TC holder, which will be sufficient to address these issues.

Until the August seminar, STC holders did not have access to this information regarding a means of compliance that is not dependent on access to TC holder data. Because of the widespread belief that access to these data was necessary, many STC holders had not made significant progress in assessing their designs. A six-month extension of the compliance time for STC holders will allow them to complete their compliance submittals using the method described above. This amendment therefore provides an extension of six months for STC holders to the compliance time of December 6, 2002, specified in SFAR 88.

It should be noted that the compliance deadline is not being extended for TC holders; and we expect them to comply by the original deadline. As noted previously, Amendment 21–82 allows TC holders to use factors providing an equivalent level of safety in complying with SFAR 88. Under this provision, some TC holders have expressed an intention to provide fuel tank inerting systems as an alternative to some design changes that would otherwise be necessary to eliminate ignition sources. Because these inerting systems involve new technology, the TC holders have indicated that they will not be able to complete the design changes by the deadline. Given the potential safety benefits of these systems, we have stated that a short delay in providing these design changes may be acceptable for a finding of equivalent safety, provided that the TC holders otherwise comply with SFAR 88's system safety assessment and maintenance program requirements by the December 6, 2002, deadline.

Operators are dependent upon STC holders for showing compliance with the operating rules (parts 91, 121, 125, and 129) that require development of an approved maintenance program by June 2004. Therefore this rulemaking would also provide a six-month extension of the compliance times for these rules. This extension will also enable operators to fully address any maintenance program changes associated with fuel tank inerting system changes that TC holders may develop, as discussed previously.

Since this rule simply extends the compliance time for STC holders and operators, it should not result in additional costs and therefore is not considered ''significant'' for purposes of Executive Order 12866, DOT Regulatory Policies and Procedures, or the Regulatory Flexibility Act, and it does not require preparation of a regulatory evaluation.

**Paperwork Reduction Act**

There are no new requirements for information collection associated with this amendment.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

**Good Cause for Immediate Adoption**

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

In the context of the APA, ''impracticable'' means that, if notice and comment procedures are followed, they would defeat the purpose of the rule. As explained previously, the purpose of this final rule is to prevent a large number of STC holders from being in noncompliance with SFAR 88 as of the December 6, 2002, deadline by extending this deadline by six months. There is no way we could issue a notice, receive comments, and issue a final rule before then. Therefore, it is ''impracticable'' to provide notice and opportunity to comment.

This final rule also provides a six-month extension of the compliance time for the operating rules, which originally had a deadline of June 2004 (18 months after the deadline for SFAR 88). The need to extend this deadline results directly from the extension for STC holders. We acknowledged in the original fuel tank safety final rule that the operators are heavily dependent on TC and STC holders' compliance, and we gave the operators 18 months after the SFAR 88 compliance deadline with the understanding that they would need that entire time to develop the maintenance program changes required by the operating rules. Nothing has occurred to make us reconsider that decision, so the extension of the STC holder deadline necessitates extending the operating rule deadline, as well.

Providing notice and opportunity to comment on this extension would create uncertainty for the operators and could be highly disruptive. Since it is important for operators to be able to plan their compliance activities, and notice and comment procedures would make this impossible, we also find that providing notice and opportunity to comment are impracticable for the operating rule extension.

For the same reasons, we find good cause to make this rule effective immediately upon publication.

**Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this rule (1) Is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial

number of small entities; (3) will have little effect on international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

For regulations with an expected minimal economic impact, the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. The FAA has determined that there are minimal costs associated with this final rule and the safety benefits contemplated by the SFAR will still be achieved. Since current circumstances preclude industry from meeting the original compliance time, a 6-month extension will impose de minimus economic impact.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. If, however, an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action simply provides a six-month extension of the original compliance times. The FAA therefore expects this final rule to impose no cost on small entities. Consequently, the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

**Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will not result in additional costs to supplemental type certificate holders or operators and will have a minimal effect on international trade

**Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We therefore determined that this final rule does not have federalism implications.

**Plain English**

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulation clearly stated?
- Does the regulation contain technical language or jargon that interferes with their clarity?
- Would the regulation be easier to understand if it was divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulation?

Please send your comments to the address specified in the **ADDRESSES** section.

**Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this final rule qualifies for a categorical exclusion.

**Energy Impact**

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

**List of Subjects**

*14 CFR Parts 21, 91, and 125*

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 121*

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

*14 CFR Part 129*

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends parts 21, 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

## PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read:

**Authority:** 42 U.S.C. 7572; 40105, 40113; 44701–44702, 44707, 44709, 44711, 44713, 44715, and 45303.

2. SFAR No. 88–1 is amended by revising the introductory text of paragraph 2 and by adding a new paragraph 2(e) to read as follows:

**SFAR No. 88—Fuel Tank System Fault Tolerance Evaluation Requirements**

* * * * *

2. *Compliance:* Each type certificate holder, and each supplemental type certificate holder of a modification affecting the airplane fuel tank system, must accomplish the following within the compliance times specified in paragraph (e) of this section:

* * * * *

(e) Each type certificate holder must comply no later than December 6, 2002, or within 18 months after the issuance of a type certificate for which application was filed before June 6, 2001, whichever is later; and each supplemental type certificate holder of a modification affecting the airplane fuel tank system must comply no later than June 6, 2003, or within 18 months after the issuance of a supplemental type certificate for which application was filed before June 6, 2001, whichever is later.

## PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read:

**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352–1355, 1401, 1421–1431, 1471, 1472, 1502, 1510, 1522, and 2121–2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

4. Amend § 91.410 by revising the first sentence of paragraph (b) to read as follows:

**§ 91.410 Special maintenance program requirements.**

* * * * *

(b) After December 6, 2004, no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. * * *

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

5. The authority citation for part 121 continues to read:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

6. Amend § 121.370 by revising the first sentence of paragraph (b) to read as follows:

**§ 121.370 Special maintenance program requirements.**

* * * * *

(b) After December 6, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. * * *

## PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

7. The authority citation for part 125 continues to read:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

8. Amend § 125.248 by revising the first sentence of paragraph (b) to read as follows:

**§ 125.248 Special maintenance program requirements.**

* * * * *

(b) After December 6, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program. * * *

## PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

9. The authority citation for part 129 continues to read:

**Authority:** 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

10. Amend § 129.32 by revising the first sentence of paragraph (b) to read as follows:

**§ 129.32 Special maintenance program requirements.**

* * * * *

(b) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, no later than December 6, 2004, the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems.

* * *

Issued in Washington, DC on December 3, 2002.

**Marion C. Blakey,**

*Administrator.*

[FR Doc. 02–30997 Filed 12–4–02; 3:40 pm]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 9

**[T.D. No. ATF–485; Re: Notice No. 936]**

**RIN 1512–AC82**

## Yadkin Valley Viticultural Area (2001R–88P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Treasury decision; final rule.

**SUMMARY:** This Treasury decision establishes the Yadkin Valley viticultural area in North Carolina. The viticultural area consists of approximately 1,416,600 acres encompassing all of Surry, Wilkes, and Yadkin counties and portions of Stokes, Forsyth, Davidson, and Davie counties.

**EFFECTIVE DATE:** Effective on February 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

### Background on Viticultural Areas

*What Is ATF's Authority To Establish a Viticultural Area?*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF)

to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR Part 9, American Viticultural Areas.

*What Is the Definition of an American Viticultural Area?*

Title 27 CFR 4.25a(e)(1) defines a viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

*What Is Required To Establish a Viticultural Area?*

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition.
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition.
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) that distinguish the proposed area from surrounding areas.
- A description of the specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (USGS) maps of the largest applicable scale.
- A copy of the appropriate USGS map(s) with the boundaries prominently marked.

**Rulemaking Proceeding**

*Yadkin Valley Petition*

Ms. Patricia McRitchie petitioned ATF, on behalf of Shelton Vineyards, Inc., Dobson, North Carolina, to establish a viticultural area within the State of North Carolina, to be known as ''Yadkin Valley.'' The petitioned viticultural area encompassed all of Surry, Wilkes, and Yadkin counties and portions of Stokes, Forsyth, and Davie counties. It was located entirely within the Yadkin River watershed.

The area, as originally proposed, covered approximately 1,924 square miles or 1,231,000 acres. Within these boundaries, there are over 30 growers who devote approximately 350 acres to the cultivation of wine grapes. Currently, there are three bonded wineries in the petitioned area, with at least two other wineries under construction.

**Comments to Notice of Proposed Rulemaking**

ATF published a Notice of Proposed Rulemaking, Notice No. 936, in the **Federal Register** on February 7, 2002 (67 FR 5756). The comment period for the proposed rule closed on April 8, 2002. During this 60-day time period, we requested comments concerning the proposed Yadkin Valley viticultural area from all interested persons. ATF received four written comments, all in favor of the Yadkin Valley viticultural area's establishment.

Alliston J. Stubbs, IV, Cedar Ridge Vineyards, Reeds, North Carolina, sought to expand the petitioned area's boundaries. ATF accepted Mr. Stubbs' expansion proposal based on the evidence he provided to support his proposed expansion.

Mr. David Bradley, president of the Greater Mount Airy Chamber of Commerce, submitted a comment fully supporting the establishment of the Yadkin Valley viticultural area, but he did not request that the area be expanded.

Ken Furr, Albemarle, North Carolina, supported a Yadkin Valley viticultural area with larger boundaries. Mr. Furr stated that, as petitioned, the area's boundaries were ''much too exclusive.'' He argued that the entire Yadkin River basin should be included in one viticultural area. His primary concern was that the few existing vineyards and ''the many that will be created over the next 20 years will be disenfranchised and deprived of a marketing mechanism that they deserve.''

State Representative Pryor Gibson of the 33rd District also submitted comments in support of expanding the proposed Yadkin Valley area. Representative Gibson supported the inclusion of ''the entirety of the Yadkin River Basin to include Stanly, Montgomery, and any other counties, which border these counties to the east and west which geographically and climatically would include areas conducive to the grape production.''

ATF will consider an expansion of a viticultural area when the appropriate supporting evidence is furnished. Mr. Furr and Representative Gibson did not provide the detailed evidence required by the regulations to support an expansion of the boundaries proposed in Notice No. 936 and, therefore, ATF is unable to expand the Yadkin Valley viticultural area based on these two requests. The requirements for expanding an approved area are the same as those for establishing a new area. A petitioner must include evidence that the additional land is also known by the viticultural area's name, in this case Yadkin Valley, and has growing conditions similar to the ones in the approved area. Any interested person may petition ATF to expand the boundaries of an existing American viticultural area. See the section titled *What is Required to Establish a Viticultural Area?* listed earlier in this final rule.

Comments from Mr. Allston J. Stubbs, IV, submitted on behalf of Cedar Ridge Vineyards, Reeds, North Carolina, proposed an expansion of the proposed area's southern boundary. His proposed expansion added a portion of Davidson County and an additional area in Davie County. Mr. Stubbs provided data and analyses, including climate, geographical, and name evidence, supporting his proposal. ATF agrees that this proposed expansion's characteristics are consistent with the original petition's area and, therefore, meet the regulatory criteria for an American viticultural area. The revised size of the Yadkin Valley viticultural area is approximately 1,416,600 acres. The final rule has been modified accordingly.

**Supporting Evidence Used in the NPRM**

*What Name Evidence Has Been Provided?*

The viticultural area has been known as the Yadkin Valley since pre-colonial times. The first known written use of the name Yadkin (also spelled as Yattken or Yattkin) was in 1674 in the writing of an early trader, Abraham Wood, whose English scouts passed through the area in 1673. It was used in reference to the Native American tribe found living along the river known as the Yadkin. Subsequently, the name Yadkin was applied to many natural features and man-made structures in the area. In fact, the only references to Yadkin as a place name are to places located in North Carolina: the Yadkin Valley, the Yadkin River, Yadkin County, and the towns of Yadkin Falls, Yadkin College, and Yadkinville. It is also used to name businesses, schools, and organizations located in the State's northwestern piedmont region.

There is rich historical and anthropological evidence of settlement and cultivation in the Yadkin Valley. Native American settlements date back to approximately 500 B.C. The first non-Native settlers, the Moravians, arrived in the Yadkin Valley in the 1740s. They

originally scouted land in the Blue Ridge Mountains near Boone, but did not find a satisfactory site for settlement. The Moravians followed the Yadkin River east, finally reaching the three forks of Muddy Creek, a tributary of the Yadkin River. It was here that the Moravians made the first settlements in what are now Forsyth and Stokes counties. The settlements were Bethabara, established in 1753, and Bethania, established in 1759. These early settlers were meticulous recordkeepers and references to the Yadkin Valley can be found in their colonial writings as well as in later sources. References to the Yadkin Valley can also be found in histories of the region during the American Revolution and the Civil War periods.

An influx of settlers who farmed the Valley's rich soil characterized the period immediately after the Civil War. In the latter part of the 19th century, cotton and tobacco were the Valley's main crops. By the early 20th century, the change to tobacco as the Valley's main cash crop was complete, but by the century's close, however, the predominance of tobacco growing in the northwest piedmont of North Carolina had waned. In its place is an increased interest in grape growing, which is rooted in pre-colonial North Carolina's history.

An article titled ''N.C. Winery History'' (North Carolina Grape Council website, 2/24/01, *http://www.ncagr/com/markets/commodit/horticul/ grape/winehist.htm),* states that the first cultivated wine grape in the United States was grown in North Carolina. The first known recorded account of the Scuppernong grape in North Carolina is found in the logbook of explorer Giovanni de Verranzano. He wrote in 1524, ''Many vines growing naturally there [in North Carolina] that would no doubt yield excellent wines.''

The wine industry in North Carolina thrived through the 19th and 20th centuries until prohibition. At that time, the industry, which was centered in the eastern part of the State, was based on muscadine wine.

One of the first modern major plantings of vinifera grapes in North Carolina occurred in 1972, when Jack Kroustalis established Westbend Vineyards, located in the Yadkin Valley. According to ''Carolina Wine Country,'' ''[t]he vines flourished in the rich soil of the Yadkin River Valley.'' In 1988, Kroustalis built the first bonded winery in the Yadkin Valley. Other growers in Yadkin Valley took note of Westbend Vineyard's success with vinifera grapes and followed suit. By the end of 2000, over 350 acres of grapes were planted in the Yadkin Valley. The North Carolina Department of Agriculture has recognized this area as a ''unique and valuable winegrowing region.''

In 1999, Shelton Vineyards began planting 200 acres of vinifera grapes on land considered perfectly suited to vinifera grape growing. The following year, Shelton opened a state-of-the-art 30,000 case winery. There are currently two additional wineries under construction in the viticultural area, and the Yadkin Valley Wine Grower's Cooperative was recently incorporated.

In 1999, Surry Community College began offering continuing education viticulture courses. Spurred on by the tremendous interest in grape growing, the College initiated a two-year viticulture program, which began in the fall of 2000. The program will educate future grape growers to take advantage of the favorable growing environment provided by the Yadkin Valley. In December of 2000, the Golden Leaf Foundation awarded the College over $130,000 to support the establishment of a demonstration vineyard and winery for use by students in the program.

The reference materials used to prepare this petition consistently included all of Wilkes, Surry, and Yadkin counties in the Yadkin Valley, as well as portions of Stokes and Forsyth counties. Davie and Iredell counties were also commonly included.

*What Evidence Relating to Geographical Features Has Been Provided?*

Soil

The Yadkin Valley viticultural area petition included a report by Roger J. Leab, a soil scientist with the Natural Resource Conservation Service, United States Department of Agriculture. Mr. Leab was the soil survey project leader for Surry and Stokes counties, and is currently the project leader for Alamance County. He compiled his report from the published soil surveys of Wilkes, Stokes, Yadkin, Davie, and Forsyth counties and the data collected for the soon-to-be-published soil survey of Surry County.

The soils of the Yadkin Valley viticultural area were formed mainly from residuum (saprolite) weathered from felsic metamorphic rocks (gneisses, schists, and phyllites) of the Blue Ridge Geologic Belt and the Smith River Allochothon and from metamorphosed granitic rocks of the inner Piedmont Belt. The extreme southeastern part of the area was formed from saprolite weathered from igneous intrusive rocks (granites, gabbros, and diorites) and some gneisses and schists, all of the Charlotte Belt.

Most of the viticultural area is in the mesic soil temperature regime, which, at a depth of 20 inches, has an average annual soil temperature of 47 to 59 degrees Fahrenheit. The extreme southeastern part of the area is in the thermic temperature regime, which is in the 59 to 72 degree Fahrenheit range.

The dominant soil series formed from residuum in the mesic area are Fairview, Clifford, Woolwine, Westfield, Rhodhiss, and Toast soils. The dominant soil series formed from residuum in the thermic area are Pacolet, Cecil, Madison, Appling, and Wedowee soils. There are also some large areas of soils, which formed in old fluvial sediments of high stream terraces. These are the Braddock series in the mesic area and the Masada, Hiwassee, and Wickham series in the thermic area. These soils all have clayey or fine-loamy subsoils with good internal structure and moderate permeability. They are mostly very deep and well drained. These soils are acidic and have low natural fertility, requiring a well-structured fertility plan.

The soil series that formed in residuum from the mafic intrusive rocks (gabbros and diorites), which occur scattered along the extreme southeastern part of the viticultural area, have slightly better natural fertility. However, they have subsoils with mixed mineralogy clays. The Gaston and Mecklenburg series have moderate or moderately slow permeability and are suitable to moderately suitable for viticulture. However, the Enon and Iredell series have high shrink-swell clayey subsoils, which perch water during wet periods and result in less than desirable internal drainage.

The less than desirable, high shrink-swell clayey soils are more abundant to the south and east of the viticultural area. The Blue Ridge Mountains are to the west and north of the area. The petitioner states that these limitations define the Yadkin Valley as a unique viticultural area.

Climate

The petition's data for precipitation, temperature and heat summation were provided by the State Climate Office of North Carolina.

*Hardiness Zone.* The Yadkin Valley viticultural area is in Zone 7a of the USDA Hardiness Zone Map. The surrounding regions are in Zones 6b and 7b. This zone is well suited for growing grapes while the adjacent zones are not as favorable for growing vinifera grapes. For example, the Columbia Valley viticultural area in Washington State is also located in Zone 7a.

The Yadkin Valley is located in the warm temperate latitude between 36°00′ and 36°30′ N. This latitude is well suited to growing vinifera grapes while latitudes below 35°00′ are not suited to vinifera grape growing, according to Gordon S. Howell and Timothy K. Mansfield's article, ''Microclimate and the Grapevine: Site Selection for Vineyards (A Review),'' in ''Vinifera Wine Growers Journal,'' Fall 1977, page 373.

*Precipitation.* The Yadkin Valley receives an average rainfall of 46.42 inches. The regions to the west and northwest receive, on average, more than 68 inches of rain per year. The regions to the south and east receive, on average, 43.37 inches of rain per year. In general, the Yadkin Valley receives less precipitation than the land to the west and northwest and slightly more than the regions to the south and the east.

*Temperature.* The Yadkin Valley has an average maximum annual temperature of 69.85 degrees Fahrenheit and an average minimum annual temperature of 44.90 degrees Fahrenheit. The regions to the west and northwest have an average maximum temperature of 58.6 degrees Fahrenheit and an average minimum annual temperature of 40.00 degrees Fahrenheit. The region to the east has an average maximum annual temperature of 68.4 degrees Fahrenheit and an average minimum annual temperature of 46.0 degrees Fahrenheit. The region to the south has an average maximum annual temperature of 71.5 degrees Fahrenheit and an average minimum annual temperature of 48.1 degrees Fahrenheit.

In summary, the Yadkin Valley is much warmer than the regions to the west and northwest and has slightly higher maximum and minimum temperatures than the region to the east. The Yadkin Valley has lower maximum and minimum temperatures than the land to the south. Temperature differences become more pronounced the further south one travels. In addition, as one proceeds east past the Greensboro area, the temperatures, both maximum and minimum, become warmer than in the viticultural area.

*Heat Summation.* Using Amerine and Winkler heat summation definitions, the Yadkin Valley viticultural area is in climatic region IV, with 3743 degree-days. The land to the east is in region IV. The land to the west-northwest is in region I, while lands to the south are in region V (Greensboro is close to region V).

*Frost-Free Season/Growing Season.* The petition also offered data regarding the Yadkin Valley's growing season from the North Carolina State University horticulture information leaflet ''Average Growing Season for Selected North Carolina Locations'' (12/96, revised 12/98) by Katharine Perry. The viticultural area enjoys a frost-free season lasting from April 22 to October 15. This is a growing season of 176 days and is two to four weeks longer than the region to the west. The frost-free/growing season in the viticultural area is similar to the lands immediately to the south. In contrast, the regions to the east and southeast have a frost-free and growing season four to six weeks longer than the viticultural area.

*Climate Summary.* The Yadkin Valley viticultural area has more moderate temperatures and precipitation than the surrounding areas. The growing season and frost-dates fall within the optimum range for cultivation of premium vinifera grapes. These data support the proposition that the Yadkin Valley possesses climatic conditions distinguishing it from the surrounding areas.

Geology

The petition also included a report on the Yadkin Valley's geology prepared by Matthew Mayberry, president of the River Ridge Land Company, Inc. The highly complex rocks of the present day Blue Ridge and Piedmont provinces represent a core area that has been present and re-crystallized and re-metamorphosed through several mountain building cycles to produce the complex schists, gneisses and igneous rocks of today's Yadkin Valley. Relics of a couple of the hot spots that re-crystallized rock are the granites of Mount Airy and Stone Mountain, North Carolina. Mr. Mayberry's report noted that the weathering of these Piedmont rocks has produced soils with chemical and physical properties that are very amenable to the viticulture industry. The petition stated that the soils and climate of the Yadkin Valley viticultural area cover a spectrum equal to most vineyards of Europe and California.

After the Yadkin River's origin and descent from mountain springs in the Blowing Rock, North Carolina region, it encounters a major structural feature known as the Brevard Shear Zone (fault system), which also defines the Blue Ridge Escarpment in the area, paralleled by the river. At the base of the Blue Ridge Escarpment, the Yadkin River turns and flows northeastward under the structural control of this shear zone for a distance of approximately 50 miles before bending to the east between the northeast end of the Brushy Mountains and Pilot Mountain. At the Surry, Yadkin, and Forsyth County corner, the Yadkin turns southward and later becomes the Pee Dee River at High Rock Lake, about six miles northwest of Salisbury, North Carolina.

*What Boundary Evidence Has Been Provided?*

Mr. Mayberry also provided the petition's boundary description. The area of the Yadkin Valley viticultural area proposed in Notice No. 936 covers approximately 1,924 square miles or 1,231,000 acres in Wilkes, Surry, Yadkin and parts of Stokes, Forsyth, and Davie counties. The subject area is identified on two 1:250,000 scale USGS maps:

(1) Winston-Salem, N.C.; VA., Tenn. 1953 Limited Revision 1962; and

(2) Charlotte, North Carolina; South Carolina 1953 Revised 1974.

As noted above, ATF has expanded the Yadkin Valley viticultural area at the request of Mr. Allston J. Stubbs. The expansion adds an additional portion of the Yadkin River basin southeast of Winston-Salem in Davidson and Davie counties. As approved, the area covers about 1,416,600 acres. The finalized, expanded Yadkin Valley viticultural area boundary is determined on a 1:250,000 scale, based on the USGS maps. Primarily, county lines define the viticultural area's boundaries. In cases where directions change, where county lines or rivers are too irregular to measure, a ''trend direction bearing'' with straight-line miles is reported. The beginning point is defined as a point 3.6 miles west of the northeast corner of Surry County on the Surry County and North Carolina/Virginia state line at the crest of Slate Mountain.

The revised Yadkin Valley viticultural area boundaries are discussed in detail in § 9.174(c) of the final rule shown below in this Treasury Decision. In addition to the boundaries expanded by Mr. Stubbs proposal, ATF expanded a small portion of the northeastern boundary. This expansion was necessary to meet the requirements of 27 CFR 9.3(b)(4), *i.e.*, so that the boundaries were based on features that could be found on the associated USGS maps.

**Supporting Evidence Provided for the Expansion of the Petitioned Area**

As stated earlier in this Treasury Decision, a commenter, Mr. Allston J. Stubbs, IV, requested the expansion of the southeastern boundary of the proposed Yadkin Valley viticultural area. Mr. Stubbs provided evidence to ATF to amend the boundaries as they were originally proposed, in Notice of Proposed Rulemaking, Notice No. 936. ''The addition'' is used to refer to the

area inside the expanded boundary and ''the petitioned viticultural area'' is used to refer to the area originally proposed in Notice No. 936. A summary of this evidence, and the associated references, is provided below.

*Climate*

The State Climate Office of North Carolina and the Southeast Regional Climate Center (*See,* respectively, *http://www.nc-climate.ncsu.edu* and *http://water.dnr.state.sc.us/ climate/sercc/*) provided data for precipitation, temperature, and heat summation. The addition is defined by climate data from weather stations at its four geographic corners of Mocksville, Winston-Salem, Lexington/Lexington Agricultural Research Station, and the Rowan Agricultural Research Station.

*Hardiness Zone.* The petitioned Yadkin Valley viticultural area is in Zone 7a of the USDA Hardiness Zone Map. The addition is also in Zone 7a. Interstate 85 through Davidson County—the southern border of the addition—approximates the demarcation between Zone 7a and 7b.

*Precipitation.* The petitioned viticultural area has areas of average annual precipitation ranging from 44 inches per year in the east to 56 inches per year in the west and an average annual precipitation of 46.42 inches per year. The addition has an average annual precipitation of 45.05 inches per year. The amount of precipitation in the addition is similar to areas included in the petitioned viticultural area. The addition has more precipitation than areas to the southeast (outside the boundary) where the average annual precipitation ranges from 42 to 44 inches per year.

*Temperature.* The petitioned viticultural area has average maximum annual temperatures of 69.85 degrees Fahrenheit and average minimum annual temperatures of 44.90 degrees Fahrenheit. The addition has an average maximum annual temperature of 70.93 degrees Fahrenheit and an average minimum annual temperature of 46.80 degrees Fahrenheit. The temperatures of the addition are similar to those within the petitioned area and are cooler than areas outside of the petitioned area's southern and southeastern borders.

*Heat Summation.* The petitioned viticultural area is located in Amerine and Winkler Climatic Region IV, with 3743 degree-days. The addition is also located in Climatic Region IV, with 3904 degree-days.

*Frost-Free Season/Growing Season.* The petitioned viticultural area has a range of growing seasons: 176 days (April 22 to October 15) in Mt. Airy, N.C. (northern Surry County), 185 days (April 19 to October 21) in Yadkinville, N.C. (central Yadkin County), and 198 days (April 14 to October 24) in Mocksville, N.C. (central Davie County).

Using data from the North Carolina Climate Office (50 year average dates of last spring freeze and first fall freeze), the addition has an estimated growing season of 191 days (April 11 to October 20). This is similar to the growing seasons of the petitioned viticultural area.

All referenced growing seasons have a standard deviation of 11 to 13 days. This variability limits the distinctions among the growing seasons across the Yadkin Valley area. Hence, the addition has a similar growing season duration compared with the petitioned viticultural area. The growing season of the petitioned area and the addition is shorter than the areas along its southern and southeastern borders.

*Climate Summary.* The addition, like the petitioned viticultural area, has a climate defined by temperature and precipitation that is different from the surrounding areas. The growing season and frost-dates of the addition, like the originally petitioned region, fall within the optimum range for cultivation of premium vinifera grapes.

*Geography*

*Location.* The petitioned viticultural area lies between the north latitudes of 35 degrees 52 minutes and 36 degrees 35 minutes and between the east longitudes of 80 degrees 14 minutes and 81 degrees 32 minutes. The addition extends the southern boundary to a latitude of 35 degrees 41 minutes North. The southern boundary of the addition remains above the 35 degree parallel recommended for vinifera grape growing by Howell and Mansfield's article, ''Microclimate and the Grapevine: Site Selection for Vineyards (A Review),'' in the ''Vinifera Wine Growers Journal,'' Fall 1977, 373.

*Elevation.* The elevation for the petitioned viticultural area ranges from 694 feet (NW Davie County) to 3800 feet (NW Wilkes County). The addition's elevation ranges from 696 feet (NW Davie County) to 921 feet (SW Forsyth County). The addition does not increase the range of elevation found in the petitioned viticultural area.

*Soil*

Mr. Stubbs provided soil information that was compiled from soil survey data of Wilkes, Surry, Stokes, Yadkin, Davie, Forsyth, and Davidson counties. A general distribution of soil types across the petitioned viticultural area, and the addition can be viewed on the General Soil Map of NC, Overlay #2, May 1978, Soil Conservation Service, USGS, 1:250,000. Additional information is from the respective county soil surveys and the Soil Survey Division, Natural Resources Conservation Service, United States Department of Agriculture, Official Soil Series Descriptions (*http://www.statlab.iastate.edu/soils/osd/*).

The soil types of the petitioned viticultural area comprise mesic and thermic residuum (saprolite). The mesic soils include the Fairview, Clifford, Woolwine, Westfield, Rhodhiss, and Toast series. The thermic soils include the Pacolet, Cecil, Madison, Appling, Louisburg, and Wedowee series.

The soil types of the addition (southwestern Forsyth, western Davidson, and eastern Davie counties) are thermic residuum, weathered primarily from felsic rock. Characteristic of the petitioned viticultural area, these thermic soils include the Pacolet, Cecil, Madison, Appling, Louisburg, and Wedowee series. These soils are distinguished by the properties of a low shrink-to-swell ratio, good drainage, and moderate permeability, which are good for grape growing.

The soil types of areas to the west, east, and south of the addition are composed of soil series weathered from mafic and felsic sources. These soils include Iredell, Mecklenburg, Enon, Wilkes, Sedgefield, Tatum, Goldston, and Badin series. As these soils are characterized by the properties of a low to high shrink-to-swell ratio, fair to good drainage, and slow to moderate permeability, they are less desirable for grape growing. These soils are neither characteristic of the petitioned area nor of the addition.

*Geology*

The geology of the petitioned viticultural area has been defined by multiple orogenies or mountain building cycles. The current geology reflects the convergence of several metamorphic and igneous formations including the Blue Ridge Belt, the Smith River Allochothon, the Sauratown Mountains Anticlinorium, the Milton Belt, the Charlotte Belt, and the Inner Piedmont Belt. The addition lies on the Charlotte Belt at the Churchland Pluton. The Churchland Pluton is composed primarily of Porphyritic granite with occasional Alluvium superstrata. The erosion of Porphyritic granite results in soils like Appling, Cecil, Pacolet, and Wedowee found throughout the Yadkin Valley region. These soil types have desirable characteristics for grape growing.

The area to the east of U.S. 52 and Interstate 85, along the eastern and

southern borders of the addition, rests on the Carolina Slate Belt. The Carolina Slate Belt comprises dioritic rock types which when weathered result in soils like Enon, Iredell, Mecklenburg, Sedgefield, and Wilkes. These soil types have less desirable characteristics for grape growing and are generally outside the petitioned area and the requested addition.

*Hydrography*

The flow of the Yadkin River is measured at several points including Yadkin College, Davidson County (included in the addition). The Yadkin River proper ends at its crossing of Interstate 85, the southern border of the addition. South of Interstate 85 and outside of the addition, the river becomes a series of three lakes: High Rock, Badin, and Tillery. Beyond Lake Tillery, the river is referred to as the Pee Dee and continues from North Carolina into South Carolina and toward the Atlantic Ocean.

**Regulatory Analyses and Notices**

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

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

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

This regulation will not have significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area. Rather, it is an identification of an area that is distinct from surrounding areas. We believe that the establishment of viticultural areas allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify various wines. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

*Does the Paperwork Reduction Act Apply to the Final Rule?*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

**Drafting Information**

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

**List of Subjects in 27 CFR Part 9**

Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Subpart C of part 9 is amended by adding § 9.174 to read as follows:

## Subpart C—Approved American Viticultural Areas

* * * * *

### § 9.174 Yadkin Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Yadkin Valley''.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Yadkin Valley viticultural area are two United States Geological Survey (USGS) topographic maps, scale 1:250,000:

(1) Winston-Salem, N.C.; VA; Tenn. (1953, Limited Revision 1962), and,

(2) Charlotte, North Carolina; South Carolina. (1953, Revised 1974).

(c) *Boundaries.* The Yadkin Valley viticultural area is located in the State of North Carolina within Wilkes, Surry, Yadkin and portions of Stokes, Forsyth, Davidson, and Davie Counties. The boundaries are as follows:

(1) On the Winston-Salem, N.C.; VA; Tenn. map, the beginning point is 3.6 miles west of the northeast corner of Surry County on the Surry County and North Carolina/Virginia state line at the crest of Slate Mountain. From the beginning point, proceed southeast in a straight line approximately 6.5 miles to the intersection of the Surry/Stokes County line and State Route 89;

(2) Then bear southeast in a straight line for approximately 9 miles to the line's intersection with State Route 66 in the village of Gap (between Sauratown and Hanging Rock Mountains);

(3) Then bear south, following State Route 66 for approximately 9 miles to intersection of State Route 66 and U.S. Route 52;

(4) Then, for approximately 9.5 miles, follow U.S. Route 52 south through Rural Hall and Stanelyville, to the intersection of the Southern Railway track and U.S. Route 52;

(5) Then bear southerly for approximately 2 miles, following the Southern Railway track to where it intersects with U.S. Route 52 in Winston-Salem;

(6) Then follow U.S. Route 52 south for approximately 19.5 miles, crossing on to the Charlotte, North Carolina; South Carolina map, to its intersection with Interstate 85 at Lexington;

(7) Then, follow Interstate 85 southwest for approximately 11 miles to the Yadkin River and bear northwest approximately 4.5 miles along the Yadkin River to the mouth of the South Yadkin River;

(8) Follow the South Yadkin River upstream in a generally northwest direction approximately 3.5 miles to its intersection with U.S. Route 601;

(9) Then continue in a northerly direction, following U.S. Route 601 through the town of Mocksville, onto the Winston-Salem, N.C.; VA; Tenn. map approximately 20 miles to the Davie/Yadkin County line;

(10) Then, following a series of county lines, continue west along the Yadkin/Davie County line to the Yadkin/Davie/Iredell County line intersection, then follow the Yadkin/Iredell County line to the Yadkin/Iredell/Wilkes County line intersection, then follow the Iredell/Wilkes County line to the Iredell/Wilkes/Alexander County line intersection, then follow the Wilkes/Alexander County line to the Wilkes/Alexander/Caldwell County line intersection;

(11) Then bear northwesterly along the Wilkes/Caldwell County line, to the Wilkes/Caldwell/Watauga County intersection;

(12) Then bear northerly along the Wilkes/Watauga County line to the intersection of the Wilkes/Watauga/Ashe County lines;

(13) Then bear generally northeasterly along the Wilkes/Ashe County line, to the Wilkes/Ashe/Alleghany County line intersection;

(14) Then bear generally easterly along the Wilkes/Alleghany County line to the Wilkes/Alleghany/Surry County line intersection;

(15) Then bear northerly along Alleghany/Surry County line to the intersection of the Alleghany/Surry County line and the North Carolina/Virginia border;

(16) Then bear east along the North Carolina/Virginia State line approximately 22.5 miles, returning to

the point of beginning 3.6 miles west of the northeast corner of Surry County.

Dated: October 9, 2002.

**Bradley A. Buckles,**

*Director.*

**Timothy E. Skud,**

*Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 02–31004 Filed 12–6–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–02–131]**

**RIN 2115–AA97**

## Safety and Security Zones; Drilling and Blasting Operations, Hubline Project, Captain of the Port Boston, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing temporary safety and security zones around the vessels Drillboat No. 8 and Lablift IV to be in effect from November 18, 2002 to February 28, 2003. The safety and security zones will help protect the public from the hazards of marine blasting that will be conducted by these vessels in support of the Hubline Gas Pipeline Project, which entails placing a 30-inch, 800-PSI natural gas pipeline beneath the sea floor from Danvers, MA to Quincy, MA. These zones are in effect only while explosives are on board the vessels and closes all waters 600 yards around the Drillboat No. 8 and Lablift IV 1 hour prior to, during, and one hour after all blasting operations and 400 yards around the Drillboat No. 8 and Lablift IV while they are otherwise operating.

**DATES:** This rule is effective from 12 a.m. November 18, 2002 through 11:59 p.m. February 28, 2003. Comments must be received on or before January 8, 2003.

**ADDRESSES:** Comments may be mailed to the Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109. All comments and those documents indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterway Safety and Response Division, at (617) 223–3000.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–02–131) and the specific section of this document to which each comment applies, and give the reason for each comment.

Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after **Federal Register** publication because specific information regarding the drilling and blasting was not provided to the Coast Guard by the Hubline Project until November 6, 2002, making the proposed rule too vague to solicit comments, thus impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. The rule is effective immediately as any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect the public from the hazards of marine blasting and to protect the vessels Drillboat No. 8 and Lablift IV, which will be carrying explosives used in this operation, from possible acts of terrorism or other sabotage.

The zones affect a small area of water only while the drill barges are conducting drilling and blasting operations and while the vessels are transiting with explosives (on-board) and when they are moored to Conley Marine terminal in order to load and discharge explosives.

### Background and Purpose

As part of the Hubline Pipeline Project that will be placing a 30-inch, 800-PSI natural gas pipeline beneath the sea floor between Salem Sound and Quincy Bay, MA, several locations along this planned route have areas of bedrock that need to be removed to ensure the placement of the pipeline at a specific depth. Algonquin Pipeline and Great Lakes Dredge and Dock Company approached the Coast Guard to establish a safety and security zone around the Drillboat No. 8 and Lablift IV to protect the public and the drill vessels themselves. After meeting with all parties involved, the Captain of the Port is placing these safety and security zones around the above listed vessels to protect them from potential acts of terrorism and to protect the marine public from the hazards associated with marine blasting. This rule establishes safety and security zones on the waters surrounding the Drillboat No. 8 and Lablift IV. The zones extend 600 yards around the vessels one hour prior to and after blasting operations and 400 yards while the barge is otherwise operating. Blasting operations will take place at various locations and at various times along the track line of the project. A local notice to mariners and safety marine information broadcast will identify the time and location of the blasting and whether the zones are in effect. These zones are in effect only while there are explosives on board the vessels.

The safety and security zone around each vessel is in effect from November 18, 2002 through February 28, 2003. Marine traffic may safely transit outside of the safety and security zone in Broad Sound during the effective period and while the vessel in transiting to and from Conley Marine Terminal. The Captain of the Port will allow access as necessary through the zones where the zones impinge on navigation channels within other blasting areas. Public notifications will be made via safety marine information broadcasts, local notice to mariners, notification of local pilots, and notification of parties in the areas that the project will affect as operations proceed.

### 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, l979). The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule prevents traffic from transiting into a portion of the above mentioned waters, the effect of this rule will be minimal for several reasons: Number of private vessels transiting the area is significantly less in the winter months, vessels will only be restricted from the safety and security zones during blasting operations or when the Drillboat No. 8 and Lablift IV are moored at Conley Marine Terminal, South Boston, MA. The majority of the track line for the project is in open waters with large areas for vessels to transit safely around the project. Advance notifications will be made to the local maritime community by safety marine information broadcasts, local notice to mariners, contact with local pilots, and contact with affected parties.

For areas of restricted waterways such as inshore areas in Quincy Bay, vessels may transit through the zones as necessary with Captain of the Port approval, and vessels may safely transit outside of the safety and security zones without restriction.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The Coast Guard and Hubline project contractors have been in contact with local maritime concerns and are coordinating activities with entities such as commuter boats and fishing associations to minimize any impact the project may have on them. 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 may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the above mentioned waters while the zones are in effect. For reasons enumerated under the Regulatory Evaluation section above this safety zone will not have significant economic impact on small entities.

**Collection of Information**

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

**Federalism**

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

This rule does 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**

The Coast Guard 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 pose an environmental risk to health or risk to safety that may 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. A rule with tribal implications has 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.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (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 where indicated under **ADDRESSES**.

**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.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—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, and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–131:

**§ 165.T01–131 Safety and Security Zones; Drilling and Blasting Operations, Hubline Project, Captain of the Port Boston, Massachusetts.**

(a) *Location.* The following areas are safety and security zones surrounding the Drillboat No. 8 and Lablift IV while operating in Danvers, MA, the Danvers River, Salem Sound, Broad Sound, Nantasket Roads, Quincy Bay and Weymouth Fore River to Quincy, MA, Boston Harbor, or any location the vessels may have to shelter in emergency situations.

(1) 600 yards around the vessels Drillboat No. 8 and Lablift IV one hour prior to, during, and one hour after all blasting operations;

(2) 400 yards around the Drillboat No. 8 and Lablift during operations other than blasting and while moored at Conley Marine Terminal, South Boston, MA for loading and unloading explosives.

(b) *Periods of enforcement.* The security and safety zones will be enforced only when explosives are on board the Drillboat No. 8 and Lablift IV or when loading and unloading operations are in progress.

(c) *Effective date.* This section is effective from 12 a.m. November 18, 2002 through 11:59 p.m. February 28, 2003.

(d) *Regulations.*

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

(2) All individuals and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel including commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: November 15, 2002.

**B.M. Salerno,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 02–30928 Filed 12–6–02; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA144–0375a; FRL–7410–9]**

## Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution District, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and the Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address general requirements for continuous emissions monitoring systems and the use of credible evidence to demonstrate compliance with emission limits under the Act.

**DATES:** This rule is effective on February 7, 2003, without further notice, unless EPA receives adverse comments by January 8, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24850 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Andy Steckel, EPA Region IX, (415) 947.4115.

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

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## I. The State's Submittal

### *A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| MBUPACD | 213 | Continuous Emissions Monitoring | 03/21/01 | 05/23/01 |
| MBUAPCD | 421 | Violations and Determinations of Compliance | 12/21/94 | 02/24/95 |
| VCAPCD | 103 | Continuous Monitoring Systems | 02/09/99 | 06/03/99 |

On the following dates EPA found these rule submittals met the completeness criteria in 40 CFR part 51 Appendix V: July 3, 2001 for MBUAPCD rule 213; March 10, 1995 for MBUAPCD rule 421; and June 24, 1999 for VCAPCD rule 103. The completeness criteria must be met before formal EPA review.

### *B. Are There Other Versions of These Rules?*

We approved a version of MBUAPCD rule 213 into the SIP on July 1, 1999.

We approved a version of MBUAPCD rule 421 into the SIP on July 13, 1987.

We approved a version of VCAPCD rule 103 into the SIP on December 14, 1994. At that time, the rule was titled ''Stack Monitoring''.

*C. What Is the Purpose of the Submitted Rules?*

MBUAPCD rule 213 includes the following significant changes from the current SIP:

- The rule is applicable to any source required to install CEMS pursuant to a District Authority to Construct or Permit to Operate.
- A reference is provided to the California Health and Safety Code (section 40702—Adoption of Rules and Regulations and section 42706—Report of Violation of Emission Standard).
- The definition of ''Authority to Construct'' is added.
- Sources with CEMS are required to develop and comply with a Quality Assurance/Preventative Maintenance Procedures Manual.

MBUAPCD rule 421 includes the following significant changes from the current SIP:

- Definitions are added for ''Administrator'' and ''District''.
- References are provided to pertinent sections of the CAA.
- Any credible evidence or federally-approved monitoring methods may be used to determine compliance.

VCAPCD rule 103 includes the following significant changes from the current SIP:

- The title was changed from ''Stack Monitoring'' to ''Continuous Monitoring Systems''.
- CEMS sources subject to federal CEMS requirements must install and operate equipment in accordance federal regulations.
- The requirement for opacity monitoring for gas fired boilers was removed.
- The time to report violations was increased from 48 to 96 hours.
- The length of time that records must be kept was increased from 4 years to 5 years.
- The requirement to maintain permanent records was changed from ''net and gross'' megawatt-hours to ''net'' megawatt-hours produced by a boiler/turbine generator system.
- Permanent records are required for a period of at least 5 years for emisions limits based on calculations.
- The requirement for quarterly reports is deleted. Sources must report excess emissions and inoperable CEMS upon written request from the District.
- CEMS data reduction requirements are added for (1) electric power generating units subject to a new source performance standards (NSPS), (2) large boilers, steam generator and process heaters, and (3) equipment with emissions of any single air pollutant greater than or equal to either 5 pounds per hour or 40 pounds per day when requested by the District to install a CEMS.
- Standards of performance are described standards for electric power generating units and units subject to NSPS.

The TSDs have more information about these rules.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

*B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rules*

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the proposed rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 8, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 7, 2003. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Background Information**

*A. Why Were These Rules Submitted?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants. Table 2 lists some of the national milestones leading to the submittal of these rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). *See* section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. |

**IV. Administrative Requirement**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: October 30, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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

**PART 52—[AMENDED]**

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

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

**Subpart F—California**

2. Section 52.220 is amended by adding paragraphs (c)(215)(i)(F),(c)(264)(i)(C)(*2*), and (c)(281)(i)(B) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(215) * * *

(i) * * *

(F) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 421 adopted on December 21, 1994.

* * * * *

(264) * * *

(i) * * *

(C) * * *

(*2*) Rule 103 adopted on February 9, 1999.

* * * * *

(281) * * *

(i) * * *

(B) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 213 adopted on March 21, 2001.

* * * * *

[FR Doc. 02–30939 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[IN146–1a; FRL–7411–7]**

**Approval and Promulgation of State Implementation Plans; Indiana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving as a revision to the Indiana particulate matter (PM) State Implementation Plan (SIP) emission control regulations that pertain to Knauf Fiber Glass (Knauf) which is located in Shelbyville, Indiana, as requested by the State of Indiana on October 17, 2002. This submission makes changes to federally enforceable Indiana air pollution control rules. The rule revisions modify the PM emissions limits adopted by the State in the 1980s which are part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names of remaining

equipment. Because the revised rules reduce both allowable emissions and the allowable emissions rate and reflect current operations atthe Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

**DATES:** This direct final rule is effective on February 7, 2003 without further notice unless EPA receives adverse written comments by January 8, 2003. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the SIP revision request is available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph Cano at (312) 886–6036 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Randolph Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'', ''us'', or ''our'' is used we mean EPA.

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## I. What Is the Background for This Action?

On October 17, 2002, Lori F. Kaplan, Commissioner of the Indiana Department of Environmental Management, submitted to EPA a requested amendment to the Indiana SIP. This amendment consisted of revisions to Title 326, Air Pollution of the Indiana Administrative Code (326 IAC). These changes to 326 IAC 11–4–5 were adopted final by the Indiana Air Pollution Control Board on May 1, 2002, filed with the Secretary of State on August 28, 2002 and became effective on September 27, 2002. They were published in the *Indiana Register* on October 1, 2002 (26 IR 10). The amendments update references to equipment to reflect current operations and delete references to equipment that no longer exists, along with their associated emissions limits, at the Knauf facility located in Shelbyville, Indiana.

## II. What Changes Are Being Made to the State Rule?

The revised rule removes references to emission points which are no longer operational at Knauf and renames several other emission points. Specifically, Indiana deleted from the rule references to 203 oven, 304 oven, 1101 oven, 1102 oven, 1103 oven, 1104 oven, 1110 oven, 1111 oven 203 furnace, and 203 forming. Indiana renamed the 204 oven as the 605 oven, with no change in its maximum hourly PM emission rate of eight pounds per hour. Indiana renamed the 204 furnace as the 605 furnace, with no change in its maximum hourly PM emission rate of 10 pounds per hour. Indiana has renamed the 204 forming operation as 605 forming with no change in its maximum hourly PM emission rate of 15 pounds per hour.

Three emission points continue to be listed in the revised rule with the same emission limits they had in the previous rule: 601 forming plus oven, with a maximum hourly PM emission limit of 28.28 pounds per hour, 603 forming plus oven, with a maximum hourly PM emission limit of 16.49 pounds per hour, and 602 forming plus oven with a maximum hourly PM emission limit of 33.27 pounds per hour.

These revised rules reduce both allowable emissions and the allowable emissions rate. The revisions also reflect current operations at the Knauf facility. Consequently, EPA approval of these changes should not result in an adverse impact on air quality. In fact, EPA estimates a PM emission reduction of 155 tons per year.

## III. What Is EPA's Rulemaking Action?

EPA is approving the incorporation of 326 IAC 11–4–5 Shelby County, as revised, into the Indiana SIP. The rule revisions modify the emissions limits adopted by the State in the 1980s which are part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names of equipment which remains in use. Because the revised rules reduce both allowable emissions and the allowable emissions rate and reflect current operations at the Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

EPA is publishing this action without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State's SIP revision request should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by January 8, 2003. Should EPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on February 7, 2003.

## IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a

Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 7, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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

## PART 52—[AMENDED]

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

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

## Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(155) to read as follows:

**§ 52.770 Identification of plan.**

(c) * * *

(155) On October 17, 2002, the State submitted revised particulate matter emission limits for the Knauf Fiber Glass in Shelby County for incorporation into the Indiana SIP.

(i) Incoropration by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 11 Emission Limitations for Specific Types of Operations, Rule 4 Fiberglass Insulation Manufacturing, Paragraph 5 Shelby County (326 IAC 11–4–5). Adopted by the Indiana Air Pollution Control Board on May 1, 2002. Filed with the Secretary of State on August 28, 2002. Published in the *Indiana Register*, Volume 26, Number 1, October 1, 2002, effective September 27, 2002.

[FR Doc. 02–30937 Filed 12–6–02; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2002–0326; FRL–7282–1]**

## Carboxin; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of carboxin (5,6-dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) in or on canola, seed. Gustafson LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) , as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective December 9, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0326, must be received on or before February 7, 2003.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS Code 111)
- Animal production (NAICS Code 112)
- Food manufacturing (NAICS Code 311)
- Pesticide manufacturing (NAICS Code 32532)

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 unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0326. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under 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. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

## II. Background and Statutory Findings

In the **Federal Register** of February 23, 2000 (65 FR 8970) (FRL–6390–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 9F6036) by Gustafson LLC, 1400 Preston Road, Suite 400, Plano, Texas 75093. That notice included a summary of the petition prepared by Gustafson, LLC, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.301 be amended by establishing a tolerance for combined residues of the fungicide carboxin, 5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide] and its sulfoxide metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide], each expressed as the parent compound], in or on canola, seed at 0.03 parts per million (ppm).

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) of the FFDCA 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) of the FFDCA 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 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, 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 and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of carboxin (5,6-dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) on canola, seed at 0.03 ppm. EPA's assessment of 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 carboxin are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

| Guideline No. | Study Type | Results |
|---|---|---|
| 870.3100 | 90–Day oral toxicity in rats | NOAEL = Males: not identified; Females: 10 mg/kg/day<br>LOAEL = Males: 10 mg/kg/day based on chronic nephritis, increased urea nitrogen, increased creatinine; Females: 40 mg/kg/day based on chronic nephritis |
| 870.3200 | 21/28–Day dermal toxicity | Not available |
| 870.3465 | 90–Day inhalation toxicity | Not available |

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

| Guideline No. | Study Type | Results |
|---|---|---|
| 870.3700 | Prenatal developmental in rats | Maternal NOAEL = 10 milligrams/kilogram/day (mg/kg/day)<br>LOAEL = 90 mg/kg/day based on decreased body weights and body weight gain, decreased food consumption, and increased hair loss<br>Developmental NOAEL = 175 mg/kg/day<br>LOAEL = not identified |
| 870.3700 | Prenatal developmental in rabbits | Maternal NOAEL = 75 mg/kg/day<br>LOAEL = 375 mg/kg/day based on increased abortions<br>Developmental NOAEL = 75 mg/kg/day<br>LOAEL = 375 mg/kg/day based on increased abortions |
| 870.3800 | Reproduction and fertility effects in rats | Parental NOAEL = Males and Females: 1 mg/kg/day<br>LOAEL = Males: 10 mg/kg/day based on decreased body weight gains in F1 parents, gross and histopathological changes in kidneys; Females: 15 mg/kg/day based on equivocal histopathological changes in kidneys<br>Reproductive NOAEL = Males: 10 mg/kg/day; Females: 15 mg/kg/day<br>LOAEL = Males: 20 mg/kg/day; Females: 30 mg/kg/day based on decreased fertility indices for F1b parents due to decreased number of pregnancies for F2b generation<br>Offspring NOAEL = Males: 10 mg/kg/day; Females: 15 mg/kg/day<br>LOAEL = Males: 20 mg/kg/day; Females: 30 mg/kg/day based on decreased body weights for F2b male pups |
| 870.4100 | Chronic toxicity in dogs | NOAEL = Males: 16 mg/kg/day; Females: 1.3 mg/kg/day<br>LOAEL = Males: 158 mg/kg/day based on decreased RBC, hematocrit and hemoglobin, increased MCH and MCV, increased alkaline phosphatase and cholesterol, increased liver weights; Females: 15 mg/kg/day based on decreased body weight gains |
| 870.4300 | Combined Chronic/ Carcinogenicity in rats | NOAEL = Males: 0.8 mg/kg/day; Females: 1.0 mg/kg/day<br>LOAEL = Males: 9 mg/kg/day based on decreased body weight and body weight gain, increased urea nitrogen and creatinine, increased water consumption and urine volume, decreased urine specific gravity, histopathological changes in kidneys; Females: 16 mg/kg/day based on histopathological changes in kidneys<br>Negative for carcinogenicity |
| 870.4200 | Carcino-genicity in mice | NOAEL = Males: 752 mg/kg/day; Females: 9 mg/kg/day<br>LOAEL = Males: not identified; Females: 451 mg/kg/day based on increased mortality<br>Negative for carcinogenicity |
| 870.5100 | Bacterial reverse mutation assay (Ames test) | Negative with or without S-9 activation at 5.000 μg/plate and less |
| 870.5375 | *In vitro* mammalian chromosome aberration (CHO cells) | Negative without S-9 activation<br>Positive with S-9 activation. Highly significant increases in chromosomal aberrations at several toxic dose levels ranging from 400 to 1,400 Fg/mL |
| 870.5385 | *In vivo* mammalian chromosome aberration (rat bone marrow) | Negative at all dose levels up to 48-hours post-dosing<br>Study is unacceptable due to lack of clinical toxicity, lack of a multiple dosing schedule, and/or lack of evidence of transport to target tissue |
| 870.5385 | *In vivo* mammalian chromosome aberration (rat bone marrow) | Negative at all dose levels tested |
| 870.5385 | *In vivo* mammalian chromosome aberration (rat bone marrow) | Positive. Dose-related statistically significant increased percent of aberrant cells at 191 mg/kg/day |
| 870.5450 | Dominant lethal assay in rats | Not available |

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

| Guideline No. | Study Type | Results |
|---|---|---|
| 870.5550 | UDS in primary rat hepatocytes | Positive. Dose-dependent positive responses were observed at treatment levels from 5.13 to 103 μg/mL in the absence of moderate to severe toxicity |
| 870.7485 | Metabolism and pharmaco kinetics in rats | Following oral treatment of rats with phenyl-UL-$C^{14}$ carboxin, approximately 78.3–81.1% and 77.0–81.5% of the low and high doses, respectively, were recovered. Urine was the major route of excretion. The major urinary metabolites were 4-acetamidophenol and its glucuronide, acetanilide, and hydroxylated carboxin sulfoxide |

*B. Toxicological Endpoints*

The dose at which 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 factors (SF) 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 SF.

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 $1 \times 10^{-6}$ 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 carboxin used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CARBOXIN FOR USE IN HUMAN RISK ASSESSMENT

| Exposure Scenario | Dose Used in Risk Assessment, UF | FQPA SF* and Level of Concern for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Acute dietary all populations | Acute RfD = not required | No toxicological endpoint attributable to a single exposure was identified | None |
| Chronic dietary all populations | NOAEL = 0.8 mg/kg/day<br>UF = 100<br>Chronic RfD = 0.008 mg/kg/day | FQPA SF = 3<br>cPAD = chr RfD<br>FQPA SF = 0.00267 mg/kg/day | Combined chronic/carcinogenicity - rat<br>LOAEL = Males: 9 mg/kg/day based on decreased body weight and body weight gain, increased urea nitrogen and creatinine, increased water consumption and urine volume, decreased urine specific gravity, histopathological changes in kidneys; Females: 16 mg/kg/day based on histopathological changes in kidneys |
| Cancer (oral, dermal, inhalation) | Not likely to be carcinogenic to humans | Negative for carcinogenicity in rats and mice | Combined chronic/carcinogenicity - rat and carcinogenicity - mouse |

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

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.301) for the combined residues of carboxin and its sulfoxide metabolite, in or on a variety of raw agricultural commodities (RAC). Risk assessments were conducted by EPA to assess dietary exposures from

carboxin and its sulfoxide metabolite in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on carboxin. As a result, an acute endpoint was not identified and an acute dietary exposure assessment was not performed.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic dietary exposure analysis was an unrefined assessment. Tolerance level residues and 100% crop treated assumptions were used.

iii. *Cancer*. Carboxin was classified as ''not likely to be carcinogenic to humans.'' Therefore, a cancer dietary exposure assessment was not performed.

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

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

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

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

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of carboxin and its sulfoxide metabolite for acute exposures are estimated to be 29.6 parts per billion (ppb) for surface water and 0.09 ppb for ground water. The EECs for chronic exposures are estimated to be 0.63 ppb for surface water and 0.09 ppb for ground water.

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

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

EPA does not have, at this time, available data to determine whether carboxin 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, carboxin 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 carboxin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### *D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity*. The developmental toxicity and reproduction studies performed with carboxin did not indicate evidence for enhanced susceptibility to the fetuses/offspring of rats or rabbits. Neither quantitative nor qualitative increased susceptibility was observed in the developmental toxicity study in rats, the developmental toxicity study in rabbits, or the 2-generation reproduction toxicity study in rats. In none of the toxicity studies on carboxin was there any toxicologically significant evidence of treatment-related neurotoxicity. A developmental neurotoxicity study in rats is not required. There is, however, a concern for possible germinal cell toxicity.

In genotoxicity studies, carboxin demonstrated clear evidence of clastogenic potential. It was also noted that in the 2-generation reproduction study in rats, treatment-related decreased fertility indices for the F1b male and female parents (due to a decreased number of pregnancies for the F2b generation) were observed. Based on these considerations, the registrant will be required to submit a germinal

cell assay, specifically a dominant lethal assay in rats, to the Agency in order to evaluate possible interaction between carboxin and germinal cell targets.

3. *Conclusion*. Based upon clear evidence of clastogenic activity and the requirement for a dominant lethal study, EPA concluded that a FQPA safety factor of 3X is appropriate for this risk assessment. The safety factor of 10X was reduced to 3X because: i. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; ii. A developmental neurotoxicity study is not required; iii. The dietary (food and drinking water) exposure assessments will not underestimate the potential for exposures to infants and children; and iv. There are no registered residential uses for carboxin.

*E. Aggregate Risks and Determination of Safety*

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

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

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

1. *Acute risk*. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on carboxin. As a result, carboxin is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to carboxin and its sulfoxide metabolite from food will utilize 41% of the cPAD for the U.S. population and 92% of the cPAD for children 1–6 years, the most highly exposed population. There are no residential uses for carboxin. In addition, there is potential for chronic dietary exposure to carboxin and its sulfoxide metabolite in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CARBOXIN AND ITS SULFOXIDE METABOLITE

| Population Subgroup | cPAD mg/kg/day | %cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.00267 | 41 | 0.63 | 0.09 | 56 |
| Children 1–6 years | 0.00267 | 92 | 0.63 | 0.09 | 2 |

3. *Short-term and Intermediate-term risk*. Both short-term aggregate exposure and intermediate-term aggregate exposure take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Since carboxin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern as described in Table 3.

4. *Aggregate cancer risk for U.S. population*. Carboxin was classified as ''not likely to be carcinogenic to humans.'' Therefore, carboxin is not expected to pose a cancer risk.

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

## IV. Other Considerations

*A. Endocrine Disruptor Effects*

FQPA requires EPA to develop a screening program to determine whether certain substances (including all pesticides and inerts or inactive ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. In the available toxicity studies for carboxin, there is no evidence of endocrine disruptor effects. When appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, carboxin may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

*B. Analytical Enforcement Methodology*

The current available enforcement methods for tolerances of the combined residues of carboxin and its carboxin sulfoxide metabolite are described in the Pesticide Analytical Manual (PAM)

Vol. II. Method I is a colorimetric method which is used for determination of residues in or on corn, peanuts, rice, rice straw, sorghum, soybeans, eggs, meat, and milk. Method II and its modification, Method A, are gas liquid chromatography (GLC) methods which are used for wheat, oats, barley, peanuts, peanut oil and meal, sorghum, cottonseed, and cottonseed oil and meal. Adequate recovery data were submitted to validate the methods used in the canola field trials. Residues in canola seeds were converted to aniline, which was derivatized with heptafluorobutyric anhydride prior to gas chromatography mass selective detector (GC/MSD) analysis. Recoveries were 100–103% for 0.025 ppm fortifications in canola seeds.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, U.S. Environmental Protection Agency, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: griffith.francis@epa.gov.

*C. International Residue Limits*

There are no CODEX, Canadian, or Mexican maximum residue levels (MRLs) for carboxin in/on onion seed. As a result, harmonization of tolerances is not an issue.

**V. Conclusion**

Therefore, the tolerance is established for combined residues of carboxin, (5,6 dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) insert regulated chemical, in or on canola, seed at 0.03 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA 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) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. 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 ID number OPP–2002–0326 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 February 7, 2003.

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 (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA;. 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 (703) 603–0061.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.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.1. Mail your copies, identified by docket ID number OPP–2002–0326, 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 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. 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).

**VII. Regulatory Assessment Requirements**

This final rule establishes a tolerance under section 408(d) of the FFDCA 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 section 408(d) of the FFDCA, 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 section 408(n)(4) of the FFDCA. 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.*, 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: November 26, 2002.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180— [AMENDED]**

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

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

2. Section 180.301 is amended by alphabetically adding the commodity ''canola, seed'' to the table in paragraph (a) to read as follows:

**§ 180.301 Carboxin; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | * |
| Canola, seed | 0.03 |
| * * * * * | * |

* * * * *

[FR Doc. 02–31010 Filed 12–6–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

**[OPPT–2002–0043; FRL–7279–1]**

**RIN 2070–AD43**

## Perfluoroalkyl Sulfonates; Significant New Use Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 75 substances including perfluorooctanesulfonic acid (PFOSH) and certain of its salts (PFOSS), perfluorooctanesulfonyl fluoride (POSF), certain higher and lower homologues of PFOSH and POSF, and certain other chemical substances, including polymers, that are derived from PFOSH and its homologues. These chemicals are collectively referred to as perfluoroalkyl sulfonates, or PFAS. This rule requires manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of these chemical substances for the significant new uses described in this document. EPA believes that this action is necessary because the PFOSH component of these chemical substances may be hazardous to human health and the environment. The required notice will provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** This final rule is effective on January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact*: Mary Dominiak, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8104; e-mail address: dominiak.mary@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in Table 1 of this unit. Persons who intend to import any chemical substance governed by a final SNUR are subject to TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 12.728. Those persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export any of the chemical substances listed in Table 1 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR 721.20 and 40 CFR part 707, subpart D.Potentially affected entities may include, but are not limited to:

- Chemical manufacturers or importers (NAICS 325), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.
- Chemical exporters (NAICS 325), e.g., persons who export, or intend to export, one or more of the subject chemical substances.

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 unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5 for SNUR-related obligations. Also, consult Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| 307–35–7 | 1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 307–51–7 | 1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro- |
| 376–14–7 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |
| 383–07–3 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |
| 423–50–7 | 1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro- |
| 423–82–5 | 2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |
| 754–91–6 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 1652–63–7 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide |
| 1691–99–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)- |
| 1763–23–1 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 2795–39–3 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt |

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| 2991–51–7 | Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt |
| 4151–50–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 14650–24–9 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester |
| 17202–41–4 | 1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt |
| 24448–09–7 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl- |
| 25268–77–3 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester |
| 29081–56–9 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt |
| 29117–08–6 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy- |
| 29457–72–5 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt |
| 31506–32–8 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl- |
| 38006–74–5 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride |
| 38850–58–7 | 1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-, inner salt |
| 55120–77–9 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt |
| 67584–42–3 | Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt |
| 67906–42–7 | 1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-, ammonium salt |
| 68156–01–4 | Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt |
| 68298–62–4 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane di-2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol |
| 68329–56–6 | 2-Propenoic acid, eicosyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate |
| 68541–80–0 | 2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate |
| 68555–90–8 | 2-Propenoic acid, butyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate |
| 68555–91–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino] ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate |
| 68555–92–0 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate |
| 68586–14–1 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[ (tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol |

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| 68649–26–3 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc. |
| 68867–60–7 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68867–62–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68891–96–3 | Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di- |
| 68909–15–9 | 2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate |
| 68958–61–2 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy- |
| 70225–14–8 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1) |
| 71487–20–2 | 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid |
| 73772–32–4 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluorohexyl)sulfonyl]amino]-2-hydroxy-, monosodium salt |
| 81190–38–7 | 1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt |
| 91081–99–1 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with epichlorohydrin, adipates (esters) |
| 94133–90–1 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt |
| 98999–57–6 | Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl)oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminium chloride |
| 117806–54–9 | 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt |
| 129813–71–4 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl) |
| 148240–80–6 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl esters |
| 148240–82–8 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters |
| 182700–90–9 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides |

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| L–92–0151 | 2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and 2-propenoic acid |
| P–80–0183<br>192662–29–6 | Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid |
| P–83–1102<br>306973–46–6 | Fatty acids, linseed-oil, dimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters |
| P–84–1163<br>306975–56–4 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatohexyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine |
| P–84–1171<br>306975–57–5 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine |
| P–86–0301<br>306973–47–7 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts |
| P–86–0958<br>306975–62–2 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride |
| P–89–0799<br>160901–25–7 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate |
| P–90–0111<br>306974–19–6 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl] |
| P–91–1419<br>306975–84–8 | Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamides-blocked |
| P–93–1444<br>306975–85–9 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride |
| P–94–0545<br>306976–25–0 | 1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate |
| P–94–0927<br>306976–55–6 | 2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfonamides-blocked |
| P–94–2206<br>306974–28–7 | Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propylgroup]-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate |
| P–95–0120<br>306980–27–8 | Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediylbis[(2-oxo-3,5-oxazolidinediyl)methylene]]bis[N-methyl- |
| P–96–1262<br>306974–45–8 | Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether |
| P–96–1424<br>306977–10–6 | 2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomer with 2-[ethyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides |
| P–96–1433 *<br>178094–69–4 | 1-Octanesulfonamide, N-[3-(dimethyloxidoamino)propyl]-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-,potassium salt |
| P–97–0790<br>251099–16–8 | 1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1) |
| P–98–0251<br>306978–04–1 | 2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride |

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| P–98–1272<br>306977–58–2 | 2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol] |
| P–99–0188<br>306978–65–4 | Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro-C4-8-alkane sulfonamides- and stearyl alc.-blocked |
| P–99–0319<br>306979–40–8 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs. |

* Manufacturer requested change in chemical identity based on interpretation of current data. Former CAS No. 179005–06–2 is being deleted from the Inventory.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT-2002-0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**''listings at http://www.epa.gov/fedrgstr/.A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

## II. Background

*A. What Action is the Agency Taking?*

This action promulgates the supplemental proposed SNUR published in the **Federal Register** of March 11, 2002 (67 FR 11014) (FRL–6823–7), which modified the original proposed SNUR published in the **Federal Register** of October 18, 2000 (65 FR 62319) (FRL–6745–5).

This rule requires persons to notify EPA at least 90 days before commencing the manufacture or import of the chemical substances identified in Table 1, Unit I.A., for the significant new uses described in this document. The chemical substances identified in Table 1, Unit I.A., are 75 chemical substances, including PFOSH, PFOSS, POSF, certain higher and lower homologues of PFOSH and POSF, and certain other chemical substances, including polymers, that are derived from PFOSH and its homologues. These chemicals are collectively referred to throughout this rule as PFAS. In the original proposed SNUR, these chemicals were referred to collectively as perfluorooctyl sulfonates, or PFOS, but commenters noted that this generic usage of the term PFOS was inconsistent with the use by the manufacturer of PFOS, 3M, to refer only to chemicals with an eight-carbon, or C8, chain length. Many of the chemicals in this SNUR include a range of carbon chain lengths, although most include C8 within the range. Accordingly, EPA uses the generic term PFAS to refer to any carbon chain length, including mixed ranges and higher and lower homologues as well as C8, and the term PFOS to represent only those chemical substances which are predominantly C8.

The significant new uses described in this document are:

1. Any manufacture or import for any use of any chemical listed in Table 1, Unit I.A., on or after January 1, 2003, except as noted in Unit II.A.2.

2. Manufacture or import of any chemical listed in Table 1, Unit I.A., solely for one or more of the following specific uses shall not be considered as a significant new use subject to reporting under this section:

i. Use as an anti-erosion additive in fire-resistant phosphate ester aviation hydraulic fluids.

ii. Use as a component of a photoresist substance, including a photo acid generator or surfactant, or as a component of an anti-reflective coating, used in a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices.

iii. Use in coatings for surface tension, static discharge, and adhesion control for analog and digital imaging films, papers, and printing plates, or as a surfactant in mixtures used to process imaging films.

iv. Use as an intermediate only to produce other chemical substances to be used solely for the uses listed in Unit II.A.2.i., ii., or iii.

The chemical substances subject to this SNUR are listed in Table 1, Unit I.A. Most of these PFAS chemical substances include the C8 chain length characteristic of PFOS and thus have the potential to degrade to PFOSH in the environment or to be converted to PFOSH via incomplete oxidation during the incineration of PFOS-containing materials. Once PFOSH has been released to the environment, it does not undergo further chemical (hydrolysis), microbial, or photolytic degradation. PFOS is highly persistent in the environment and has a strong tendency to bioaccumulate. Studies have found PFOS in very small quantities in the blood of the general human population as well as in wildlife, indicating that exposure to the chemicals is widespread, and recent tests have raised concerns about their potential

developmental, reproductive, and systemic toxicity (Refs. 1, 2, and 3). These facts, taken together, raise concerns for long term potential adverse effects in people and wildlife over time if PFOS should continue to be produced, released, and built up in the environment.

3M, the principal manufacturer of PFAS worldwide, voluntarily committed to discontinue the production of the specific PFOS-based PFAS chemicals covered by this rule by December 31, 2002 (Ref. 4). Based on the information EPA possessed when the original proposed SNUR was published, EPA concluded that this action by 3M would reduce manufacture and importation of these chemicals to zero, with a corresponding reduction in the type, form, and duration of exposure to these chemicals. EPA therefore concluded that any subsequent new manufacture or importation of these chemicals would constitute a significant new use.

Commenters on the original SNUR proposal provided information confirming that, contrary to the information available to the EPA when the original proposed SNUR was published, 3M was not the sole manufacturer of certain of the chemical substances on Table 1, Unit I.A.These commenters were importing a few of these substances in small quantities below mandatory reporting thresholds for their specific uses from non-3M sources outside the United States prior to the publication of the proposed SNUR. The identities, amounts, and suppliers of those specific chemicals were claimed as CBI, and thus cannot be specifically identified in this rule. To the extent that specific PFAS chemical substances on the proposed SNUR lists were being obtained from sources other than 3M for specific uses prior to the publication of the proposed SNUR, and thus would not be affected by 3M's unilateral decision to discontinue production, the manufacture of those specific chemicals for particular uses is considered to be ongoing and would not be subject to a significant new use determination. These specific uses are as a component of a photoresist substance, including a photo acid generator or surfactant, or as a component of an anti-reflective coating, used in a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices. Accordingly, this SNUR identifies the manufacture or importation of chemicals listed in Table 1, Unit I.A., for these specific uses as not being a significant new use.

Commenters on the original SNUR proposal who had obtained listed chemicals only from 3M sources prior to the publication of the proposed SNUR also identified non-3M sources for specific PFAS chemicals that were essential to their specific uses in the semiconductor, aviation hydraulics, and imaging industries. Based on the information presented by these commenters about the limited volume of their uses, the extent of controls on exposure and releases, and the absence of viable alternatives for these specific chemicals, some of which are claimed as CBI and thus cannot be specifically identified in this rule, this SNUR identifies the manufacture of chemicals in Table 1, Unit I.A., for these specific uses as not being significant new uses. Manufacture or importation of these chemicals for these uses is thus not subject to this SNUR. Because certain of the SNUR chemicals are intermediates required in the manufacture of the specific listed chemicals associated with these excluded uses, the use of PFAS chemicals listed in Table 1, Unit I.A., as intermediates solely to produce other chemicals for one or more of the specific excluded uses is also excluded from the definition of a significant new use.

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

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' The Agency makes this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). These factors include the volume of a chemical substance's production or importation; the extent to which a use changes the type, form, magnitude, or duration of exposure to the substance; and the reasonably anticipated manner of producing or otherwise managing the substance. Once EPA makes this determination and promulgates a SNUR, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that significant new use (15 U.S.C. 2604 (a)(1)(B)).

As noted in the proposed SNUR, EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing.

Accordingly, persons who may have begun commercial manufacture or import of the PFAS chemicals listed in Table 1, Unit I.A., for the significant new uses listed in this final SNUR after the initial proposal was published on October 18, 2000, must stop that activity before the effective date of this final rule. Persons who cease those activities will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who may have begun commercial manufacture or import of these chemical substances between the proposal and the effective date of the SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

### *C. Summary of and Response to Comments*

Eight parties submitted timely comments on the supplemental proposed SNUR. All of the comments generally supported the SNUR, although several of them requested clarification of specific points. Two parties submitted late comments addressing broader issues of EPA's SNUR authority.

Three of the comments, from Solutia, Inc., ExxonMobil Biomedical Sciences, Inc., and Boeing Company, supported the approach and language of the proposed SNUR with respect to the aviation hydraulics use.

The Semiconductor Industry Association and Semiconductor Equipment and Materials, Inc. (SIA/SEMI), submitted joint comments generally approving the proposed SNUR, but requested clarification on two issues, including the scope of the proposed exclusion of the semiconductor photomicrolithography use from the rule and the application of the section 12(b) export notification requirements of TSCA to the export of chemicals and products intended for the excluded use. SIA/SEMI noted that the photomicrolithography processes used in the semiconductor industry are used to produce not only semiconductors, but also electronic components of disk drives, electronics packaging, micromachines, and optoelectronic devices and circuits. SIA/SEMI indicated that they read the proposed exclusion to apply to such production activities, which were included in the industry mass balance materials they

supplied to the Agency, and asked EPA to confirm that understanding. EPA acknowledges that the language of the exclusion, which describes ''... a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices,'' is intended to apply to all of these activities for which the semiconductor industry, in its data submissions to the Agency, detailed the current need to use PFAS to achieve the technical requirement of fineness of lines requiring sharp definition in the submicron area. EPA agrees that the specific items listed by SIA/SEMI are ''components of electronic or other miniaturized devices.'' Broader photolithography uses are not intended to be covered by this exclusion, and manufacture or importation of listed PFAS chemicals for such uses is considered to be a significant new use subject to this rule.

With respect to TSCA section 12(b), SIA/SEMI stated that it assumes that a person who exports one of the chemicals covered by the SNUR for a use that is excluded from the SNUR would not need to meet export notification requirements for such exports. EPA does not concur with this interpretation. Section 12(b)(2) of TSCA provides that, ''If any person exports or intends to export to a foreign country a chemical substance or mixture for which ... a rule has been proposed or promulgated under section 5 ..., such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule ...'' Regulations implementing TSCA section 12(b) are at 40 CFR part 707, subpart D.

The TSCA section 12(b) export notification requirement for a chemical is not contingent on whether the intended use of the chemical has been regulated under the SNUR, and EPA does not interpret TSCA section 12(b) to include an exemption for uses that are not regulated. In promulgating the original TSCA section 12(b) regulations, EPA explained its position, ''that the export notification requirement for a chemical is not contingent on whether the intended use of the chemical has been regulated . . . Notice must be given to EPA even though the chemical is being exported for a use, or in a manner, that is not regulated domestically under the relevant TSCA section 5, 6, or 7 action, rule or order.'' (45 FR 82844, 82846, December 16, 1980.) Under TSCA section 12(b), the Agency is responsible for informing the importing country about actions taken with respect to a chemical that is the subject of a proposed or final SNUR. This notice includes information about any exempt uses within the United States. It is up to the foreign government to determine what action, if any, should be taken with respect to the substance in that country. The Agency also notes that, in many cases, the exporter will not know the use of the substance or mixture being exported. Requiring the exporter to make a use determination would be unnecessarily burdensome, and could be impossible in some cases. Accordingly, EPA believes its current interpretation of TSCA section 12(b) best furthers the intent of the statute.

Air Products Electronic Chemicals (APEC) requested that the Agency clarify specifically whether the semiconductor photomicrolithography exclusion would apply to developer products with a PFAS component. This exclusion applies only to ''components of photoresist substances'' and ''components of anti-reflective coatings.'' Developers are not components of either ''photoresist substances'' or ''anti-reflective coatings,'' and thus are not included within the scope of the exclusion. The manufacture or importation of PFAS for use in developers and polyimides is considered a significant new use under this rule.

The Eastman Kodak Company filed comments and supporting materials on behalf of the International Imaging Industry Association (I3A), requesting minor changes to the language of the proposed exclusion for certain imaging uses and providing substantial information on the industry's reductions in PFAS use and on the details of PFAS use, exposures, and releases by the industry. I3A also met twice with the Agency to present information and answer questions, and materials and correspondence from those meetings were included in the rulemaking record. The language changes requested by I3A help to clarify the intended application of the exclusion, and have been incorporated into the regulatory text of the rule.

The specific imaging uses excluded from the significant new use definition are uses in coatings for surface tension, static discharge, and adhesion control for analog and digital imaging films, papers, and printing plates, or as a surfactant in mixtures used to process imaging films. Coatings for surface tension control allow the rapid spreading of multiple thin layers of light-sensitive materials at high speed to prevent drying of materials as they are laid down. This prevents irregularities in the coating which would make the films, papers, or printing plates unuseable. Coatings to control static discharge help to repel dirt, reduce friction, and thus prevent the discharge of static electricity otherwise built up during the transport of imaging materials through manufacturing and image processing equipment. This prevents light-sensitive imaging materials from being fogged and rendered useless by light from a static discharge. Because tape is the primary way in which imaging materials are attached to spools and to each other during processing, adhesion control coatings help to ensure that the bond between the tape and the coating will be strong enough to withstand transport during use and processing, but will separate before it would damage either the imaging material or the equipment.

The exclusion for use of PFAS as a surfactant in mixtures used to process imaging films involves incorporation of a PFAS material into a mixture that is used as a photoprocessing solution where its surfactant properties function to prevent discoloration of films while the films are being processed through the solution. This exclusion applies only to processing films. Use as a surfactant in mixtures to process papers and printing plates would be a significant new use under the rule.

The I3A comments and supporting documents characterized the specific uses, exposures, and releases of PFAS materials in the imaging industry in such a way as to greatly improve the Agency's understanding. The submission also reflected a significant reduction in the use of the chemicals subject to the SNUR. Comments on the original SNUR proposal indicated that the annual worldwide usage volume of these chemicals was approximately 36,000 kilograms (kg) (79,200 pounds), of which the U.S. consumption was approximately 18,000 kg/year (yr). The recent I3A comments reported that the United States demand for these chemicals is expected to be down to 3,000 kg/yr by the end of 2002. Of this amount, I3A estimates that less than 50 kg/yr are used for paper products and less than 300 kg/yr are used for printing plates, with the remainder being used for various film products in the United States. Of the remaining 2,650 kg/yr that are used for film, I3A estimates that 30 kg/yr are used as a surfactant in processing solutions and 2,620 kg/yr are used in film coatings. I3A reported that the industry has pursued alternative chemicals aggressively, indicating that the PFAS usage volumes are expected to continue to decline over time. EPA commends the members of I3A for the significant steps made in reducing the use of the PFAS chemicals listed in the

SNUR, and for the effort expended in supplying the Agency with a substantial base of information on which to make its decision.

3M requested clarification of the SNUR scope and nomenclature to emphasize that the hazard assessment supporting the proposed rule addressed only PFOS, the C8 chain length, not the entire range of PFAS chemicals covering all carbon chain lengths. 3M also stated that all of the chemicals voluntarily discontinued by 3M and subject to the SNUR would be properly characterized as being predominantly C8, or PFOS, and expressed concern that using the PFAS term in connection with the regulation of these specific chemicals could be confusing because many PFAS chemicals exist that are not subject to this rule. In this final rule, EPA has continued to use the PFAS name for the entire category, but has attempted to make clear that most of the chemicals subject to this rule do include the C8 chain length specifically of concern, although individual chemicals on the list include a range of higher and lower homologues in addition to C8. EPA acknowledges that the hazard assessment supporting the original proposed rule addressed only C8, or PFOS, chemicals, and not the full range of homologues.

3M requested that EPA clarify its future regulatory intentions with respect to these related chemicals. As indicated in the supplemental proposed SNUR, EPA is evaluating and assessing other PFAS and PFAS-related chemicals not listed in this rule. It is true that other PFAS chemicals, including lower homologues, have distinct hazard profiles and may not present the same concerns expressed by EPA with respect to PFOS. However, EPA is reviewing data on those other homologues, and, if warranted, will take action as appropriate on other PFAS chemicals. Because of the unique properties of perfluorinated compounds, EPA is currently assessing a variety of these compounds to determine their hazard profiles, including not only PFAS chemicals but also perfluorooctanoic acid (PFOA) and its salts, as well as fluorinated telomers. That these chemicals are currently under assessment does not necessarily indicate that regulation will follow; it indicates only that EPA is seeking answers to questions that have been raised about these chemicals and their behavior.

3M also requested that EPA acknowledge the substantial amount of data on PFOS submitted by 3M since the drafting of the original hazard assessment, and acknowledge the effort underway by the Organization for Economic Cooperation and Development (OECD) to prepare an international hazard assessment on PFOS. EPA has been an active contributor to the OECD assessment effort, and toward that end, has been reviewing all of the data submitted by 3M and others with respect to PFOS. EPA commends 3M for the extensive research it has conducted and continues to pursue to improve the understanding of these unique chemicals. When the OECD assessment document is released, it will be included in both the docket for this rule, and in Administrative Record (AR) file AR–226. AR–226 is the non-regulatory public access file for information on all the related fluorinated chemicals being assessed by the EPA, including PFOS, PFAS, PFOA and its salts, and fluorinated telomer chemicals. Copies of the index to and all documents contained within AR–226 can be obtained through the docket facility identified in Unit I.B.1.

*Waste Not* questioned whether PFAS chemicals previously on the list of pesticide inerts would continue to be listed, whether one named chemical on the inerts list was included in the SNUR, and whether its understanding of the status of sulfluramid products was correct. *Waste Not* also asked whether EPA would identify crops on which these products were used. EPA confirms that none of the PFAS chemicals on the inerts list identified by *Waste Not*, including the named chemical without a CAS number provided, are currently formulated into pesticide products, and they will all be removed from the EPA List 3 Inerts list the next time that list is updated. EPA notes that, although these PFAS chemicals will remain on the List 3 Inerts list until that list is updated, the manufacture or import of chemicals listed in this rule for use as inert ingredients in pesticide products would be a significant new use subject to this rule. Although TSCA does not regulate chemicals manufactured for use solely as pesticide active ingredients, chemical intermediates and pesticide inert ingredients are subject to regulation under TSCA.

With respect to *Waste Not*'s comment concerning the current status of registered insecticide products containing sulfluramid, EPA concurs with the list of active and cancelled products provided by *Waste Not*. There are currently 16 products listed as active and 3 products cancelled. Three of the four products listed as transferred, EPA Registration Nos. 11540–21, 1812–330, and 1812–329, are the same as the three products listed as cancelled. The fourth product listed as transferred, EPA Registration No. 11540–20, is the same as the active product under EPA Registration No. 499–45. All pesticide products containing sulfluramid are under a specific timeline to be phased out by 2016. The pesticide products that are registered are for use in a variety of enclosed termite, ant, and roach bait stations. These products are pre-filled and sold only in child-resistant packaging. Products containing sulfluramid have not been registered for food or crop uses.

The American Chemistry Council (ACC) filed late comments supporting the effort by EPA and industry to address concerns pertaining to PFAS compounds on a cooperative basis, but also expressed the opinion that an increase in manufacture or importation for an existing use should not be considered a ''new use'' within the meaning of TSCA section 5(a)(2). ATOFINA Chemicals, Inc. filed late comments supporting the comments of ACC. As no volume cap or trigger on manufacturing or importation for an existing use has been incorporated into this rule, EPA will not address this issue in the context of this rule. In addition, EPA believes ACC's and ATOFINA's comments present a broader legal issue regarding EPA's authority under TSCA section 5, rather than specific issues related to PFAS. EPA does not believe it is necessary or appropriate to engage in a broader legal discussion in the context of this specific SNUR.

## III. References

These references have been placed in the official record that was established under docket ID number OPPT–2002–0043 for this rulemaking as indicated in Unit I.B.1. Reference documents identified with an AR number are cross-indexed to non-regulatory, publicly accessible information files maintained in the OPPT Docket. Other documents which the Agency considers relevant to this final rule have previously been identified in the **Federal Register** in the proposed and supplemental proposed SNURs discussed in Unit II.A. Copies of these documents can be obtained as described in Unit I.B.1.

1. (AR226–0620) Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. 3M. St. Paul, MN. March 1, 2000.

2. (AR226–0547) The Science of Organic Fluorochemistry. 3M. St. Paul, MN. February 5, 1999.

3. (AR226–0548) Perfluorooctane Sulfonate: Current Summary of Human Sera, Health and Toxicology Data. 3M. St. Paul, MN. January 21, 1999.

4. (AR226–0550) Fluorochemical Use, Distribution, and Release Overview. 3M. St. Paul, MN. May 26, 1999.

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not a ''significant regulatory action'' subject to review by OMB, because SNURs do not meet the criteria in section 3(f) of the Executive order.

According to the Paperwork Reduction Act (PRA), 44 USC 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost of between $5,957 and $7,192 per SNUN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required SNUN, and maintain the required records. This burden estimate does not include 1 hour of technical time at $64.30 per hour estimated to be required for customer notification of SNUR requirements, or the $2,500 user fee for submission of a SNUN ($100 for businesses with less than $40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities currently engage in such activity. Since a SNUR requires merely that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no economic impact will even occur until someone decides to engage in those activities. As a voluntary action, it is reasonable to presume that this decision would be based on a determination by the person submitting the SNUN that the potential benefits would outweigh the costs. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In fact, EPA expects to receive few, if any, SNUNs from either large or small entities in response to any SNUR. Therefore, EPA believes that the economic impact of complying with a SNUR is not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

Based on EPA's experience with past SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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).

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 276755, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 10175 do not apply to this rule either.

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

In addition, since this action does not involve any technical standards, 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), does not apply to this action.

This action does not involve special considerations of environmental justice related issues 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).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by

examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

## V. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: November 27, 2002.

**Charles M. Auer,**

*Director, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 721—[AMENDED]

1. The authority citation for part 721 continues to readas follows:

**Authority:** 15 U.S.C. 2604, 2607 and 2625(c).

2. By revising § 721.9582 to read as follows:

### § 721.9582 Certain perfluoroalkyl sulfonates.

(a) Chemical substances and significant new uses subject to reporting.

(1) The chemical substances listed in Table 1 and Table 2 of this section are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2001

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| 2250–98–8 | 1-Octanesulfonamide, N,N',N''-[phosphinylidynetris(oxy-2,1-ethanediyl)]tris[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 30381–98–7 | 1-Octanesulfonamide, N,N'-[phosphinicobis(oxy-2,1-ethanediyl)]bis[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt |
| 57589–85–2 | Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[(heptadecafluorooctyl)sulfonyl]oxy]phenyl]amino]carbonyl]-, monopotassium salt |
| 61660–12–6 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[3-(trimethoxysilyl)propyl]- |
| 67969–69–1 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[2-(phosphonooxy)ethyl]-, diammonium salt |
| 68608–14–0 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 1,1'-methylenebis[4-isocyanatobenzene] |
| 70776–36–2 | 2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 1,1-dichloroethene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, N-(hydroxymethyl)-2-propenamide, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate |
| 127133–66–8 | 2-Propenoic acid, 2-methyl-, polymers with Bu methacrylate, lauryl methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate |
| 148240–78–2 | Fatty acids, C18-unsatd., trimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters |
| 148684–79–1 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 1,6-diisocyanatohexane homopolymer and ethylene glycol |
| 178535–22–3 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), polymers with 1,1'-methylenebis[4-isocyanatobenzene] and polymethylenepolyphenylene isocyanate, 2-ethylhexyl esters, Me Et ketone oxime-blocked |
| P–94–2205 | Polymethylenepolyphenylene isocyanate and bis(4-NCO-phenyl)methane reaction products with 2-ethyl-1-hexanol, 2-butanone, oxime, N-ethyl-N-(2- hydroxyethyl)-1-C4-C8 perfluoroalkanesulfonamide |
| P–96–1645<br>306974–63–0 | Fatty acids, C18-unsatd., dimers, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl esters |

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| 307–35–7 | 1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 307–51–7 | 1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro- |
| 376–14–7 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |
| 383–07–3 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |
| 423–50–7 | 1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro- |
| 423–82–5 | 2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |
| 754–91–6 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 1652–63–7 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide |
| 1691–99–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)- |
| 1763–23–1 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 2795–39–3 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt |
| 2991–51–7 | Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt |
| 4151–50–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 14650–24–9 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester |
| 17202–41–4 | 1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt |
| 24448–09–7 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl- |
| 25268–77–3 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester |
| 29081–56–9 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt |
| 29117–08–6 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy- |
| 29457–72–5 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt |
| 31506–32–8 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl- |
| 38006–74–5 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride |
| 38850–58–7 | 1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-, inner salt |
| 55120–77–9 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt |
| 67584–42–3 | Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt |
| 67906–42–7 | 1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-, ammonium salt |
| 68156–01–4 | Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt |
| 68298–62–4 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane di-2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol |
| 68329–56–6 | 2-Propenoic acid, eicosyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate |
| 68541–80–0 | 2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate |
| 68555–90–8 | 2-Propenoic acid, butyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate |

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003—Continued

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| 68555–91–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino] ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate |
| 68555–92–0 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate |
| 68586–14–1 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[ (tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol |
| 68649–26–3 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc. |
| 68867–60–7 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68867–62–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68891–96–3 | Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di- |
| 68909–15–9 | 2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate |
| 68958–61–2 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy- |
| 70225–14–8 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1) |
| 71487–20–2 | 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid |
| 73772–32–4 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluorohexyl)sulfonyl]amino]-2-hydroxy-, monosodium salt |
| 81190–38–7 | 1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt |

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003—Continued

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| 91081–99–1 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with epichlorohydrin, adipates (esters) |
| 94133–90–1 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt |
| 98999–57–6 | Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl)oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminium chloride |
| 117806–54–9 | 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt |
| 129813–71–4 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl) |
| 148240–80–6 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl esters |
| 148240–82–8 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters |
| 182700–90–9 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides |
| L–92–0151 | 2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and 2-propenoic acid |
| P–80–0183<br>192662–29–6 | Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid |
| P–83–1102<br>306973–46–6 | Fatty acids, linseed-oil, dimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters |
| P–84–1163<br>306975–56–4 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatohexyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine |
| P–84–1171<br>306975–57–5 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine |
| P–86–0301<br>306973–47–7 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts |
| P–86–0958<br>306975–62–2 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride |
| P–89–0799<br>160901–25–7 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate |
| P–90–0111<br>306974–19–6 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl] |
| P–91–1419<br>306975–84–8 | Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamides-blocked |
| P–93–1444<br>306975–85–9 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride |
| P–94–0545<br>306976–25–0 | 1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate |
| P–94–0927<br>306976–55–6 | 2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfonamides-blocked |
| P–94–2206<br>306974–28–7 | Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propylgroup]-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate |

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003—Continued

| CAS No./PMN | CAS Ninth Collective Index Name |
|---|---|
| P–95–0120<br>306980–27–8 | Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediylbis[(2-oxo-3,5-oxazolidinediyl)methylene]]bis[N-methyl- |
| P–96–1262<br>306974–45–8 | Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether |
| P–96–1424<br>306977–10–6 | 2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomer with 2-[ethyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides |
| P–96–1433<br>178094–69–4 | 1-Octanesulfonamide, N-[3-(dimethyloxidoamino)propyl]-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-,potassium salt |
| P–97–0790<br>251099–16–8 | 1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1) |
| P–98–0251<br>306978–04–1 | 2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride |
| P–98–1272<br>306977–58–2 | 2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol] |
| P–99–0188<br>306978–65–4 | Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro-C4-8-alkane sulfonamides-and stearyl alc.-blocked |
| P–99–0319<br>306979–40–8 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs. |

(2) The significant new uses are:

(i) Any manufacture or import for any use of any chemical listed in Table 1 of paragraph (a)(1) of this section on or after January 1, 2001.

(ii) Any manufacture or import for any use of any chemical listed in Table 2 of paragraph (a)(1) of this section on or after January 1, 2003, except as noted in paragraph (a)(3) of this section.

(3) Manufacture or import of any chemical listed in Table 2 of paragraph (a)(1) of this section for the following specific uses shall not be considered as a significant new use subject to reporting under this section:

(i) Use as an anti-erosion additive in fire-resistant phosphate ester aviation hydraulic fluids.

(ii) Use as a component of a photoresist substance, including a photo acid generator or surfactant, or as a component of an anti-reflective coating, used in a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices.

(iii) Use in coatings for surface tension, static discharge, and adhesion control for analog and digital imaging films, papers, and printing plates, or as a surfactant in mixtures used to process imaging films.

(iv) Use as an intermediate only to produce other chemical substances to be used solely for the uses listed in paragraph (a)(3)(i), (ii), or (iii) of this section.

(b) [Reserved]

[FR Doc. 02–31011 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D. 112602A]**

### Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2003

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

**ACTION:** Notice of suspension of surf clam minimum size limit.

**SUMMARY:** NMFS suspends the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams for the 2003 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surf clams harvested are larger than the minimum size limit.

**DATES:** Effective January 1, 2003, through December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Management Specialist, 978–281–9141.

**SUPPLEMENTARY INFORMATION:** Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2002, meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit. Commercial surf clam shell length data for 2002 were analyzed to determine the percentage of surfclams landed that were smaller than the minimum size requirement. The analysis indicated that 14 percent of the samples taken overall were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the

Council's recommendation and suspends the minimum size limit for Atlantic surf clams from January 1, 2003, through December 31, 2003.

## Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 3, 2002.

**Bruce C. Morehead,**

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

[FR Doc. 02–31028 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 236
Monday, December 9, 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 TRANSPORTATION

### Office of the Secretary

### 14 CFR Part 255 and Part 399

**[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]**

**RIN 2105–AC65**

## Computer Reservations System (CRS) Regulations; Statements of General Policy

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice extending comment period.

**SUMMARY:** The Department has issued a notice of proposed rulemaking that proposes to readopt and amend its existing rules governing airline computer reservations systems (CRSs) and to clarify the requirements of its Statements of General Policy on travel agency disclosure of any agency service fees.

**DATES:** The Department is now extending the due date for comments and reply comments on this notice of proposed rulemaking to March 16, 2003, and May 15, 2003, from the original dates of January 14 and February 13, 2003.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket numbers OST–97–2881, OST–97–3014, OST–98–4775 and OST–99–5888) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. Comments must be filed in Dockets OST–97–2881, OST–97–3014, and OST–98–4775 and OST–99–5888, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible.

Due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

**SUPPLEMENTARY INFORMATION:** The Department has begun a rulemaking to reexamine whether it should maintain its existing rules governing CRS operations. Our rules have a sunset date, currently March 31, 2003, to ensure that we would reexamine the need for the rules and their effectiveness. 67 FR 14846 (March 28, 2002). We issued a notice of proposed rulemaking that set forth our tentative conclusions on whether the rules should be readopted, whether we should extend the rules to cover the sale of airline tickets through the Internet, and whether we should clarify our full-fare advertising policy insofar as it concerns the disclosure of travel agency service fees. 67 FR 69366 (November 15, 2002). Comments and reply comments were due sixty days and ninety days, respectively, after the notice's publication.

Nineteen of the parties have filed a petition to extend these comment periods and to extend the rules' existing sunset date. These petitioners, Amadeus, Galileo, Sabre, Interactive Travel Services Association, American Society of Travel Agents, National Business Travel Association, National Consumers League, Navigant International, Rosenbluth International, Tzell Travel, Maritz TQ3, Colwick Travel, Protravel International, Austin Travel, Corporate Travel Planners, Altour International, World Travel BTI, Compass Travel, and Sea Gate Travel Group, ask that we provide an additional sixty days for comments and an additional thirty days for reply comments. They also ask that we extend the rules' sunset date to September 30, 2003. They request us to grant their petition by December 3 so that they may better plan the preparation of their comments.

In support of their request for more time, the petitioners note that our notice of proposed rulemaking is very long and requests the parties to address a large number of issues. They contend that the comment periods provided by the notice of proposed rulemaking will not enable them to prepare meaningful comments on the issues. They point out that the initial comment period includes the Thanksgiving, Christmas, and New Year's Day holidays. And they allege that our proposals, if adopted, would require the systems, airlines, and many travel agencies to make significant changes in their operations.

We have determined that it would be reasonable to give commenters more time for preparing their responses to the advance notice. The issues are complex, and our notice of proposed rulemaking is lengthy. As the petitioners point out, the comment period includes three major holidays. Extending the comment period should help us, by enabling the parties to prepare comments that thoroughly analyze the issues raised by our notice of proposed rulemaking. We will therefore give commenters an additional sixty days for the comments and thirty days for reply comments. These extensions should give them adequate time for preparing responses to our notice and the comments filed by other parties without unduly delaying the completion of this rulemaking. These comment periods will be comparable to those established by us in our last major reexamination of the rules. 56 FR 12586 (March 26, 1991). As a result, we are making the comments due on March 16 instead of January 14, 2003, and the reply comments due on May 15 instead of February 13.

We recognize that Continental, Orbitz, and Northwest have filed oppositions to the request for an extension that argue that we should not delay our decision on new rules, since the current rules allegedly restrict competition. We appreciate the need to proceed without undue delay, but we think the public interest will be best served by ensuring that the commenters have an opportunity to thoroughly address and analyze the issues.

We are not now prepared to propose another extension of the rules' sunset date. We will consider that issue early next year and see no reason to act on that matter at this time.

Issued in Washington, DC on December 2, 2002.

**Kirk K. Van Tine,**

*General Counsel.*

[FR Doc. 02–30951 Filed 12–3–02; 4:39 pm]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 284

**[Docket No. RM96–1–024]**

## Standards for Business Practices of Interstate Natural Gas Pipelines

November 29, 2002.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is proposing to amend its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the standards, Version 1.6, promulgated July 31, 2002, by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) and the standards governing partial day recalls (recommendations R02002 and R02002–2), adopted October 31, 2002. These standards can be obtained from NAESB at 1100 Louisiana, Suite 3625, Houston, TX 77002, 713–356–0060, *http://www.naesb.org.*

**DATES:** Comments are due January 8, 2003.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8685.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8292.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–6507.

**SUPPLEMENTARY INFORMATION:**

*Notice of Proposed Rulemaking*

1. The Federal Energy Regulatory Commission (Commission) proposes to amend § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to adopt the most recent version, Version 1.6, of the consensus standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (WGQ), and the WGQ standards governing partial day recalls. The proposed rule is intended to benefit the public by adopting the most recent and up-to-date standards governing electronic communication and by adopting standards that will facilitate partial day recalls.

### Background

2. Since 1996, in the Order No. 587 series,[1] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by the WGQ (formerly the Gas Industry Standards Board or GISB), a private consensus standards developer composed of members from all segments of the natural gas industry. The WGQ is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On October 7, 2002, the WGQ filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.6. The WGQ reports that while Version 1.5 contained many of the standards designed to support Order No. 637,[2] Version 1.6 includes additional standards that support Order No. 637. It states: ''development of standards to support FERC Order No. 637 was given the highest priority by all NAESB subcommittees and task forces.'' The WGQ further reports that the surety assessment performed by the Sandia National Laboratories on the GISB EDM (Electronic Delivery Mechanisms) standards was accepted by GISB and forwarded to the EDM Subcommittee for review and development of standards in October 2000. It states that some of the Sandia recommendations were implemented in Version 1.5, and the remainder were implemented in Version 1.6. Finally, the WGQ reports that work continues on requests for both new and revised business practices, information requirements, code value assignments, technical implementation and mapping or interpretations.

4. In Order No. 587–N,[3] the Commission adopted a regulation requiring that pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the nomination opportunities provided by the pipelines. The Commission established a two-phased implementation for this regulation. In the first phase, the Commission established an interim schedule under which releasing shippers could recall capacity, as long as the recall did not involve a partial or flowing day recall (a recall of scheduled gas after the time at which it began to flow). Pipelines implemented the first phase as of July 1, 2002. In the second phase, the Commission provided the WGQ with six months to develop standards dealing with the operational details of permitting partial or flowing day recalls, in particular the method by which capacity would be allocated between releasing and replacement shippers. The Commission established October 1, 2002, as the date by which the WGQ and other industry members should submit a report and further provided for

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,114 (Dec. 11, 2000); Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002), Order No. 587–O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,129 (May 1, 2002).

[2] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,091 (Feb. 9, 2000).

[3] Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002).

reply comments to be filed by October 15, 2002.

5. On October 1, 2002, the WGQ filed a report stating that its Executive Committee had adopted standards governing partial or flowing day recalls in Recommendations R02002 and R02002–2. The WGQ membership ratified these standards on October 31, 2002.

6. Process Gas Consumers Group and Georgia Industrial Group (PGC) filed a comment on October 15, 2002. PGC supports the partial day recall standards as approved by the WGQ, but requests clarification as to whether the WGQ should be considering additional standards dealing with the allocation of penalties as a result of partial day recalls. PGC maintains that penalty issues are matters of Commission policy that should only be developed by the Commission.

**Discussion**

7. The Commission is proposing to adopt Version 1.6 of GISB's consensus standards and the standards adopted for partial day recalls.[4] Pipelines would be required to implement the standards three months after a final rule is issued.

8. Adoption of Version 1.6[5] of the WGQ standards will help continue the process of implementing Order No. 637 and will update and improve the current standards.[6] Adoption of the partial day recall standards[7] will provide shippers with enhanced flexibility to recall capacity, while ensuring that replacement shippers receive notice sufficient for them to reschedule their capacity. The partial day recall standards also address the method for determining how capacity will be allocated among releasing and replacement shippers when capacity is recalled during the gas day. Among the most notable of these standards are: A revision to the capacity release timeline to permit prearranged non-biddable releases on non-business days (Standard 5.3.2); a revision to the Commission's interim timeline for recall transactions to permit recalls at any of the four nomination opportunities, while still providing sufficient notice to replacement shippers to enable them to reschedule their capacity (Standard 5.3.z1); the adoption of procedures governing notice to replacement shippers (Standards 5.3.z2 through 5.3.z5); and the use of elapsed prorata capacity as the allocation method for flowing day recalls, unless a different method is necessary to reflect the nature of the pipeline's tariff, services, or operational characteristics (Standard 5.3.z13).[8]

9. The WGQ approved the standards under its consensus procedures.[9] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like the WGQ, as means to carry out policy objectives or activities.[10]

10. PGC seeks clarification as to the role of the WGQ with respect to the development of future standards (not included in this NOPR) dealing with the allocation of penalties between releasing and replacement shippers as a result of partial day recalls. PGC is particularly concerned about two proposed standards regarding the allocation of reservation charges and capacity release credit quantities and the determination of overrun charges.[11] PGC is concerned that such standards may undermine Commission policies regarding penalties adopted in Order No. 637, and it maintains that such issues should be deemed beyond the scope of the WGQ, and should be reserved for Commission determination.

11. PGC's comment raises two issues: The specific question of how reservation charges and credits and overrun penalties should be allocated when capacity is recalled during the gas day; and the generic question of what the WGQ's role should be in developing standards related to penalties.

12. As to the first issue, the Commission proposes that the determination of reservation charges and credits and potential liability for contract overruns should follow the allocation of capacity.[12] This seems the fairest method of allocating contractual responsibility, especially since the standards are designed to provide replacement shippers with sufficient notice to reschedule recalled capacity in order to come within contractual limits.[13] The Commission sees no reason in this instance for pipelines to propose individual allocation mechanisms.

13. As to the second issue, the Commission disagrees with PGC that the WGQ should refrain from examining methods of standardizing penalties. As the Commission found in Order No. 637, having penalty provisions that vary from pipeline to pipeline can create adverse effects by providing incentives for shippers to engage in penalty arbitrage and by creating additional administrative costs and uncertainty.[14]

[4] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.6 and the partial day recall standards are available from NAESB. 5 U.S.C. 552(a)(1); 1 CFR part 51 (2001).

[5] In Version 1.6, the WGQ made the following changes to its standards. It revised Standards 1.3.63, 4.3.4, 4.3.6, 4.3.8, 4.3.10, 4.3.15, 4.3.21, 4.3.23, 4.3.61, 4.3.70 and 4.3.83, and Data Sets 1.4.6, 5.4.1 through 5.4.4, 5.4.7, 5.4.8, 5.4.9, 5.4.13, 5.4.14, 5.4.15, 5.4.18, and 5.4.19. It added Principle 4.1.39, Standard 4.3.88, and Data Sets 5.4.20, 5.4.21, and 5.4.22. It deleted Principles 4.1.1 and 4.1.11.

[6] The Commission is proposing to incorporate by reference Standards 2.3.29 and 2.3.30 (dealing with operational balancing agreements and imbalance netting and trading, respectively) which in previous versions, the Commission had not incorporated because the standards conflicted with the Commission's regulations in these areas. 18 CFR 284.12(b)(2)(i)&(ii). The WGQ has amended these standards so they no longer conflict with the Commission regulations.

[7] In the partial day recall standards, the WGQ made the following changes to its standards. It revised Standards 5.3.2, 5.3.7, 5.3.41, and 5.3.42, and Data Sets 1.4.4, 5.4.1, 5.4.3, 5.4.4, 5.4.7, and 5.4.9. It added Principles 5.1.z1, 5.1.z2, and 5.1.z3, Definition 5.2.z1, and Standards 5.3.z1 through 5.3.z15. It deleted Standard 5.3.6.

[8] Elapsed prorata capacity means the portion of the capacity that would have theoretically been available for use prior to the effective time of the intraday recall based on a cumulative uniform hourly use of the capacity. Definition 5.2.z1.

[9] This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of the WGQ's general membership must ratify the standards.

[10] Pub L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[11] According to PGC's filing, the two standards are the following: 3.3.zl Proposed Standard: For recalls at the intraday 1 and intraday 2 cycles, the reservation charge and capacity release credit quantities should be based upon the allocation of capacity between the Releasing and Replacement Shipper(s); and 3.3.z2 Proposed Standard: For recalls at the intraday 1 and intraday 2 cycles, overrun charges, if applicable, should be based upon the allocation of capacity between the Releasing and Replacement Shipper(s).

[12] For example, under a 2000 Dth/day release, with a recall amounting to 500 Dth/day, the replacement shipper would be responsible for paying reservation charges for 1500 Dth/day (to be credited to the releasing shipper) and would be potentially liable for contract overruns if it transported more than 1500 Dth over the day.

[13] It is also consistent with Standard 5.3.z14 which provides that the pipeline ''should not be obligated to deliver in excess of the total daily contract quantity of the release.''

[14] *See* Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR

Continued

development of standards that reduce such adverse effects could help reduce barriers to multi-pipeline shipments and improve the overall efficiency of the pipeline grid, thus redounding to the benefit of the entire industry. Thus, the Commission finds no reason to deem the standardization of penalties beyond the scope of the WGQ's standardization activities. The Commission is not asking the WGQ specifically to develop standards for penalties, but it encourages the WGQ to examine seriously any such proposals that hold out the prospect of improving the efficiency of the pipeline grid.

14. Should the WGQ adopt penalty standards, the Commission's role in reviewing such standards will not be eliminated, as PGC appears to fear. Just as in this rulemaking, the Commission would seek comment on, and review any proposed penalty standards developed by the WGQ before adopting such standards. PGC and other shippers, therefore, will have ample opportunity in those proceedings to raise any concerns about such standards with the Commission.

**Notice of Use of Voluntary Consensus Standards**

15. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the WGQ.

**Information Collection Statement**

16. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate includes the costs to implement the WGQ's Version 1.6 standards which incorporate the most recent and up-to-date standards governing electronic communication, including additional standards that support Order No. 637, that implement the surety assessment performed by the Sandia National Laboratories, and that implement the WGQ's standards governing partial day recalls. The burden estimate does not include the costs of modifying, preparing and submitting tariff changes to reflect compliance with these standards since costs for tariff filings for phase two implementation of partial day recalls were previously included in the burden estimate in Order No. 587–N. The burden estimate is primarily related to start-up to implement the latest version of the standards and will not result in on-going costs.

| Data collection | Number of respondents | Number of responses per respondent | Hours per response | Total number of hours |
|---|---|---|---|---|
| FERC–549C | 93 | 1 | 2,248 | 209,064 |

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 209,064.

17. Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:

| | FERC–549C |
|---|---|
| Annualized Capital/Startup Costs | $11,763,971 |
| Annualized Costs (Operations & Maintenance) | 0 |
| Total Annualized Costs | 11,763,971 |

18. OMB regulations [15] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

*Title:* FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

*Action:* Proposed collection.

*OMB Control No.:* 1902–0174.

*Respondents:* Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business)).

*Frequency of Responses:* One-time implementation (business procedures, capital/start-up).

*Necessity of Information:* This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to the latest edition approved by the WGQ (Version 1.6) as well as the standards governing partial day recalls approved by the WGQ. These standards include additional standards that support Order No. 637 and standards implementing the surety assessment performed by the Sandia National Laboratories. The implementation of these standards is necessary to increase the efficiency of the pipeline grid and is consistent with the mandate that agencies provide for electronic disclosure of information.[16]

19. The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

20. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information

10156, at 10197–10198 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶31,091, at 31,307–310 (Feb. 9, 2000); Notice of Proposed Rulemaking, 63 FR 42982, 43005 (Aug. 11, 1998), FERC Statutes and Regulations, Proposed Regulations 1988–1998 ¶32,533, at 33,468 (Jul. 29, 1998) (recognizing a need for standardization of penalty provisions and requesting comment on whether GISB should develop such standards).

[15] 5 CFR 1320.11.

[16] 44 U.S.C. 3504 note, Pub. L. 105–277, 1701, 112 Stat. 2681–749 (1998).

ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

21. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 502–8415, fax: (202) 208–2425, email: *michael.miller@ferc.gov*)

22. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285).

**Environmental Analysis**

23. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[17] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[18] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[19] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

**Regulatory Flexibility Act Certification**

24. The Regulatory Flexibility Act of 1980 (RFA)[20] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

**Comment Procedures**

25. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 8, 2003. Comments must refer to Docket No. RM96–1–024, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

26. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov,* under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by E-Mail to *efiling@ferc.gov.* Comments should not be submitted to the E-Mail address.

27. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

28. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the FERRIS link.

**Document Availability**

29. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

30. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

31. User assistance is available for FERRIS and the FERC's website during normal business hours. Please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

**List of Subjects in 18 CFR Part 284**

32. Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, *Code of Federal Regulations,* as follows:

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended by revising paragraphs (a)(1)(i), (ii), (iii), (iv) and (v), to read as follows:

**§ 284.12 Standards for pipeline business operations and communications.**

(a) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.6, July 31, 2002) and the

[17] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[18] 18 CFR 380.4.

[19] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[20] 5 U.S.C. 601–612.

standards contained in Recommendation R02002 (October 31, 2002);

(ii) Flowing Gas Related Standards (Version 1.6, July 31, 2002);

(iii) Invoicing Related Standards (Version 1.6, July 31, 2002);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.6, July 31, 2002) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.6, July 31, 2002), with the exception of Standards 5.3.6 and 5.3.7, and the standards contained in Recommendations R02002 and R02002–2 (October 31, 2002).

* * * * *

[FR Doc. 02–30996 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA144–0375b; FRL–7411–1]**

### Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution District, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution District (MBUAPCD) and the Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern general requirements for continuous emissions monitoring systems and the use of credible evidence to demonstrate compliance with emission limits. We are proposing to approve these local rules under the under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by January 8, 2003.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24850 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Andy Steckel, EPA Region IX, (415) 947.4115.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: MBUAPCD 213, MBUAPCD 421, and VCAPCD 103. In the rules and regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 30, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02–30940 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IN146–1b; FRL–7411–8]**

### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve as a revision to the Indiana particulate matter (PM) State Implementation Plan (SIP) emission control regulations that pertain to Knauf Fiber Glass (Knauf) which is located in Shelbyville, Indiana, as requested by the State of Indiana on October 17, 2002. This SIP submission contains changes to federally enforceable Indiana air pollution control rules. The rule revisions modify the PM emissions limits adopted by the State in the 1980s which are part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names equipment which remains in use. Because the revised rules reduce both allowable emissions and the allowable emissions rate, and reflect current operations at the Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Comments on this action must be received by January 8, 2003.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State's request is available for inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** Randolph Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

I. What action is EPA taking today?

## I. What Action Is EPA Taking Today?

The EPA is proposing to approve as a revision to the Indiana particulate matter SIP emission control regulations that pertain to Knauf Fiber Glass (Knauf) which is located in Shelbyville, Indiana, as requested by the State of Indiana on October 17, 2002. This SIP submission makes changes to federally enforceable Indiana air pollution control rules. Indiana made these changes at the request of Knauf, and they apply to the operation of the Knauf fiberglass plant in Shelbyville, Indiana. The rule revisions modify the PM emissions limits adopted by the State in the 1980s which EPA approved as part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names of equipment which remains in use. Because the revised rules reduce both allowable emissions and the allowable emissions rate and reflect current operations at the Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

## II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

**Authority:** 42 U.S.C. 4201 *et seq.*

Dated: November 7, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02–30938 Filed 12–6–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[FRL–7419–6]**

**RIN 2060—AK52**

## National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; amendments.

**SUMMARY:** In this action, we are proposing specific amendments to the General Provisions for national emission standards for hazardous air pollutants (NESHAP), and to the rule establishing requirements for case-by-case determinations under Clean Air Act (CAA) section 112(j). We are proposing to establish a new timetable for the submission of section 112(j) Part 2 applications which is derived from our agreed timetable for promulgation of the remaining NESHAP. This new timetable for Part 2 applications is intended both to avoid the expenditure of unnecessary resources by affected sources and permitting authorities, and to create new incentives for prompt completion of the remaining standards. We are also proposing to make several changes in the section of the General Provisions rule that establishes general procedures for preparation, maintenance, and periodic revision of startup, shutdown, and malfunction (SSM) plans. These amendments are being proposed pursuant to a settlement agreement concerning a petition for judicial review of the prior amendments to these rules published on April 5, 2002. We are also proposing to revise a recordkeeping provision which we adopted in response to comments we received on the prior amendments because we have concluded that the recordkeeping provision should be more narrow in applicability.

**DATES:** *Comments.* Submit comments on or before January 20, 2003.

*Public Hearing.* If anyone contacts us requesting to speak at a public hearing by December 16, 2002, a public hearing will be held on December 19, 2002.

**ADDRESSES:** *Comments.* Written comments may be submitted to: Air and Radiation Docket and Information Center, Attention Docket Number OAR–2002–0038, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II, Mailcode 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

*Public Hearing.* If a public hearing is held, it will be held at 10 a.m. on December 19, 2002 in our EPA facility complex, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina, or at an alternate site nearby.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Colyer, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5262, e-mail *colyer.rick@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Categories and entities potentially regulated by this action include all section 112 source categories listed under section 112(c) of the CAA.

**Industry Group: Source Category**

*Fuel Combustion:*
- Coal- and Oil-fired Electric Utility Steam Generating Units
- Combustion Turbines
- Engine Test Facilities
- Industrial Boilers
- Institutional/Commercial Boilers
- Process Heaters
- Reciprocating Internal Combustion Engines
- Rocket Testing Facilities

*Non-Ferrous Metals Processing:*
- Primary Aluminum Production
- Primary Copper Smelting
- Primary Lead Smelting
- Primary Magnesium Refining
- Secondary Aluminum Production
- Secondary Lead Smelting

*Ferrous Metals Processing:*
- Coke Ovens: Charging, Top Side, and Door Leaks
- Coke Ovens: Pushing, Quenching, Battery Stacks
- Ferroalloys Production: Silicomanganese and Ferromanganese
- Integrated Iron and Steel Manufacturing
- Iron Foundries
- Steel Foundries
- Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

*Mineral Products Processing:*
- Asphalt Processing
- Asphalt Roofing Manufacturing
- Asphalt/Coal Tar Application—Metal Pipes
- Brick and Clay Products Manufacturing
- Ceramics Manufacturing
- Lime Manufacturing
- Mineral Wool Production
- Portland Cement Manufacturing
- Refractories Manufacturing
- Taconite Iron Ore Processing
- Wool Fiberglass Manufacturing

*Petroleum and Natural Gas Production and Refining:*
- Oil and Natural Gas Production
- Natural Gas Transmission and Storage
- Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Plant Units
- Petroleum Refineries—Other Sources Not Distinctly Listed

*Liquids Distribution:*
- Gasoline Distribution (Stage 1)
- Marine Vessel Loading Operations
- Organic Liquids Distribution (Non-

Gasoline)
*Surface Coating Processes:*
Aerospace Industries
Auto and Light Duty Truck (Surface Coating)
Large Appliance (Surface Coating)
Magnetic Tapes (Surface Coating)
Manufacture of Paints, Coatings, and Adhesives
Metal Can (Surface Coating)
Metal Coil (Surface Coating)
Metal Furniture (Surface Coating)
Miscellaneous Metal Parts and Products (Surface Coating)
Paper and Other Webs (Surface Coating)
Plastic Parts and Products (Surface Coating)
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing (Surface Coating)
Shipbuilding and Ship Repair (Surface Coating)
Wood Building Products (Surface Coating)
Wood Furniture (Surface Coating)
*Waste Treatment and Disposal:*
Hazardous Waste Incineration
Municipal Solid Waste Landfills
Off-Site Waste and Recovery Operations
Publicly Owned Treatment Works (POTW)
Site Remediation
*Agricultural Chemicals Production:*
Pesticide Active Ingredient Production
*Fibers Production Processes:*
Acrylic Fibers/Modacrylic Fibers Production
Spandex Production
*Food and Agriculture Processes:*
Manufacturing of Nutritional Yeast
Solvent Extraction for Vegetable Oil Production
*Pharmaceutical Production Processes:*
Pharmaceuticals Production
*Polymers and Resins Production:*
Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production
*Production of Inorganic Chemicals:*
Ammonium Sulfate Production—Caprolactam By-Product Plants
Carbon Black Production
Chlorine Production
Cyanide Chemicals Manufacturing
Fumed Silica Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
*Production of Organic Chemicals:*
Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical Manufacturing
*Miscellaneous Processes:*
Benzyltrimethylammonium Chloride Production
Carbonyl Sulfide Production
Chelating Agents Production
Chlorinated Paraffins Production
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Ethylidene Norbornene Production
Explosives Production
Flexible Polyurethane Foam Fabrication Operations
Friction Materials Manufacturing
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Dry Cleaning (Perchloroethylene)—Dry-to-dry Machines
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Process Cooling Towers
Leather Finishing Operations
Miscellaneous Vicose Processes
OBPA/1,3-Diisocyanate Production
Paint Stripping Operations
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood and Composite Wood Products
Pulp and Paper Production
Rubber Chemicals Manufacturing
Rubber Tire Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production
Wet-formed Fiberglass Mat Production
*Categories of Area Sources:*
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hazardous Waste Incinerators
Portland Cement Production
Secondary Aluminum Production
Secondary Lead Smelting

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine your source category specific section 112 regulation. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Docket**

EPA has established an official public docket for this action under Docket ID No. OAR–2002–0038. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Part 63 General Provisions (Subpart A)

and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II Docket is (202) 566–1742). A reasonable fee may be charged for copying docket materials.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2002–0038. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. OAR–2002–0038. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

Send your comments to: Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0038.

Deliver your comments to: Public Reading Room, Room B102, EPA West, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. OAR–2002–0038. Such deliveries are only accepted during the Docket's normal hours of operation.

Fax your comments to 202–566–1741, Attention Docket ID. No. OAR–2002–0038.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Attention: Mr. Rick Colyer, c/o OAQPS Document Control Officer, Mailcode C404–02, U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–

0038. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 comments that includes any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT section.

**Public Hearing**

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, U.S. EPA, Mailcode C539–03, Research Triangle Park, NC 27711, telephone (919) 541–7946, no later than December 17, 2002. Persons interested in attending the public hearing must also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

**Worldwide Web (WWW)**

In addition to being available in the docket, an electronic copy of today's proposed rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

**Applicable Law**

This rulemaking is being undertaken pursuant to the procedures established by CAA section 307(d). The special procedures for rulemakings governed by section 307(d) were utilized when EPA originally promulgated, and when EPA subsequently amended, each of the rules to which this proposal applies. The Administrator has specifically determined that it is appropriate to utilize the procedures in section 307(d) for this rulemaking.

**Outline**

The information presented in this preamble is organized as follows:



## I. Background

### *A. General Provisions*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of Hazardous Air Pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit equal to or greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit equal to or greater than 10 tons/yr of any one HAP and 25 tons/yr of any combination of HAP.

The General Provisions in 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112 of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing national air toxics standards. The General Provisions become applicable to a CAA section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our practical experience in developing and implementing maximum achievable control technology (MACT) standards under the General Provisions (66 FR 16318, March 23, 2001). We then promulgated final amendments to the General Provisions pursuant to that proposal (67 FR 16582, April 5, 2002).

### *B. CAA Section 112(j) Provisions*

The 1990 Amendments to section 112 of the CAA include a new section 112(j), which is entitled ''Equivalent Emission Limitation by Permit.'' Section 112(j)(2) provides that the provisions of section 112(j) apply if the EPA misses a deadline for promulgation of a standard under section 112(d) established in the source category schedule for standards. After the effective date of a title V permit program in a State, section 112(j)(3) requires the owner or operator of a major source in a source category, for which the EPA failed to promulgate a section 112(d) standard, to submit a permit application 18 months after the missed promulgation deadline.

We first promulgated a rule to implement section 112(j) on May 20, 1994 (59 FR 26429). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our own further evaluation of the existing procedures (66 FR 16318, March 23, 2001). We then promulgated

final amendments to the section 112(j) rule, along with our final amendments to the General Provisions (67 FR 16582, April 5, 2002).

*C. The Sierra Club Litigation*

We promulgated the final rule amending the MACT General Provisions and the requirements for case-by-case determinations under Clean Air Act section 112(j) on April 5, 2002 (67 FR 16582). The Sierra Club filed a petition seeking judicial review of that final rule on April 25, 2002, *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit). Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule, pursuant to CAA section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with Sierra Club concerning a settlement agreement. We reached initial agreement with Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002. Under the proposed settlement, we agreed to propose a rule to make specified amendments to the General Provisions and section 112(j) rules no later than 2 months after signature and to take final action on the proposed amendments within 7 months after signature.

*D. Review of Proposed Settlement Under CAA Section 113(g)*

As required by section 113(g) of the CAA, EPA published a notice in the **Federal Register** affording interested persons an opportunity to comment on the terms of the proposed settlement in *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit) (67 FR 54804, August 26, 2002). In response to that notice, we received 110 timely comments, the vast majority of which opposed one or more provisions of the proposed settlement.

While we do not believe we are legally required to discuss or summarize our review of the comments on the proposed settlement we received as part of the process required by section 113(g), we think it is appropriate in this instance to describe our assessment of and response to certain of these comments.

Virtually all of the commenters expressed concern about the practical consequences of the proposal to reduce the time between the section 112(j) Part 1 and Part 2 applications from 24 months to 12 months. We agree with the commenters that this approach would have resulted in wasteful expenditures by the applicants and the permitting agencies to prepare and to process permit applications which in all likelihood would never have been acted upon. Given the strong opposition to this approach reflected in the comments both by industry sources and organizations and by State and local permitting authorities, we were pleased when Sierra Club agreed to discuss modifying the proposed settlement to establish an alternative timetable for submission of Part 2 section 112(j) applications.

Organizations representing the State and local permitting authorities played a very helpful role in the discussions concerning a revised settlement. These organizations noted that EPA had already reached an agreement with Sierra Club on a schedule for promulgation of all remaining MACT standards that were included on the original schedule established pursuant to CAA section 112(e)(1) and (3). We anticipate that this agreed upon schedule for promulgation of the remaining MACT standards will be incorporated in a forthcoming consent decree in *Sierra Club* v. *Whitman,* 01–1337 (D.D.C.). The State and local governmental organizations suggested that a timetable which would require submission of section 112(j) Part 2 applications only if the agreed upon schedule is not met would both eliminate the expenditure of significant resources on an ultimately futile process and create new incentives for EPA and the other stakeholders to cooperate in meeting the promulgation schedule.

After Sierra Club agreed to consider the alternative approach suggested by the State and local governmental organizations, EPA and Sierra Club then negotiated a revised settlement based on that approach. Under the timetable we are proposing pursuant to the revised settlement, section 112(j) Part 2 applications for affected sources in those categories for which MACT standards are scheduled to be promulgated while this rulemaking is pending will be due on May 15, 2003, and section 112(j) Part 2 applications for affected sources in categories for which the MACT standards are scheduled to be promulgated thereafter will be due 60 days after the corresponding scheduled promulgation dates.

In the revised settlement, we have also agreed to propose the same amendments to the General Provisions concerning startup, shutdown, and malfunction (SSM) plans which were set forth in the original settlement. Although we received numerous comments opposing these amendments as well, we believe that many of these comments materially misconstrued both the intent and the effect of these proposed amendments. In any case, we note that there will be a full opportunity for those who have concerns regarding either the need for or the effect of these amendments to comment during this rulemaking. We also believe these comments are likely to be more constructive and appropriately focused when the commenters have had an opportunity to review our explanation of the basis for these proposed amendments set forth below.

The EPA and Sierra Club executed a final settlement agreement in *Sierra Club* v. *U.S. Environmental Protection Agency,* No. 02–1135 (DC Circuit), and filed it with the Court on November 26, 2002. This rulemaking is being conducted in accordance with the provisions of that final agreement.

## II. Proposed Amendments to the General Provisions

In today's action, we are proposing to make several changes in the section of the General Provisions rule that establishes general procedures for preparation, maintenance, and periodic revision of SSM plans. We consider these proposed revisions to be modest in character, and we believe they are generally consistent with the policies articulated in the preamble when we proposed the last set of amendments concerning SSM plans. We are also proposing to revise a new recordkeeping provision which we adopted in the prior rulemaking in response to a comment we received, because we have concluded that the new recordkeeping provision is too broad in its effect.

We are proposing some minor changes in the language in 40 CFR 63.6(e)(1)(i) to correct a potential problem in interpreting the relationship between the general duty to minimize emissions established by that section and a facility's compliance with its SSM plan. That section was modified in the last rulemaking because it appeared at that time to impose on a source a general duty to further reduce emissions, even when the source is already in full compliance with the applicable MACT standards. We deemed this result to be unreasonable and made corresponding changes in the language of the rule. We emphasize that nothing in today's proposal is intended to alter our determination that the general duty to minimize emissions is satisfied when emission levels required by the MACT standard have been achieved.

However, as part of these changes, we adopted some language which could be construed as contrary to the policies regarding the relationship between the general duty to minimize emissions and

SSM plans which we stated in the preamble of the proposal of the original amendments. We note at the outset that SSM plans must be drafted in a manner which satisfies the general duty to minimize emissions (40 CFR 63.6(e)(3)(i)(A)). Thus, compliance with a properly drafted SSM plan during a period of startup, shutdown, or malfunction will necessarily also constitute compliance with the duty to minimize emissions, even though compliance with the MACT standards themselves during a period of startup, shutdown, or malfunction may not be practicable. However, in the proposal preamble to the original amendments, we stated explicitly that ''compliance with an inadequate or improperly developed SSM plan is no defense for failing to minimize emissions'' (66 FR 16327, March 23, 2001). We note that this understanding of the effect of the amendments was explicitly restated in comments by the organizations that represent the agencies that generally enforce these requirements, the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). See Docket A–2001–02.

Sierra Club subsequently pointed out to us that the actual language of the section as promulgated could be construed to indicate that a facility that complies with its SSM plan—regardless of whether the plan is inadequate or improperly developed—thereby satisfies its general duty to minimize emissions. We did not intend this result. We believe such a construction could encourage potential abuse, particularly because SSM plans do not have to be reviewed or approved by the permitting authority before they take effect, and because such plans may also be revised by the facility without prior notice to the permitting authority. The revisions to 40 CFR 63.6(e)(1)(i) which we are proposing today are intended to assure that this section is not construed in this manner. Nothing in these revisions is intended either to change the general principle that compliance with a MACT standard is not mandatory during periods of startup, shutdown, or malfunction, or to require a source to further minimize emissions during periods of startup, shutdown, or malfunction once it has achieved levels which would constitute compliance with the MACT standard at other times.

We are also proposing some changes to 40 CFR 63.6(e)(3)(v), the section that governs submission of SSM plans to the EPA Administrator, and to the State or local permitting authorities which operate as the Administator's authorized representatives. The present rule provides that the current SSM plan must be made available upon request to the Administrator for ''inspection and copying.'' The ''Administrator'' is defined to include a State which has received delegation and is therefore the Administrator's ''authorized representative'' (40 CFR 63.2).

We stated in the preamble of the proposal for the previous amendments that the permit writer or the Administrator may also require submission of the SSM plan (66 FR 16326, March 23, 2001). This is sensible because the SSM plan is an integral part of the permit file, regardless of whether the plan is physically available at the EPA Regional Office or the permitting authority that has received delegation or is maintained only at the affected source. However, we note that the present rule does not expressly require that SSM plans be submitted to the Administrator or to the permitting authority upon request. This potential omission was also noted in previous comments by STAPPA/ALAPCO. See Docket A–2001–02.

SSM plans are developed in connection with individual MACT standards promulgated under CAA section 112 and are therefore covered by CAA section 114(a). Under CAA section 114(c) and 40 CFR 70.4(b)(3)(viii), information in SSM plans must be made available to the public, unless the submitter makes a satisfactory showing that disclosure would divulge methods or processes that are entitled to protection under the Trade Secrets Act, 18 U.S.C. 1905. SSM plans are considered to be submitted to the Administrator under CAA Section 114 even if they are submitted to a State or local agency acting on the Administrator's behalf (40 CFR 2.301(b)(2)).

Sierra Club has expressed concern about the adequacy of the provisions in the present rule to assure the degree of public access to SSM plans required by law. In particular, Sierra Club is concerned that some permitting authorities might not construe the rule to require that an SSM plan be obtained from the affected source when it is requested by a member of the public, and that the rule does not expressly require submission of an SSM plan when the permitting authority or Administrator requests it. Although the rule clearly requires that such plans must be made available for inspection and copying by EPA or the permitting authority, Sierra Club believes that interested members of the public may encounter protracted delays in obtaining access to the non-confidential portions of an SSM plan.

We understand these concerns about the practicality of public access under the present system, and we have agreed to propose some revisions to the rule to facilitate better public access. The new language requires sources to submit a copy of the SSM plan to the permitting authority at the time it is first adopted and when it is subsequently revised. In most instances, revised versions of the SSM plan may be submitted with the semiannual report required by 40 CFR 63.10(d)(5). Under our proposal, the source may elect to submit the SSM plan in an electronic format. If the submitter claims that any portion of an SSM plan, or any revision of an SSM plan, is CBI entitled to protection under section 114(c) of the CAA or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission.

While the applicable law generally requires that we provide public access to those portions of SSM plans which are not entitled to confidentiality under the Trade Secrets Act, we note that it is hypothetically possible that some information in a particular SSM plan would be deemed to be sensitive from a Homeland Security perspective. In most instances, we think that such sensitive information would also be entitled to confidential treatment under CAA section 114(c). However, we note that the entire Federal government is presently reviewing public access requirements to assure that they are compatible with Homeland Security, and it is possible that we may in the future propose other changes in public access to SSM plans as part of this important effort.

We note that many sources have already adopted SSM plans, and that the language we are proposing does not establish a specific transitional process for submission of those existing plans to permitting authorities. If we adopt the proposed changes, we want to minimize the burden and disruption associated with this transition, and we are requesting comment on how this may best be accomplished. One option would be to provide a specific time period within which the existing plans must be submitted. Another option would be to require that the plans be submitted as part of the next semiannual compliance report.

We are also proposing a change to 40 CFR 63.6(e)(3)(vii). The current rule provides that EPA or the permitting authority ''may'' require that an SSM plan be revised if certain specified deficiencies are found. However, we cannot envision any circumstance

where revision of an SSM plan should not be mandatory if it is specifically found to be deficient by EPA or the permitting authority according to one of the criteria set forth in this section. Therefore, we have agreed to propose to change the language to make such revisions mandatory rather than discretionary.

We are required to propose all of the foregoing amendments to the SSM plan provisions in the MACT General Provisions rule by the final settlement agreement that we executed with Sierra Club. We solicit comments on all these proposals.

In addition to the proposals required under our final settlement agreement with Sierra Club, we are also proposing to revise a provision concerning reporting of SSM events which we adopted in the previous rulemaking in response to comments we received. We have concluded that the new language we adopted was unnecessarily broad in its scope and we are proposing to substantially narrow its applicability.

During the previous rulemaking concerning revisions to the General Provisions and section 112(j) rules, we received comments from STAPPA/ALAPCO indicating that it would assist permitting agencies in performing their oversight function if facilities were required to include the number and a description of all malfunctions that occurred during the prior reporting period in the required semiannual report. See Docket A–2001–02. In response to that comment, we added a new reporting obligation to the language governing periodic SSM reporting in 40 CFR 63.10(d)(5)(i). However, the language we added was not limited to malfunctions and required that the facility report ''the number, duration, and a brief description of each startup, shutdown, and malfunction.'' We have concluded that the inclusion of startups and shutdowns in this reporting requirement is unnecessary and burdensome.

With respect to malfunctions, the rule expressly requires that the SSM plan must be revised by the facility if there is an event meeting the characteristics of a malfunction which is not addressed by the plan (40 CFR 63.6(e)(3)(vii). Although the facility is required by 40 CFR 63.6(e)(3)(iv) to immediately report those instances where the actions it takes are not in conformity with the SSM plan and the standard is exceeded, this provision may not be sufficient to give the permitting authority all the information it needs to assure that SSM plans properly address all types of malfunctions. Thus, we think that the requirement that the owner or operator report the number, duration, and type of malfunctions which occurred during the prior reporting period may provide useful information to the permitting authority.

We recognize that some sources are concerned that the requirement to periodically report malfunctions may be interpreted to require reporting of minor problems that have no impact on emissions. However, we do not construe the provision in this manner. Under our regulations, ''malfunction'' is defined as ''any sudden, *infrequent*, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner.'' See 40 CFR 63.2. Only those events that meet this definition would be subject to the reporting requirement. During an event that meets this definition, the facility is not required to comply with otherwise applicable emission limits, and the SSM plan must specify alternative procedures which satisfy the general duty to minimize emissions. Minor or routine events that have no appreciable impact on the ability of a source to meet the standard need not be classified by the source as a malfunction, addressed in the SSM plan, or included in periodic reports. Thus, if a source experiences a minor problem that does not affect its ability to meet the applicable emission standard, the problem need not be addressed by the SSM plan and would not be a reportable ''malfunction'' under our regulations.

Unlike malfunctions, we think that the extension of this requirement to startups and shutdowns was unwarranted. In some industries, startup and shutdown events are numerous and routine. So long as the provisions of the SSM plan are followed, there does not appear to be any real utility in requiring that each individual startup and shutdown be reported or described. In those instances where a startup and shutdown includes actions which do not conform to the SSM plan and the standard is exceeded, the facility is otherwise required to promptly report these deviations from the plan. We encourage all interested parties to comment both on our proposal to delete startups and shutdowns from this reporting provision, and on our rationale for the retention of the periodic reporting of malfunctions.

In addition to seeking comment on the revisions to the provisions governing SSM plans described above, we are also requesting comment concerning two other changes to the General Provisions which we made during the prior rulemaking in response to industry comments. During the prior rulemaking, the Colorado Association of Commerce and Industry suggested that we revise the definition of ''monitoring'' in 40 CFR 63.2 to include the phrase ''or to verify a work practice standard.'' See Docket item No. IV–D–03. There are times when we must adopt a work practice standard under CAA section 112(h) rather than an emission standard under CAA section 112(d), and compliance with such a work practice standard is sometimes verified by activities which may not require ''* * * collection and use of measurement data or other information to control the operation of a process or pollution control device * * *'' Therefore, we thought that the suggested revision was a sensible one. However, because the additional language was not originally proposed by EPA, and it has been subsequently suggested that this revision might have unintended consequences, we have decided to take additional comment concerning the value of this language and the effects it might have when read in conjunction with other regulatory requirements, including other provisions of the General Provisions.

In the prior rulemaking, we also made a small change in the language of 40 CFR 63.9(h)(2)(ii) by adding the phrase ''(or activities that have the same compliance date)'' in response to a comment submitted by Dow Chemical Company. See Docket item No. IV–D–19. Although separate notices are appropriate for compliance obligations with different compliance dates (*e.g.*, equipment leaks versus process vents), Dow was concerned that separate compliance reports might be required for compliance obligations that have the same date and requested the option of filing a single compliance status report covering multiple compliance obligations. Because the new language in question was not originally proposed by EPA, and some have questioned whether it clearly achieves the intended purpose, we have decided to request additional comment concerning the need for this change and potential alternatives.

## III. Proposed Amendments to the Section 112(j) Provisions

### *A. New Schedule for Part 2 Applications*

The final settlement agreement which we have executed with Sierra Club requires us to propose to replace the existing schedule for submission of section 112(j) Part 2 applications, under which most Part 2 applications would have been due on May 15, 2004, with

a schedule which will establish a specific deadline for submission of Part 2 applications for all affected sources in a given category or subcategory. With respect to those listed categories or subcategories for which MACT standards are scheduled to be promulgated by November 30, 2002 or by February 28, 2003, we are proposing a Part 2 application deadline of May 15, 2003. Establishing an earlier deadline for these sources would not be practicable because we do not anticipate completing this rulemaking until April 2003. With respect to those categories or subcategories for which MACT standards are scheduled to be promulgated at a later time, we are proposing Part 2 application deadlines which are 60 days after each respective scheduled promulgation date. The deadlines for Part 2 applications which we are proposing for each category or subcategory are set forth below in Tables 1 and 2 of this preamble.

TABLE 1.—SECTION 112(j) PART 2 APPLICATION DUE DATES

| Due date | MACT standard |
|---|---|
| 5/15/03 | Municipal Solid Waste Landfills |
| | Flexible Polyurethane Foam Fabrication Operations |
| | Coke Ovens: Pushing, Quenching, and Battery Stacks |
| | Reinforced Plastic Composites Production |
| | Semiconductor Manufacturing |
| | Refractories Manufacturing [1] |
| | Brick and Structural Clay Products |
| | Manufacturing, and Clay Ceramics Manufacturing [2] |
| | Asphalt Roofing Manufacturing and Asphalt Processing [3] |
| | Integrated Iron and Steel Manufacturing |
| | Hydrochloric Acid Production and Fumed Silica [4] |
| | Engine Test Facilities and Rocket Testing Facilities [3] |
| | Metal Furniture (Surface Coating) |
| | Printing, Coating, and Dyeing of Fabrics |
| | Wood Building Products (Surface Coating) |
| 10/30/03 | Combustion Turbines |
| | Lime Manufacturing |
| | Site Remediation |
| | Iron and Steel Foundries |
| | Taconite Iron Ore Processing |
| | Miscellaneous Organic Chemical Manufacturing (MON) [5] |
| | Organic Liquids Distribution |
| | Primary Magnesium Refining |
| | Metal Can (Surface Coating) |
| | Plastic Parts and Products (Surface Coating) |
| | Chlorine Production |
| | Miscellaneous Metal Parts and Products (Surface Coating) (and Asphalt/Coal Tar Application—Metal Pipes) [3] |
| 4/28/04 | Industrial Boilers, Institutional/Commercial Boilers and Process Heaters [6] |
| | Plywood and Composite Wood Products |
| | Reciprocating Internal Combustion Engines |
| | Auto and Light-Duty Truck (Surface Coating) |
| 8/13/05 | Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters [7] |
| | Hydrochloric Acid Production [8] |

[1] Includes Chromium Refractories Production.
[2] Two subcategories of Clay Products Manufacturing.
[3] Two source categories.
[4] Includes all sources within the category Hydrochloric Acid Production that burn no hazardous waste, and all sources in the category Fumed Silica.
[5] Covers 23 source categories, see Table 2 of this preamble.
[6] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn no hazardous waste.
[7] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn hazardous waste.
[8] Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

TABLE 2.—MON SOURCE CATEGORIES

| |
|---|
| Manufacture of Paints, Coatings, and Adhesives |
| Alkyd Resins Production |
| Maleic Anhydride Copolymers Production |
| Polyester Resins Production |
| Polymerized Vinylidene Chloride Production |
| Polymethyl Methacrylate Resins Production |
| Polyvinyl Acetate Emulsions Production |
| Polyvinly Alcohol Production |
| Polyvinyl Butyral Production |
| Ammonium Sulfate Production—Caprolactam By-Product Plants |

TABLE 2.—MON SOURCE CATEGORIES—Continued

| |
|---|
| Quaternary Ammonium Compounds Production |
| Benzyltrimethylammonium Chloride Production |
| Carbonyl Sulfide Production |
| Chelating Agents Production |
| Chlorinated Paraffins Production |
| Ethylidene Norbornene Production |
| Explosives Production |
| Hydrazine Production |
| OBPA/1,3-Diisocyanate Production |

TABLE 2.—MON SOURCE CATEGORIES—Continued

| |
|---|
| Photographic Chemicals Production |
| Phthalate Plasticizers Production |
| Rubber Chemicals Manufacturing |
| Symmetrical Tetrachloropyridine Production |

We have always been reluctant to establish any timetable which would require submission of a large number of Part 2 applications which would in all likelihood never be acted upon by the

permitting authorities. Submission of Part 2 applications would generally be a futile exercise in those instances where a final Federal MACT standard governing the facilities in question is scheduled for promulgation prior to the 18-month deadline for action on the applications by the respective permitting authorities. It has been our consistent view that requiring submission of such applications would represent an unwarranted expenditure of private and public resources. Thus, we are pleased that the proposed schedule under the final settlement will permit us to avoid such a wasteful exercise unless there are further delays in promulgation of the remaining MACT standards. We note also that the prompt and significant consequences if a promulgation deadline is missed will create new incentives for EPA and the other stakeholders to assure that the agreed upon promulgation deadlines are met.

We recognize that the proposed schedule for submission of section 112(j) Part 2 applications leaves relatively little time for sources to prepare and submit such applications if a particular promulgation deadline is missed. In recognition of the tight time frames, we will try to provide prompt advance notice to affected sources and to permitting authorities if we have reason to believe that we will not be able to meet an impending promulgation deadline for a particular MACT standard.

We note that the MACT standards for which we are proposing a Part 2 application deadline of May 15, 2003 are actually scheduled to be promulgated while this rulemaking is in progress. There will be no need to adopt a Part 2 application deadline for affected sources in any category for which a final MACT standard has been promulgated under CAA section 112(d) and/or (h) prior to the completion of this rulemaking. We are proposing to state explicitly in the amendments to the section 112(j) rule that no further process to develop a case-by-case MACT determination under section 112(j) is required for any source once a generally applicable Federal MACT standard governing that source has been promulgated.

The revised timetable for submission of Part 2 applications we are proposing requires significant changes in the structure of the existing section 112(j) rule. In contrast to the current general timetable for Part 2 applications, which applies to all of the remaining MACT standards which were included in the schedule adopted under CAA section 112(e)(1) and (3), we are proposing a phased timetable for Part 2 applications with different dates for sources in different categories based on the scheduled promulgation date. We are also proposing to make the new schedule as uniform as practicable for all affected sources in each category or subcategory, regardless of whether the source in question has previously requested an applicability determination under 40 CFR 63.52(e)(2)(i) or has previously obtained a case-by-case determination under CAA section 112(g).

These proposed changes will require that the existing section 112(j) rule be substantially rewritten. In order to allow the rulemaking process required by the final settlement agreement to proceed expeditiously and to encourage commenters to focus on the broad issues presented by the new approach, we are not proposing specific regulatory text. Rather, we are providing a detailed discussion in this preamble of the changes we are proposing to make. While we do not want to discourage those commenters who want to propose specific regulatory text for our consideration, we believe that comments will be most constructive if they focus on the larger question of how the existing rule should be restructured to achieve our proposed objectives.

When we first proposed the creation of a two-part process for section 112(j) applications, we specified a 6-month period between the submission of the general initial notification in the Part 1 application and the submission of more detailed supporting information in the Part 2 application. That initial proposal was based on the premise that every applicant would automatically be given the maximum extension of time to supplement an incomplete application that is authorized by CAA section 112(j)(4).

In the final rule, we observed that there is another provision in the statute which may be reasonably construed to provide authority for us to establish an incremental process for the submission of section 112(j) applications. The hammer provision in section 112(j)(2) itself establishes the requirement to submit permit applications ''*beginning* 18 months after'' the statutory date for promulgation of a standard. Reading this provision in context, we believe that the statute can be reasonably construed as authorizing us to provide a period of time after the hammer date in which the information necessary for a fully informative section 112(j) application can be compiled. We have not changed our view that this is a reasonable construction of the statutory provision in question, and we are reiterating this construction of the statute as part of our rationale for these proposed rule amendments.

*B. Requests for Applicability Determination*

As we explained above, we are proposing to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory, which is based in turn on the agreed upon promulgation date for the MACT standard for that category or subcategory. However, to achieve this objective it will be necessary to establish new procedures for those affected sources which have previously submitted a request for applicability determination under 40 CFR 63.52(e)(2)(i).

That provision establishes a process by which major sources can request that the permitting authority determine whether or not specific sources at their facility belong in any category or subcategory requiring a case-by-case determination under section 112(j). All requests for applicability determinations were due at the same time as the section 112(j) Part 1 applications, on May 15, 2002. Under the procedures in the current rule, a negative determination by the permitting authority concerning such a request means that no further action is required, while a positive determination means that the applicant must then submit a Part 2 application within 24 months. In order to adopt the single uniform deadline for Part 2 applications for each affected source in a category or subcategory which we are required to propose by the final settlement, it is necessary to amend the provisions governing requests for applicability determinations.

We lack precise information concerning how many such requests for applicability determination were submitted to permitting authorities on or before May 15, 2002, but we believe that hundreds of such requests are pending. We know that some of these requests reflect genuine uncertainty concerning the scope of the activities or equipment governed by a particular category or subcategory. For some of these requests, the subsequent issuance of a proposed MACT standard or other subsequent events may have resolved such uncertainty. However, we also believe that many of these requests were filed merely because the filing of such a request operated to defer the deadline for submission of a Part 2 application. Under the proposal required by the final settlement, such an indefinite deferral of the Part 2 application deadline will no longer be allowed.

We do not seek to limit the right of those affected sources who may have genuine uncertainty regarding the scope of a particular category or subcategory to obtain a decision on applicability issues by the permitting authority, but we also do not want to burden the permitting authorities with a process that requires them to take final action on those pending requests which do not present genuine applicability issues. Accordingly, we are proposing to require that each affected source which still wishes to pursue a previously filed request for applicability determination under 40 CFR 63.52(e)(2)(i) which is still pending must resubmit and supplement that request within 60 days after EPA publishes final action in this rulemaking or within 60 days after EPA publishes a proposed MACT standard for the category or subcategory in question, whichever is later.

Our experience tells us that most uncertainties regarding applicability can be resolved by applying the specific applicability language in the proposed MACT standard. That is why we are proposing to delay any requirement to resubmit and supplement a request for applicability determination until after a proposed MACT standard is available. We are proposing to require that each resubmitted request for an applicability determination be supplemented to specifically discuss the relation between the source(s) in question and the applicability provision in the proposed MACT standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. We are also proposing to require that the permitting authority act upon each resubmitted and supplemented request for an applicability determination within an additional 60 days after the applicable deadline for the resubmitted request.

We believe this approach will preserve the rights of those affected sources which still have legitimate applicability concerns even after issuance of a proposed MACT standard. We also expect there will be a significant reduction in the number of pending requests, since the current procedural incentives for submission of such requests will have been eliminated. With respect to those requests that are resubmitted, the proposed mandatory supplementation should delineate the issues more clearly and improve the record for a decision concerning the request by the permitting authority.

While we anticipate that the issuance of a proposed MACT standard will generally operate to resolve existing applicability issues rather than raising new ones, it is hypothetically possible that a facility will have new questions based on the applicability provision in a proposed MACT standard. There is at present no formal process for addressing such issues, but we encourage all major sources that have questions concerning the applicability of a proposed MACT standard to their operations or equipment to seek guidance from responsible personnel at the permitting authority and the EPA Regional Office.

We note that there are special timing issues with respect to any requests for applicability determination which have been submitted concerning sources that may be in a category or subcategory for which the MACT standard in question is scheduled to be promulgated by November 30, 2002 or by February 28, 2003. There will be no need to address these concerns if the standards are promulgated on schedule. However, if any one of these standards is delayed, and if the delayed standard still has not been promulgated by the time we take final action concerning this proposal, special procedures will be required. Those facilities which have sources which may be in such a category or subcategory, and who previously submitted a request for applicability determination which is still pending, cannot be required to submit their Part 2 application on May 15, 2003. In such an instance, we propose that any Part 2 application will be required 120 days after EPA publishes final action in this rulemaking if the request for applicability determination is not resubmitted within 60 days after publication, or within 180 days after EPA publishes final action in this rulemaking if the request is resubmitted and a determination concerning the request by the permitting authority is required. We consider it improbable that we will need to adopt such procedures, but we are proposing them now in the unlikely event they are required.

We note also that those major sources which elect to resubmit requests for applicability determination with respect to sources that may be governed by one of the MACT standards which are scheduled to be promulgated by August 31, 2003, may not be entitled to receive a determination by the permitting authority on the resubmitted request until shortly after the scheduled promulgation date. If such a standard is delayed, and there is no negative determination by the permitting authority on the resubmitted request, the Part 2 application for sources within the category in question will be due on October 30, 2003. This tight time frame underscores the importance of careful coordination between such sources and the permitting authority if it appears that a MACT standard will be delayed. As discussed above, EPA will endeavor to provide timely information to affected sources and permitting authorities if it becomes apparent that the Agency will not meet the promulgation schedule for any of the remaining MACT standards.

*C. Prior Section 112(g) Determinations*

Our proposal to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory also requires that we make some changes to the current procedures governing CAA section 112(j) applications for those sources which have previously received a case-by-case determination pursuant to CAA section 112(g). In evaluating this question, it is important to understand the substantive relationship between these separate statutory requirements.

In general, we anticipate that emission control requirements established as part of a previous case-by-case determination under section 112(g) will subsequently be adopted by the permitting authority to satisfy any applicable section 112(j) requirements as well. This is because the determination required for any sources subject to CAA section 112(g) is supposed to be based on new source MACT, and the subsequent application of section 112(j) requirements to those same sources will be based on existing source MACT. Moreover, to assure that inconsequential differences in emission control do not result in unduly burdensome sequential case-by-case determinations, the current section 112(j) rule requires the permitting authority to adopt any prior case-by-case determination under section 112(g) as its determination for the same sources under section 112(j) if it ''determines that the emission limitations in the prior case-by-case determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j).'' See 40 CFR 63.52(a)(3), (b)(2), and (e)(2)(ii).

Under the applicable provisions of the present rule, sources which have previously obtained a case-by-case determination under CAA section 112(g) are generally required to submit a request for an ''equivalency determination'' to decide if the applicable section 112(g) requirements are ''substantially as effective'' as the requirements which would otherwise apply under section 112(j). As explained above, we believe that this

determination will generally be positive. However, 40 CFR 63.52(e)(2)(ii) provides that, if such a determination is negative, the source must then submit a Part 2 application within 24 months. As in the case of requests for applicability determination, changes to the existing rule will be required to place all sources in a given category or subcategory on the same schedule for submission of Part 2 applications. However, in this instance, we believe that the solution is considerably simpler.

We are proposing to adopt the proposed Part 2 application deadline for a given category or subcategory as the final deadline for submission of a request for an ''equivalency determination'' by any affected source that previously obtained a case-by-case determination under CAA section 112(g). Under this proposal, those sources which submitted such requests earlier under the provisions of the existing rule need not resubmit them. However, we are also proposing that all requests for an equivalency determination, regardless of when they were submitted, will be construed in the alternative as a section 112(j) Part 2 application as well.

The effect of this proposal will be to require that the permitting authority first make an equivalency determination. In the event of a negative determination, the permitting authority will then proceed to adopt a separate set of requirements pursuant to section 112(j). Under this proposal, this process will be completed in the same 18-month period that applies to the processing of all other Part 2 applications.

This proposal will assure that the deadline for submission of Part 2 applications will be the same for all affected sources within a category or subcategory, regardless of whether a source previously obtained a case-by-case determination under section 112(g). We do not think this proposal imposes any new burden on sources or permitting authorities, because the permitting authority should already have all of the information required for a Part 2 application in any instance where it is already administering section 112(g) requirements applicable to the same source.

*D. Content of Part 2 Applications*

We are hopeful that no source will be required to submit a section 112(j) Part 2 application under the schedule we are proposing in this rulemaking. We also note that the Part 2 application requirements in the current section 112(j) rule are significantly narrower than the application requirements in the original section 112(j) rule. However, in the event that some Part 2 applications must ultimately be submitted, we think it is appropriate to give some additional guidance concerning the information they must contain and to request comment on a few related issues.

We believe that an affected source submitting a Part 2 application may elect to rely directly on the content of the applicable proposed MACT standard in identifying affected emission points. We also think that applicants may reasonably limit the information they submit concerning HAP emissions to those specific HAP or groups of HAP which would be subject to actual control in the applicable proposed MACT standard. We encourage all section 112(j) Part 2 applicants to utilize the regulatory approach in the applicable proposed MACT standard as a practical template in compiling Part 2 applications. We also encourage applicants who have previously submitted to the permitting authority some of the information required in the Part 2 application to meet the requirements in question by cross-referencing such prior submissions.

Moreover, although the submission by an affected source of a proposed case-by-case MACT determination as part of its Part 2 application is entirely discretionary, we note that some industry representatives have stated that they would generally elect to include such information as a precautionary matter. While we do not seek to discourage this practice, we believe that the burden associated with inclusion of such information will not be significant in instances where a Federal MACT standard has already been proposed, the applicable proposed standard has already been evaluated by the facility, and the facility has already had an opportunity to comment on the applicable proposed standard.

We also want to do whatever we can to minimize any unnecessary burdens associated with submission of a Part 2 application. We do not want to require the submission of any information which is not truly necessary to prepare for potential issuance of case-by-case MACT determinations. To that end, we are requesting comment on the approach outlined above and whether there may be other ways to minimize any unnecessary burden. We also request comments on the following specific questions. Does the applicant need to provide ''estimated total uncontrolled and controlled emission rates'' to enable the permitting authority to prepare for a potential case-by-case determination? If the applicant does not have the information required to provide meaningful estimates of emission rates, should new emission testing be required? Is it appropriate to require individual applicants to submit ''information relevant to establishing the MACT floor'' in their Part 2 applications? Are there any Part 2 application requirements which can be met simply by referring to the applicable proposed MACT standard?

## IV. Administrative Requirements

*A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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.

We have determined that neither the proposed amendments to the General Provisions nor the proposed amendments to the section 112(j) rule are a ''significant regulatory action'' under the terms of Executive Order 12866, and this proposal was therefore not submitted to OMB for review.

*B. 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'' 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 States, or on the distribution of power and responsibilities among the various levels of government.''

These proposed amendments do not have Federalism implications under the terms of this Executive Order. We do not believe that the proposed changes in the General Provisions rule have any significant federalism implications. With respect to the alteration in the schedule for submission of section 112(j) Part 2 applications, we note that the CAA itself requires that State and local permitting authorities receive and process applications for case-by-case MACT determinations pursuant to section 112(j). This is one of the responsibilities that State and local permitting authorities have agreed to assume. We have tried to construe the statutory provisions in question in a manner that minimizes the burden on these agencies associated with this responsibility. We have determined that the proposed change in the schedule for submission of such applications does not itself have a substantial direct effect on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

*C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (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 Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

These proposed amendments to the General Provisions and the section 112(j) rule would not have tribal implications. They would not have substantial direct effects on tribal governments, or 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. There are currently no tribal governments that have approved title V permit programs to which sources would submit case-by-case permit applications under section 112(j). Accordingly, Executive Order 13175 would not apply to this action.

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

Executive Order 13045 (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, EPA 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 that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These amendments are not subject to Executive Order 13045 because they are amending information collection requirements and do not affect health or safety risks. Furthermore, this rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

*E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

These proposed amendments are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

*F. Unfunded Mandates Reform Act of 1995*

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 on the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, in any 1 year. We do not expect annual expenditures by State, local and tribal governments in connection with implementation of these amendments to exceed $100 million. In any case, any obligation of State or local permitting authorities to take particular actions under these proposed amendments is not directly enforceable by a court of law, and any failure by a State or local permitting authority to meet such an obligation would at most result in a determination that the permitting authority is not adequately administering its permit program under CAA section 502(i). Thus, it can be argued that such obligations are not enforceable duties within the meaning of section 421(5)(A)(i) of UMRA, 2 U.S.C. 658(5)(A)(i). Moreover, even if such obligations were deemed to be enforceable duties, such duties might be viewed as falling within the exception for a condition of Federal assistance

under section 421(5)(A)(i)(I), 2 U.S.C. 658(5)(A)(i)(I).

We have also determined that the proposed amendments will not result in expenditures by the private sector of $100 million in any 1 year. We fully expect to promulgate the remaining MACT standards on or near schedule, eliminating the need for sources to prepare and submit section 112(j) Part 2 applications. We recognize that some sources may choose to begin preparing the Part 2 application, but cannot estimate the total expenditures this would entail, although we believe it to be only a small fraction of the $100 million criterion. We also expect relatively few resubmissions of applicability determination requests. In any case, all such resubmissions will be done at the source's discretion, and we expect the aggregate expenditure on them to be small.

Based on these determinations, today's proposed amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

*G. Regulatory Flexibility Act (RFA) as Amended by 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 proposed 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 a 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 amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart, as defined by the Small Business Administration; (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 proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. We have determined that the proposed amendments to the General Provisions would not themselves cause any economic impacts on small entities. Rather, any economic impacts on small entities would be associated with the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories.

We believe that adoption of the proposed amendments will not lead to a substantial impact on small entities through the incorporation of the General Provisions in individual MACT standards. For most MACT standards, we anticipate that any affected facilities will not be small entities. For those MACT standards where small entities would be affected, we believe any economic impact will be minimal since the only specific action which may be required is the submission to the permitting authority of an existing document which has already been prepared and is on file at the source.

We also have not prepared any regulatory flexibility analysis for the proposed amendments to the section 112(j) rule. At this time, we do not expect that any Part 2 applications will have to be submitted or case-by-case determinations will have to be made under section 112(j) and thus no small businesses would be affected by such determinations.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*H. Paperwork Reduction Act*

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required in connection with the proposed amendments to the General Provisions rule. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories. In any case, we believe that adoption of the proposed amendments will not materially alter the burden imposed on affected sources through the incorporation of the General Provisions in individual MACT standards. We anticipate that any incremental changes in the recordkeeping and reporting burden estimate for individual MACT standards will be addressed in the context of the periodic renewal process required by the PRA.

Approval is also not required for the proposed amendments to the section 112(j) rule. We expect to promulgate all remaining MACT standards before the Part 2 application due dates associated with those standards (see Table 1 of this preamble), which would eliminate the need for sources to submit the Part 2 application. Approval is also not necessary for resubmission of applicability determination requests. We expect there to be few resubmissions, and all of these will be entirely at the sources' discretion; the rule does not require submission or resubmission of such requests. Thus we do not project any recordkeeping or reporting burden to be incurred by sources as a result of these amendments.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

*I. National Technology Transfer and Advancement Act of 1995*

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with

explanations when an agency does not use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

**List of Subjects in 40 CFR Part 63**

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

Dated: December 3, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—[AMENDED]

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

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

## Subpart A—[Amended]

2. Section 63.6 is amended by:

a. Revising paragraph (e)(1)(i);

b. Adding 6 sentences to the beginning of paragraph (e)(3)(v); and

c. Revising the introductory text to paragraph (e)(3)(vii).

The revisions and additions read as follows:

**§ 63.6 Compliance with standards and maintenance requirements.**

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

* * * * *

(3) * * *

(v) The owner or operator must submit to the Administrator a copy of the startup, shutdown, and malfunction plan at the time it is first adopted. The owner or operator must also submit to the Administrator a copy of any subsequent revisions of the startup, shutdown, and malfunction plan. Such revisions must be submitted at the time they are adopted if the revisions are required in order to adequately address an event involving a type of malfunction not included in the plan, or the revisions alter the scope of the activities at the source which are deemed to be a startup, shutdown, or malfunction, or otherwise modify the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part. All other revisions to the startup, shutdown, and malfunction plan may be submitted with the semiannual report required by § 63.10(d)(5). The owner or operator may elect to submit the required copy of the initial startup, shutdown, and malfunction plan, and of all subsequent revisions to the plan, in an electronic format. If the owner or operator claims that any portion of a startup, shutdown, and malfunction plan, or any revision of the plan, submitted to the Administrator is confidential business information entitled to protection under section 114(c) of the CAA or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission. * * *

* * * * *

(vii) Based on the results of a determination made under paragraph (e)(1)(i) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator must require appropriate revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

* * * * *

3. Section 63.10 is amended by revising the second sentence of paragraph (d)(5)(i) to read as follows:

**§ 63.10 Recordkeeping and reporting requirements.**

* * * * *

(d) * * *

(5)(i) * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they must include the number, duration, and a brief description of each malfunction. * * *

* * * * *

[FR Doc. 02–31012 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–7393–3]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List (NPL) and requests public comment on this action. The Industrial Latex site is located in the Borough of Wallington, Bergen County, New Jersey. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions have been completed at the Industrial Latex site and no further fund-financed remedial action is appropriate under CERCLA. In addition, EPA and the State of New Jersey have determined that the remedial actions taken at the Industrial Latex site protect public health and the environment without any further monitoring or restriction.

**DATES:** The EPA will accept comments concerning its intent to delete on or before January 8, 2003.

**ADDRESSES:** Comments should be mailed to: Stephanie Vaughn, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor New York, New York 10007–1866.

Comprehensive information on the Industrial Latex site is contained in the Administrative Record and is available for viewing, by appointment only, at: U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007–1866.

*Hours:* 9 a.m. to 5 p.m.—Monday through Friday. Contact the Records Center at (212) 637–4308.

Information on the Site is also available for viewing at the Information

Repository located at: John F. Kennedy Memorial Library, 92 Hathaway Street, Wallington, New Jersey 07057, (973) 471–1692.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Vaughn, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, phone: (212) 637–3914; fax: (212) 637–4393; e-mail: *vaughn.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

The United States Environmental Protection Agency (EPA) Region II announces its intent to delete the Industrial Latex site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund).

The Industrial Latex site (Site) is the property known as 350 Mount Pleasant Avenue in Wallington, Bergen County, New Jersey. The 9.67-acre site is located in a mixed residential/industrial area. An elementary school is located directly across the street. An outdoor recreation field forms the southern border of the site and an active railway forms the eastern border. Directly across the railroad tracks is the Borough of Wood-Ridge, New Jersey. The property is currently vacant.

At the Site, EPA conducted a Remedial Investigation and Feasibility Study (RI/FS), conducted a risk assessment, selected a remedy, and implemented the selected remedy in two phases.

EPA will accept comments concerning its intent to delete for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of record.

## II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria has been met:

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

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

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

EPA will not conduct any further activities at this Site because EPA believes that it is suitable for unlimited use and unrestricted exposure. If new information becomes available which indicates the need for further action, EPA may initiate such actions under § 300.425(e)(3) of the NCP. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

## III. Deletion Procedures

The following procedures were used for the intended deletion of the Industrial Latex Superfund Site.

1. EPA conducted an RI/FS to characterize and evaluate site contamination, conducted a risk assessment, and, in a Record of Decision (ROD) dated September 30, 1992, selected a remedy to address contaminated soil, vats, drums, and buildings at the Site. On April 10, 1996, EPA modified the remedy in an Explanation of Significant Differences.

2. Completion of the remedy was accomplished in two phases. The first phase, involving the demolition of the buildings and removal of the vats, started in July 1995 and was completed in November 1995. Field work for the second phase, addressing the soil and buried drums, began in December 1998 and was completed in August 2000.

3. EPA conducted a ground water investigation and issued a No Action ROD for ground water on September 27, 2001. Ground water represented the final operable unit at the site.

4. EPA has recommend the deletion of the Industrial Latex site and has prepared the relevant documents.

5. The State of New Jersey, through the New Jersey Department of Environmental Protection, has concurred with the deletion decision in a letter dated August 29, 2002.

6. Concurrent with this national Notice of Intent to Delete, a notice has been published in a local newspaper and appropriate notice has been distributed to federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion, which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

7. EPA has placed all relevant site documents in the site information repositories identified above.

8. Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the deletion. EPA will prepare a Responsiveness Summary, if appropriate, for comments received during the public comment period which will address the concerns raised. The Responsiveness Summary will be made available to the public at the information repositories. If, after review of all public comments, EPA determines that the deletion from the NPL is appropriate, EPA will publish a final notice of deletion in the **Federal Register**. Deletion of the Industrial Latex site does not actually occur until the final Notice of Deletion is published in the **Federal Register**.

Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. Deletion from the NPL does not alter EPA's right to take appropriate enforcement actions. The NPL is designed primarily for informational purposes and to assist Agency management.

## IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for deletion of the Industrial Latex site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

The Industrial Latex Corporation manufactured natural and synthetic rubber compounds, and chemical adhesives from 1951 to 1983. The company used solvents in the manufacturing process and polychlorinated biphenyls (PCBs) as a fire retardant. Poor operational procedures and on-site waste dumping resulted in widespread surface and subsurface soil contamination. When operations ceased in 1983, about 1,600

open or leaking drums remained on the property.

In 1986, EPA removed and disposed of open drums, liquids, and other immediate threats. The site was proposed for inclusion on the National Priorities List in May 1988 and finalized in March 1989. EPA then initiated an RI/FS to determine the nature and extent of contamination at the Industrial Latex site, and to develop and evaluate alternatives to address the contamination.

Based on the RI/FS and after receiving public input, EPA issued a ROD in September 1992, which outlined the cleanup plan for the site. The plan included: (1) Excavation of contaminated soil and on-site treatment by low temperature thermal desorption, followed by backfilling on the site; (2) excavation and off-site disposal of buried drums; (3) dismantling and off-site disposal of vats; and (4) demolition and off-site disposal of two buildings on the site.

On April 10, 1996, EPA issued an Explanation of Significant Differences changing or eliminating a number of remediation goals specified in the ROD. These changes were based on sampling conducted after the ROD was signed. The four remaining site-related contaminants of concern at the Industrial Latex site were PCBs, bis(2-ethylhexyl)phthalate, 3,3'-dichlorobenzidine, and arsenic.

Because the results of the ground water investigation were inconclusive, the 1992 ROD called for a subsequent investigation. This investigation was completed in August 2001 and a ROD was signed on September 27, 2001. The ROD selected a no action remedy for ground water at the site. No action was needed because the ground water at the site poses no unacceptable risk to human health or the environment.

The cleanup of the site was accomplished in two phases. The first phase, involving the demolition of the buildings and removal of the vats, started in July 1995 and was completed in November 1995. Field work for the second phase, addressing the soil and buried drums, began in December 1998 and was completed in August 2000.

During the soil remediation, approximately 53,600 cubic yards of material were excavated, treated on-site via low temperature thermal desorption, and then backfilled on the site.

The site has been cleaned up to an unrestricted, residential use standard. All activities at the Industrial Latex site are complete and the site poses no unacceptable risk to human health or the environment. Therefore, no operation and maintenance activities or institutional controls are required at the site. A five-year review of the remedy is also not required.

Public participation activities for the Industrial Latex site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The RI/FS, the RODs and the ESD were subject to a public review process. All other documents and information which EPA relied on or considered in recommending that no further activities are necessary at the Industrial Latex site, and that the site can be deleted from the NPL, are available for the public to review at the information repositories.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New Jersey, through the New Jersey Department of Environmental Protection, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL.

In a letter dated August 29, 2002, the New Jersey Department of Environmental Protection concurred with EPA.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 17, 2002.

**Jane M. Kenny,**

*Regional Administrator—Region II.*

[FR Doc. 02–30838 Filed 12–6–02; 8:45 am]

**BILLING CODE 6560–50–P**

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### 40 CFR Part 1610

### Transcripts of Witness Testimony in Investigations

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Chemical Safety and Hazard Investigation Board (''CSB'' or ''Board'') proposes a new rule concerning transcripts of the testimony of witnesses appearing at Board depositions. The proposed rule provides that witnesses have the right to petition to procure a copy of a transcript of their testimony, except that due to the nonpublic nature of Board depositions, witnesses (and their counsel) may for good cause be limited to inspection of the official transcript of their testimony.

**DATES:** Submit comments on or before January 8, 2003.

**ADDRESSES:** Address all comments concerning this proposed rule to Raymond C. Porfiri, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite C–100, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Porfiri, 202–261–7600.

**SUPPLEMENTARY INFORMATION:** The Chemical Safety and Hazard Investigation Board is mandated by law to ''investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release [within its jurisdiction] resulting in a fatality, serious injury or substantial property damages.'' 42 U.S.C. 7412(r)(6)(C)(i). The Board has developed practices and procedures for conducting investigations under this provision in 40 CFR 1610 and has spelled out the rights of witnesses to be represented in such proceedings (section 1610.1) and rules concerning attorney misconduct, (section 1610.2) and sequestration of witnesses and exclusion of counsel (section 1610.3). The Board has determined that it would be useful to add a provision concerning the taking, handling, and inspection of transcripts of Board depositions.

In proposing this regulation, the Board is following section 555(c) of the Administrative Procedure Act, which provides:

> A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

On its face, section 555(c) recognizes that it is sometimes necessary to balance a compelled witness' right to have access to his or her testimony, and an agency's need to limit the dissemination of sensitive matters revealed in such testimony.

Board depositions are nonpublic investigatory proceedings. Attendance at depositions is limited to the minimum number of necessary CSB staff, the witness, and one attorney representing the witness. Depositions are not open to multiple attorneys

representing the witness, non-attorney representative of the witness, or representatives of other parties (40 CFR part 1610). The Board's regulations on Freedom of Information Act requests (40 CFR part 1601) and on Production of Records in Legal Proceedings (40 CFR part 1612) further demonstrate that the Board recognizes that some of the information obtained in its investigation may not be appropriate for public dissemination.

Several considerations have led the Board to conclude that it is necessary to establish a mechanism to ensure appropriate control over the dissemination of deposition transcripts while also respecting witness' rights under the Administrative Procedure Act. Because of the nature of Board investigations, deposition testimony may contain sensitive information. For example, testimony may reveal trade secrets and confidential business information, which are protected by the Trade Secrets Act, 18 U.S.C. 1905.

Protection of the integrity of Board investigations also necessitates control over the dissemination of deposition transcripts. First-hand witness accounts are an invaluable source of information about the events leading to, and causes of, chemical incidents. Witnesses can be reluctant to cooperate, though, out of fear of whistleblower retaliation. The CSB would likely have greater difficulty obtaining vital testimony if witnesses believed that their testimony could easily become known to their employers and to other witnesses. Reasonable limits, such as proposed in this regulation, on the dissemination of transcripts also helps to prevent the coaching of future witnesses based on testimony already given. Such preparation is undesirable in health and safety investigations, where it is important to gather unvarnished facts and untainted recollections.

Ultimately, the Board's duty is to obtain the facts about chemical incidents and to report objectively based on those facts. The Administrative Procedure Act provision limiting the release of transcripts in non-public proceedings is intended to facilitate missions such as the Board's. It protects against harms that would be caused by premature circulation of such transcripts, while protecting the witness' rights by allowing him or her to inspect the official transcript. This approach, embodied in this proposed regulation, is also consistent with the principles of Attorney General Ashcroft's October 12, 2001, ''Memorandum for Heads of All Federal Departments and Agencies,'' on the Freedom of Information Act, in which he said, ''Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.''

This proposal is modeled on the rules of the Securities and Exchange Commission (17 CFR 203.6) and those of other agencies which also follow the APA and permit the agency to limit witnesses to inspection of transcripts in non-public investigatory proceedings for good cause. The Board has followed the APA process by allowing witnesses, after their testimony, to ask the General Counsel for the opportunity to procure a copy of the transcript, provided, of course, that for good cause, the General Counsel may deny the petition and limit the witness (and his or her counsel) to an inspection of the witness' testimony. This proposed regulation also makes it clear that this right to inspect the transcript is a right guaranteed by the APA and that witnesses who seek copies of the transcript are informed by the General Counsel of their right to inspect it.

As the court stated in *SEC* v. *Sprecher,* 594 F.2d 317, 319 (2nd Cir 1979), ''[I]t is obviously impractical for the Commission to determine prior to the testimony of a witness whether there will be 'good cause' to withhold a copy of the testimony from that witness, and we do not read the APA as requiring such an advance determination.''

Moreover, the courts have made it clear that the APA ''does not require [the agency] to spell out the 'good cause' which was the basis for the refusal to sell copies of the transcript.'' *Commercial Capital Corp.* v. *SEC,* 360 F. 2d 856, 858 (7th Cir. 1966).

In summary, this regulation largely tracks the language of the APA. The courts have recognized that such regulations are properly designed to ''permit the [agency] to enjoy confidentiality, where it is necessary, in order effectively to complete its investigation.'' *Zients* v. *La Morte,* 319 F. Supp 956, 958 (S.D.N.Y 1970) (discussing purpose of the SEC regulation), accord *Lamorte* v. *Mansfield,* 438 F.2d 448 (2d Cir 1971), (Friendly, J.) (''to the extent that a privilege exists, it is the agency's not the witness'').

**Regulatory Flexibility Act**

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and certifies that it will not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48.

**Federalism (E.O. 13132)**

The CSB has determined this proposed regulation conforms to the federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of state and tribal authority conflicts with the exercise of federal authority under the U.S. Constitution's supremacy clause and federal statute.

**Paperwork Reduction Act**

This proposed regulation contains no reporting or recordkeeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

**List of Subjects in 40 CFR Part 1610**

Administrative practice and procedure, Investigations.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to amend 40 CFR part 1610 as follows:

## PART 1610—-ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 is revised to read as follows:

**Authority:** 42 U.S.C. 7412(r)(6)(C)(i), 7412(r)(6)(L), 7412(r)(6)(N).

Section 1610.4 also issued under 5 U.S.C. 555.

2. Add § 1610.4 to read as follows:

### § 1610.4 Deposition Transcripts.

(a) Transcripts of depositions of witnesses compelled by subpoena to appear during a Board investigation, shall be recorded solely by an official reporter designated by the person conducting the deposition.

(b) Such a witness, after completing the compelled testimony, may file a petition with the Board's General Counsel to procure a copy of the official transcript of such testimony. The General Counsel shall rule on the petition, and may deny it for good cause. Whether or not such a petition is

filed, the witness (and his or her attorney), upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony. If such a petition is denied by the General Counsel, he shall inform the petitioner of the right to inspect the transcript.

(c) Good cause for denying a witness' petition to procure a transcript of his or her testimony may include, but shall not be limited to, the protection of: trade secrets and confidential business information contained in the testimony, security-sensitive operational and vulnerability information, and the integrity of Board investigations.

Dated: December 2, 2002.

**Christopher W. Warner,**

*General Counsel.*

[FR Doc. 02–30981 Filed 12–6–02; 8:45 am]

**BILLING CODE 6350–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Part 1001

### Solicitation of Public Comments on Exceptions Under Section 1128A(a)(5) of the Social Security Act

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** The OIG is soliciting public comments on the possible development of exceptions under section 1128A(a)(5) of the Social Security Act (the Act), the civil money penalty (CMP) prohibition on offering inducements to Medicare and Medicaid beneficiaries to influence their selection of a provider, practitioner, or supplier. In particular, the OIG is interested in comments on possible exceptions for complimentary local transportation, inducements related to clinical trials, and inducements of nominal value. The OIG welcomes suggestions for other exceptions under section 1128A(a)(5) of the Act, as well.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 7, 2003.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–72–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–72–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, amended the Social Security Act (the Act) to prohibit providers from offering patients any inducement to order or receive Medicare or Medicaid reimbursable items or services from a particular provider, practitioner, or supplier. Specifically, section 231(h) of HIPAA established a new provision, section 1128A(a)(5) of the Act, to provide for the imposition of a CMP against any person who:

> Offers or transfers remuneration to any individual eligible for benefits under [Medicare or Medicaid] that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under [Medicare or Medicaid].

Section 231(h) of HIPAA also created a new section 1128A(i)(6) of the Act to define ''remuneration'' for purposes of section 1128A(a)(5) of the Act. This section defines ''remuneration,'' in relevant part, as ''transfers of items or services for free or for other than fair market value.'' Remuneration does not include certain enumerated practices, including waivers of coinsurance and deductible amounts if the waiver is not advertised; not routinely offered; and made following an individualized good faith assessment of financial need or after the failure of reasonable collection efforts. Other statutory exceptions include properly disclosed copayment differentials in health plans; incentives to promote the delivery of preventive health care services; any practice permitted under a safe harbor to the federal anti-kickback statute at 42 CFR 1001.952; and waivers of hospital outpatient copayment amounts in excess of the minimum copayment amounts.

In 1998, Congress enacted section 6201 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, which authorized the Secretary to issue regulations establishing ''safe harbor'' exceptions under section 1128A(a)(5) of the Act for payment practices that would otherwise run afoul of the statute. In addition, the Secretary is vested with the authority to issue advisory opinions providing legal and regulatory guidance to providers under this section.

The OIG issued proposed regulations interpreting section 1128A(a)(5) of the Act on March 25, 1998 (63 FR 14393) and final regulations on April 26, 2000 (65 FR 24400). To alert the industry to the scope of acceptable practices, promote compliance, and level the competitive playing field, we have issued further guidance on the statute in a Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries (67 FR 55855; August 30, 2002). In the Bulletin, we indicated our intent to solicit public comments on the possible regulatory exceptions to the statute.

## II. Solicitation of Comments and Suggestions for Additional Exceptions

The OIG invites comments and suggestions for new regulatory exceptions to section 1128A(a)(5) of the Act. In particular, we are seeking comments and suggestions on possible exceptions for complimentary local transportation; remuneration to induce participation in clinical trials; and inducements of low value. We also welcome comments on other possible exceptions to section 1128A(a)(5). Comments that include detailed descriptions of relevant industry business practices, address the legal and policy concerns raised by the application of section 1128A(a)(5) to particular business practices, and offer specific suggestions for applicable criteria that might apply under a regulatory exception are particularly useful.

### *A. Criteria for Establishing Exceptions*

In giving the OIG authority to create additional regulatory exceptions to—and issue advisory opinions on—section 1128A(a)(5) of the Act, Congress provided no guidance on the criteria to be applied. The absence of criteria is especially problematic because any exception to the prohibition creates the very harm prohibited (*i.e.*, the inducement of beneficiaries), resulting in an uneven competitive playing field. Moreover, any exception will result in a valuable benefit to Medicare and

Medicaid beneficiaries. In the absence of statutory guidance, attempting to distinguish among types of benefits or categories of beneficiaries necessarily results in arbitrary standards. In these circumstances, the OIG has determined to exercise its regulatory authority cautiously by limiting exceptions to areas in which Congress has indicated a desire for flexibility in the provision remuneration to beneficiaries or where the provision of such remuneration serves a governmental interest.

*B. Specific Areas of Interest*

1. Complimentary Local Transportation

In enacting section 1128A(a)(5) of the Act, Congress intended that the statute not preclude the provision of complimentary local transportation of nominal value (H.R. Conf. Rep. No. 104–191 at 255 (1996)). We have interpreted nominal value to mean no more than $10 per item or service or $50 in the aggregate. (*See* 65 FR 24411; April 6, 2000.) We are concerned that this interpretation may be overly restrictive in the context of complimentary local transportation. Accordingly, we seek public input on the following issues as they relate to a possible exception for complimentary transportation:

- *Forms of transportation.* What forms of transportation should be considered in developing an exception and how should various forms of transportation be treated? We believe that luxury transportation (*e.g.*, limousines), as well as certain specialized transportation (*e.g.*, ambulances) should not be covered in an exception. Are there other forms of transportation that should be excluded (*e.g.*, handicapped-accessible vans, taxis, public transportation)?

- *Area in which transportation is offered.* Should the complimentary transportation service be limited to a provider's primary service area? If so, how should a service area be defined? Should there be a different rule for rural or underserved areas or patients? Should complimentary transportation be permitted to the nearest facility even if the patient resides outside the primary service area?

- *Eligibility for transportation.* Should providers be required to offer the transportation services to all patients? What other kinds of eligibility requirements might be permitted? Certain eligibility criteria, such as diagnosis or insurance coverage, would clearly raise significant issues. What about other eligibility criteria, such as a showing of transportation or financial need, chronic conditions, special services, or safety or treatment compliance?

- *Type of provider offering the transportation.* Should the rules be different depending on the type of provider or supplier offering the transportation services? Free transportation services offered by individuals or small groups of providers, including physicians, or by freestanding clinics have been subject to greater scrutiny. Historically, for example, unscrupulous providers and clinics have offered free transportation in conjunction with Medicare and Medicaid frauds.

- *Destination.* Should a provider be permitted to furnish transportation to other health care providers or only to its own premises for appointments for its own services? Some hospitals apparently provide free transportation to patients for private office visits with local physicians or other professionals; others limit transportation service to practitioners with hospital staff privileges. In addition, many hospitals and physician practices are co-located on a single campus. What safeguards might be included to protect against abuse if transportation is offered to the premises of other providers (*e.g.*, free transportation of patients as a financial benefit to other providers)? What about transportation among entities affiliated through health systems? What about transportation for reasons other than medical appointments?

- *Marketing and advertising.* What are the practical and policy considerations associated with allowing marketing or advertising of complimentary transportation services? What would constitute reasonable limits on promotional activities?

- *Other criteria.* Are there other safeguards, limitations, or conditions that should apply in any exception for complimentary transportation?

2. Clinical Trials

Historically, sponsors of clinical trials have offered various inducements to patients to enroll in their trials. Because Medicare did not cover medical services incident to most clinical trials, these inducements did not trigger scrutiny under the various federal program fraud and abuse sanctions. However, in 2000, the Centers for Medicare and Medicaid Services (CMS) issued a national coverage determination (NCD) providing for coverage for physician, hospital, and other services incidental to certain clinical trials (''Medicare Coverage Routine Costs of Beneficiaries in Clinical Trials''; September 19, 2000). Under the NCD, all other requirements of the Medicare program apply, including the various fraud and abuse authorities. In extending coverage to certain clinical trials, CMS intended to remove impediments to Medicare beneficiaries who want to enroll in trials, but not to grant favored status to clinical trials. This distinction is important, because many clinical trials involve unproven alternatives to existing effective treatments.

Because we are concerned that section 1128A(a)(5) not unduly impede valuable clinical trials, we are soliciting comments and suggestions on how to apply section 1128A(a)(5) to inducements to participate in bona fide clinical trials. Issues of particular interest to the OIG include:

- *Threshold level of Medicare reimbursement.* In many clinical trials, the volume and value of covered Medicare services provided to enrollees is likely to be significant, and trial sponsors may have a financial incentive to offer inducements to Medicare beneficiaries to enroll. For example, hospitalization triggers a substantial Medicare payment. However, it is possible that some clinical trials may involve only a small volume or value of Medicare covered services. Should a possible exception turn on the volume or value of Medicare services involved? If so, what would be the appropriate threshold level?

- *Sponsorship of studies.* One issue in crafting an exception for inducements associated with clinical trials would be defining the universe of trials that would be covered by the exception. We believe covered trials should have a clear potential public benefit. The scope of ''deemed'' trials under the NCD is overly broad for purposes of a possible exception to section 1128A(a)(5) of the Act. We are interested in comments regarding the scope of covered trials and the criteria that might apply to distinguish those with potential public benefit from those with solely or chiefly commercial value. We are also concerned that, as noted in several OIG studies, some trial sponsors provide investigators and other persons in positions to identify and influence potential enrollees with substantial monetary payments. (*See*, for example, the OIG report issued in June 2000, entitled ''Recruiting Human Subjects: Pressures in Industry-Sponsored Clinical Research'' (OEI–01–97–00195)).

- *Type or amount of inducements.* We are interested in information regarding the types of beneficiary inducements that might be offered in connection with clinical trials (*e.g.*, waivers of copayments, provision of otherwise uncovered services, drugs, or equipment). In the clinical trial context,

what are the practical and policy considerations associated with the various forms of inducements? Which kinds of inducements matter most to the efficient and successful completion of a clinical trial? What might be a reasonable cap on the value of inducements offered to particular patients?

• *Sources of benefits.* The OIG is aware that, in some cases, free items or services are offered to enrollees in a clinical trial by parties other than the trial sponsor. For example, a manufacturer might furnish patients with free or discounted products used in the course of the trial (but not the products that are the subject of the clinical trials). These kinds of arrangements raise concerns, as the benefits may induce enrollees to continue to use the manufacturer's products after completion of the trial.

3. Inducements of Low Value

As noted above, Congress indicated an intent to permit items and services of ''nominal'' value under section 1128A(a)(5) of the Act. Consistent with this intent, in the preamble to the final regulations governing section 1128A(a)(5), we indicated that items and services of nominal value are not prohibited by the statute and thus no exception would be necessary (65 FR 24410; April 6, 2000). We further interpreted ''nominal'' value to mean less the $10 per item and $50 in the aggregate on an annual basis (65 FR 24411; April 6, 2000).

We invite comments on whether, for the sake of clarity and bright-line guidance, we should codify an exception for inducements of low value, and, if so, what the value should be. Should the exception include a per item or service limitation on value or should it look solely to value on an annual (or other) aggregate basis?

4. Other Exceptions

The OIG welcomes suggestions for other possible exceptions to section 1128A(a)(5) of the Act. As noted above, comments are particularly useful if they address the legal and policy concerns raised by the application of section 1128A(a)(5) to particular business practices and offer specific suggestions for applicable criteria.

Dated: November 19, 2002.

**Janet Rehnquist,**

*Inspector General.*

[FR Doc. 02–31040 Filed 12–6–02; 8:45 am]

BILLING CODE 4152–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Part 1001

### Solicitation of New Safe Harbors and Special Fraud Alerts

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts. In addition, this notice solicits public comments regarding the development of possible guidance addressing certain credentialing practices.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 7, 2003.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–71–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–71–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*A. The OIG Safe Harbor Provisions*

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. The OIG may also propose the imposition of civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a), or exclusions from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, specifying various payment and business practices which, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. The OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952; July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or related administrative authorities. The safe harbor provisions are codified at 42 CFR 1001.952.

*B. OIG Special Fraud Alerts and Special Advisory Bulletins*

The OIG has also periodically issued Special Fraud Alerts and Special Advisory Bulletins to give continuing guidance to health care providers with respect to practices the OIG finds potentially fraudulent or abusive. The Special Fraud Alerts and Bulletins encourage industry compliance by giving providers guidance that can be applied to their own businesses. The OIG Special Fraud Alerts and Bulletins are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Federal health care programs. The OIG Special Fraud Alerts and Bulletins are available on the

OIG Web page at *http://oig.hhs.gov/fraud/fraudalerts.html*.

*C. Section 205 of Public Law 104–191*

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, the OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

## II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, the OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 19, 2001 (66 FR 65460). As required under section 205, a status report of the public comments received in response to that notice is set forth in Appendix G to the OIG's Semiannual Report covering the period April 1, 2002 through September, 30, 2002.[1] The OIG is not seeking additional public comment on the proposals listed in Appendix G at this time. Rather, this notice seeks additional recommendations regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix G to the OIG Semiannual Report referenced above. A detailed explanation of justifications for a suggested safe harbor or Special Fraud Alert, as well as supporting empirical data if available, would be helpful and should, if possible, be included in any response to this solicitation.

*A. Criteria for Modifying and Establishing Safe Harbor Provisions*

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions to (1) order a health care item or service or (2) arrange for a referral for health care items or services to a particular practitioner or provider.

*B. Criteria for Developing Special Fraud Alerts and Advisory Bulletins*

In determining whether to issue Special Fraud Alerts and Special Advisory Bulletins, we will consider, among other factors, whether, and to what extent, the identified conduct may result in any of the consequences set forth above, as well as the potential volume and frequency of the identified conduct.

## III. Solicitation of Public Comments on Certain Credentialing Practices

We have been asked by the American Medical Association (AMA) to issue guidance regarding the legality under the federal anti-kickback statute of certain practices in connection with the granting of hospital staff privileges. According to the AMA and other sources, an increasing number of hospitals are refusing to grant staff privileges to physicians who (1) own or have other financial interests in, or leadership positions with, competing healthcare entities, (2) refer to competing health care entities, or (3) fail to admit some specified percentage of their patients to the hospital. There may be other examples of restrictive credentialing.

In evaluating the propriety of these credentialing practices, the OIG has identified the following issues about which it is soliciting public comment in order to develop a better understanding of these practices and their potential for abuse:

A. Are hospital staff privileges ''remuneration''? Historically, so long as a physician had privileges at one hospital, the denial of privileges at another hospital was rarely actionable, since the physician could admit his or her patients to the hospital at which the physician had privileges. With the growth of managed care networks, especially in combination with the growth of health care systems that substantially control local markets, access to patients may depend on having privileges at the proper hospital. What effect, if any, do these developments have on the determination whether staff privileges are remuneration? Should the determination whether staff privileges have monetary value turn on the particular factual circumstances (e.g., in a given market, does access to privileges have a demonstrable monetary value)? Under what circumstances do staff privileges have monetary value?

B. What are the implications of a hospital's denial of privileges to a physician who competes with the hospital? Increasingly, physicians invest in and own entities, such as ambulatory surgical centers, cardiac catheterization labs, and specialty hospitals, that compete with hospital services. These physicians may be in a position to steer profitable business or patients to their own competing business through their control of referrals. A credentialing policy that *categorically* refuses privileges to physicians with significant conflicts of interest would not appear to implicate that anti-kickback statute in most situations. How should such physicians be defined: ownership? employee or contractor? staff leadership position?

C. Should the exercise of discretion by the privilege-granting hospital affect the analysis under the anti-kickback statute? Several credentialing practices have been brought to our attention that give the privilege-granting hospital discretion to evaluate the ''financial conflict'' created by a physician's outside business interests and permit the physician to retain privileges subject to periodic review. Such discretionary decision-making appears to raise substantial risks under the anti-kickback statute (i.e., privileges are conditioned on a sufficient flow of referred business). What factors other than the amount of business still being generated for the hospital might be used as the basis for the hospital exercising discretion in these kinds of arrangements? From a policy perspective, are there bases for the hospital's review or exercise of discretion that should not implicate the

[1] The OIG Semiannual Report can be accessed through the OIG Web site at *http://oig.hhs.gov/publications/semiannual.html.*

anti-kickback statute? Are there limits on discretion that might provide sufficient safeguards under the anti-kickback statute?

D. Can privileges ever be conditioned on referrals, other than minimums necessary for clinical proficiency? Some hospitals have apparently attempted to condition privileges on a physician's referral of a predetermined level of his or her hospital business to the hospital. Assuming the privileges have monetary value, such conditions would appear to be suspect under the anti-kickback statute. Are there conditions under which such conditions might be justified? Failing financial health? Guaranteeing a patient volume sufficient to support offering a critical service not otherwise available (e.g., a cardiac service in a rural area)? Does the level of required referrals or business matter (e.g., is there a difference between a requirement of 25 percent of referrals compared to 75 percent)?

E. What is the effect of credentialing restrictions that apply only to members of a group practice? What are the implications of a hospital restricting privileges for some, but not all, members of a group practice? What about restricting privileges of the entire group?

Finally, we are interested in comments on other aspects of restrictive credentialing practices that should inform our review of these practices and development of possible guidance under the anti-kickback statute.

Dated: November 19, 2002.

**Janet Rehnquist,**

*Inspector General.*

[FR Doc. 02–31039 Filed 12–6–02; 8:45 am]

**BILLING CODE 4152–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Inspector General

## 42 CFR Part 1003

**RIN 0991–AB04**

## Medicare and State Health Care Programs: Fraud and Abuse; Civil Money Penalty Exception To Protect Payment of Medicare Supplemental Insurance and Medigap Premiums for ESRD Beneficiaries

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of withdrawal of proposed rulemaking.

**SUMMARY:** On May 2, 2000, we published a notice of proposed rulemaking (65 FR 25460) soliciting public comments regarding a possible new exception under the OIG's civil money penalty provisions in 42 CFR part 1003 for independent dialysis facilities that pay, in whole or in part, premiums for Supplemental Medical Insurance (Medicare Part B) or Medicare Supplemental Health Insurance policies (Medigap) for financially needy Medicare beneficiaries with end-stage renal disease (ESRD). The exception would have established various standards and guidelines that, if met, would have resulted in the particular arrangement being protected from civil money sanctions under section 1128A(a)(5) of the Social Security Act (the Act). Having considered the public comments and for the reasons explained below, we are not promulgating an exception for these arrangements.

**DATES:** The NPRM published on May 2, 2000 at 65 FR 25460 is withdrawn as of December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, Office of Counsel to the Inspector General.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Section 1128A(a)(5) of the Act*

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, amended the Act to prohibit any person from offering Medicare or Medicaid beneficiaries remuneration that might influence them to order or receive from a particular provider, practitioner, or supplier items or services payable by Medicare or Medicaid. Specifically, section 231(h) of HIPAA established a new provision—section 1128A(a)(5) of the Act—for the imposition of a civil money penalty (CMP) against any person who:

> Offers or transfers remuneration to any individual eligible for benefits under [Medicare or Medicaid] that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under [Medicare or Medicaid].

Section 231(h) of HIPAA also created a new section 1128A(i)(6) of the Act to define the term ''remuneration'' for purposes of the new CMP. ''Remuneration'' is broadly defined to include any ''waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value.'' There are several narrow exceptions, including an exception for waivers of copayments based on financial need, if the waivers are neither routine, nor advertised. No exception applies to the payment by providers of Medicare Part B or Medigap insurance premiums on behalf of Medicare or Medicaid beneficiaries.

*B. Effects of Section 1128A(a)(5)*

Following enactment of HIPAA, representatives of a number of ESRD providers informed the OIG that many providers had been paying for Medicare Part B premiums and Medigap policies for financially needy patients who could not afford to purchase such insurance. The OIG concluded that such premium subsidies could be unlawful under the new law, and providers subsequently suspended their purchases of Medigap policies and payments of Medicare Part B premiums for their patients. Alternatively, some providers entered into funding arrangements with unrelated, nonprofit organizations that pay premiums on behalf of needy ESRD patients without regard to the identity of the patient's provider.

To date, the OIG has approved three premium funding arrangements through advisory opinions. (OIG Advisory Opinions Nos. 97–1, 97–2, and 98–17.[1]) OIG Advisory Opinion No. 97–1 is representative. In that instance, the American Kidney Fund (AKF)—a section 501(c)(3) charitable and educational organization—and a number of dialysis providers established an arrangement whereby the providers contribute funds to AKF, which, in turn, independently screens patients for financial need and pays Medicare Part B and Medigap premiums on behalf of qualifying patients. Under the arrangement, the providers do not make premium payments to, or on behalf of, particular patients; there is no ''pass through'' of payments from providers to specific patients; and payments do not tie patients in any way to particular providers. In short, the premium payments do not influence a patient's selection of any particular provider—the core prohibited conduct under section 1128A(a)(5). We understand that the AKF program now operates effectively and that contributions from ESRD providers have resulted in increasing numbers of needy patients receiving premium payment and other vital assistance. In the five years since AKF implemented its premium support program, we have received only a handful of letters from patients

[1] *http://oig.hhs.gov/fraud/docs/advisoryopinions/1997/kdp.pdf; http://oig.hhs.gov/fraud/docs/advisoryopinions/1997/972ao.pdf* and *http://oig.hhs.gov/fraud/docs/advisoryopinions/1998/ao98_17.htm* respectively.

concerned abut mistakes made in connection with their AKF funding.

*C. The Proposed Exception*

On October 21, 1998, Congress enacted the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (OCESAA), Public Law 105–277. Section 5201 of OCESAA authorized, but did not require, the Secretary to issue regulations establishing exceptions under section 1128A(a)(5) of the Act for payment practices that would otherwise violate the statute. (Additionally, OCESSA vested the Secretary with authority to issue advisory opinions approving such arrangements on a case-by-case basis.) Congress provided no guidance as to acceptable bases for protecting or approving an otherwise unlawful arrangement. Under OCESAA, if a regulatory exception is promulgated for premium support payments by ESRD providers, (i) the exception must be limited to two years, and (ii) the Comptroller General of the United States must study any disproportionate impact on specific Medigap insurers due to adverse selection in enrolling Medicare ESRD beneficiaries and recommend whether to extend the exception past two years.

We construed OCESSA as evidencing Congress' intent that we consider, but not necessarily establish, an exception for premium payments made by ESRD providers. To that end, we issued an NPRM soliciting public comment regarding a proposed exception that would have applied to independent dialysis facilities (as defined in 42 CFR 413.174) that have no hospital, physician, or other provider or supplier ownership and that pay for Medicare Part B or Medigap premiums for financially needy ESRD patients when (i) the payment is not advertised, (ii) the dialysis facility does not routinely make payments for such premiums, and (iii) the dialysis facility makes a good faith determination that the individual is financially needy. The proposed exception would not have covered the payment of Medicare Part B or Medigap premiums on behalf of any other beneficiaries or by any other type of provider. We specifically solicited comments on the potential impact of adverse selection on the Medigap insurance market.

We received 72 timely comments to the proposed rule from a cross-section of interested parties. Many commenters considered the proposed rule too narrow and advocated a broader rule that would apply to dialysis providers owned or operated by hospitals, physicians, or other providers. Other commenters thought the rule was unnecessary. Commenters representing insurers opposed the rule.

Commenters favoring a broader rule believed that OCESSA demonstrated Congress' support for an ESRD premium payment exception. They pointed out that many ESRD facilities had paid premiums for financially needy patients prior to the enactment of HIPAA and that the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services) had a separate line on the ESRD cost report for such payments. They also noted that dialysis patients traditionally have very high copayments and, thus, have a particular need for supplemental insurance. A substantial amount of care provided to these patients is covered under Medicare Part B and requires a 20% copayment. According to these commenters, premium payments do not influence a patient's choice of an ESRD facility, since the availability of premium support is not typically advertised and an ESRD patient typically picks a dialysis facility based on proximity to the patient's home or the recommendation of the patient's nephrologist. Commenters also asserted that there is little risk of overutilization because both ESRD facilities and nephrologists are paid by Medicare primarily on a composite rate basis that does not vary with the amount of services provided.

Commenters opposing the proposed rule emphasized the potential effects of adverse selection on the insurance market, noting that the claims costs of Medigap subscribers with ESRD are significantly higher than those of non-ESRD subscribers. Commenters also observed, among other things, that the proposed safe harbor would give ESRD facilities an incentive to pay Medicare Part B and Medigap premiums in order to maintain their revenue streams; would benefit nephrologists who may be influenced to steer patients to facilities providing premium support; and would influence beneficiaries to select particular facilities. In sum, commenters opposing the proposal believed it would have detrimental effects on insurers, the Medicare program, and beneficiaries.

*D. Determination Not To Promulgate an Exception*

We have reviewed the public comments and considered the issues raised by an exception to section 1128A(a)(5) for ESRD premium payments. For the following reasons, we decline to promulgate such an exception.

First, the direct payment of supplemental premiums by ESRD providers for financially needy patients carries the same potential for abuse as the provision of free or below market rate goods or services by any other health care provider. (*See OIG Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries* (65 FR 55844; August 30, 2002). The statute targets corruption of the provider selection process. Since any exception would be permissive, any ESRD facility that did not pay premiums for financially needy patients would likely lose business. In short, the exception would promote the very conduct the statute prohibits: the offering of remuneration to influence the selection of a provider. Moreover, patients would not only be influenced to select ESRD facilities that buy them supplemental health insurance, but would be ''locked in'' to those facilities, since changing facilities would jeopardize their supplemental insurance for all services, including substantial non-ESRD services.

Second, creating an exception for direct premium payments by ESRD providers would create demands for additional exceptions for comparable payments by other health care providers and would potentially increase federal expenditures and Medigap premiums. We can discern no rational basis—and Congress has provided no guidance—for distinguishing between providers paying premiums for ESRD patients and providers paying premiums for other chronically ill, financially needy patients, such as patients with cancer, diabetes, or congestive heart disease. Nor can we discern any rational bases for distinguishing among types of benefits provided to Medicare and Medicaid beneficiaries or among categories of sick beneficiaries. Absent congressional guidance, attempting to draw such distinctions would necessarily result in arbitrary standards and would undermine the statute.

It is to a provider's financial advantage (i) to pay the Medigap premium whenever the premium is less than the expected copayments and (ii) to pay the Part B premium whenever the premium is less than the expected Part B payments. Thus, the insurer will always lose money on these policies, as the amount paid out to the provider will always exceed the premiums received. This phenomenon—adverse selection—will likely cause insurers to raise premiums for all other enrollees to cover the losses. For this reason, the health insurance industry objected to the proposed exception.

Finally, we are not persuaded that a special exception for ESRD premium payments is needed. Financially needy dialysis patients are already receiving, and will continue to receive, supplemental health insurance support through funding arrangements with AKF or comparable independent nonprofit organizations. These arrangements are lawful, are apparently efficient, and minimize the potential for abuse.

In sum, in the absence of specific guidance from Congress on the standards to apply, we are not promulgating an exception for ESRD premium payments under section 1128A(a)(5) of the Act. This approach reflects our determination—articulated in the OIG Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries (67 FR 55855; August 30, 2002)—that any exceptions to section 1128A(a)(5) must be closely aligned with the existing language of the statute.

## II. Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published in the **Federal Register** on May 2, 2000 (65 FR 25460) is withdrawn.

## III. Regulatory Impact

Since the action only withdraws a notice of proposed rulemaking, it is neither a proposed or a final rule and, therefore, is not covered under Executive Order 12866 or the Regulatory Flexibility Act (5 U.S.C. 601–612).

## List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Dated: October 25, 2002.

**Janet Rehnquist,**

*Inspector General.*

Approved: December 2, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02–31041 Filed 12–6–02; 8:45 am]

BILLING CODE 4152–01–P

# Notices

Federal Register
Vol. 67, No. 236
Monday, December 9, 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.

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Meeting of the Advisory Committee; Meeting

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on January 9 and 10, 2003.

**DATES:** Thursday, January 9, 2003, from 9 a.m. to 5 p.m., and Friday, January 10, 2003, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Thursday, January 9, 2003, from 9 a.m. to 5 p.m., and Friday, January 10, 2003, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2002 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2003 Basic (EA–1) Examination and the May 2003 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2002 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 10 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2002, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:DOP, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: December 3, 2002.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 02–31053 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF AGRICULTURE

### Center for Nutrition Policy and Promotion; Agency Information Collection Activities; Proposed Collection; Comment Request—Generic Clearance for Nutrition Education Messages and Materials for the General Public

**AGENCY:** Center for Nutrition Policy and Promotion, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This notice announces the Center for Nutrition Policy and Promotion's intention to request the Office of Management and Budget approval of the information collection instruments to be used during consumer research. The instruments are designed to identify consumers' understanding of potential nutrition education messages and their reaction to prototype sections of nutrition education materials, including Internet-based materials. The information collected will be used to refine messages and materials to improve usefulness and consumer understanding.

**DATES:** Written comments on this notice must be submitted on or before February 7, 2003.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Carole Davis, Nutrition Promotion Staff Director, Center for Nutrition Policy and Promotion, U.S. Department of

Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Carole Davis, 703–305–7600.

**SUPPLEMENTARY INFORMATION:**

*Title:* Nutrition Education Messages and Materials for the General Public.

*OMB Number:* To be assigned.

*Expiration Date:* Not applicable.

*Type of Request:* New collection of information.

*Abstract:* The Dietary Guidelines for Americans, issued jointly by the U.S. Departments of Agriculture and Health and Human Services, are the cornerstone of Federal nutrition policy and form the basis for nutrition education efforts of these agencies. The U.S. Department of Agriculture develops and promotes nutrition education materials to help consumers understand and use the Dietary Guidelines. The Center for Nutrition Policy and Promotion is responsible for publication of the bulletin containing the text of the Dietary Guidelines; it also develops additional materials to help consumers understand and use the Guidelines. The increased prevalence of overweight and obesity in the United States has made it even more important to communicate clear and useful nutrition education information related to the Guidelines on food choices, weight, and physical activity. In addition, the Center for Nutrition Policy and Promotion provides food-based guidance for the general public through the Food Guide Pyramid. The Pyramid is an educational tool designed to help consumers implement the Guidelines and eat a nutritious diet. The Food Guide Pyramid is undergoing a broad-based reassessment, and development of updated materials is planned to help communicate Pyramid messages and recommendations.

Educational messages and materials in support of the Dietary Guidelines for Americans and Food Guide Pyramid, including those targeted to preventing obesity, will be developed by the Center for Nutrition Policy and Promotion. These will include:

1. The 2005 editions of the bulletin Nutrition and Your Health: Dietary Guidelines for Americans and the brochure Using the Dietary Guidelines for Americans;

2. An updated Food Guide Pyramid graphical representation, poster, and supportive educational materials;

3. Nutrition education and Internet-based materials to help combat overweight and obesity in America. The initial phase of this campaign will target women 20 to 40 years old, with a special emphasis on low-income women.

The materials for these initiatives will be tested using qualitative consumer research techniques, which may include focus groups, qualitative interviews, and Web-based surveys. Participants in the testing will provide information regarding the clarity, understandability, and acceptability of the messages and materials during the developmental process and during the final product development stage.

*Affected Public:* Adult Consumers.

*Estimated Number of Respondents:* 850.

*Estimated Time Per Response:* 2 hours for focus groups and qualitative interviews, .25 hours for Web-based surveys.

*Total Estimated Annual Burden Hours:* 1175 hours.

| Project | Number of respondents | Estimated hours per respondent | Total estimated time burden |
|---|---|---|---|
| Dietary Guidelines materials | 200 | 2 | 400 hrs. |
| Food Guide Pyramid materials | 200 | 2 | 400 hrs. |
| Portion awareness messages | 100 | 2 | 200 hrs. |
| Portion awareness materials | 300 | .25 | 75 hrs. |
| Portion awareness interactive | 50 | 2 | 100 hrs. |
| Total | 850 | | 1175 hrs. |

Dated: November 27, 2002.

**Steven Christensen,**

*Acting Director, Center for Nutrition Policy and Promotion.*

[FR Doc. 02–30963 Filed 12–6–02; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 02–045N]**

### Improving the Recall Process

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing that it will hold a one day technical conference on December 12, 2002, on Improving the Recall Process. There will be a series of discussions of issues related to this topic.

**DATES:** The public meeting is scheduled for Thursday, December 12, 2002. The meeting will be held from 8 a.m. to approximately 5 p.m.

**ADDRESSES:** The public meeting will be held at the Washington Plaza Hotel, #10 Thomas Circle, NW., Washington, DC 20005. The telephone number is 202–842–1300.

A tentative agenda is available in the FSIS Docket Room and on the FSIS Web site at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.fsis.usda.gov.* FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Room, Docket 02–045N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Moshe Dreyfuss at (202) 205–0260. Registration for the meeting will be on-site. No prior registration will be accepted. Persons requiring a sign Language interpreter or other special accommodations should notify Ms. Mary Harris as soon as possible at (202) 690–6498.

**SUPPLEMENTARY INFORMATION:**

#### Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products

Inspection Act. The Agency's activities are intended to prevent the distribution in domestic and foreign commerce, as human food, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

In January 2000, the Agency issued its latest revision of the recall procedures, FSIS Directive 8080.1, rev. 3. This revised directive was an improved recall procedure designed to inform meat and poultry producers of the need for swift action to prevent contaminated or adulterated meat or poultry from reaching the public. It includes methods for recovering those products and procedures for public notification.

While this process has functioned well, in recent months there have been questions raised on the efficiency and effectiveness of the recall process in light of several large recalls. Therefore, to address these concerns and to solicit possible means of improving the recall system, FSIS is holding this public meeting.

**Public Meeting**

At the meeting, the Agency will describe and invite discussion and comments on FSIS's recall authority, how FSIS approaches recalls, and how FSIS works with states on recalls. Also, presentations are expected to be made on approaches to recalls by industry and by other agencies.

The Agency will host three panel discussions to solicit ideas and proposals for making the recall process more effective. The discussions will cover the implications of mandatory recall authority, when public notification is needed, whether the Agency should approach establishment-initiated recalls differently from Agency-initiated recalls, and whether product should be withheld from commerce until sample results are received. The Agency intends to seek information from academia, industry sources, and consumers on ways to improve the recall process with a particular emphasis on improving public health and to provide a forum for discussion on how best to handle them. The Agency will open the discussion to include, and solicit comment from, the attendees.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail Subscription service. In addition, the update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on: December 4, 2002.

**Dr. Garry L. McKee,**

*Administrator.*

[FR Doc. 02–31008 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Keystone-Quartz Ecosystem Management Project, Beaverhead-Deerlodge National Forests, Beaverhead County, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare a supplement to the Environmental Impact Statement.

**SUMMARY:** The Forest Service will prepare a supplement to the final Environmental Impact Statement to document additional soils analysis and disclose the environmental impacts to the soils resource of the preferred alternative to manipulate forest and range vegetation on 684 acres. The Preferred Alternative 6 would thin and prescribe burn 540 acres of Douglas-fir forest to restore open Douglas-fir forest habitat, release 58 acres of aspen/shrub to restore aspen/shrub communities, thin 19 acres of dense lodgepole pine to improve overall forest health, and restore shrub/grass habitat by removal of small conifers and prescribed burning on 67 acres of shrub/grass habitat that has been lost to conifer succession. Forest product recovery would occur on 58 acres to remove the large conifers (aspen/shrub release only); on 260 acres to remove special forest products (small diameter trees), and on 19 acres to remove post and pole size lodgepole pine. Slashing would remove smaller conifers in most treatment areas as a pre-treatment prior to prescribed burning. Existing roads would be used and no new roads would be built. This area lies at the northern end of the Pioneer Mountains, three miles south of Wise River, Montana. The prior notice of intent for this proposed action appeared in the **Federal Register** on April 9, 1999, 64 FR 17310–11. The NOA for the DEIS appeared on April 6, 2001, 66 FR 18243. A Final Environmental Impact Statement and a Record of Decision were issued on December 3, 2001. The legal notice of the Record of Decision for the FEIS appeared on the Montana Standard on December 31, 2001. The decision was appealed, and later reversed on March 15, 2002.

**DATES:** Initial comments concerning the supplement to the EIS should be received in writing no later than 30 days after the publication of this NOI in the **Federal Register**.

**ADDRESSES:** The responsible official is the District Ranger, Beaverhead-Deerlodge National Forest, Dillon, Montana. Please send comments to Charlie Hester, District Ranger, Wise River Ranger District, P.O. Box 100, Wise River, MT 59762. Comments may be electronically submitted to *r1_b-d_comments@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Jeff Trejo, project leader, P.O. Box 100, Wise River, MT or phone (406) 832–3178 or by e-mail to *jtrejo@fs.fed.us.* People may visit with Forest Service officials at any time during the analysis and prior to the decision.

The draft supplement to the EIS is anticipated to be available for review in January 2003. The final supplement to the EIS is planned for completion in April 2003.

The Environmental Protection Agency will publish the notice of availability of the draft supplement to the environmental impact statement in the **Federal Register**. The Forest will also publish a legal notice of its availability in the Montana Standard Newspaper, Butte, Montana. A 45-day comment period on the draft supplement to the Environmental Impact Statement will

begin the day following the publication of the legal notice.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplement to the Environmental Impact Statement must structure their participation in the environmental review of the preferred alternative so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft supplement to the environmental impact statement stage but that are not raised until after completion of the final supplement to the environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns, comments on the draft supplement to the Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final supplement to the EIS, the EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: December 2, 2002.

**Thomas K. Reilly,**

*Forest Supervisor.*

[FR Doc. 02–30980 Filed 12–6–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Georgetown Vegetation Management, Philipsburg Ranger District, Beaverhead Deerlodge National Forest, Granite and Deer Lodge Counties, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice; intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact settlement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to manage forest and rangelands to reduce fuel levels, improve forest health, and improve vegetative structure in the Flint Creek, North Flint Creek, and upper Warm Springs drainages. The proposed project includes the Georgetown and Echo Lake recreation areas which are located approximately 10 miles south of Philipsburg, Montana. A portion of the project proposes to treat forested lands comprised of vegetation condition classes 2 and 3 within and adjacent to areas defined as wildland urban interface and intermix communities. Areas with these conditions have been identified as priorities for fuel treatment under the National Fire Plan and Cohesive Strategy because of the potential for severe and damaging wildfire.

The Forest Service proposes fuel reduction and forest health treatments by thinning and shelterwood harvest on 1,000 to 1,200 acres. As estimated 1.0 to 1.3 million board feet (2,000 to 2,600 hundred cubic feet, CCF) of sawtimber and approximately 1.0 to 1.5 million board feet equivalent (2,000 to 3,000 CCF) of posts and poles would be harvested. Also, 1,100 to 1,200 acres would be treated with prescribed fire and mechanical methods to control conifer encroachment and reduce grassland fuels.

This project originally appeared in the **Federal Register** on August 3, 1998, page 41223, as the Double Sec Timber Sale and Vegetative Management, Beaverhead-Deerlodge National Forest, Granite and Deer Lodge Counties, MT. A draft environmental impact statement was completed and a notice of availability was published in the **Federal Register** on October 8, 1999, page 54882, as EIS No. 990357, Draft EIS, AFS, MT, Double Sec Timber Sale and Vegetation Management Project.

**DATES:** Initial comments concerning the scope of the analysis should be received in writing no later than 30 days after the publication of this NOI in the **Federal Register**.

**ADDRESSES:** The responsible official is Forest Supervisor Thomas K. Reilly, Beaverhead-Deerlodge National Forest, Dillon, MT. Please send written comments to Bob Gilman, District Ranger, Philipsburg Ranger District, 88 10A Business Loop, Philipsburg, MT 59858. Comments may be electronically submitted to *rl_b-d_comments@fs.fed.us*.

**FOR FURTHER INFORMATION CONTACT:** Mark Giacoletto, Fire Management Officer, Philipsburg Ranger District, 88 10A Business Loop, Philipsburg, MT, 59858, or phone: (406) 859–3211.

**SUPPLEMENTARY INFORMATION:** The project area is located in T4 &5N, R13 &14W. The scope of this proposal is to initiate vegetative practices throughout the Georgetown Lake area that would help maintain the recreational setting over time. Treatments would reduce stand densities and fuel levels, especially in areas near private property, developments, and homes.

The original environmental analysis for this area was initiated in the spring of 1997. The original proposed action would have harvested approximately 11.5 million board feet, from 1,250 acres, and constructed 4.5 miles of system roads and 4.5 miles of temporary roads. Alternatives to the proposed action reduced harvest levels, reduced or eliminated road construction, and changed travel management by closing up to 14.5 miles of roads and motorized trails.

The revised project would implement the goals and objectives outlined in the National Fire Plan, Cohesive Strategy and Goal 2 of the 10 Year Comprehensive Strategy.

Public participation will be re-initiated due to the substantial changes in project design. Part of the goal of public involvement is to identify issues to the revised project. During initial scoping, over 900 letters were sent to interested people, adjacent landowners, organizations, business, as well as Federal, State, County, and Tribal organizations. Thirty-two individual responses were received. A field trip was held during the summer of 1997; two people attended. A public meeting was held in Anaconda, MT on December 15, 1999. Articles describing the project were published in local newspapers.

The analysis will consider all reasonably foreseeable activities. The interdisciplinary team has not yet developed alternatives to the proposed action. Alternatives will be developed

based on the key issues identified through scoping.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in July 2003. The final EIS is scheduled for completion in August 2003.

The Environmental Protection Agency will publish the notice of availability of the Draft Environmental Impact Statement in the **Federal Register**. The Forest Service will also publish a legal notice of its availability in the Montana Standard Newspaper, Butte, Montana. A 45-day comment period on the draft environmental impact statement will begin the day following the legal notice.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45 day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: December 2, 2002.

**Thomas K. Reilly,**

*Forest Supervisor, Beaverhead-Deerlodge National Forest.*

[FR Doc. 02–30979 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Stanislaus National Forest, CA; Larson Reforestation and Fuels Reduction Project

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The Forest Service will prepare an environmental impact statement to restore, reforest, and reduce fuels within the 13,263 acre Larson project area that was burned in the Stanislaus Complex Fire of 1987. The Larson project area is located in Mariposa County, California, on Stanislaus National Forest, Groveland Ranger District. The project area is located three miles south of Highway 120, two miles north of the Merced River Canyon, and is bounded by Pilot Peak Lookout on the west and Yosemite National Park on the east. The legal description is: Township 2 South, Range 18 East, Sections 13, 24, 25, 36; Township 2 South, Range 19 East, Sections 15–18, 19–22, 26–30, 31–35; Township 3 South, Range 19 East, Sections 2–6, 9–10, MDM.

**DATES:** Comments concerning the scope of the analysis must be received by January 15, 2003. The draft environmental impact statement is expected September 2003 and the final environmental impact statement is expected April 2004.

**ADDRESSES:** Send written comments to John R. Swanson, District Ranger, Stanislaus National Forest, Groveland Ranger District, 24545 Highway 120, Groveland, CA 95321 or fax them to (209) 962–7412.

**FOR FURTHER INFORMATION CONTACT:** Dan Roskopf, Silviculture Forester, Stanislaus National Forest, Groveland Ranger District, 24545 Highway 120, Groveland, CA 95321, phone (209) 962–7825.

**SUPPLEMENTARY INFORMATION:** The proposed action is being undertaken to comply with the direction contained in the National Forest Management Act (1976) Sec. 4.(d)(1), stating that ''it is the policy of Congress that all forested lands shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stands designed to secure the maximum benefits of multiple use sustained yield management in accordance with the land management plans''. In addition, this environmental impact statement (EIS) will tier to the Stanislaus National Forest Land and Resource Management Plan and EIS of 1991 as amended.

#### Purpose and Need for Action

The Larson Fire (part of the Stanislaus Complex Fire of 1987) burned over 15,000 acres of forest and non-forest lands within the Larson project area. The fire burned in a mosaic pattern of moderate and high intensities. Significant regeneration of conifer trees following a wildfire and the associated benefits of a forested ecosystem has not occurred. Relying on natural regeneration and succession to reforest an area would take many decades. By restoring and reforesting the area, the associated benefits of recreation, timber, soil quality, visual quality, water quality, and wildlife habitat would recover to pre-fire levels at an accelerated rate.

#### Proposed Action

The proposed action would consist of combinations of site preparation (4,300 acres), reforestation (4,500 acres), release (4,800 acres), precommercial thinning (750 acres), prescribed burning (4,800), and defensible fuel profile zone construction (150 acres) treatments. Site preparation treatments would include mechanical, manual, and chemical methods. Specific treatments would include shredding, tractor piling,

grapple piling, crushing, felling, hand herbicide applications (glyphosate or triclopyr), and aerial herbicide (glyphosate) applications. Reforestation treatment would include planting and re-planting if needed. Release treatments would include hand herbicide (glyphosate or triclopyr) application and a second hand herbicide (glyphosate or triclopyr) application if needed. Precommercial thinning treatments would include shredding, hand felling and piling, and hand felling with lopping and scattering of slash. Prescribed burning treatments would include broadcast, underburn, and pile burning. Defensible fuel profile zone construction would include tractor piling and shredding.

**Possible Alternatives**

A range of reasonable alternatives will be considered as long as they meet the purpose and need of the proposed action, meet the project objectives of the proposed action, and are consistent with the Forest and Resource Management Plan. A ''no action'' alternative will also be considered.

**Responsible Official**

The Responsible Official is Glenn Gottschall, Acting Forest Supervisor, Stanislaus National Forest, Supervisor's Office, 19777 Greenley Road, Sonora, CA 95370.

**Nature of Decision To Be Made**

The decision to be made is how to restore and reforest the land that was burned in the Stanislaus Complex Fire of 1987 to meet a variety of resource needs (i.e., recreation, timber, watershed, wildlife). The Forest Supervisor may select one of the proposed alternatives for reforesting the burn area, modify one of the proposed alternatives by adding additional management requirements or mitigation measures, or defer reforestation treatments of the burned area.

**Scoping Process**

The Larson Reforestation and Fuels Reduction Project encouraged public participation through notification in the Stanislaus National Forest Schedule of Proposed Actions (SOPA), a publication mailed to over 500 governmental agencies, organizations, groups, and interested individuals. In addition, the project is listed on the Stanislaus National Forest SOPA web site (*http;://www.r5.fs.fed.us/stanislaus/planning/sopa/index.htm*). Furthermore, a preliminary scoping letter was mailed out to various individuals, organizations and government agencies in September of 1997 and August of 1998 requesting public comments. This project will also be listed in the **Federal Register**.

**Preliminary Issues**

Preliminary concerns include the effects of mechanical, chemical, and prescribed burning treatments on air quality, soil quality, water quality, and threatened and endangered species.

**Permits or Licenses Required**

A county burning permit will be required for prescribed burning operations. A California Pesticide Applicators License will be required for herbicide operations.

**Comment Requested**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations that may be interested in, or affected by, the proposed action. Scoping comments will be used to refine the proposed action; develop management requirements, mitigation measures, or alternatives; and identify potential issues and environmental effects of the proposal and the alternatives. This input will be used in the preparation of the draft environmental impact statement (DEIS).

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45-days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 26, 2002.

**Glenn J. Gottschall,**

*Acting Forest Supervisor, Stanislaus National Forest.*

[FR Doc. 02–31025 Filed 12–6–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Assistance to High Energy Cost Rural Communities

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of funding availability (NOFA).

**SUMMARY:** The Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) announces the availability of $14.9 million in a new program of competitive grants to assist communities with extremely high energy costs. This grant program is authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 1918a). The grant funds may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving communities in which the average residential expenditure for

home energy exceeds 275 percent of the national average. Eligible applicants include persons, States, political subdivisions of States, and other entities organized under State law. Federally-recognized Indian tribes and tribal entities are eligible applicants. This notice describes the eligibility and application requirements, the criteria that will be used by RUS to award funding and information on how to obtain application materials.

**DATES:** All applications must be postmarked or delivered to RUS no later than February 7, 2003.

Applications will be accepted on publication of this notice.

**ADDRESSES:** Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Applications should be marked ''Attention: High Energy Cost Community Grant Program.''

**FOR FURTHER INFORMATION CONTACT:** Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW, STOP 1560, Room 4037 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, email *HEnergy02@rus.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

**Programs Affected**

This program is listed in the Catalog of Federal Domestic Assistance Programs (CFDA) as ''Assistance to High Energy Cost Rural Communities.'' The CFDA number assigned to this program is 10.859.

**Executive Order 12372**

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

**Information Collection and Recordkeeping Requirements**

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the ''Act''), OMB must approve all ''collections of information'' by RUS. The Act defines ''collection of information'' as a requirement for ''answer to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A).) RUS has determined that it is likely that fewer than ten applications will be received because of stringent eligibility requirements. Therefore, this NOFA does not involve the imposition of identical reporting and recordkeeping requirements on ten or more persons and does not require approval under the Act. If RUS receives ten or more applications in response to this NOFA, the Agency will submit a request for approval under the Paperwork Reduction Act.

**Background**

RUS is making available $14.9 million in competitive grants through a new financial assistance program under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) (the ''RE Act''). Under section 19 of the RE Act (7 U.S.C. 918a), RUS is authorized to make grants to ''acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities'' serving communities in which the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy.''

The purpose of this new program is to provide financial assistance for a broad range of energy facilities, equipment and related activities to offset the impacts of extremely high residential energy costs on eligible communities. Grants funds may be used to ''acquire, construct, extend, upgrade and otherwise improve energy generation, transmission, or distribution facilities' serving extremely high energy cost communities. Eligible facilities include on-grid and off-grid renewable energy systems and implementation of cost-effective demand side management and energy conservation programs that benefit eligible communities.

Eligible applicants include ''persons, States, political subdivisions of States, and other entities organized under the laws of States.'' Under section 13 of the RE Act (7 U.S.C. 913) ''the term person shall be deemed to mean any natural person, firm, corporation, or association.'' Indian tribes and tribal entities are eligible applicants and beneficiaries under this program.

No cost sharing or matching funds are required as a condition of eligibility under this grant program. However, RUS will consider other financial resources available to the grantee and any voluntary commitment of matching funds or other contributions in assessing the grantee's capacity to carry out the grant program successfully and will award additional evaluation points to proposals that include such contributions.

As a further condition of each grant, section 19(b)(2) of the RE Act requires that planning and administrative expenses may not exceed 4 percent of the grant funds.

This NOFA provides an overview of the grant program, eligibility and application requirements, and selection criteria. Applicants should consult the detailed grant Application Guide for additional information on application requirements and copies of all required forms and certifications. The Application Guide is available on the Internet from the RUS Web site at *<http://www.usda.gov/rus/electric/hecgp/index.htm>*. The application guide may also be requested from the Agency contact listed above.

**Definitions**

As used in this NOFA:

*Administrator* means the Administrator of the RUS.

*Agency* means the Rural Utilities Service.

*Application Guide* means the Application Guide prepared by RUS for the High Energy Cost Grant program containing detailed instructions for determining eligibility and preparing grant applications, and copies of required forms, questionnaires, and model certifications.

*Census block* means the smallest geographic entity for which the Census Bureau collects and tabulates decennial census information and which are defined by boundaries shown on census maps.

*Census designated place (CDP)* means a statistical entity recognized by the U.S. Census comprising a dense concentration of population that is not within an incorporated place but is locally identified by a name and with boundaries defined on census maps.

*Extremely high energy costs* means local community average residential energy costs that are at least 275 percent of one or more home energy cost benchmarks identified by RUS based on the national average residential energy expenditures as reported by the Energy Information Administration (EIA).

*Home energy* means any energy source or fuel used by a household including electricity, natural gas, fuel oil, kerosene, liquefied petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind, and solar energy. Fuels used for subsistence activities in remote rural areas are also included. Other transportation fuel uses are not included, however.

*Home energy cost benchmarks* means the criteria established by RUS for eligibility as an extremely high energy cost community. Home energy cost benchmarks are calculated for total annual household energy expenditures;

total annual expenditures for individual fuels; annual average per unit energy costs for primary home energy sources at 275 percent of EIA estimates of national average residential energy expenditure.

*Indian Tribe* means a Federally recognized tribe as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to include ''* * *any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

*Person* means any natural person, firm, corporation, or association and for purposes of this notice, includes Indian tribes and tribal entities.

*Primary home energy source* means the energy source that is used for space heating or cooling, water heating, cooking, and lighting. A household or community may have more than one primary home energy source.

*State rural development initiative* means a rural economic development program funded by or carried out in cooperation with a State agency.

*Target area* means the geographic area to be served by the grant.

*Target community* means the unit or units of local government in which the target area is located.

*Tribal entity* means a legal entity that is owned, controlled, sanctioned, or chartered by the recognized governing body of an Indian tribe as defined in this NOFA.

**Award Information**

The total amount of funds available for grants under this notice is $14.9 million. The number of grants awarded under this NOFA will depend on the number of applications submitted, the amount of grant funds requested, and the quality and competitiveness of applications submitted.

The funding instrument available under this NOFA will be a grant agreement. Grants awarded under this notice must comply with all applicable USDA and Federal regulations concerning financial assistance, with the terms of this notice, and with the requirements of section 19 of the RE Act. Grants made under this NOFA will be administered under and are subject to USDA financial assistance regulations at 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052, as applicable. The maximum amount of grant assistance that will be considered for funding in a grant application under this notice is $5,000,000. The minimum amount of assistance for a grant application under this program is $75,000. The award period will generally be for 36 months, however, longer periods may be approved depending on the project involved.

All timely submitted and complete applications will be reviewed for eligibility and rated according to the criteria described in this NOFA. Applications will be ranked in order of their numerical scores on the rating criteria and forwarded to the RUS Administrator. The Administrator will review the rankings and the recommendations of the rating panels. The RUS Administrator will then fund grant applications in rank order.

RUS reserves the right not to award any or all the funds made available under this notice, if in the sole opinion of the Administrator, the grant proposals submitted are not deemed feasible. RUS also reserves the right to partially fund grants if grant applications exceed the available funds. RUS will advise applicants if it cannot fully fund a grant request.

**Eligible Projects**

Grantees must use grant funds to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving eligible communities. All energy generation, transmission, and distribution facilities, equipment, and associated services used to provide electricity, natural gas, home heating fuels, and other residential energy service are eligible. On-grid and off-grid renewable energy projects, and energy efficiency, and energy conservation projects that serve eligible communities are included.

Grants may cover up to the full costs of any eligible projects subject to the statutory condition that no more than 4 percent of grant funds may be used for the planning and administrative expenses of the grantee.

The project must serve communities that meet the extremely high energy cost eligibility requirements described in this NOFA. The grantee must demonstrate that the proposed project will benefit eligible communities. Additional information on eligible activities is contained in the Application Guide.

**Ineligible Grant Purposes**

Grant funds cannot be used for: preparation of the grant application, fuel purchases, routine maintenance or other operating costs, and purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

Consistent with USDA policy, grant funds awarded under this program generally cannot be used to replace other USDA assistance or to refinance or repay outstanding RUS loans. Grant funds may, however, be used in combination with other USDA assistance programs including RUS loans. Grants may be applied toward grantee contributions under other USDA programs depending on the terms of those programs. For example, an applicant may propose to use grant funds to offset the costs of electric system improvements in extremely high cost areas and as a cost contribution as part of the utility's expansion of its distribution system financed in whole or part by an RUS electric loan. An applicant may propose to finance a portion of an energy project for an extremely high energy cost community through this grant program and secure the remaining project costs through a loan or loan guarantee or grant from RUS or other sources.

Each grant applicant must demonstrate the economic and technical feasibility of its proposed project. Activities or equipment that would commonly be considered as research and development activities, or commercial demonstration projects for new energy technologies will not be considered as technologically feasible projects and would, thus, be ineligible grant purposes. However, grant funds may be used for projects that involve the innovative use or adaptation of energy-related technologies that have been commercially proven.

**Eligible Applicants**

Under Section 19 eligible applicants include ''persons, States, political subdivisions of States, and other entities organized under the laws of States'' (7 U.S.C. 918a). Under section 13 of the RE Act, the term ''person'' means ''any natural person, firm, corporation, or association'' (7 U.S.C. 913). Examples of eligible applicants include: for-profit and nonprofit organizations, including corporations, associations, partnerships (including limited liability partnerships), cooperatives, trusts, and sole proprietorships; State and local

governments, counties, cities, towns, boroughs, or other agencies or units of State or local governments; Indian tribes, other tribal entities, Alaska Native Corporations; and individuals.

An individual is an eligible applicant under this program, however, the proposed grant project must provide community benefits and not be for the sole benefit of an individual applicant.

All applicants must demonstrate the legal capacity to enter into a binding grant agreement with the Federal Government at the time of the award and to carry out the proposed grant funded project according to its terms.

**Eligible Communities**

The grant project must benefit communities with extremely high energy costs. The RE Act defines an extremely high energy cost community as one in which ''the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy'' as determined by the Energy Information Administration (EIA) using the most recent data available. 7 U.S.C. 918a.

The statutory requirement that community residential expenditures for home energy exceed 275 percent of national average establishes a very high threshold for eligibility under this program. RUS has calculated high energy cost benchmarks based on EIA national average home energy expenditure data. Communities must meet one or more high energy cost benchmarks to qualify as an eligible beneficiary of a grant under this program. Based on available published information on residential energy costs, RUS anticipates that only those communities with the highest energy costs across the country will qualify under this congressionally-mandated standard.

The EIA's Residential Energy Consumption and Expenditure Surveys (RECS) and reports provide the baseline national average household energy costs that were used by RUS for establishing extremely high energy cost community eligibility criteria for this grant program. The RECS data base and reports provide national and regional information on residential energy use, expenditures, and housing characteristics. The latest available RECS home energy expenditure estimates are based on 1997 survey data and are shown in Table 1.

TABLE 1.—EIA AVERAGE ANNUAL HOUSEHOLD ENERGY EXPENDITURES AND RUS EXTREMELY HIGH ENERGY COST ELIGIBILITY CRITERIA BENCHMARKS

| Fuel | Average total consumption | National average | Extremely high energy cost benchmark |
|---|---|---|---|
| Average annual household expenditure: | | | |
| Electricity | 10,219 kilowatt hours (kWh) | $871 per year | $2,341 per year |
| Natural Gas | 83 thousand cubic feet | 579 per year | 1,547 per year |
| Fuel Oil | 730 gallons | 714 per year | 1,870 per year |
| LPG/Propane | 488 gallons | 500 per year | 1,266 per year |
| Total Household Energy Use | 101 million Btus | 1,338 per year | 3,613 per year |
| Annual average per unit residential energy costs: | | | |
| Electricity | | 0.085 per kWh | 0.229 per kWh |
| Natural Gas | | 6.96 per thousand cubic feet | 18.78 per thousand cubic feet |
| Fuel Oil | | 0.96 per gallon | 2.62 per gallon |
| LPG/Propane | | 1.03 per gallon | 2.72 per gallon |
| Total Household Energy cost per Btus. | | 13.25 per million Btus | 36.10 per million Btus |

*Sources:* U.S. Department of Energy, Energy Information Administration, Residential Energy Consumption and Expenditure Surveys 1997. The RUS benchmarks calculations include adjustments to reflect the uncertainties inherent in EIA's statistical methodology for estimating home energy costs. The benchmarks are set based on the EIA's lower range estimates using the specified EIA methods.

Extremely high energy costs in rural and remote communities typically result from a combination of factors. The most prevalent include high energy consumption, high per unit energy costs in local markets, limited availability of energy sources, extreme climate conditions, and housing characteristics. The relative impacts of these conditions exhibit regional and seasonal diversity. Market factors have created an additional complication in recent years as the prices of the major commercial residential energy sources—electricity, fuel oil, natural gas, and LPG/propane—have fluctuated dramatically in some areas.

RUS has established community eligibility criteria based on EIA's estimates of national average residential energy expenditures. Table 1 shows the national averages and RUS benchmark criteria for extremely high energy costs. The applicant must demonstrate that each community in the grant's proposed target area exceeds one or more of these high energy cost benchmarks to be eligible for assistance under this program.

**RUS High Energy Cost Benchmarks.**

The benchmarks measure extremely high energy costs for residential consumers. These benchmarks were calculated using EIA's estimates of national average residential energy expenditures per household and by primary home energy source. The benchmarks recognize the diverse factors that contribute to extremely high home energy costs in rural communities. The benchmarks allow extremely high energy cost communities several alternatives for demonstrating eligibility. Communities may qualify based on: total annual household energy expenditures; total annual expenditures for commercially-supplied primary home energy sources, *i.e.,* electricity, natural gas, oil, or propane; or average annual per unit home energy costs. By providing alternative measures for demonstrating eligibility, the benchmarks reduce the burden on potential applicants created by the limited public availability of comprehensive data on local community energy consumption and expenditures.

RUS is adopting the following high energy cost benchmarks as eligibility criteria for competitive grant applications submitted in response to this NOFA. A target community or target area will qualify as an extremely high cost energy community if it meets

one or more of the energy cost benchmarks described below.

1. *Extremely High Average Annual Household Expenditure For Home Energy.* The target area or community exceeds one or more of the following:

- Average annual residential electricity expenditure of $2,341 per household;
- Average annual residential natural gas expenditure of $1,547 per household;
- Average annual residential expenditure on fuel oil of $1,870 per household;
- Average annual residential expenditure on propane or liquefied petroleum gas (LPG) as a primary home energy source of $1,266 per household; or
- Average annual residential energy expenditure (for all non-transportation uses) of $3,613 per household.

2. *Extremely High Average per unit energy costs.* The average residential per unit cost for major commercial energy sources in the target area or community exceeds one or more of the following:

- Annual average revenues per kilowatt hour for residential electricity customers of $0.229 per kilowatt hour (kWh);
- Annual average residential natural gas price of $18.78 per thousand cubic feet;
- Annual average residential fuel oil price of $2.62 per gallon;
- Annual average residential price of propane or LPG as a primary home energy source of $2.72 per gallon; or
- Total annual average residential energy cost on a Btu basis of $36.13 per million Btu.[1]

**Supporting Energy Cost Data**

The applicant must include information that demonstrates its eligibility under the RUS high energy cost benchmarks for the target communities and the target areas. The applicant must supply documentation or references for its sources for actual or estimated home energy expenditures or equivalent measures to support eligibility. Generally, the applicant will be expected to use historical residential energy cost or expenditure information for the local energy provider serving the target community or target area to determine eligibility. Other potential sources of home energy related information include Federal and State agencies, local community energy providers such as electric and natural gas utilities and fuel dealers, and commercial publications. The Application Guide includes a list of EIA resources on residential energy consumption and costs that may be of assistance.

The grant applicant must establish eligibility for each community in the project's target area. To determine eligibility, the applicant must identify each community included in whole or in part within the target areas and provide supporting actual or estimated energy expenditure data for each community. The smallest area that may be designated as a target area is a 2000 Census block. This minimum size is necessary to enable a determination of population size.

Potential applicants can compare the RUS benchmark criteria to available information about local energy use and costs to determine their eligibility. Applicants should demonstrate their eligibility using historical energy use and cost information. Where such information is unavailable or does not adequately reflect the actual costs of supporting average home energy use in a local community, RUS will consider estimated commercial energy costs. The Application Guide includes examples of circumstances where estimated energy costs are used.

EIA does not collect or maintain data on home energy expenditures in sufficient detail to identify specific rural localities as extremely high energy cost communities. Therefore, grant applicants will have to provide information on local community energy costs from other sources to support their applications.

In many instances, historical community energy cost information can be obtained from a variety of public sources or from local utilities and other energy providers. For example, EIA publishes monthly and annual reports of residential prices by State and by service area for electric utilities and larger natural gas distribution companies. Average residential fuel oil and propane prices are reported regionally and for major cities by government and private publications. Many State agencies also compile and publish information on residential energy costs to support State programs.

**Use of Estimated Home Energy Costs**

Where historical community energy cost data are incomplete or lacking or where community-wide data do not accurately reflect the costs of providing home energy services in the target area, the applicant may substitute estimates based on engineering standards. The estimates should use available community, local, or regional data on energy expenditures, consumption, housing characteristics and population. Estimates are also appropriate where the target area does not presently have centralized commercial energy services at a level that is comparable to other residential customers in the State or region. For example, local commercial energy cost information may not be available where the target area is without local electric service because of the high costs of connection. Engineering cost estimates reflecting the incremental costs of extending service could reasonably be used to establish eligibility for areas without grid-connected electric service. Estimates also may be appropriate where historical energy costs do not reflect the costs of providing a necessary upgrade or replacement of energy infrastructure to maintain or extend service that would raise costs above one or more of benchmarks.

Information to support high energy cost eligibility is subject to independent review by RUS. Applications that contain information that is not reasonably based on credible sources of information and sound estimates will be rejected. Where appropriate, RUS may consult standard sources to confirm the reasonableness of information and estimates provided by applicants in determining eligibility, technical feasibility, and adequacy of proposed budget estimates.

**Coordination With State Rural Development Initiatives**

USDA encourages the coordination of grant projects under this program with State rural development initiatives. There is no requirement that the grant proposal receive the concurrence or approval of State officials as a condition of eligibility under this program. RUS will, however, award additional priority points to proposals that are coordinated with and support rural development initiatives within a State. The Applicant should describe how the proposed project will support State rural development initiatives and provide documentation evidencing any concurrence or endorsement by State rural development officials.

If an Applicant is an entity directly involved in rural development efforts, such as a State, local, or tribal rural development agency or a participant in an existing USDA Rural Development program, the Applicant may qualify for

[1] **Note:** Btu is the abbreviation for British Thermal Unit, a standard energy measure. A Btu is the quantity of heat needed to raise the temperature of one pound of water 1 degree Fahrenheit at or near 39.2 degrees Fahrenheit. In estimating average household per unit energy cost on a Btu basis, the costs of different home energy sources are converted to a standard Btu basis. The Application Guide contains additional information on calculating per unit costs on a Btu basis for major home energy sources.

additional points by describing how its proposed project supports its efforts.

**How To Apply**

All applications must be prepared and submitted in compliance with this NOFA and the Application Guide. The Application Guide contains additional information on the grant program and sources of information for use in preparing applications and copies of the required application forms. The Guide may be downloaded from RUS Web site <*http://www.usda.gov/rus/electric/hecgp/index.htm*> or requested from RUS.

**How To Request An Application Package**

Application packages, including required forms, may be requested from: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW, STOP 1560, Room 4037 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, email *HEnergy02@rus.usda.gov.*

**What To Include In The Application**

Applicants should follow the directions in this notice and the Application Guide in preparing their applications. The completed application should be assembled in the order specified with all pages numbered sequentially or by section. The applicant must submit the following information for the application to be complete and considered for funding:

*Part A. A Completed SF 424, ''Application for Federal Assistance.''* This form must be signed by a person authorized to submit the proposal on behalf of the applicant.

*Part B. Grant Proposal.* The grant proposal is a narrative description prepared by the applicant that establishes the applicant's eligibility, identifies the eligible extremely high energy cost communities to be served by the grant, and describes the proposed grant project, the potential benefits of the project, and a proposed budget. The grant proposal should contain the following sections in the order indicated.

*1. Executive Summary.* The Executive Summary is a one to two page narrative summary that: (a) Identifies the applicant, project title, and the key contact person with telephone and fax numbers, mailing address and email address; (b) specifies the amount of grant funds requested; (c) provides a brief description of the proposed program including the eligible rural communities and residents to be served, activities and facilities to be financed, and how the grant project will offset or reduce the target community's extremely high energy costs; and (d) identifies the associated rural development initiative that the project supports. The Executive Summary should also indicate whether the applicant is claiming additional points under any of the criteria designated as USDA priorities under this NOFA.

*2. Table of Contents:* The application package must include a table of contents immediately after the Executive Summary with page numbers for all required sections, forms, and appendices.

*3. Applicant Eligibility:* This section includes a narrative statement that identifies the applicant and supporting evidence establishing that the applicant has or will have the legal authority to enter into a financial assistance relationship with the Federal Government. Examples of supporting evidence of applicant's legal existence and eligibility include: a reference to or copy of the relevant statute, regulation, executive order, or legal opinion authorizing a State, local, or tribal government program, articles of incorporation or certificates of incorporation for corporate applicants, partnership or trust agreements, board resolutions. Applicants must also be free of any debarment or other restriction on their ability to contract with the Federal Government.

*4. Community Eligibility:* This section provides a narrative description of the community or communities to be served by the grant and supporting information to establish eligibility. The narrative must show that the proposed grant project's target area or areas are located in one or more communities where the average residential energy costs exceed one or more of the benchmark criteria for extremely high energy costs as described in this NOFA. The narrative should clearly identify the location and population of the areas to be aided by the grant project and their energy costs and the population of the local government division in which they are located. Local energy providers and sources of high energy cost data and estimates should be clearly identified. Neither the applicant nor the project must be physically located in the extremely high energy cost community, but the funded project must serve an eligible community.

The population estimates should be based on the results of the 2000 Census available from the U.S. Census Bureau. Additional information and exhibits supporting eligibility may include maps, summary tables, and references to statistical information from the U.S. Census, the Energy Information Administration, other Federal and State agencies, or private sources. The Application Guide includes additional information and sources that the applicant may find useful in establishing community eligibility.

*5. Coordination With State Rural Development Initiatives:* In this section the applicant must describe how the proposed grant will be coordinated with rural development efforts. The Applicant should provide supporting references or documentation.

*6. Project Overview:* This section includes the applicant's narrative overview of its proposed project. The narrative must address the following:

a. *Project Design:* This section must provide a narrative description of the project including a proposed scope of work identifying major tasks and proposed schedules for task completion, a detailed description of the equipment, facilities and associated activities to be financed with grant funds, the location of the eligible extremely high energy cost communities to be served, and an estimate of the overall duration of the project. The Project Design description should be sufficiently detailed to support a finding of technical feasibility. Proposed projects involving construction, repair, replacement, or improvement of electric generation, transmission, and distribution facilities must generally be consistent with the standards and requirements for projects financed with RUS loans and loan guarantees as set forth in RUS Electric Program Regulations and Bulletins and may reference these requirements.

b. *Project Management:* This section must provide a narrative describing the applicant's capabilities and project management plans. The description should address the applicant's organizational structure, method of funding, legal authority, key personnel, project management experience, staff resources, the goals and objectives of the program or business, and any related services provided to the project beneficiaries. A current financial statement and other supporting documentation may be referenced here and included under the Supplementary Material section. If the applicant proposes to use affiliated entities, contractors, or subcontractors to provide services funded under the grant, the applicant must describe the identities, relationship, qualifications, and experience of these affiliated entities. The experience and capabilities of these entities will be reviewed by the rating panel. If the applicant proposes to

secure equipment, design, construction, or other services from non-affiliated entities, the applicant must briefly describe how it plans to procure and/or contract for such equipment or services. The Applicant should provide information that will support a finding that the combination of management team's experience, resources and project structure will enable successful completion of the project.

c. *Regulatory and other approvals:* The applicant must identify any other regulatory or other approvals required by other Federal, State, local, or tribal agencies, or by private entities as a condition of financing that are necessary to carry out the proposed grant project and its estimated schedule for obtaining the necessary approvals.

d. *Benefits of the proposed project:* The applicant should describe how the proposed project would benefit the target area and eligible communities. The description must specifically address how the project will improve energy generation, transmission, or distribution facilities serving the target area. The applicant should clearly identify how the project addresses the energy needs of the community and include appropriate measures of project success such as, for example, expected reductions in household or community energy costs, avoided cost increases, enhanced reliability, or economic or social benefits from improvements in energy services available to the target community. The applicant should include quantitative estimates of cost or energy savings and other benefits. The applicant should provide documentation or references to support its statements about cost-effectiveness savings and improved services. The applicant should also describe how it plans to measure and monitor the effectiveness of the program in delivering its projected benefits.

*7. Proposed Project Budget:* The applicant must submit a proposed budget for the grant program on SF 424A, ''Budget Information—Non-Construction Programs'' or SF–424C, ''Standard Form for Budget Information-Construction Programs,'' as applicable. The budget must document that planned administrative and other expenses of the project sponsor will not total more than 4 percent of grant funds. The applicant must also identify the source and amount of any other contributions of funds or services that will be used to support the proposed project. This program does not require supplemental or matching funds for eligibility, however RUS will award additional rating points for programs that include a match of other funds or like-kind contributions to support the project.

*8. Supplementary Material:* The applicant may append any additional information relevant to the proposal or which may qualify the application for extra points under the evaluation criteria described in this NOFA.

*Part C. Additional Required Forms and Certifications:* In order to establish compliance with other Federal requirements for financial assistance, the Applicant must execute and submit with the initial application the following forms and certifications:

- SF 424B, ''Assurances—Non-Construction Programs'' or SF 424D, ''Assurances—Construction Programs'' (as applicable).
- SF LLL, ''Disclosure of Lobbying Activities.''
- Drug-free Workplace Certification: Form AD–1049, ''Certification Regarding Drug-free Workplace Requirements for Grantees other than Individuals;'' Form AD–1050, ''Certification Regarding Drug-free Workplace Requirements for Individuals;'' or Form AD–1052, ''Certification Regarding Drug-free Workplace Requirements, States and State Agencies.'' (State applicants that have already submitted this certification to USDA may reference their prior filing and need not submit a new certification.)
- ''Certification Regarding Debarment, Suspension and Other Responsibility Matter—Primary Covered Transactions'' as required under 7 CFR part 3017, Appendix A. Certifications for individuals, corporations, nonprofit entities, Indian tribes, partnerships.
- Environmental Profile. The environmental profile included in the Application Guide solicits information about project characteristics and site-specific conditions that may involve environmental, historic preservation, and other resources. The profile will be used by RUS to identify selected projects that may require additional environmental reviews, assessments, or environmental impact statements before a final grant award may be approved. A copy of the environmental profile and instructions for completion are included in the Application Guide.

**Submitting the Application**

Applicants must submit one original application that includes original signatures on all required forms and certifications and two copies. Applications should be submitted on 8½ by 11 inch white paper. Supplemental materials, such as maps, charts, plans, and photographs may exceed this size requirement.

A completed application must contain all required parts in the order indicated in the above section on ''What to Include in the Application.'' The application package should be paginated either sequentially or by section.

The completed application package and two copies must be delivered to RUS headquarters in Washington, DC at the address listed at the beginning of this notice using United States Mail, overnight delivery service, or by hand. At this time, RUS is not able to accept applications online, by email or fax. Applicants should be advised that regular mail deliveries to Federal Agencies, especially of oversized packages and envelopes, continues to be delayed because of increased security screening requirements. Applicants may wish to consider using Express Mail or a commercial overnight delivery service instead of regular mail. Applicants wishing to hand deliver or use courier services for delivery should contact the Agency representative in advance to arrange for building access. RUS advises applicants that because of intensified security procedures at government facilities that any electronic media included in an application package may be damaged during security screening. If an applicant wishes to submit such materials, they should contact the agency representative for additional information.

**Deadline for Submission and Late Applications**

Applications must be postmarked or delivered to RUS by February 7, 2003. RUS will begin accepting applications on the date of publication of this NOFA. RUS will accept for review all applications postmarked or delivered to RUS by this deadline. Late applications will not be considered and will be returned to the Applicant.

**Disclosure of Information**

All material submitted by the applicant may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and USDA's implementing regulations at 7 CFR Part 1.

**Review of Applications**

All applications for grants must be delivered to RUS at the address listed above or postmarked no later than February 7, 2003 to be eligible for grant funding. After the deadline has passed, RUS will review each application to determine whether it is complete and meets all of the eligibility requirements described in this NOFA.

After the application closing date, RUS will not consider any unsolicited information from the applicant. RUS may contact the applicant for additional information or to clarify statements in the application required to establish applicant or community eligibility and completeness. Only applications that are complete and meet the eligibility criteria will be considered. RUS will not accept or solicit any additional information relating to the technical merits and/or economic feasibility of the grant proposal after the application closing date.

RUS may establish one or more rating panels to review and rate the grant applications. These panels may include persons not currently employed by USDA.

The panel will evaluate and rate all complete applications that meet the eligibility requirements using the selection criteria and weights described in this NOFA. As part of the proposal review and ranking process, panel members may make comments and recommendations for appropriate conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements. The decision to include panel recommendations on grant conditions in any grant award will be at the sole discretion of the Administrator.

RUS will use the ratings and recommendations of the panel(s) to rank applicants against other applicants. The rankings and recommendations will then be forwarded to the Administrator for final review and selection.

Decisions on grant awards will be made by the RUS Administrator based on the application, and the rankings and recommendations of the rating panel. The Administrator will fund grant requests in rank order to the extent of available funds

**Selection Criteria and Weights**

RUS will use the selection criteria described in this NOFA to evaluate and rate applications and will award points up to the maximum number indicated under each criterion. Applicants should carefully read the information on the rating criteria in this NOFA and the Application Guide and address all criteria. The maximum number of points that can be awarded is 100 points. RUS will award up to 65 points for project design and technical merit criteria and up to 35 points based on priority criteria for project or community characteristics that support USDA Rural Development and RUS program priorities.

**Project Design and Technical Merit Criteria**

Reviewers will consider the soundness of applicant's approach, the technical feasibility of the project, the adequacy of financial and other resources, the competence and experience of the applicant and its team, the project goals and objectives, and community needs and benefits. A total of 65 points may be awarded under these criteria.

*A. Comprehensiveness and feasibility of approach. (Up to 30 points)* Raters will assess the technical and economic feasibility of the project and how well its goals and objectives address the challenges of the extremely high energy cost community. The panel will review the proposed design, construction, equipment, and materials for the community energy facilities in establishing technical feasibility. Reviewers may propose additional conditions on the grant award to assure that the project is technically sound. Reviewers will consider the adequacy of the applicant's budget and resources to carry out the project as proposed. Reviewers will also evaluate how the applicant proposes to manage available resources such as grant funds, income generated from the facilities, and any other financing sources to maintain and operate a financially viable project once the grant period has ended.

*B. Demonstrated experience. (Up to 10 points)* Reviewers will consider whether the applicant and its project team have demonstrated experience in successfully administering and carrying out projects that are comparable to that proposed in the grant application. RUS supports and encourages emerging organizations that desire to develop the internal capacity to improve energy services in rural communities. In evaluating the capabilities of entities without extensive experience in carrying out such projects, RUS will consider the experience of the project team and the effectiveness of the program design in compensating for lack of extensive experience.

*C. Community Needs. (Up to 15 points)* Reviewers will consider the applicant's identification and documentation of eligible communities, their populations, and the applicant's assessment of community energy needs to be addressed by the grant project. Information on the severity of physical and economic challenges affecting eligible communities will be considered. Reviewers will weigh: (1) The applicant's analysis of community energy challenges and (2) why the applicant's proposal presents a greater need for Federal assistance than other competing applications. In assessing the applicant's demonstration of community needs, the rating panel will consider information in the narrative proposal addressing:

(a) the burden placed on the community and individual households by extremely high energy costs as evidenced by such quantitative measures as, for example, total energy expenditures, per unit energy costs, energy cost intensity for occupied space, or energy costs as a share of average household income, and persistence of extremely high energy costs compared to national or statewide averages.

(b) the hardships created by limited access to reliable and affordable energy services; and

(c) the availability of other resources to support or supplement the proposed grant funding.

*D. Project Evaluation Methods. (Up to 5 points)* Reviewers will consider the applicant's plan to evaluate and report on the success and cost-effectiveness of financed activities and whether the results obtained will contribute to program improvements for the applicant or for other entities interested in similar programs.

*E. Coordination with Rural Development Initiatives. (Up to 5 points)* Raters will assess how effectively the proposed project is coordinated with State rural development initiatives and is consistent with and supports these efforts. RUS will consider the documentation for coordination efforts, community support, and State or local government recommendations. Applicants should identify the extent to which the project is dependent on or tied to other rural development initiatives, funding, and approvals.

**Priority Criteria**

In addition to the points awarded for project design and technical merit, all proposals will be reviewed and awarded additional points based on certain characteristics of the project or the target community. USDA Rural Development policies generally encourage agencies to give priority in their programs to rural areas of greatest need and to support other Federal policy initiatives. In furtherance of these policies, RUS will award additional points to smaller communities and areas experiencing economic hardship, persistent poverty, or where community energy services are inadequate or the facilities present an imminent hazard to public health or safety. Priority points will also be awarded for proposals that include cost sharing, or that serve a Federally designated Empowerment

Zone or Enterprise Community (EZ/EC) or a USDA Champion Community. A maximum of 35 total points may be awarded under priority criteria.

*1. Economic Hardship. (Up to 10 points)* The community experiences one or more economic hardship conditions that impair the ability of the community and/or its residents to provide basic energy services or to reduce or limit the costs of these services. Economic hardship will be assessed using either the objective measure of county median income under A below or subjectively under B based on the Applicant's description of the community's economic hardships and supporting materials. Applicants may elect either measure, but not both.

*A. Economically Distressed Communities (up to 10 points).* The target community is an economically distressed county where the median household income is significantly below the State average. Points will be awarded based on the county percentage of State median household income according to the following:

(1) Less than 70 percent of the State median household income—10 points;

(2) 70 to 80 percent of the State median household income—8 points; or

(3) 80 to 90 percent of the State median household income—5 points;

(4) 90 to 95 percent of the State median household income—2 points

(5) over 95 percent of the State median household income—0 points

Information on State and county median income is available online from the USDA Economic Research Service at *http://www.ers.usda.gov/data/unemployment/.*

*B. Other Economic Hardship (up to 10 points)* The community suffers from other conditions creating a severe economic hardship that is adequately described and documented by the Applicant. Examples include but are not limited to natural disasters, financially distressed local industry, loss of major local employer, outmigration, or other condition adversely affecting the local economy, or contributing to unserved or underserved energy infrastructure needs that affect the economic health of the community.

*2. Persistent poverty community. (3 points)* Persistent poverty counties are those where poverty continues to be a long-term problem. The Economic Research Service (ERS) of USDA has defined a persistent poverty county as a nonmetropolitan county in which more than 20 percent of the population were below the poverty level in each of the last 4 census years. ERS has made a preliminary identification of over 300 nonmetropolitan counties in which more than 20 percent of the population was below the poverty level in 1970, 1980, 1990, and 2000. A list of the ERS persistent poverty counties can be found in the online Application Guide *http://www.usda.gov/rus/electric/hecgp/counties.htm* or requested from the agency contact. In support of USDA policy, raters will award 3 points to any proposal in which the target area or project is located in a persistent poverty county.

*3. Rurality. ( Up to 12 points)* Consistent with the USDA Rural Development policy to target resources to rural communities with significant needs and recognizing that smaller communities are often comparatively disadvantaged in seeking assistance, RUS reviewers will award additional points based on the rurality (as measured by population) of the target communities to be served with grant funds. Applications will be scored based on the population of the largest incorporated cities, towns, or villages, or census designated places included within the grant's proposed target area.

If the largest target community within the proposed target area has a population of:

(A) 2,500 or less—12 points;

(B) Between 2,501 and 5,000, inclusive 10 points;

(C) Between 5,001 and 10,000, inclusive 8 points;

(D) Between 10,001 and 15,000, inclusive 5 points;

(E) Between 15, 001 and 20,000, inclusive 2 points;

(F) Above 20,000, 0 points.

Applicants must use the latest available population figures from Census 2000 available at *http://www.census.gov/main/www/cen2000.html* for every incorporated city, town, or village, or Census designated place included in the target area.

*4. Unserved Energy Needs (2 points)* Consistent with the purposes of the RE Act, projects that meet unserved or underserved energy needs will be eligible for 2 points. Examples of proposals that may qualify under this priority include projects that extend or improve electric or other energy services to communities and customers that do not have reliable centralized or commercial service or where many homes remain without such service because the costs are unaffordable.

*5. Imminent hazard (2 points)* If the grant proposal involves a project to correct a condition posing an imminent hazard to public safety, welfare, the environment, or to a critical community or residential energy facility, raters may award 2 points. Examples include community energy facilities in immediate danger of failure because of deteriorated condition, capacity limitations, damage from natural disasters or accidents, or other conditions where failure would create a substantial threat to public health or safety, or to the environment.

*6. Cost Sharing (2 points)* This grant program does not require any cost contribution. In addition to their assessment of the economic feasibility and sustainability of the project under the project evaluation factors above, raters may award 2 points for cost sharing. These points will be awarded when the proposal documents that supplemental contributions of funds, property, equipment, services, or other in kind contributions that support the project and demonstrate the applicant's and/or community's commitment to the project exceed 10 percent of project costs.

*7. Empowerment Zone and Enterprise Community (EC/EZ) or Champion Community (up to 4 points)* If the proposed project serves at least one community that is a Federally-identified Empowerment Zone and Enterprise Community (EC/EZ Community), 4 points will be awarded. The list of currently approved EC/EZ communities may be found at the EZ/EC Web site at: *http://www.ezec.gov* or may be requested from the agency contact.

If the proposed project serves at least one community that is a USDA identified ''Champion Community,'' 2 points will be awarded. The list of currently approved USDA champion communities may be found at the EZ/EC Web site at: *http://www.ezec.gov* or may be requested from the agency contact.

**Scoring and Ranking of Applications**

Following the evaluation and rating of individual applications under the above criteria, the rating panels will rank the applications in order according to their total scores. The scored and ranked applications and the raters' comments will then be forwarded to the Administrator for review and selection of grant awards.

**Selection of Grant Awards and Notification of Applicants**

The RUS Administrator will review the rankings and recommendations of the applications provided by the rating panels for consistency with the requirements of this NOFA. The Administrator may return any application to the rating panel with written instruction for reconsideration if, in her sole discretion, she finds that the scoring of an application is

inconsistent with this NOFA and the directions provided to the rating panel.

Following any adjustments to the project rankings as a result of reconsideration, the Administrator will select projects for funding in rank order. If funds remain after funding the highest ranking application, RUS may fund all or part of the next highest ranking application. RUS will advise an applicant if it cannot fully fund a grant request.

The Administrator may decide based on the recommendations of the rating panel or in her sole discretion that a grant award may be made fully or partially contingent upon the applicant satisfying certain conditions or providing additional information and analyses. For example, RUS may defer approving a final award to a selected project—such as projects requiring more extensive environmental review and mitigation, preparation of detailed site specific engineering studies and designs, or requiring local permitting, or availability of supplemental financing—until any additional conditions are satisfied. In the event that a selected applicant fails to comply with the additional conditions within the time set by RUS, the selection will be vacated and the next ranking project will be considered.

If a selected applicant turns down a grant award offer, or fails to conclude a grant agreement acceptable to RUS, or to provide required information requested by RUS within the time period established in the notification of selection for grant award, the RUS Administrator may select for funding the next highest ranking application submitted in response to this NOFA. If funds remain after all selections have been made, remaining funds will be carried over and made available in future awards under the High Energy Cost Grant Programs.

RUS will notify each Applicant in writing whether or not it has been selected for an award. RUS's written notice to a successful applicant of the amount of the grant award based on the approved application will constitute RUS's preliminary approval, subject to compliance with all post-selection requirements including but not limited to completion of any environmental reviews and negotiation and execution of a grant agreement satisfactory to RUS. Preliminary approval does not bind the Government to making a final grant award. Only a final grant award and agreement executed by the Administrator will constitute a binding obligation and commitment of Federal funds. Funds will not be awarded or disbursed until all requirements have been satisfied. RUS will advise selected applicants of additional requirements or conditions.

**Adjustments to Funding**

RUS reserves the right to fund less than the full amount requested in a grant application to ensure the fair distribution of the funds and to ensure that the purposes of a specific program are met. RUS will not fund any portion of a grant request that is not eligible for funding under Federal statutory or regulatory requirements; that does not meet the requirements of this NOFA, or that may duplicate other RUS funded activities, including electric loans. Only the eligible portions of a successful grant application will be funded.

Grant assistance cannot exceed the lower of:

(a) The qualifying percentage of eligible project costs requested by the Applicant; or

(b) The minimum amount sufficient to provide for the economic feasibility of the project as determined by RUS.

**Other Grantee Requirements**

RUS will notify successful grantees of their selection. Successful applicants will be required to execute a grant agreement acceptable to RUS and complete additional grant forms and certifications required by USDA. The grantee will provide periodic financial and performance reports as required by RUS and submit a final project performance report. Depending on the nature of the activities proposed by the application, the grantee may be asked to provide information and certifications necessary for compliance with RUS environmental policy regulations and procedures at 7 CFR part 1794.

RUS will require each successful applicant to agree to the specific terms of each grant agreement, a project budget, and other RUS requirements. In cases where RUS cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide RUS with requested information within the time specified, an award will not be made to that applicant. The selection will be revoked and RUS may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

**Environmental Review and Restriction on Certain Activities**

Grant awards are required to comply with 7 CFR part 1794, which sets forth RUS regulations implementing the National Environmental Policy Act (NEPA). Grantees must also agree to comply with any other Federal or State environmental laws and regulations applicable to the grant project.

If the proposed grant project involves physical development activities or property acquisition, the Applicant is generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending RUS or non-RUS funds for proposed grant activities until RUS has completed any environmental review in accordance with 7 CFR part 1794 or determined that no environmental review is required. Successful applicants will be advised whether additional environmental review and requirements apply to their proposals.

**Other Federal Requirements**

Other Federal statutes and regulations apply to grant applications and to grant awards. These include, but are not limited to, requirements under 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

Certain OMB circulars also apply to USDA grant programs and must be followed by a grantee under this program. The policies, guidance, and requirements of the following may apply to the award, acceptance and use of assistance under this program and to the remedies for noncompliance, except when inconsistent with the provisions of the Agriculture, Rural Development and Related Agencies Appropriations Acts, other Federal statutes or the provisions of this NOFA:

OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);

- OMB Circular A–21 (Cost Principles for Education Institutions);
- OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);
- OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);
- 7 CFR part 3015 (Uniform Federal Assistance Regulations);
- 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments);
- 7 CFR part 3017 (Governmentwide debarment and suspension (non-procurement) and governmentwide requirements for drug-free workplace (grants));
- 7 CFR part 3018 (New restrictions on Lobbying);
- 7 CFR part 3019 (Uniform administrative requirements for grants

and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and

• 7 CFR part 3052 (Audits of States, local governments, and non-profit organizations).

Compliance with additional OMB Circulars or government-wide regulations may be specified in the grant agreement.

Dated: December 4, 2002.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

[FR Doc. 02–31056 Filed 12–6–02; 8:45 am]

**BILLING CODE 3410–15–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting

**AGENCY:** Commission on Civil Rights.

**DATE AND TIME:** Friday, December 13, 2002, 8:30 a.m.

**PLACE:** New York Marriott Brooklyn Hotel, 333 Adams Street, New York, NY 11201.

**STATUS:**

**Agenda**

I. Approval of Agenda
II. Approval of Minutes of November 15, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Indiana and Massachusetts
VI. Presentations from individuals and organizational representatives on Civil Rights Issues Facing Immigrants in New York City
VII. Presentations from New York State Advisory Committee Members
VIII. Future Agenda Items

**FOR FURTHER INFORMATION CONTACT:** Les Jin, Press and Communications (202) 376–7700.

**Debra A. Carr,**

*Deputy General Counsel.*

[FR Doc. 02–31146 Filed 12–5–02; 12:07 pm]

**BILLING CODE 6335–01–M**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 55–2002]**

### Foreign-Trade Zone 222—Montgomery, AL, Application for Subzone Status, Hyundai Motor Manufacturing Alabama, LLC, Plant (Motor Vehicles), Montgomery, AL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Montgomery Area Chamber of Commerce, grantee of FTZ 222, requesting special-purpose subzone status for the motor vehicle manufacturing plant of Hyundai Motor Manufacturing Alabama, LLC, (HMM)(a subsidiary of Hyundai Motor Co., of South Korea) located in Montgomery, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 27, 2002.

The HMM plant (1,752 acres/2.1 million sq.ft.) is to be located at 1500 Montgomery County Road 42 (Teague Road), between Interstate 65 and the main line of the CSX Railroad, in Montgomery (Montgomery County), Alabama. The facility, currently under construction, will be used to produce light-duty passenger vehicles (sedans, sport utility vehicles, minivans) for export and the domestic market. At full capacity, the facility (about 2,000 employees) will manufacture up to approximately 250,000 vehicles annually. Components to be purchased from abroad (representing approximately 45% of vehicle material value) would include: diesel and gasoline engines and parts thereof, pumps, oils, compressors, air conditioner components, filters, paint, flexible tubes/hoses, self-adhesive plastic or polyurethane sheets/foil/film, labels, rubber belts, tires, seats, safety glass, engines and parts of engines, mirrors, flat-rolled steel (would be admitted under privileged foreign status (19 CFR 146.41)), stranded wire of steel and copper, body parts and trim, fasteners, cotter pins, catalytic converters, parts of steering systems, half shafts, transmissions and parts of transmissions, differentials, bearings and parts thereof, compasses, thermometers, motors, batteries, ignition parts, lighting equipment, horns, windshield wipers, audio components, antennas, wiring harnesses, handles/knobs, gaskets/seals, carpet sets, seat belts, airbag modules/inflators, brake components, wheels, shock absorbers, radiators, exhaust systems, hinges, pneumatic dampeners, speedometers, tachometers, flow meters, regulators/controllers, windshields and windows, springs, valves, resistors, relays, clocks, and switches (duty rate range: free—9.0%).

FTZ procedures would exempt HMM from Customs duty payments on the foreign components used in export production. On its domestic sales and exports to NAFTA countries, HMM would be able to choose the duty rate that applies to finished passenger vehicles (2.5%) for the foreign inputs noted above that have higher rates. Customs duties would be deferred and possibly reduced on foreign status production equipment. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

*1. Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

*2. Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is February 7, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 24, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 707, Medical Forum Building, 950 22nd Street North, Birmingham, AL 35203.

Dated: November 27, 2002.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 02–31036 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 57–2002]**

### Proposed Foreign-Trade Zone—Imperial County, California; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Imperial, California, to establish a general-purpose foreign-trade zone at sites in Imperial County, within and adjacent to

the Calexico Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 3, 2002. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed zone would consist of sites covering 1,950 acres in Imperial County and within the City limits of Brawley, Calexico, Calipatria and El Centro: *Site 1* (755 acres, 3 parcels)—*Site 1a* (597 acres)—Gateway of the Americas, State Route 7 and State Highway 98, Imperial County; *Site 1b* (43 acres)—Imperial County Airport, State Highway 86 and Aten Road; *Site 1c* (115 acres)—Drewry Warehousing complex, 340 West Ralph Road, Imperial County; *Site 2* (77 acres, 2 parcels)—*Site 2a* (32 acres)—Airport Industrial Park, Jones Drive and Best Road with adjacent parcel on Duarte Street, Brawley; *Site 2b* (45 acres)—Luckey Ranch Industrial Park, Best Road and Shank Road, Brawley; *Site 3* (483 acres)—located at (a) Calexico International Airport (227 acres) and (b) adjacent industrial parks (256 acres) within the Calexico Community Redevelopment Agency project area; *Site 4* (104 acres)—Calipatria Airport Industrial Park and adjacent parcel, Main Street, International and Lyerly Roads, Calipatria; and, *Site 5* (531 acres)—within the El Centro Community Redevelopment Agency project area (Danenberg Road, Dogwood Road and I–8), El Centro. The sites are generally located within the County's Federal Empowerment Zone and Enterprise Community Initiative area.

The application indicates a need for foreign-trade zone services in the Imperial County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as videos, construction/agricultural equipment and parts, electronics and furniture. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on January 15, 2003, at 2 p.m., at the City Hall Council Chambers, City of Calexico, 608 Heber Avenue, Calexico, California 92231.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is February 7, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 24, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Economic Development Coordinator, Imperial County Community & Economic Development, 836 Main Street, El Centro, California 92243.

Dated: December 3, 2002.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 02–31038 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 56–2002]**

### Foreign-Trade Zone 33—Pittsburgh, Pennsylvania, Expansion of Manufacturing Authority—Subzone 33C, Sony Technology Center—Pittsburgh (Television Manufacturing Facility), Mount Pleasant, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting authority to expand the scope of manufacturing activity at Subzone 33C, the Sony Technology Center—Pittsburgh (Sony) television manufacturing facility, located in Mount Pleasant, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 2, 2002.

Subzone 33C was approved on September 27, 2001 (Board Order 1196, 66 FR 52741, 10–17–01). The subzone currently consists of three sites: Site 1 (633.64 acres)—located at 1001 Technology Drive, Mount Pleasant, Pennsylvania; Site 2 (9.8 acres, 192,500 square feet)—located at the South Greensburg Commons at Huff and Parr Streets, Greensburg, Pennsylvania; and Site 3 (31.2 acres, 273,600 square feet)—located at the former Montgomery Wards Distribution Center on Route 119 in New Stanton, Pennsylvania. Authority was originally granted for the manufacture of finished and unfinished televisions. The applicant is now seeking authority to manufacture a new line of 34-inch wide screen (16:9 ratio) direct view digital and analog televisions at the facility (HTS 8528.12.4800 and 8528.12.3290, duty rate 5%) using foreign sourced cathode ray tubes (HTS 8540.11.1080 and 8540.11.3000, duty rate 15%).

FTZ procedures would exempt Sony from Customs duty payments on the foreign components used in export production. On its domestic sales, Sony would be able to choose the duty rates during Customs entry procedures that apply to finished televisions (5%) for the imported cathode ray tubes. The request indicates that the 34-inch wide screen direct view cathode ray tubes are not produced in the U.S. and that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is February 7, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 24, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed

above, and at the U.S. Department of Commerce, Export Assistance Center, 2002 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Dated: December 2, 2002.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 02–31037 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–823–808]**

## Certain Cut-to-Length Carbon Steel Plate From Ukraine; Preliminary Results of Administrative Review of the Suspension Agreement

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of the administrative review of the suspension agreement on certain cut-to-length carbon steel plate from Ukraine.

**SUMMARY:** In response to a request from the Ministry of Economy and for European Integration Issues of Ukraine (respondent) on behalf of the Government of Ukraine, the Department of Commerce (the Department) is conducting an administrative review of the suspension agreement on certain cut-to-length carbon steel plate from Ukraine (the Agreement) for the period November 1, 2000 through October 31, 2001, to review the current status of, and compliance with, the Agreement. For the reasons stated in this notice, the Department preliminarily determines the Government of Ukraine (GOU) is in compliance with the Agreement. The preliminary results are set forth in the section titled ''Preliminary Results of Review,'' infra. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the arguments.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Patricia Tran or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–1121 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 24, 1997, the Department signed an agreement with the Government of Ukraine which suspended the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL plate) from Ukraine. *See Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61766 (November 19, 1997). In accordance with section 734(g) of the Tariff Act of 1930 (the Tariff Act), on November 19, 1997, the Department also published its final determination of sales at less than fair value in this case. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997).

On October 30, 2001, the Government of Ukraine submitted a request for an administrative review pursuant to the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 66 FR 49923 (October 1, 2001). The Department initiated a review of the Agreement on December 13, 2001. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews (Initiation Notice)*, 66 FR 65470 (December 19, 2001).

On July 1, 2002, the Department extended the time limit for the preliminary results of review by 120 days. *See Notice of Extension of Time Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 67 FR 44174 (July 1, 2002).

### Scope of Review

The products covered by this agreement include hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

### Period of Review

The period of review (POR) is November 1, 2000 through October 31, 2001.

### Preliminary Results of Review

Section 751(a)(1)(C) of the Tariff Act specifies that the Department shall ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.'' In this case the Department and the GOU signed the Agreement suspending the antidumping duty investigation on CTL Plate from Ukraine on October 24, 1997. In order to effectively restrict the volume of exports of CTL Plate from Ukraine to the United States, Article VI of the Agreement provides for the implementation by the GOU of certain legal and administrative provisions. Moreover, Article VIII of the Agreement (Monitoring) requires the GOU to ''provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of [the] Agreement.'' The Department primarily relies upon three tools to administer the Agreement: (i) Export licenses issued by the GOU, and received by the Department from the U.S. Customs Service; (ii) reference prices, revised quarterly by the Department; and (iii) the annual export limits setting a quota on total imports of CTL plate from Ukraine. The GOU must restrict the volume of direct and indirect exports of CTL plate from Ukraine to the United States by means of export

licenses. In addition, subject merchandise may not be sold below the quarterly reference prices issued by the Department.

On March 29, 2002, September 26, 2002, and October 29, 2002, the Department issued questionnaires to the GOU. The GOU submitted its responses to our March 29, 2002, September 26, 2002, and October 29, 2002 requests for information on May 13, 2002, October 14, 2002, and November 12, 2002, respectively. Our review of the information submitted by the GOU indicates that the GOU adhered to the major terms of the agreement. The GOU implemented the provisions of the Agreement through the passage of Presidential Decrees, Orders of the Ministry of Foreign Economic Relations and Trade of Ukraine, and Statute of the Cabinet of Ministers of Ukraine. *See* Exhibit 1 through 6 of May 13, 2002 response, and Exhibit I–3 of the October 14, 2002 and October 18, 2002 responses.

These legal enactments by the GOU established an export licensing program for all exports of CTL plate to the United States and mandated that merchandise would not be sold under the reference price. Pursuant to section VIII of the Agreement, the GOU conformed to the Agreement's monitoring requirement by timely filing semi-annual reports indicating the volume of sales of CTL plate in the home market and to third countries. It has also timely filed monthly reports on export licenses issued for sales of subject merchandise to the United States. The Agreement also stipulates the GOU must ensure compliance ''by any official Ukrainian institution, chamber, or other entities authorized by the [GOU], all producers, exporters, brokers, and traders of CTL plate, and their affiliated parties, as well as independent trading companies/resellers utilized by the Ukrainian producer to make sales to the United States.'' The Ukrainian producers conformed to this requirement by inserting a clause in its contracts which prohibited the re-exportation of subject merchandise to the United States without the written permission of the producer and required their customers to include re-exportation cautions in contracts of further resells of the goods. *See* GOU's response on October 14, 2002 at 133.

Our review of the information submitted by the GOU indicates that each of the export licenses governed by the Agreement were at or above the quarterly FOB reference prices stipulated by the Agreement. Furthermore, data supplied by the GOU in its monthly reports, as well as our independent review of import data compiled by the U.S. Customs Service, indicates Ukraine did not exceed its annual export limits. Therefore, we preliminarily determine that the GOU has been in compliance with the Agreement. We note, however, that upon further review of the record and specifically the information provided by the GOU in its November 12, 2002 submission, Azovstal reported sales made during the POR to an affiliated trading company, instead of sales to the first unaffiliated customer. Appendix B12 of the Agreement requires Azovstal to report the name and address of the first unaffiliated customer. Consequently, certain information concerning the movement expenses incurred by this affiliated trading company on sales to the first unaffiliated customer in the United States and the nature of the affiliation between Azovstal and the trading company is not on the record of this segment of the proceeding. On November 25, 2002, we sent a supplemental questionnaire to the GOU requesting the GOU to provide sales to the first unaffiliated customer, the movement expenses incurred on all sales to these customers, and to describe the nature of the affiliation between the Ukrainian producer and its affiliated trading company. If appropriate, we will use the reported movement expenses to adjust the unaffiliated customer's reported CFR unit prices to the FOB prices specified in section IV E of the Agreement. We will inform the public of our decision in a Memorandum to the File. Additionally, prior to issuing the final results of this review, we will conduct a verification in Ukraine to verify the information submitted by the GOU in this proceeding.

**Public Comment**

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

Case briefs from interested parties may be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing case briefs. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. If this review proceeds normally, the Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 2, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–31035 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–834]**

### Stainless Steel Sheet and Strip in Coils From The Republic of Korea: Extension of Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from the Republic of Korea. This review covers the period July 1, 2000 through June 30, 2001.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4243.

**Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (''the Act''), are 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 (2001).

**Background**

On August 20, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of July 1, 2000 through June 30, 2001 (66 FR 43570). We extended the preliminary results of review by 120 days on March 6, 2002. *See Stainless Steel Sheet and Strip in Coils from Korea: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 10134 (March 6, 2002). We issued our preliminary results of review on August 7, 2002. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 67 FR 51216 (August 7, 2002). The final results of review are currently due on December 5, 2002.

**Extension of Time Limit for Final Results**

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons:

- This review involves certain cross-cutting complex issues which were raised in the respondents' case briefs.
- The review involves a large number of transactions and complex adjustments.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 60 days until February 3, 2003.

Dated: December 2, 2002.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 02–31034 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–122–846, C–122–848]**

### Certain Durum Wheat and Hard Red Spring Wheat: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for preliminary determinations in countervailing duty investigations.

**SUMMARY:** The Department of Commerce is extending the time limit of the preliminary determinations in the countervailing duty (''CVD'') investigations of certain durum wheat and hard red spring wheat from December 27, 2002 until no later than March 3, 2003. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended (''The Act'').

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Craig Matney, Stephen Cho, or Audrey Twyman, at (202) 482–1778, (202) 482–3798, (202) 482–3534, respectively, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Extension of Due Date for Preliminary Determinations**

On October 23, 2002, the Department of Commerce (''the Department'') initiated the CVD investigations of certain durum wheat and hard red spring wheat from Canada. *See Notice of Initiation of Countervailing Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat,* 67 FR 65951 (October 29, 2002). Currently, the preliminary determinations are due no later than December 27, 2002. However, pursuant to section 703(c)(1)(B) of the Act, we have determined that these investigations are ''extraordinarily complicated'' and are, therefore, extending the due date for the preliminary determinations by 65 days to no later than March 3, 2003.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) the administering authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in both investigations all concerned parties are cooperating. Regarding the second requirement that the investigations be extraordinarily complicated, it is the Department's position that the appropriate criterion for analysis is not the number of programs in question, but rather, the specific transactions, applied under those programs, which are numerous and appropriately categorized as ''practices.'' With respect to the issue of the complexity of the practice, these practices are complex in nature as reflected in the extensive analysis required to address these subsidies. Furthermore, the practices present novel issues. Finally, additional time is necessary to make the preliminary determinations.

For a number of the programs in both investigations, the Department will be required to examine complicated circumstances and documents from a number of private-sector and government parties to determine whether the Government of Canada (''GOC'') or provincial governments entrusted or directed private parties to provide subsidies to the Canadian Wheat Board (''CWB''). For example, the Department must analyze complicated systems used to determine whether the revenue cap system imposed by the GOC on the railroads for transporting grain provides a benefit to the CWB. In addition, the Department will be required to examine in detail the financial records of the CWB and the GOC to determine whether or not the CWB received a countervailable subsidy by virtue of a GOC guarantee on its lending and borrowing. Lastly, the respondents have requested an extension of time to respond to the Department's questionnaire because the subsidies alleged ''focus on extraordinarily complicated transportation systems. Information pertaining to these systems is held by many different private sector parties, governments, and government agencies, with no one entity possessing full knowledge of all aspects of the system.'' See November 22, 2002, submission from the GOC at page 2. The responses

to the questionnaire will require complicated analysis and will be necessary for the Department to make its preliminary determinations.

Accordingly, we conclude that the concerned parties are cooperating, we deem these investigations to be extraordinarily complicated, and we determine that additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations to March 3, 2003.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: December 3, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–31033 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 112102A]**

### Marine Mammals: Draft Environmental Assessment of Issuing a Bowhead Whale Subsistence Quota to the Alaska Eskimo Whaling Commission for the Years 2003 through 2007

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

**ACTION:** Notice of availability of a Draft Environmental Assessment(EA); request for written comments.

**SUMMARY:** NMFS announces the availability of a Draft EA, in accordance with the National Environmental Policy Act(NEPA), to assess the impacts of issuing a subsistence quota for bowhead whales to the Alaska Eskimo Whaling Commission (AEWC) for the years 2003 through 2007. The Draft EA considers four alternatives regarding the issuance of a quota to the AEWC, and NMFS has identified a preferred alternative. NMFS is soliciting comments and information to facilitate this analysis.

**DATES:** Comments and information must be postmarked by January 8, 2003.

**ADDRESSES:** Written comments should be sent to Chief, Marine Mammal Division (F/PR2), Office of Protected Resources, National Marine Fisheries Service, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Please mark the outside of the envelope with ''Comments on Bowhead Whale Analysis.'' Comments will not be accepted if submitted via e-mail or Internet. Copies of the EA may be obtained over the internet at the Office of Protected Resources Marine Mammal website under ''Quick Information Links'' at *http://www.nmfs.noaa.gov/prot_res/overview/mm.html*. The link is titled ''Bowhead Whale Draft Environmental Assessment''.

**FOR FURTHER INFORMATION CONTACT:** Chris Yates or Winnie Chan, NMFS Office of Protected Resources, 301–713–2322.

**SUPPLEMENTARY INFORMATION:** At the 5th Special Meeting of the International Whaling Commission (IWC) held in October, 2002 the Commission approved a 5–year aboriginal subsistence quota for the take of Western arctic bowhead whales. The quota allows for a combined total of up to 280 whales to be landed in the years 2003 through 2007 by Alaskan Eskimos and Russian natives. For each of these years, the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year shall be carried forward and added to the strike quota of any subsequent year, provided that no more than 15 strikes shall be added to the strike quota for any one year.

The basis for the quota was a joint request by the Russian Federation and the United States, showing that the needs of both countries' Native groups could be met with an annual average of 56 landed bowhead whales (or a total of 255 for the Alaska Eskimos and 25 for the Chukotka people over the 5–year period). The annual strike limits and quotas for whales are determined at the beginning of each year after consultation with the Russian government.

At the 54th annual meeting of the IWC, held in May, 2002 the Scientific Committee reiterated its previous advice for the Bering-Chukchi-Beaufort Seas stock of bowhead whales, i.e., that it is very likely that a catch limit of 102 whales or less would be consistent with the requirements of the Schedule.

The International Convention for the Regulation of Whaling, under which the IWC operates, is implemented domestically through the Whaling Convention Act (WCA). Under the WCA, NMFS proposes to issue a share of the IWC bowhead quota to the AEWC.

Alaska Eskimos have been taking bowhead whales for at least 2,000 years. Alaska Native subsistence hunters take less than one percent of the population of bowhead whales per year. Since 1977, the number of takes has ranged between 14 and 75 per year, depending in part on changes in management strategy and in part on higher estimates of bowhead whale abundance in recent years (NMFS Alaska Marine Mammal Stock Assessments, 2001).

The National Environmental Policy Act (NEPA) requires that Federal agencies conduct an environmental analysis of the effect of their proposed actions on the environment. While quotas under the WCA are issued on an annual basis, NMFS is evaluating the effects of issuing them over a 5–year period. Accordingly, NMFS prepared a draft EA that evaluated the following four alternatives:

Alternative 1 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no unused strikes are added to the strike quota for any one year.

Alternative 2 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no more than 15 unused strikes are added to the strike quota for any one year.

Alternative 3 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where, for unused strikes, up to 50 percent of the annual strike limit is added to the strike quota for any one year.

Alternative 4 (No Action) - Do not grant the AEWC a quota.

NMFS has selected Alternative 2 as the preferred alternative.

The Draft EA was prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in NOAA Administrative Order 216–6.

#### Information Solicited

To ensure that NMFS' review is comprehensive and based on the best available information, NMFS is soliciting information and comments from any interested party concerning issuing a bowhead whale quota to the AEWC of 255 landed whales over 5 years (2003 through 2007). NMFS is particularly interested in information on the affected environment or environmental consequences of issuing a quota. NMFS requests that data, information, and comments be accompanied by (1) supporting documentation, and (2) the name, address, and affiliation of person submitting data. Written comments should be sent to Chief of the Marine

Mammal Division within NMFS' Office of Protected Resources (see **ADDRESSES**).

Dated: December 3, 2002.

**Laurie K. Allen,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 02–31027 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

**[Docket No. 2003–C–006]**

## Request for Written Comments and Notice of Hearings on Technological Protection Systems for Digitized Copyrighted Works

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for written comments and notice of hearings.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) requests written comments that will assist the agency in preparing a report to Congress required by the ''Technology, Education and Copyright Harmonization Act of 2002.'' The report will provide information to Congress on technological protection systems for digitized copyrighted works and to prevent infringement. The USPTO also may conduct a hearing to obtain information for the report and requests a response from persons interested in providing testimony.

**DATES:** Written comments are due at the offices of the USPTO on January 14, 2003. A hearing is tentatively scheduled for the Washington, DC area, on February 4, 2003. Based on expressions of public interest, additional hearings may be scheduled. Requests to testify must be received by January 14, 2003.

**ADDRESSES:** Written comments and requests to testify should be addressed to the United States Patent and Trademark Office, Office of Legislative and International Affairs, Room 902, 2121 Crystal Drive, Arlington, VA 22202, or faxed to (703) 305–8885, marked to the attention of Velica Steadman. Written comments also may be sent via electronic mail to *teach.act@uspto.gov.* A specific time and location for the proposed hearing will be determined based on responses received from persons who express an interest in testifying and will be posted on the USPTO's Web site at *http://www.uspto.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael S. Shapiro by telephone at (703) 305–9300 or by electronic mail at *teach.act@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

### 1. Background

On November 2, 2002, the President signed into law the ''Technology, Education and Copyright Harmonization Act of 2002'' (the TEACH Act), Pub. L. 107–273, which updates certain provisions of the Copyright Act to facilitate the growth and development of distance education, while introducing new safeguards to limit the additional risks to copyright owners that are inherent in exploiting works in a digital format. As discussed more fully below, the TEACH Act requires the USPTO to submit a report to Congress on technological protection systems for digitized copyrighted works and to prevent infringement. The brief discussion of the TEACH Act that follows is intended only to provide some context for that report.

Over the last several years, the educational opportunities and risks associated with distance education have been the subject of extensive public debate and attention in the United States. In November 1998, the Conference on Fair Use (CONFU), convened by the Administration's Information Infrastructure Task Force, issued its final report, which included a proposal for educational fair use guidelines for distance learning.[1] In May 1999, the U.S. Copyright Office issued an extensive report on copyright and digital distance education.[2] The Senate Committee on the Judiciary and the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property held hearings on the TEACH Act.[3] For more detailed information on the background and legislative history of the TEACH Act, interested persons may wish to visit the USPTO Web site at *http://www.uspto.gov* and the U.S. Copyright Office Web site at *http://www.loc.gov.*

Subsection (b) of the TEACH Act amends section 110(2) of the Copyright Act to encompass performances and displays of copyrighted works in digital distance education under appropriate circumstances and subject to certain limitations. The Act expands the categories of works exempt from the performance right, from nondramatic literary works and musical works to ''reasonable and limited portions'' of any work and permits the display of any work in ''an amount comparable to that typically displayed in the course of a live classroom setting.'' The Act removes the concept of the physical classroom, while maintaining the requirement of ''mediated instructional activity,'' which generally requires the involvement of an instructor. The exemption is limited to mediated instructional activities that are conducted by governmental bodies and ''accredited'' non-profit educational institutions. Subsection (c) of the TEACH Act amends section 112 of the Copyright Act to permit transmitting organizations to store copyrighted material on their servers in order to allow the performances and displays of works authorized under amended section 110(2).

The TEACH Act contains a number of new safeguards to limit the additional risks to copyright owners that are inherent in using works in the digital format. Section 110(2)(C) limits the receipt of authorized transmissions, ''to the extent technologically feasible,'' to students officially enrolled in the course or to Government employees as part of their official duties. Section 110(2)(D)(ii) requires transmitting institutions to apply technological measures that ''reasonably prevent retention of the work in accessible form by recipients of the transmission * * * for longer than the class session'' and the ''unauthorized further dissemination'' of the work. Section 110(2)(D)(ii) also prohibits transmitting institutions from engaging in ''conduct that could reasonably be expected to interfere'' with such technological measures.

### 2. Mandate for the Report

Subsection (d) of the TEACH Act requires the Under Secretary of Commerce for Intellectual Property, after consultation with the Register of Copyrights and after a period of public comment, to submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on technological protection systems for digitized copyrighted works. The report, which is intended solely to provide information to Congress, is due not later than 180 days after the date of enactment of the Act.

Congress specifically directed the USPTO to include information ''on

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[1] *See* The Conference on Fair Use: Final Report to the Commissioner on the Conclusion of the Conference on Fair Use (U.S. Patent and Trademark Office, November 1998). The report is available on-line at *http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.htm*

[2] *See* Report on Copyright and Digital Distance Education: A Report to the Register of Copyrights (U.S. Copyright Office, May 1999). The report is available at *http://www.copyright.gov/disted/.*

[3] *See* the Report of the Senate Committee on the Judiciary on the Technology, Education and Copyright Act of 2001, S.R. Rep. No. 107–31, 107th Congress, 1st Session and the Report of the House Committee on the Judiciary on the Technology, Education and Copyright Act of 2001, H.R. Rep. No. 107–687, 107th Congress, 2d Session.

technological protection systems that have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including upgradeable and self-repairing systems, and systems that have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad based consensus process.'' Congress also directed the USPTO to exclude ''any recommendations, comparisons, or comparative assessments of any commercially available products that may be mentioned in the report.''

Subsection (d) of the Act further states that the report ''shall not be construed to affect in any way, either directly or by implication, any provision'' of the Copyright Act in general or the TEACH Act in particular, including the requirements of section 110(2)(D)(ii) of the TEACH Act (discussed above), or ''the interpretation or application of such provisions, including evaluation of the compliance with that clause by any governmental body or nonprofit educational institution.''

**Request for Written Comments**

The USPTO requests that persons interested in submitting written comments organize their comments as follows:

(1) What technological protection systems have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including any upgradeable and self-repairing systems?

(2) What systems have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad-based consensus process?

(3) Consistent with the types of information requested by Congress, please provide any additional comments on technological protection systems to protect digitized copyrighted works and prevent infringement.

Written comments must be received by January 14, 2003, and should be addressed to the United States Patent and Trademark Office, Office of Legislative and International Affairs, Room 902, 2121 Crystal Drive, Arlington, VA 22202, ATTN: Velica Steadman, Office of Legislative and International Affairs; faxed to Velica Steadman's attention at (703) 305–8885; or sent via electronic mail to *teach.act@uspto.gov.*

In addition, as noted above, the USPTO will schedule a hearing to obtain information for the report on the basis of expressions of public interest. The hearing is tentatively scheduled for the Washington, DC area on February 4, 2003. Based on expressions of public interest, additional hearings may be scheduled. Requests to testify must be received by January 14, 2003. A specific time and location for the proposed hearing will be determined based on responses received from persons who express an interest in testifying and will be posted on USPTO's Web site at http://www.uspto.gov.

Dated: December 3, 2002.

**James E. Rogan,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 02–31017 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–16–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

December 4, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Memorandum of Understanding of December 29, 2001, between the Governments of the United States and Cambodia amends and extends the bilateral textile agreement of January 20, 1999 to cover the period January 1, 2003 through December 31, 2003.

The limits under this agreement may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits, which include a twelve percent (12%) increase to all of Cambodia's quotas under the Labor Standards provision described in **Federal Register** notice 64 FR 60428, published on November 5, 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 4, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Memorandum of Understanding, dated December 29, 2001, between the Governments of the United States and Cambodia, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 331/631 | 2,191,661 dozen pairs. |
| 334/634 | 240,376 dozen. |
| 335/635 | 91,908 dozen. |
| 338/339 | 3,782,381 dozen. |
| 340/640 | 1,060,481 dozen. |
| 345 | 132,913 dozen. |
| 347/348/647/648 | 4,241,923 dozen. |
| 352/652 | 848,385 dozen. |
| 435 | 21,832 dozen. |
| 438 | 104,892 dozen. |
| 445/446 | 128,202 dozen. |
| 638/639 | 1,272,576 dozen. |
| 645/646 | 353,493 dozen. |

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated January 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

Moreover, these limits may be revised in light of the U.S. determination as to whether working conditions in the Cambodian textile and apparel sector substantially comply with Cambodian labor law and internationally recognized core labor standards (see **Federal Register** notice 64 FR 60428, published on November 5, 1999).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02–31031 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

December 3, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

These limits do not apply to goods entered under the Andean Trade Promotion and Drug Eradication Act (ATPDEA. Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. See 67 FR 67283, published on November 5, 2002.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

**D. Michael Hutchinson.**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 3, 2002.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following restraint limits:

| Category | Twelve-month restraint limit |
|---|---|
| 315 | 39,120,817 square meters. |
| 443 | 139,440 numbers. |

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 8, 2001 to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Andean Trade Promotion and Drug Eradication Act (ATPDEA. Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. See directive dated October 31, 2002.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–30976 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

December 3, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 447/448 and 645/646 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63219, published on December 5, 2001.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 3, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 10, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Sublevels in Group II | |
| 447/448 | 70,515 dozen. |
| 645/646 | 1,382,033 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02–31029 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

December 4, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for the rescinding of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63031, published on December 4, 2001.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 4, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 10, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 335 | 258,290 dozen. |
| 635 | 473,183 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02–31032 Filed 12–6–02; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

December 3, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://www.otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 351/651 is being increased for swing, reducing the limit for Category 237 to account for the swing being added to Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). *Also see* 66 FR 63035, published on December 4, 2001.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 3, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 9, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 237 | 287,065 dozen. |
| 351/651 | 628,179 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02–30977 Filed 12–6–02; 8:45 a.m.

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 4, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67232, published on December 28, 2001.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 4, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 10, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Twelve-month limit [1] |
|---|---|
| Group I | |
| 200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group. | 222,654,584 square meters equivalent. |
| Sublevels in Group I | |
| 225/317/326 | 45,427,541 square meters. |
| 619/620 | 16,816,084 square meters. |
| Sublevels in Group II | |
| 338/339 | 1,062,354 dozen. |
| 345 | 138,633 dozen. |
| 347/348 | 1,535,616 dozen of which not more than 1,309,866 dozen shall be in Categories 347–W/348–W [6]. |
| 445/446 | 148,019 dozen. |
| 638/639 | 6,607,313 dozen. |
| Within Group II Subgroup | |
| 333/334/335 | 350,889 dozen of which not more than 190,066 dozen shall be in Category 335. |
| 351 | 281,059 dozen. |
| 447/448 | 23,018 dozen. |
| 651 | 568,875 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31030 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DR–S

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 8, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 3, 2002.

**John Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Annual Program Cost Report.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 82

Burden Hours: 385.

*Abstract:* Vocational Rehabilitation (VR) Services data submitted on the RSA–2 by State VR agencies for each fiscal year (FY) is used by the Rehabilitation Services Administration (RSA) to administer and manage the Title I Program; to analyze expenditures, evaluate program performance and identify problem areas.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30974 Filed 12–6–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 8, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren.Wittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: December 3, 2002.

**John Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

**Federal Student Aid**

*Type of Review:* Revision.

*Title:* William D. Ford Federal Direct Loan Program Statutory Forbearance Forms.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 4,092.

Burden Hours: 818.

*Abstract:* Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to agree to statutory forbearances on their loans.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your reqest.

Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at his e-mail address *Lew.Oleinick@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30975 Filed 12–6–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### National Nuclear Security Administration, Office of Los Alamos Site Operations; Notice of Floodplain Involvement for the Proposed Installation of a Permeable Reactive Barrier Within Mortandad Canyon at Los Alamos National Laboratory, Los Alamos, NM

**AGENCY:** Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

**ACTION:** Notice of floodplain involvement.

**SUMMARY:** The Department of Energy (DOE), National Nuclear Security Administration (NNSA) Office of Los Alamos Site Operations plans to construct a multiple permeable reactive barrier within Mortandad Canyon at Los Alamos National Laboratory (LANL). The permeable reactive barrier (PRB) would be located within a floodplain area for the purpose of reducing the contaminant load within shallow groundwater. The PRB would be operated for about five years as a site-specific technology demonstration project. The site chosen for the PRB is in the central portion of LANL. In accordance with 10 CFR part 1022, DOE has prepared a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

**DATES:** Comments are due to the address below no later than December 24, 2002.

**ADDRESSES:** Written comments should be addressed to: Elizabeth Withers, Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations, 528 35th Street, Los Alamos, NM 87544, or submit them to the Mail Room at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Written comments may also be sent electronically to: *ewithers@doeal.gov* or by facsimile to (505) 667–9998.

**FOR FURTHER INFORMATION CONTACT:** Everett Trollinger, Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–5280, facsimile (505) 667–9998.

For Further Information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

**SUPPLEMENTARY INFORMATION:** In November 2002, NNSA considered a proposal for constructing a PRB system at a narrow constriction in Mortandad Canyon within LANL where contaminated groundwater is confined to a small cross-section of alluvial materials. The entire PRB structure would extend about 120 feet from side-wall to side-wall within the canyon bottom. The PRB would consist of a ''funnel and gate'' system to direct contaminated groundwater into a centrally-located gate area of reactive materials. The impermeable funnel would be constructed of sheet piling driven to a depth of approximately 27 feet on either side of the canyon. The permeable gate would contain multiple buried cells of selected media designed to react with and reduce the concentration of contaminants in groundwater passing through the gate. The PRB would be left in place for about five years and its function would be monitored through a system of shallow monitoring wells that would be installed at the same time the PRB was constructed. Construction of the PRB and associated monitoring wells will commence in 2003 and be completed in less than 6 months.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), NNSA has prepared a floodplain/wetland assessment for this action, which is available by contacting Elizabeth Withers at the previously identified addresses, phone and facsimile numbers. The floodplain/wetland assessment is available for review at the DOE Reading Room at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, NM 878544; and the DOE Reading Room at the Zimmerman Library, University of New Mexico, Albuquerque, NM 87131. The NNSA will publish a floodplain statement of findings for this project in the **Federal Register** no sooner than December 24, 2002.

Issued in Los Alamos on November 26, 2002.

**Ralph E. Erickson,**

*Director, U.S. Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations.*

[FR Doc. 02–31007 Filed 12–6–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–136–000]**

### Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 10; First Revised Sheet No. 257; and First Revised Sheet No. 258, proposed to become effective January 1, 2003.

Section 30.1 of the General Terms and Conditions (GTC) of Alliance's FERC Gas Tariff establishes an ACA charge applicable to Alliance's Rate Schedules FT–1 and IT–1. GTC Section 30.2 provides that such rate schedules shall

include an ACA unit charge, which shall be the unit charge authorized by the Commission each year, and that Alliance shall file changes to the ACA unit charge annually to reflect the annual charge unit rate authorized by the Commission each year. Alliance states that it recently remitted payment for its initial Annual Charges Billing, covering fiscal year 2002.

Alliance states that all of its firm transportation capacity is subscribed on an long-term basis by its existing Rate Schedule FT–1 customers, all of whom have agreed to pay negotiated rates. The shippers' negotiated rate agreements provide that changes in Alliance's costs will be reflected in its negotiated rates from time to time. Contemporaneous with Alliance's filing in this docket, Alliance made a tariff change filing in Docket No. RP00–445–003 to adjust its negotiated rates to reflect changes in its costs.

Alliance states that its negotiated rate shippers have agreed that the amount of the Annual Charges Billing may be included as one of the cost changes reflected in Alliance's adjusted negotiated rates. Accordingly, Alliance states that the negotiated rates adjustment filing reflects the cost of the Annual Charges Billing. Because Alliance will recover its Annual Charges Billing in its negotiated rates, it is barred by Section 154.402 of the Commission's regulations from also recovering such costs through an ACA unit charge. Therefore, Alliance states that it is filing the revised tariff sheets listed above to delete the ACA charge authority from its FERC Gas Tariff.

Alliance further states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31107 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–119–000]**

## ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifty-Fourth Revised Sheet No. 8; Fifty-Fourth Revised Sheet No. 9; Fifty-Third Revised Sheet No. 13; and Sixty-Fifth Revised Sheet No. 18, to become effective December 1, 2002.

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.3 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,382,158 to $2,326,128.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31098 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–148–000]**

## CMS Trunkline Gas Company, LLC; Notice of Storage Credit Report

December 3, 2002.

Take notice that on November 27, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment for the years 2000 and 2001 in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with section 24 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment.

Trunkline further states that it failed to file its report under Section 24 for the

2000 and 2001 reporting periods. No Interruptible Storage Revenues for the periods covered by the missed filings in 2000 and 2001 were collected, and consequently no change in rates were required.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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 on or before December 10, 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31112 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–149–000]**

## CMS Trunkline Gas Company, LLC; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following *pro forma* sheet:

Pro Forma Sheet No. 223A

Trunkline states that this filing is being made to comply with the Commission's Order on Remand issued October 31, 2002 in Docket No. RM98–10–011. Trunkline is modifying Section 3.2(A) of the General Terms and Conditions of its FERC Gas Tariff to permit segmented transactions consisting of a forwardhaul and a backhaul to the same point. In such a segmented transaction, the revised tariff sheet makes clear that the shipper may nominate quantities of gas at a point of receipt or a point of delivery in excess of its maximum daily quantity at such point and the shipper may nominate quantities of gas in each segment up to its maximum daily quantity in the segment. Consistent with the Commission's policy and the Remand Order, the revised tariff sheet clarifies that a segment in which the flow is the opposite of the shipper's primary path will be considered to be outside the primary path for scheduling purposes.

Trunkline states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31113 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–121–000]**

## Colorado Interstate Gas Company; Notice Fuel Reimbursement Percentage

December 3, 2002.

Take notice that on November 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Sixth Revised Sheet No. 11A, to become effective January 1, 2003.

CIG states the tariff sheet is being filed to revise the quarterly Fuel Reimbursement Percentage applicable to Lost, Unaccounted-For and Other Fuel Gas.

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 on or before December 10, 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31100 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–122–000]**

## Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the Appendix to the filing, to become effective January 1, 2003.

CIG states that the tariff sheets propose to enhance service provided under CIG's Rate Schedule NNT–1 to enable shippers to divert gas quantities available at primary, no notice delivery points to designated secondary delivery points on short notice.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31101 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## *Consolidated Edison Company of New York, Inc.* v. *Public Service Electric and Gas Company;* Notice Partially Vacating Procedural Schedule and Authorizing Establishment of New Dates

December 3, 2002.

On December 2, 2002, Consolidated Edison Company of New York (ConEd) filed a motion requesting the Commission to suspend the procedural schedule for the hearing in Phase II of this proceeding.

On December 3, 2002, Public Service Electric and Gas Company filed an answer opposing ConEd's request.

For good cause shown, Con Ed's motion will be granted in part. The procedural dates beginning with Filing of Staff's Testimony and ending with Reply Briefs Filed are hereby vacated, pending further action. The remaining dates, beginning with Initial Decision Issued and ending with Briefs Opposing Exceptions Filed, are unchanged.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–31087 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–111–000]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 26, 2002, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 2003:

Second Revised Volume No. 1–A
Twenty-Sixth Revised Sheet No. 20
Nineteenth Revised Sheet No. 22
Twenty-Fourth Revised Sheet No. 23
Thirty-First Revised Sheet No. 24
Twenty-Fifth Revised Sheet No. 26
Twenty-Fifth Revised Sheet No. 27
Eleventh Revised Sheet No. 37
Thirteenth Revised Sheet No. 38
Third Revised Volume No. 2
Fifty-Third Revised Sheet No. 1–D.2
Forty-Seventh Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation in accordance with its tariff and in accordance with the settlement of its last general rate case.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31092 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–120–000]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, El Paso Natural Gas Company (El Paso) tendered for filing as part of its

FERC Gas Tariff, Second Revised Volume No. 1–A, Ninth Revised Sheet No. 29, to become effective January 1, 2003.

El Paso states that the tendered tariff sheet revises the fuel charges applicable to transportation service on El Paso's system.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31099 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–163–000]**

## *Energy Development Corporation* v. *Columbia Gas Transmission Corporation, and Columbia Natural Resources, Inc.;* Notice of Complaint

December 3, 2002.

Take notice that on December 2, 2002, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Energy Development Corporation (EDC) filed a Complaint Requesting Fast Track Processing and Request for Interim and Permanent Relief against Columbia Gas Transmission Corporation (Columbia), and Columbia Natural Resources (CNR). EDC alleges that Columbia, in concert with its affiliate CNR, is acting in an anti-competitive manner in connection with the transportation of gas in interstate commerce.

EDC has requested the Commission to: (1) Reassert jurisdiction over the V–33 system to protect shippers such as EDC from the anticompetitive behavior of Columbia and its affiliate CNR; (2) require Columbia to restore the exchange agreement with Cranberry/Cabot that existed prior to abandonment if, in fact, such agreement is not still in place; (3) protect EDC from the immediate danger of losing its essential service on the V–33 system by providing immediate interim relief requiring Columbia and its affiliate CNR to continue service without interruption until the final resolution of this Complaint; and (4) provide permanent relief to EDC and other shippers by restoring jurisdictional status to the V–33 system and requiring Columbia to accept delivery of maximum allowable volumes of gas from EDC into the V–33 system as an integral part of the Columbia system, thus allowing EDC free choice of a gas buyer.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before December 23, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, 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. The Commission strongly encourages electronic filings.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–31115 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–138–000]**

## Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Garden Banks Gas pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 19, and First Revised Sheet No. 221, to be effective January 1, 2003.

GBGP states that the purpose of this filing is to remove a provision in Section 2 of its Rate Schedule FT–2 and the attendant form of service agreement that restricts an FT–2 shipper from reducing its cumulative MDQ over the term of the applicable transportation service agreement by more than twenty percent (20%) of the shipper's production forecast underlying its initial MDQ elections.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web siteunder the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–31108 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–118–000]**

## High Island Offshore System, L.L.C; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, High Island Offshore System, L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 103.

HIOS states that the revised tariff sheet is being filed in order to comply with the Commission's October 31, 2002, Order in Docket No. RM98–10–011

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31097 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–22–001]**

## Michigan Gas Storage Company; Notice of Application

December 3, 2002.

On November 15, 2002, in Docket No. CP02–22–001, Michigan Gas Storage Company (MGSCo), 212 West Michigan Avenue, Jackson, Michigan 49201, filed Sixth Revised Sheet No.1 to terminate its entire FERC Gas Tariff, First Revised Volume No. 1, effective November 8, 2002. The Commission's February 28, 2002 order, in Docket No. CP02–22–000, conditionally authorized MGSCo to abandon its facilities by transfer to Consumers Energy Company (Consumers), its parent company, and to cancel its FERC Gas Tariff within 10 days of the abandonment. The February 28 Order also directed MGSCo to notify the Commission of the date of the abandonment within ten days after it occurred. MGSCo states that by this filing it providing notice to the Commission that the transfer of its facilities to Consumers occurred on November 8, 2002, as required by the February 28 order, and canceling its FERC Gas Tariff in its entirety.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Any person desiring to intervene or to protest this filing should file on or before December 26, 2002, 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) and the regulations under the Natural Gas Act (18 CFR 157.10). 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, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

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. The Commission strongly encourages electronic filings.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–31086 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER03–234–000]**

## New England Power Pool; Notice of Filing

December 3, 2002.

Take notice that on November 29, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Great Bay Power Marketing, Inc. (GBPMI). The Participants Committee requests a December 1, 2002 effective date for commencement of participation in NEPOOL by GBPMI.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. 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. The Commission strongly encourages electronic filings.

*Comment Date:* December 13, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–31088 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–150–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 63 Revised Sheet No. 50; 64 Revised Sheet No. 51; 60 Revised Sheet No. 53; and 13 Revised Sheet No. 56, to be effective January 1, 2003.

Northern states that this filing establishes the System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 2003 for the period January 1 through December 31, 2003.

Northern further states that copies of the filing have been mailed to each of 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31114 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–129–000]**

## Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following *pro forma* tariff sheets:

Pro Forma Sheet No. 249
Pro Forma Sheet No. 249A
Pro Forma Sheet No. 250
Pro Forma Sheet No. 250A
Pro Forma Sheet No. 254
Pro Forma Sheet No. 254A

Panhandle states that this filing is being made to comply with the Commission's Order on Remand issued October 31, 2002 in Docket No. RM98–10–011. Panhandle is modifying section 10.2(a) and (b) and section 11.5(a) and (b) of the General Terms and Conditions of its FERC Gas Tariff to permit segmented transactions consisting of a forwardhaul and a backhaul to the same point. In such a segmented transaction, the revised tariff sheets make clear that the shipper may exceed its maximum daily contract quantity at such point and the shipper may nominate quantities of gas in each segment up to its maximum daily contract quantity in the segment. Consistent with the Commission's policy and the Remand Order, the revised tariff sheets clarify that the portion of such a transaction in which the flow is the opposite of the shipper's primary path will be considered to be outside the primary path for scheduling purposes.

Panhandle states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31104 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–141–000]**

## Petal Gas Storage, L.L.C.; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First

Revised Sheet No. 137, to be effective December 27, 2002.

Petal states that the revised tariff sheet is being filed in order to comply with the Commission's October 31, 2002 Order on Remand.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31109 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP00–241–000 and RP00–241–006]**

## *Public Utilities Commission of the State of California* v. *El Paso Natural Gas Company, El Paso Merchant Energy Gas, L.P. and El Paso Merchant Energy Company;* Notice Releasing Protected Materials

December 3, 2002.

At the oral argument held on December 2, 2002, the Commission voted to make public the attached five pages that are a part of documents that were filed under protective seal in the above-docketed proceeding. The following pages were made public:

Exhibit PUC—36, pages 14 and 15
Exhibit PUC–37, page 13, one paragraph from that page
Exhibit PG&E–54, pages 47 and 48

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–31091 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–134–000]**

## Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 30b, to be effective January 1, 2003.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to reflect a reduction in the standard fuel percentage in Section 5.1(b) of the General Terms and Conditions.

Sea Robin states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31105 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–123–000]**

## Southern Natural Gas Company; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2003.

Fifty-ninth Revised Sheet No. 14
Eightieth Revised Sheet No. 15
Fifty-ninth Revised Sheet No. 16
Eightieth Revised Sheet No. 17
Forty-third Revised Sheet No. 18

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT-NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory. Southern proposes to reduce its Storage Cost Reconciliation Mechanism Surcharge from $.012/Dth to $.003/Dth to be effective January 1, 2003. Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31102 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–125–000]**

### Tennessee Gas Pipeline Company; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff Fifth Revised Volume No. 1, Seventh Revised Sheet No. 324, with an effective date of January 1, 2003.

Tennessee states that the revised tariff sheet is being filed in accordance with the Commission's October 31, 2002, Order on Remand.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31103 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–143–000]**

### Tennessee Gas Pipeline Company; Notice of Take or Pay Report and Request for Waiver

December 3, 2002.

Take notice that on November 27, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a current accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the current accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on May 31, 2002.

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 on or before December 10, 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31110 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–144–000]**

### Tennessee Gas Pipeline Company; Notice of Cashout Report

December 3, 2002.

Take notice that on November 27, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Cashout Report for the September 2001 through August 2002 Period.

The Cashout Report is the fourth filed by Tennessee under the cashout reconciliation methodology established pursuant to the March 25, 1999 Stipulation and Agreement (Cashout Settlement) on the Tennessee system. Tennessee states that the Cashout Report reflects a cashout loss during the period of $1,414,168. Pursuant to the Cashout Settlement, this loss will carry forward into the next annual cashout period.

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 on or before December 10, 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31111 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–115–000]**

## Texas Gas Transmission Corporation; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 26, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2003.

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect the 2003 General RD&D Funding Units authorized in the ''Letter Order,'' issued by the Commission on September 19, 2002, in Docket No. RP02–534–000.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31094 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–112–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 26, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revise tariff sheets and their proposed effective dates are detailed in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19.1(f) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff. Specifically, such tariff sheets have been revised to include changes associated with

(1) the November 1, 2002 in-service date of the completed Leidy East incremental capacity expansion and (2) miscellaneous adjustments as more fully explained in Appendix B of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31093 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–116–000]**

## Williams Gas Pipelines Central, Inc.; Notice of Cash-Out Report

December 3, 2002.

Take notice that on November 26, 2002, Williams Gas Pipelines Central, Inc., (Central) tendered for filing its report of net revenue received from

cash-outs for the period of October 1, 2002 through September 30, 2002.

Central states that pursuant to the cash-out mechanism contained in Section 9.8(a)(iv) of Central's tariff, Shippers are given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing out such imbalances at 100% of the spot market price applicable to Central as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which are not resolved by the end of the second month following the month in which the imbalance occurred and which exceed the tolerance specified in section 9.8(c). Central states that it is filing its report of net cash out activity, which shows net cash out costs to the company of $79,401.63 for the twelve months ended September 30, 2002.

Central states that copies of its filing was served to all jurisdictional 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 on or before December 10, 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31095 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–117–000]**

## Williams Gas Pipelines Central, Inc.; Notice of Cash Balancing Report

December 3, 2002.

Take notice that on November 26, 2002, Williams Gas Pipelines Central, Inc. (Central) filed its report of payments received from penalties assessed due to Periods of Daily Balancing and Operational Flow Orders.

Pursuant to Sections 9.6 and 10.3 of Central's FERC Gas Tariff, Original Volume No. 1, Central states that it is reporting that neither a Period of Daily Balancing nor an Operational Flow Order was issued during the 12-month period of October 1, 2001 through September 30, 2002 and no penalties were assessed or collected. Therefore, no refunds are due from Central for the 12-month period ending September 30, 2002 and a refund plan is unnecessary.

Central states that a copy of this filing has been served on all of Central's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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 on or before December 10, 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–31096 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–135–000]**

## Williams Gas Pipelines Central, Inc.; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Williams Gas Pipelines Central, Inc., (Central) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 6B, with an effective date of January 1, 2003.

Central states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 2002.

Central states that copies of the filing have been served on all Central's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The

Commission strongly encourages electronic filings. *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. 02–31106 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC03–22–000, et al.]**

## Camden Cogen, L.P., et al.; Electric Rate and Corporate Filings

November 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Camden Cogen, L.P., Cogen Technologies Camden GP Limited Partnership, Cogen Technologies NJ Venture, CPN Bayonne, L.L.C., East Coast Power Bayonne GP, L.L.C., East Coast Power Camden LP, L.C.C., East Coast Power, L.L.C., Mesquite Investors, L.L.C., TEVCO/Mission Bayonne Partnership**

[Docket No. EC03–22–000]

Take notice that on November 25, 2002, Camden Cogen, L.P. (Camden Cogen), Cogen Technologies Camden GP Limited Partnership (Cogen Technologies Camden), Cogen Technologies NJ Venture (Bayonne), CPN Bayonne, L.L.C. (CPN Bayonne), East Coast Power Bayonne GP, L.L.C. (East Coast Bayonne), East Coast Power Camden LP, L.L.C. (''East Coast Camden''), East Coast Power, L.L.C. (East Coast Power), Mesquite Investors, L.L.C. (Mesquite), and TEVCO/Mission Bayonne Partnership (TEVCO) (jointly, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act seeking authorization for: (I) Camden Cogen and Bayonne to convert their form of business organization to limited liability companies, and (ii) an internal corporate transfer of the member interests in the newly-converted limited liability companies, namely Camden Plant Holding, L.L.C. and Bayonne Plant Holding, L.L.C. respectively, directly to Mesquite.

*Comment Date:* December 16, 2002.

**2. Power Resources, Ltd.**

[Docket No. EG03–22–000]

Take notice that on November 22, 2002, Power Resources, Ltd. (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's Regulations. Applicant, a Texas limited partnership with its principal place of business at 500 East Refinery Road, Big Spring, Texas 79720, is an indirect subsidiary of MidAmerican Energy Holdings Company.

*Comment Date:* December 18, 2002.

**3. Ameren Energy Generating Company**

[Docket No. EG03–23–000]

Take notice that on November 25, 2002, Ameren Energy Generating Company (AEG), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of continuing exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

AEG states that it has recently acquired the 468 MW Elgin Energy Center, which consists of four 117 MW natural gas-fired combustion turbines operating in simple cycle mode. AEG states that all of the electric energy from the affected units will be sold at wholesale.

*Comment Date:* December 18, 2002.

**4. Southern Company Services, Inc.**

[Docket No. ER03–211–000]

Take notice that on November 22, 2002, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (Georgia Power) submitted for filing with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement by and between Georgia Power and Southern Power Company for McIntosh CC Unit 1 (Interconnection Agreement). SCS requests the Interconnection Agreement be accepted for filing effective October 25, 2002.

*Comment Date:* December 13, 2002.

**5. Southern Company Services, Inc.**

[Docket No. ER03–212–000]

Take notice that on November 22, 2002, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (Georgia Power) submitted for filing with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement by and between Georgia Power and Southern Power Company for McIntosh CC Unit 2 (Interconnection Agreement). SCS requests Interconnection Agreement be accepted for filing effective October 25, 2002.

*Comment Date:* December 13, 2002.

**6. Power Resource Group, Inc.**

[Docket No. ER03–213–000]

Take notice that on November 22, 2002, Power Resource Group, Inc. filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1, with a proposed effective date of November 25, 2002. Power Resource Group, Inc. is no longer engaged in the power marketing business, will not conduct power marketing activities in the future, and has no outstanding power sales contracts; accordingly, no purchasers will be affected by this Notice.

*Comment Date:* December 13, 2002.

**7. New York Independent System Operator, Inc.**

[Docket No. ER03–214–000]

Take notice that on November 22, 2002 Niagara Mohawk Power Corporation tendered for filing a service agreement, *i.e.* an Interconnection Agreement between Niagara Mohawk Power Corporation and Orion Power New York GPII, Inc. for an existing and operating 2.2 MW hydroelectric generating facility located in the Town of Clifton, St. Lawrence County, New York, dated as of October 18, 2002 (Agreement). The filing reflects the filing of the agreement as a service agreement filed by Niagara Mohawk under the NYISO Open Access Transmission Tariff. The filing has been designated by the New York Independent System Operator as Service Agreement No. 318.

An effective date of November 15, 2002 is requested and to the extent necessary, Niagara Mohawk requests waiver of any Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

*Comment Date:* December 13, 2002.

**8. Mirant Delta, LLC, Mirant Potrero, LLC**

[Docket No. ER03–215–000]

Take notice that, on November 22, 2002, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (Mirant Potrero) tendered for filing certain revised tariff sheets to the Must-Run Service Agreements between Mirant Delta, Mirant Potrero, and the California Independent System Operator Corporation. The revisions include,

inter alia, changes to the: (I) Contract Service Limits, (ii) Hourly Availability Charges and Penalty Rates, (iii) Capital Item Charges and Penalty Rates; (iv) Prepaid Start-up Costs, and (v) projected outage information for the generating units owned by Mirant Delta and Mirant Potrero, for the year beginning January 1, 2003.

*Comment Date:* December 13, 2002.

**9. Midwest Independent Transmission System Operator, Inc. and TRANSLink Development Company, LLC**

[Docket No. ER03–216–000]

Take notice that on November 22, 2002, TRANSLink Development Company, LLC (TRANSLink Development) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or MISO) submitted to the Commission for its review and approval an Appendix I Independent Transmission Company Agreement (the Agreement) between the Midwest ISO and TRANSLink Development, executed on November 22, 2002.

The Appendix I Agreement submitted to the Commission identifies the terms under which TRANSLink Transmission Company LLC (TRANSLink) will join the Midwest ISO as an independent transmission company, thereby expanding the scope of the Midwest ISO regional transmission organization to include the transmission systems of the TRANSLink Participants, including both jurisdictional utilities and municipal and cooperative public power systems.

*Comment Date:* December 13, 2002.

**Standard Paragraph**

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. 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. The Commission strongly encourages electronic filings.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–30983 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL01–122–005, et al.]**

## PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

November 29, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. PJM Interconnection, L.L.C.**

[Docket No. EL01–122–005]

Take notice that on November 21, 2002, in compliance with the Commission's order in PJM Interconnection, L.L.C., 101 FERC ¶ 61,135 (2002), PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the PJM Open Access Transmission Tariff to amend the PJM Market Monitoring Plan to comply with the Commission's earlier order issued in this proceeding on December 20, 2001 (PJM Interconnection, L.L.C., 97 FERC ¶ 61,319 (2002)), by adding a new section addressing investigations of undue preference.

As directed by the Commission, PJM requests an effective date of May 15, 2002 for the amendments.

Copies of this filing were served upon all parties designated on the official service list in Docket No. EL01–122, all PJM members and each state electric utility regulatory commissions in the PJM control area and PJM West region.

*Comment Date:* December 12, 2002.

**2. TransCanada Energy Ltd.**

[Docket No. ER97–1417–001]

Take notice that on November 21, 2002, TransCanada Energy Ltd. (TCE) filed a notification of a change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority.

*Comment Date:* December 12, 2002.

**3. AES Placerita, Inc.**

[Docket No. ER00–33–003]

Take notice that on November 22, 2002, pursuant to the Federal Energy Regulatory Commission's Order in this docket, AES Placerita, Inc. (Placerita) submitted its triennial market power update. In addition, pursuant to Section 205 of the Federal Power Act, Placerita submitted its second revision to FERC Electric Rate Schedule, Original Volume No. 1, and its first revision to its code of conduct reflecting new corporate affiliations.

*Comment Date:* December 13, 2002.

**4. Adirondack Hydro Development Corporation, Adirondack Hydro Fourth Branch, LLC, Black Hills Colorado, LLC, Black Hills Power, Inc., Black Hills Generation, Inc., Black Hills Pepperell Power Associates, Inc., Fountain Valley Power, LLC, Harbor Cogeneration Company, NYSD LP, Sissonville LP, Warrensburg Hydro Power LP**

[Docket Nos. ER00–3109–001, ER00–3774–001, ER00–1952–001, ER02–2287–001, ER01–1844–001, ER96–1635–008, ER01–1784–004, ER99–1248–003, and ER00–3109–001]

Take notice that on November 25, 2002, Black Hills Corporation, on behalf of itself and its public utility affiliates with authorization to sell electric capacity and energy at market-based rates, submitted a consolidated triennial market power update analysis demonstrating that each of the Black Hills entities satisfies the Federal Energy Regulatory Commission's applicable standards for assessing generation market power.

*Comment Date:* December 16, 2002.

**5. Aquila, Inc.**

[Docket No. ER03–188–001]

Take notice that on November 22, 2002, Aquila, Inc. filed a correction to its notice of termination of Transmission Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on September 30, 2002.

*Comment Date:* December 13, 2002.

**6. Aquila, Inc.**

[Docket No. ER03–189–001]

Take notice that on November 22, 2002, Aquila, Inc. (Aquila) filed a supplement to its notice of termination of Transmission Service Agreements for Non-Firm and Short-Term Firm Point-

to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on October 19, 2002.

*Comment Date:* December 13, 2002.

**7. New York Independent System Operator, Inc.**

[Docket No. ER03–200–001]

Take notice that on November 22, 2002, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) a corrected version of proposed Attachment V (ISO Working Capital Fund) to its Open Access Transmission Tariff. The corrected version conforms to the Commission's rules governing the pagination of tariff sheets. It is identical to the version originally filed on November 18, 2002 in all other respects.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

*Comment Date:* December 13, 2002.

**8. California Independent System Operator Corporation**

[Docket No. ER03–219–000]

Take notice that on November 25, 2002, the California Independent System Operator Corporation (ISO) tendered for filing revisions to the Transmission Control Agreement (TCA) for acceptance by the Commission. The ISO states that the purpose of the amendment is (1) to clarify, amend, and supplement various provisions of the current TCA in response to issues raised by the Cities of Anaheim, Azusa, Banning, and Riverside, California (together Southern Cities), which have applied to become Participating Transmission Owners; (2) to identify the transmission interests that Southern Cities will be turning over to the ISO's Operational Control, and (3) to make certain other changes to the TCA proposed by the ISO and the current Participating Transmission Owners.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including the signatories to the TCA, with effective Scheduling Coordinator Agreements under the ISO Tariff.

The ISO is requesting waiver of the 60-day notice requirement to allow the TCA to be made effective January 1, 2003.

*Comment Date:* December 16, 2002.

**9. PJM Interconnection, L.L.C.**

[Docket No. ER03–220–000]

Take notice that on November 25, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) amendments to the PJM Open Access Transmission Tariff that more clearly conform the confidentiality provisions of the Market Monitoring Plan to the confidentiality provisions in the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

PJM requests waiver of the Commission's notice requirements to permit an effective date of November 26, 2002.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area and PJM West region.

*Comment Date:* December 16, 2002.

**10. El Paso Electric Company**

[Docket No. ER03–221–000]

Take notice that on November 25, 2002, El Paso Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission) unexecuted Service Agreements with Arizona Public Service Company and Public Service Company of New Mexico.

*Comment Date:* December 16, 2002.

**11. Las Vegas Cogeneration II, L.L.C.**

[Docket No. ER03–222–000]

Take notice that on November 25, 2002, Las Vegas Cogeneration II, L.L.C., filed an initial rate schedule to sell power at market-based rates.

*Comment Date:* December 16, 2002.

**12. Florida Power & Light Company**

[Docket No. ER03–223–000]

Take notice that on November 26, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an executed First Revised Construction and Connection Agreement between FPL and Oleander Power Project, L.P (Oleander). This First Revised Service Agreement No. 178 provides for additional mutually agreed to terms and conditions governing the interconnection between FPL and Oleander. A copy of this filing has been served on Oleander and the Florida Public Service Commission.

*Comment Date:* December 16, 2002.

**13. American Electric Power Service Corporation**

[Docket No. ER03–224–000]

Take notice that on November 26, 2001, American Electric Power Service Corporation (AEPSC) submitted for filing (1) the Service Agreement for ERCOT Regional Transmission Service between AEPSC and Medina Electric Cooperative Inc. (MEC), dated October 1, 2001, (2) a notice of cancellation of a service agreement for ERCOT regional transmission service between CPL and West Texas Utilities Company collectively, and MEC, dated January 1, 1997, (3) an amended interconnection agreement between Central Power and Light Company (CPL) and MEC, dated November 29, 1999, and (4) a notice of cancellation of an interchange agreement among CPL, MEC and South Texas Electric Cooperative, Inc., dated February 6, 1979.

AEPSC requests an effective date of October 1, 2001 for the Service Agreement for ERCOT Regional Transmission Service, cancellation of the earlier service agreement for ERCOT regional transmission service and addition of Facility Schedule Nos. 9 through 12 to the interconnection agreement. Such date coincides with the cancellation of CPL's agreement with MEC under which CPL supplied wholesale electric power service to MEC. AEPSC requests an effective date of August 30, 2000 for the amendment to Facility Schedule No. 7 of the interconnection agreement and it requests that the interchange agreement be canceled effective August 28, 2001.

AEPSC served copies of the filing on Medina Electric Cooperative, Inc. and the Public Utility Commission of Texas.

*Comment Date:* December 17, 2002.

**14. Public Service Company of Oklahoma**

[Docket No. ER03–225–000]

Take notice that on November 26, 2002, Public Service Company of Oklahoma (PSO) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Restated and Amended Interconnection Agreement between PSO and the City of Coffeyville, Kansas (Coffeyville), dated September 12, 2002.

PSO requests an effective date of October 1, 2002. Because there are no rates or charges associated with this filing, PSO requests waiver of the Commission's notice requirements.

AEPSC served copies of the filing on Coffeyville and the Oklahoma Corporation Commission.

*Comment Date:* December 17, 2002.

**15. Central Vermont Public Service Corporation**

[Docket No. ER03–226–000]

Take notice that on November 26, 2002, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 2003 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000. The Forecast 2003 Cost Report supports rates that represent a decrease of $1,266,280 for estimated non-energy costs in 2003.

Copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

*Comment Date:* December 17, 2002.

**16. Duke Energy Corporation**

[Docket No. ER03–227–000]

Take notice that on November 25, 2002, Duke Energy Corporation, on behalf of Duke Power and Duke Electric Transmission, (collectively, Duke), tendered for filing an amended Network Integration Transmission Service Agreement (NITSA) between Duke and the City of Seneca, South Carolina. Duke seeks an effective date of November 1, 2002 for the amended NITSA.

*Comment Date:* December 16, 2002.

**17. SP Newsprint Co.**

[Docket No. QF03–34–000]

Take notice that on November 27, 2002, SP Newsprint Co., 1301 Wynooski Street, P. O. Box 70, Newberg, Oregon 97123, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The new cogeneration facility will be located at the applicant's recycled content newsprint mill in Newberg, Oregon, and will consist of two natural gas-fired turbine generators combined with two heat recovery steam generators. The power output and steam recovered from the facility will be substantially used in the papermaking process. Surplus power and capacity not needed for the papermaking process may be sold to Pacific Northwest utilities or energy marketers. SP Newsprint currently purchases electric energy from PGE. PGE may provide the applicant with a variety of services including interconnection, wheeling, and ancillary services. In addition to PGE, it is anticipated that Bonneville Power Administration may provide wheeling and transmission services for the facility. The energy source for the facility will be natural gas. The maximum net electric power production capacity of the new cogeneration facility will be approximately 100 MW. The facility is expected to be in commercial operation by July 2003.

*Comment Date:* December 27, 2002.

**Standard Paragraph**

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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. The Commission strongly encourages electronic filings.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–30984 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

December 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12248–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Iron Bridge Hydro, LLC.

e. *Name and Location of Project:* The Iron Bridge Dam Hydroelectric Project would be located on the Sabine River in Van Zandt, Hunt, and Rains Counties, Texas. The project would utilize a dam owned by the Sabine River Authority of Texas. The project would not occupy Federal or Tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 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. 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. The Commission strongly encourages electronic filings. Please include the project number (P–12248–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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.

j. *Description of Project:* The proposed project would operate in a run-of-river mode and would consist of: (1) An

existing concrete dam 85-feet high, and 29,080-feet-crest-length, (2) an existing reservoir with a surface area of 36,015 acres, a storage capacity of 1,660,000 acre-feet, and a normal maximum water surface elevation of 438 feet, (3) a proposed 96-inch steel penstock approximately 200 feet long, (4) a proposed powerhouse containing one turbine with a total installed capacity of 2 MW, (5) a proposed switchyard, (6) approximately three miles of proposed 25kV transmission line, and (7) appurtenant facilities.

The project would have an estimated annual generation of 1.8 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Iron Bridge Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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. 02–31089 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Recreation Plan Amendment and Soliciting Motions To Intervene, Protests, and Comments

December 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Recreation Plan.

b. *Project No.:* P–2113–148.

c. *Date filed:* October 4, 2002.

d. *Applicant:* Wisconsin Valley Improvement Company.

e. *Name and Location of Project:* This amendment will affect project lands on the shores of the Rice development, located on the Tomahawk River in Lincoln and Oneida Counties, Wisconsin. The Rice reservoir is composed of three lakes: Nokomis Lake, Bridge Lake, and Deer Lake. The project utilizes U.S. Forest Service lands within the Nicolet and Ottawa National Forests and lands of the Lac Vieux Desert Bank of Lake Superior Chippewa Indians. This project does not include any hydroelectric generating facilities.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Robert Gall, President, Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, Wisconsin.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* January 3, 2003.

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 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. The Commission strongly encourages electronic filings. Please include the project number (P–2113–148) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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.

j. *Description of Amendment:* The proposed amendment would (1) remove the requirement to development Site 2 in 2002 from the Recreation Plan, close vehicle access to Site 2 for erosion control and public safety reasons and retain it in the Recreation Plan for possible future development; (2) Reinstate Site 7 in the Recreation Plan for development in 2004; (3) Close Site 1 for public safety reasons when Site 7 opens.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Holbrook Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. 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.

m. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

n. 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. 02–31090 Filed 12–6–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7419–7]**

## Agency Information Collection Activities: Proposed Collection; Comment Request: NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); EPA ICR Number 1062.08; OMB Control Number 2060–0122; Expiration Date February 28, 2003

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): NSPS for Coal Preparation Plants (40 CFR part 60, subpart Y); EPA ICR Number 1062.08; OMB Control Number 2060–0122; expiration date February 28, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before February 7, 2003.

**ADDRESSES:** Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of a specific ICR may be obtained without charge by calling or sending an E-mail to the contact person listed in this notice.

**FOR FURTHER INFORMATION CONTACT:** Dan L. Chadwick of the Office of Compliance at (202) 564–0754 or via E-mail at *Chadwick.Dan@epa.gov* and ask for EPA ICR Number 1062.08; OMB Control Number 2060–0122; expiration date February 28, 2003.

**SUPPLEMENTARY INFORMATION:**

*Title:* NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); EPA ICR Number 1062.08; OMB Control Number 2060–0122; expiration date February 28, 2003.

*Affected Entities:* Entities potentially affected by this action are owners or operators of coal preparation plants subject to the Clean Air Act New Source Performance Standards (NSPS) published 40 CFR part 60, subpart Y.

*Abstract:* The Agency has determined that the emissions from coal preparation plants cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. As such, the Agency published a standard at 40 CFR part 60, subpart Y to control emissions from coal preparation plants.

Owners or operators of coal preparation plants must make certain one-time-only notifications including: notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test; including information necessary to determine the conditions of the performance test, and performance test measurements and results; notification of demonstration of the continuous monitoring system (CMS). Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the CMS is inoperative. CMS requirements specific to coal preparation plants provide information on the operation of the emissions control device and compliance with the opacity standard. Periodic reports of excess emissions are

also required. Any owner or operator subject to the rule shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

*Burden Statement:* The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In the previously approved ICR, the estimated number of respondents for this information collection was 390 with 390 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 15,463 hours. On the average, each respondent reported once per year and approximately 40 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $15,000. This included an annual cost of $1,000 associated with capital/startup costs and $14,000 associated with the annual operation and maintenance costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Dated: November 27, 2002.

**Michael M. Stahl,**

*Director, Office of Compliance.*

[FR Doc. 02–31016 Filed 12–6–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0312; FRL–7280–7]**

## Diazinon; End-Use Products Cancellation Order

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's cancellation order for the product and use cancellations as requested by companies (hereafter collectively referred to as the ''EUP Registrants'') that hold the registrations of pesticide End-Use Products (EUPs) containing the active ingredient diazinon and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up an September 11, 2002, notice of receipt from the EUP Registrants, of requests for cancellations and or amendments of their diazinon product registrations to terminate all indoor uses, certain agricultural uses and certain outdoor non-agricultural uses. In the September 11, 2002 notice, EPA indicated that it would issue an order granting the voluntary product and use registration cancellations unless the Agency received any substantive comment within the comment period that would merit its further review of these requests. The Agency did not receive any comments specific to these cancellations. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

**DATES:** The cancellations are effective December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, telephone number: (703) 305–5776; fax number: (703) 308–7042; e-mail address: *parsons.laura@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0312. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

## II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses.

### *A. Background*

Certain registrants requested in letters dated December 2001, and January, February, March, April, May, June, and July 2002 that their diazinon registrations be amended to delete all indoor uses, certain agricultural uses, and any other uses that the registrants do not wish to maintain. The requests also included deletions of outdoor non-agricultural uses from the labeling of certain end-use products so that such products would be labeled for agricultural uses only. Similarly, other diazinon end-use registrants requested voluntary cancellation of their diazinon EUP registrations with indoor use and/or certain outdoor non-agricultural uses, and any other uses that the registrants do not wish to maintain. EPA announced its receipt of these above-mentioned cancellation requests in a **Federal Register** notice dated September 11, 2002 (67 FR 57589), (FRL–7197–8).

These requested cancellations and amendments are consistent with the requests in December 2000 by the manufacturers of diazinon technical products, and EPA's approval of such requests, to terminate all indoor uses and certain agricultural uses from their diazinon product registrations because of EPA's concern with the potential exposure risk, especially to children, associated with diazinon containing products. The indoor uses and agricultural uses subject to cancellation are identified in List 1 below:

List 1 — Uses Requested for Termination

1. *Indoor uses*: Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including food/feed handling establishments, greenhouses, schools, residences, commercial buildings, museums, sports facilities, stores, warehouses and hospitals.

2. *Agricultural uses*: Alfalfa, bananas, Bermuda grass, dried beans, dried peas, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, forestry (ground squirrel/rodent burrow dust stations for public health use), kiwi, lespedeza, parsley, parsnips, pastures, peppers, potatoes (Irish and sweet), sheep, sorghum, squash (winter and summer), rangeland, Swiss chard, tobacco, and turnips (roots and tops).

In today's Cancellation Order, EPA is approving the registrants' requested cancellations and amendments of the their diazinon end-use products registrations to terminate all uses identified in List 1.

### *B. Requests for Voluntary Cancellation of End-Use Products*

The end-use product registrations for which cancellation was requested are identified in the following Table 1.

TABLE 1.— END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

| Company | EPA Registration # | Product |
|---|---|---|
| Farnam Companies, Inc. | 270–282 | Diazinon 2EC |
| Prentiss Inc. | 655–457<br>655–462<br>655–519 | Prentox Diazinon 4E Insecticide<br>Prentox Diazinon 4S Insecticide<br>Prentox Liquid Household Spray #1 |
| Universal Cooperatives, Inc. | 1386–573<br>1386–651 | Diazinon Emulsifiable Lawn and Garden Insecticide<br>Security Brand 2% Diazinon Granules Lawn Insect Control |
| Virbac AH, Inc. | 2382–168<br>2382–171<br>2382–172 | Diazinon-Pyriproxyfen Collar for Dogs and Puppies #1<br>Diazinon-Pyriproxyfen Collar for Dogs and Puppies #3<br>Diazinon-Pyriproxyfen Collar for Dogs and Puppies #2 |
| ABC Compounding, Inc. | 3862–71 | Drop Dead Insect Spray |
| Cerexagri, Inc. | 4581–335 | Knox Out 2 FM |
| Amvac Chemical Corp. | 5481–224<br>5481–241 | Diazinon 4E<br>Alco Housing Authority Roach Concentrate |
| US Marketing Distributors | 6409–14 | Professional Do it Yourself Exterminator's Kit Formula 400 |
| Voluntary Purchasing Group, Inc. | 7401–67 | Ferti-Lome Rose Spray Containing Diazinon & Daconil. |
| Earth Care/Division of United Industries Corp. | 8660–101<br>8660–115<br>8660–106 | Vertagreen 5% Diazinon Insecticide<br>Vertagreen Diazion Pre-Weed<br>Vertagreen Diazinon Pre-Weed Plus |
| The Andersons Lawn Fertilizer Division | 9198–189 | Proturf Insecticide One |
| Waterbury Companies, Inc. | 9444–89 | CB Aqueous Residual Insecticide |
| Athea Laboratories, Inc. | 10088–71 | Roach and Ant Killer |
| Verpas Products, Inc. | 13926–6 | Diaciclon F-5 |
| Wagnol Inc. | 33912–1 | Wagnol 40 Pest Control Spray Concentrate Contains Diazinon |
| T-Tex Corp. | 39039–5 | Dryzon WP Livestock Premise & Sheep Insecticide |

TABLE 1.— END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | EPA Registration # | Product |
|---|---|---|
| Chem-Tech Ltd. | 47000–63 | Pressurized Household Insect Spray Concentrate Contains Diazinon and DDVP |
| Marman USA , Inc. | 48273–25 | Marman Diazinon AG 60 EC |
| Control Solutions Inc | 53883–58 | Martin's Diazinon 4E Indoor- Outdoor Insecticide |
| Arkopharma, Inc. | 69607–1 | Double Duty Flea & Tick Collar For Dogs |

EPA did not receive any substantive comments that would merit further review expressing a need of diazinon products for indoor use. Accordingly, the Agency is issuing an order in this notice canceling the registrations identified in Table 1, as requested by the EUP registrants.

*C. Requests for Voluntary Amendments of End-Use Product Registrations to Terminate Certain Uses*

Pursuant to section 6(f)(1)(A) of FIFRA, many EUP Registrants submitted requests to amend a number of their diazinon end-use product registrations to terminate the uses identified in List 1 of this notice or any other uses as specified for each product in the September 13, 2001, Diazinon 6(f) Notice and reiterated in Table 2 below. EPA did not receive any comments expressing a need for any of the canceled uses. The registrations for which amendments to terminate specific uses were requested are identified in the following Table 2:

TABLE 2.— END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

| Company | EPA Registration # | Product Name: Use Deletions |
|---|---|---|
| Dragon Chemical Corp. | 16–119<br>16–157<br>16–166 | Dragon 5% Diazinon Granules: Celery.<br>Diazinon 25% Diazinon Spray: Almonds<br>Dragon Diazinon Water-Based Concentrate: Almonds |
| Southern Agricultural Insecticides, Inc. | 829–264 | SA-50 Brand 5% Diazinon Granules: Celery |

TABLE 2.— END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

| Company | EPA Registration # | Product Name: Use Deletions |
|---|---|---|
| Universal Cooperative, Inc. | 1386–599<br>1386–648 | Diazinon 4 EC (AG): Beans, Cucumbers, Parsley, Parsnips, Peas, Peppers, Potatoes (Irish), Squash (Summer and Winter), Sweet Potatoes, Swiss Chard, Turnips, Lawn Pest Control, Nuisance Pests in Outside Areas, Grassland Insects, and Indoor Ornamentals<br>5% Diazinon Insect Killer Granules: Celery |
| Knox Fertilizer Co. Inc. | 8378–32 | Shaw's 5% Diazinon Insect Granules: Celery |

## III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of diazinon product and use registrations identified in Tables 1 and 2 of this notice. Accordingly, the Agency orders that the diazinon end-use product registrations identified in Table 1 are hereby canceled. The Agency also orders that all of the uses identified in List 1 and all other uses (including specific outdoor non-agricultural uses) identified for deletion in Table 2 are hereby canceled from the end-use product registrations identified in Table 2. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with the terms of this order or the Existing Stock Provisions in Unit IV of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

## IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows:

1. *Distribution or Sale of Products Bearing Instructions for Use on Agricultural Crops.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on the agricultural crops identified in List 1 will not be lawful under FIFRA 1–year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 2 that bears instructions for any of the agricultural uses identified in List 1 after the effective date of the cancellation order.

2. *Distribution or Sale of Products Bearing Instructions for Use on Outdoor Non-Agricultural Sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites will not be lawful under FIFRA 1–year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites after the effective date of the cancellation order.

3. *Distribution or Sale of Products Bearing Instructions for Use on Indoor Sites.* The distribution or sale of existing stocks by the registrant of any product

listed in Table 1 or 2 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA as of the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

4. *Retail and Other Distribution or Sale of Existing Stock of Products For Indoor Use.* The distribution or sale of existing stocks by any person other than the registrants of products listed in Table 1 or 2 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

5. *Use of existing stocks.* EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: November 22, 2002.

**Lois Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 02–31013 Filed 12–6–02; 8:45am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7413–3]**

### Napa State Hospital—Administrative Consent Agreement and Final Order; Notice of Proposed Administrative Consent Agreement and Final Order Pursuant to Section 311(b)(6) of the Clean Water Act

**AGENCY:** Environmental Protection Agency, Region IX.

**ACTION:** Notice, request for public comments.

**SUMMARY:** In accordance with section 311(b)(6)(C) of the Clean Water Act, (''CWA''), 33 U.S.C. 1321(b)(6)(C), notice is hereby given of a proposed Consent Agreement and Final Order (''CA/FO,'' Region 9 Docket No. OPA 9–2003–0001), which resolves penalties for alleged violations of sections 311(b)(3) and 311(j) of the CWA. The respondent to the CA/FO is the Napa State Hospital, an agency of the State of California. Through the proposed CA/FO, the Napa State Hospital will pay $40,000 to the Oil Spill Liability Trust Fund as a penalty for alleged violations involving the discharge of oil into waters of the United States, and the failure to prepare and maintain a spill prevention, control and countermeasure plan. The penalty included in this CA/FO was calculated in accordance with the Agency's guidance document, Civil Penalty Policy for section 311(b)(3) and section 311(j) of the Clean Water Act, dated August 1998. For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the proposed CA/FO. Any person who comments on the proposed CA/FO shall be given notice of any hearing held and a reasonable opportunity to be heard and to present evidence. If no hearing is held regarding comments received, any person commenting on this proposed CA/FO may, within 30 days after the issuance of the final order, petition the Agency to set aside the CA/FO, as provided by section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. 1321(b)(6)(C)(iii).

**DATES:** Comments must be submitted on or before January 8, 2003.

**ADDRESSES:** The proposed CA/FO may be obtained from J. Andrew Helmlinger, telephone (415) 972–3904. Comments regarding the proposed CA/FO should be addressed to Danielle Carr (ORC–3) at 75 Hawthorne Street, San Francisco, California 94105, and should reference the Napa State Hospital and Region IX docket OPA 9–2003–0001.

**FOR FURTHER INFORMATION CONTACT:** J. Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: November 14, 2002.

**Debbie Jordan,**

*Acting Director, Superfund Division.*

[FR Doc. 02–30121 Filed 12–6–02; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–02–49–A (Auction No. 49); DA 02–3287]**

### Auction No. 49 Auction of Lower 700 MHz Band Licenses Scheduled for April 16, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of 251 licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) scheduled to commence on April 16, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

**DATES:** Comments are due on or before December 16, 2002, and reply comments are due on or before December 23, 2002.

**ADDRESSES:** Comments and reply comments must be sent by electronic mail to the following address: *auction49@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** *Legal questions:* Howard Davenport (202) 418–0660; *General auction questions:* Lyle Ishida (202) 418–0660 or Linda Sanderson (717) 338–2888. *For service rule questions:* Amal Abdallah, Policy and Rules Branch, or Joanne Epps and Melvin Spann, Licensing and Technical Analysis Branch, at (202) 418–0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 49 Comment Public Notice* released December 2, 2002. The complete text of the *Auction No. 49 Comment Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. *Auction No. 49 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

1. By the *Auction No. 49 Comment Public Notice,* the Wireless Telecommunications Bureau (''Bureau'') announces the auction of 251 licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) scheduled to commence on April 16, 2003 (Auction No. 49). This auction will include the C block licenses that remained unsold in Auction No. 44, which closed on September 18, 2002. A complete list of licenses available for Auction No. 49 is included as Attachment A of the *Auction No. 49 Comment Public Notice.* The C block is a 12-megahertz spectrum block, consisting of a pair of 6-megahertz segments, which is licensed over 734 Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs'').

2. The following table contains the block/frequency cross-reference for the 710–716/740–746 MHz bands:

| Block | Frequencies (MHz) | Bandwidth | Pairing | Geographic area type | No. of licenses |
|---|---|---|---|---|---|
| C | 710–716, 740–746 | 12 MHz | 2 x 6 MHz | MSA/RSA | 251 |

(**Note:** *For Auction No. 49, licenses are not available in every market for the frequency block listed in the table. See Attachment A of the Auction No. 49 Comment Public Notice to determine which licenses will be offered.*)

3. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 49.

## I. Auction Structure

### *A. Simultaneous Multiple Round (SMR) Auction Design*

4. The Bureau proposes to award all licenses included in Auction No. 49 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

### *B. Upfront Payments and Initial Maximum Eligibility*

5. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 49, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 49 Comment Public Notice.* The Bureau seeks comment on this proposal.

6. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 49 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

### *C. Activity Rules*

7. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain). The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

8. For Auction No. 49, the Bureau proposes the following activity requirements:

*Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

*Stage Two:* In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

*Stage Three:* In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final

stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

9. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

*D. Activity Rule Waivers and Reducing Eligibility*

10. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

**Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

11. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

**Note:** If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

12. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the ''reduce eligibility'' function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

13. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

14. The Bureau proposes that each bidder in Auction No. 49 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

*E. Information Relating to Auction Delay, Suspension, or Cancellation*

15. For Auction No. 49, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

**II. Bidding Procedures**

*A. Round Structure*

16. The Commission will conduct Auction No. 49 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

17. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

18. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

*B. Reserve Price or Minimum Opening Bid*

19. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

20. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

21. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 49. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

22. Specifically, for Auction No. 49, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$0.01 * MHz * License Area Population with a minimum of $1,000 per license. The specific minimum opening bid for each license available in Auction No. 49 is set forth in

Attachment A of the *Auction No. 49 Comment Public Notice.* Comment is sought on this proposal.

23. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the Lower 700 MHz band spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

*C. Minimum Acceptable Bids and Bid Increments*

24. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

25. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment.* The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

26. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained.

27. For Auction No. 49, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as it has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment*, not to be confused with the *bid increment.* The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license which has received many bids throughout the auction will have a higher percentage increment than a license which has received few bids.

28. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

Equations

$A_i=(C*B_i)+((1-C)*A_{i-1})$

$I_{i+1}$=smaller of ((1+$A_i$)*N) and M

$X_{i+1}=I_{i+1}*Y_i$

Where,

$A_i$=Activity index for the current round (round i)

C=Activity weight factor

$B_i$=Number of bids in the current round (round i)

$A_{i-1}$=Activity index from previous round (round i − 1), $A_0$ is 0

$I_{i+1}$=Percentage increment for the next round (round i+1)

N=Minimum percentage increment or percentage increment floor

M=Maximum percentage increment or percentage increment ceiling

$X_{i+1}$=Dollar amount associated with the percentage increment

$Y_i$=High bid from the current round

29. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C=0.5, N=0.1, M=0.2

*Round 1 (2 new bids, high bid=$1,000,000)*

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1$ = (0.5 * 2) + (0.5 * 0) = 1

$I_2$ = The smaller of ( (1 + 1) * 0.1) = 0.2 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using $I_2$):

$X_2$ = 0.2 * $1,000,000 = $200,000

iii. Minimum acceptable bid for round 2 = $1,200,000

*Round 2 (3 new bids, high bid = $2,000,000)*

i. Calculation of percentage increment for round 3 using the smoothing formula:

$A_2$ = (0.5 * 3) + (0.5 * 1) = 2

$I_3$ = The smaller of ( (1 + 2) * 0.1) = 0.3 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using $I_3$):

$X_3$ = 0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3 = $2,400,000

*Round 3 (1 new bid, high bid = $2,400,000)*

i. Calculation of percentage increment for round 4 using the smoothing formula:

$A_3$ = (0.5 * 1) + (0.5 * 2) = 1.5

$I_4$ = The smaller of ( (1 + 1.5) * 0.1) = 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using $I_4$):

$X_4$ = 0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = $2,880,000

30. As stated, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The

additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded} − (minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

31. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

32. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau seeks comment on these proposals.

*D. High Bids*

33. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license.

34. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' Bidders are reminded that standing high bids confer activity credit.

*E. Information Regarding Bid Withdrawal and Bid Removal*

35. For Auction No. 49, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

36. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

37. In the *Part 1 Third Report and Order,* 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

38. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 49 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

*A. Stopping Rule*

39. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 49, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

40. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

41. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 49:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

42. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The

Bureau seeks comment on these proposals.

**III. Conclusion**

43. Comments are due on or before December 16, 2002, and reply comments are due on or before December 23, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction49@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 49 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

44. *In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.*

45. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions & Industry Analysis Division, WTB.*

[FR Doc. 02–31075 Filed 12–6–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System (Board)

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The Board is publishing the proposed revisions on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The Board will then submit the revisions to OMB for review and approval.

**DATES:** Comments must be submitted on or before February 7, 2003.

**ADDRESSES:** Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies. Written comments, which should refer to the ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, 7100–0032,'' should be addressed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to regs.comments@federalreserve.gov, or fax them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

**FOR FURTHER INFORMATION CONTACT:** A draft copy of the proposed FFIEC 002 reporting form may be obtained at the FFIEC's web site (www.ffiec.gov). A copy of the proposed revisions to the collection of information may also be requested from Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** Proposal to Revise the Following Currently Approved Collection of Information:

*Report Title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

*Form Number:* FFIEC 002.

*OMB Number:* 7100–0032.

*Frequency of Response:* Quarterly.

*Affected Public:* U.S. branches and agencies of foreign banks.

*Estimated Number of Respondents:* 354.

*Estimated Total Annual Responses:* 1,416.

*Estimated Time per Response:* 22.50 burden hours.

*Estimated Total Annual Burden:* 31,860 burden hours.

*General Description of Report:* This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

*Abstract:* On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

*Current Actions:* The agencies propose to implement several revisions to the existing reporting requirements of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The proposed revisions would improve the agencies' ability to analyze the risks and activities of branches and agencies and achieve consistency with the Reports of

Condition and Income (Call Report) (forms FFIEC 031 and 041) filed by insured commercial banks and FDIC–supervised savings banks, including certain proposed changes to the Call Report.

The proposed revisions to the FFIEC 002 that would take effect as of the March 31, 2003, reporting date include:

**Schedule RAL–Assets and Liabilities**

1. Splitting item 1.c(2), ''Mortgage–backed securities,'' into separate items 1.c(2)a ''Issued or guaranteed by U.S. Government agencies'' and 1.(c).2b ''Other.'' The proposed breakdown would provide information on the composition of mortgage–backed securities held by branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes.

2. Splitting item 1.d., ''Federal funds sold and securities purchased under agreements to resell'' into separate items 1.d.(1), ''Federal funds sold,'' 1.d.(1)a, ''With depository institutions in the U.S.,'' 1.d.(1)b, ''With others,'' and 1.d.(2), ''Securities purchased under agreements to resell,'' 1.d.(2)a, ''With depository institutions in the U.S.,'' 1.d.(2)b, ''With others.'' The proposed breakdown would provide greater insight into the liquidity of branches and agencies. These institutions actively participate and often hold large positions in the federal funds and repurchase agreement market. The separation would also achieve consistency with the existing Reports of Condition and Income (Call Report) because insured commercial banks and FDIC–supervised savings banks currently report federal funds sold separately from securities purchased under agreements to resell.

3. Splitting item 4.b., ''Federal funds purchased and securities sold under agreements to repurchase'' into separate items 4.b.(1), ''Federal funds purchased,'' 4.b.(1)a, ''With depository institutions in the U.S.,'' 4.b.(1)b, ''With others'' and 4.b.(2), ''Securities sold under agreements to repurchase,'' 4.b.(2)a, ''With depository institutions in the U.S.,'' 4.b.(2)b, ''With others.'' The rationale for this proposed change, which deals with a funding source for branches and agencies, is essentially the same as the justification above for splitting ''Federal funds sold and securities purchased under agreements to resell''.

4. Splitting item 1.f, ''Trading Assets,'' into separate items 1.f(1), ''U.S. Treasury and Agency Securities'' and 1.f(2), ''Other trading assets.'' The proposed breakdown would provide information on the composition of the trading assets of branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes. On November 8, 2002, the agencies published a notice soliciting comments for 60 days on proposed revisions to the Reports of Condition and Income (Call Report) (67 FR 68234). The notice includes a proposed clarification to the ''Trading Account'' Glossary entry on when loans can be designated as trading assets. Accordingly, the agencies are proposing the same clarification for the FFIEC 002 ''Trading Account'' Glossary entry to achieve consistency with the proposed changes to the Call Report.

**Schedule L–Derivatives and Off–Balance–Sheet Items**

1. Adding Memoranda items 1.a., ''Gross positive fair value,'' and 1.b., ''Gross negative fair value'' to Memoranda item 1., ''Notional amount of all credit derivatives on which the reporting branch or agency is the guarantor.'' The new items would provide a better measure of credit and market risk, particularly for branches and agencies with large positions in credit derivatives. These new items will also achieve consistency with the existing Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC–supervised savings banks.

2. Adding Memoranda items 2.a., ''Gross positive fair value,'' and 2.b., ''Gross negative fair value'' to Memoranda item 2., ''Notional amount of all credit derivatives on which the reporting branch or agency is the beneficiary.'' The rationale for the proposed change is the same as the justification above for adding items to Memoranda item 1.

**Schedule O –Other Data for Deposit Insurance Assessments**

Modifying the captions for Memorandum items 1.a., ''Deposit accounts of $100,000 or less,'' and 1.b., ''Deposit accounts of more than $100,000,'' to reflect the deposit insurance limits in effect on the report date that are to be used as the basis for reporting the number and amount of deposit accounts in Memorandum item 1. Memorandum item 1, collects information on the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000. This information provides the basis for calculating ''simple estimates'' of the amount of insured and uninsured deposits. The captions for these memorandum items explicitly refer to $100,000, which is the current deposit insurance limit. Given the purpose of these memorandum items, the dollar amount cited in the caption would need to be changed if the deposit insurance limit were to change. The proposed revision would ensure that such a change occurs automatically as a function of the deposit insurance limit in effect on the report date.

**Schedule S – Securitization and Asset Sale Activities**

Splitting item 2.b., ''Standby letters of credit, subordinated securities, and other enhancements,'' into two items, one for securitization credit enhancements that are on–balance sheet assets and another for other credit enhancements. This would be accomplished by adding a new item 2.c., ''Standby letters of credit and other enhancements,'' where branches and agencies would disclose the unused portion of standby letters of credit and the maximum contractual amount of recourse or other credit exposure not in the form of an on–balance sheet asset that has been provided or retained in connection with the securitization structures reported in item 1 of Schedule S. This proposed revision will enable the agencies to better understand the types of credit support that branches and agencies are providing to their securitizations, including which types are typically used for different types of securitized loans. The revisions will also achieve consistency with the changes proposed to the Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC–supervised savings banks.

**Request for Comment**

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or

other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, December 3, 2002.

**Jennifer J. Johnson**

*Secretary of the Board.*

[FR Doc. 02–30970 Filed 12–6–02; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:**

**Final Approval Under OMB Delegated Authority of the Extension For Three Years, With Revision, of the Following Reports:**

*1. Report title:* Reports of Foreign Banking Organizations

*Agency form numbers:* FR Y–7, FR Y–7N, FR Y–7NS, and FR Y–7Q

*OMB control number:* 7100–0125

*Frequency:* Quarterly and annually

*Reporters:* Foreign banking organizations (FBO's)

*Annual reporting hours:* 5,330 hours

*Estimated average hours per response:*
FR Y-7: 3.25 hours,
FR Y-7N (quarterly): 6 hours,
FR Y-7N (annual): 6 hours,
FR Y-7NS: 1 hour,
FR Y-7Q (annual): 1 hour,
FR Y-7Q (quarterly): 1.25 hours

*Number of respondents:*
FR Y-7: 327,
FR Y-7N (quarterly): 129,
FR Y-7N (annual): 96,
FR Y-7NS: 164,
FR Y-7Q (annual): 301,
FR Y-7Q (quarterly): 26
Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. §§601–604a, 611–631, 1844(c), 3106, and 3108(a)). Confidential treatment is not routinely given to the data in these reports. However, the FR Y–7Q data will be held confidential until 120 days after the as-of date. Also, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§522(b)(4) and (b)(6)].

*Abstract:* The FR Y–7 is an annual report filed by all FBO's that engage in banking in the United States, either directly or indirectly, to update their financial and organizational information. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

*Current actions:* On August 19, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the FR Y–7, Reports of Foreign Banking Organizations (67 FR 53797). The notice described the Federal Reserve proposal to (1) streamline the existing nonbank subsidiary reporting framework for all non-functionally regulated nonbank subsidiaries, (2) add a new report for collecting capital and asset information from FBO's (FR Y–7Q), and (3) revise the Annual Report of FBO's, FR Y–7, to update the reporting form for recent changes to Regulation K and delete items that were no longer needed. The Federal Reserve Board has approved the proposed changes, with the modifications discussed below, effective for the December 31, 2002, as–of date.

The Board received comment letters from three FBO's and three trade groups representing FBO's on this proposal. Most commenters supported the Board's efforts to streamline the reports and reduce reporting burden. Other substantive comments addressed the reporting dates and timing of submissions, the implementation date, and confidentiality for all the reports; consolidation and thresholds for the nonbank reports (FR Y–7N and 7NS); and top–tier reporting for capital and asset information and reporting of total assets (FR Y–7Q).

*Reporting dates and timing of submissions*

On the FR Y–7Q, FBO's that are financial holding companies (FHC's) must report capital and asset information quarterly and all other FBO's must report this information annually. Several commenters pointed out that some FHC FBO's do not provide quarterly capital and asset information even to their home country supervisors, and requested that capital information be collected on a basis consistent with home country reporting. Quarterly reporting will assist Federal Reserve supervisors in their evaluation of foreign bank FHC capital under the comparability requirements in the Gramm–Leach–Bliley Act. Also, quarterly reporting is appropriate for consistency with the reporting frequency for U.S. banking organizations. Therefore, the Federal Reserve maintains that quarterly reporting for FHC FBO's is appropriate. A commenter also suggested that FBO's be allowed to provide this information according to their fiscal year. As stated in the initial proposal, FBO's may report these data according to their fiscal year, but will provide these data on a calendar–year basis and note the as–of date on the form.

A commenter requested that more time be given for submitting the FR Y–7Q, regardless of frequency. Since many FBO's do not produce capital and asset information for their home country supervisors or the public as quickly as 60 days after the as–of date, the Federal Reserve will allow all FR Y–7Q reporters to submit their data up to 90 days after the as–of date. Some commenters also noted that the Federal Reserve proposed in 2000 to require risk–based capital data within 90 days, yet decided to keep the 120–day deadline. At that time, the Federal Reserve recognized that 120 days were sometimes needed to compile the different kinds of information required for the FR Y–7. Because such information is now being collected in separate forms, the timetables for filing have been tailored more appropriately to the types of information sought.

Some commenters expressed concern about the opportunity for extensions to file the FR Y–7Q. Cases in which home country practices do not allow for

reporting within 90 days might justify an extension, but only after consultation with Federal Reserve staff. Given the changes to submission dates suggested above, few extensions are expected to be granted after the initial implementation period.

The FR Y–7N collects data on FBO's nonbank subsidiaries not held through a U.S. holding company (formerly the NFIS report). A few commenters addressed the fact that some current NFIS reporters provide data on their U.S. nonbank subsidiaries according to the home country fiscal year, which is not on a calendar–year basis. Since these nonbank subsidiaries are separately capitalized entities operating within the United States, the Federal Reserve maintains that they should report on a calendar–year basis for consistency with other U.S. nonbank subsidiaries. Also, U.S. branches and agencies of FBO's (which are not separately capitalized entities) are currently required to report quarterly on a calendar–year basis.

Some commenters on the FR Y–7N requested that the quarterly filing requirement for ''significant'' nonbank subsidiaries (i.e., those with sizeable asset or off–balance–sheet positions) be eliminated because of burden arising from quarterly reconciliation with parent financial statements. However, the quarterly reporting requirement for significant nonbank subsidiaries was developed specifically to improve supervisory assessment of significant nonbank subsidiaries, because these significant nonbank subsidiaries have greater potential than other subsidiaries to pose risks to the FBO's other U.S. operations or the parent organization. As noted above, most FBO's already provide quarterly data on their branches and agencies, which requires reconciliation with financial statements of the parent organization. Therefore, quarterly data for significant nonbank subsidiaries will be collected. Finally, a commenter suggested that the threshold for quarterly reporting be determined annually, not quarterly. The Federal Reserve decided to maintain the quarterly threshold assessment since this is consistent with the assessment method for other quarterly regulatory reports.

Several commenters also requested that FR Y–7N filers be given more than 60 days after the as–of date to submit the report. The commenters also pointed out that the filing deadline for the FR Y–7, which contains consolidated financial statements remains at 120 days. The submission deadline for both annual and quarterly reporting on the FR Y–7N will be extended to 75 days for an implementation period to allow respondents time to alter their systems. However, by March 2004, the submission deadline will be scaled back to 60 days (consistent with FR Y–11 and FR 2314 reports). The Federal Reserve decided to retain the 120–day submission deadline for consolidated financial statements on the FR Y–7, since information on that report is required from the entire consolidated entity, which may have subsidiaries in various countries. The FR Y–7N collects data for individual U.S. subsidiaries, which should be available more quickly.

*Implementation date*

Several commenters stated that implementation of the new reporting framework for the FR Y–7Q and the FR Y–7N starting with year–end 2002 would be particularly difficult, especially given the submission deadlines in the original proposal. In order to facilitate the transition to the new reporting requirements for the FR Y–7Q and the FR Y–7N, respondents will be given 180 days to report year–end 2002 data.[1] In addition, the requirement for any quarterly reporting as of March 31, 2002, will be waived. This one–time delayed implementation should allow respondents time to adjust to the new framework. Quarterly reporting will commence June 30, 2003.

*Confidentiality*

Several commenters addressed the lack of automatic confidential treatment of capital and asset information on the FR Y–7Q. The FBO's were concerned about having capital and asset information available before their public financial statements were released. Therefore, all FR Y–7Q data will be held confidential for 120 days after the as–of date, since these data are usually provided to the public by FBO's before that time. The 120–day confidentiality period will not preclude applicants from requesting from the Board confidentiality beyond that period, in whole or in part, on a case–by–case basis, if justified by the respondent.

There were also requests that confidential status be applied to FR Y–7N reports. However, FR Y–7N respondents will not automatically be accorded confidential treatment. This is consistent with the current treatment of other domestic nonbank reports. The Board may grant confidentiality treatment for the reporting information on the FR Y–7N, in whole or in part, on a case–by–case basis, if justified by the respondent.

*Consolidation (FR Y-7N and FR Y-7NS)*

Several commenters strongly suggested that consolidated reporting of nonbank subsidiaries still be allowed for the FR Y–7N and FR Y–7NS. Legal entity data allows supervisors to identify issues more efficiently and effectively, and consolidated data is not as useful because filers consolidate reports inconsistently. Therefore, the Federal Reserve maintains that these respondents must file on a legal entity basis. As discussed in the following paragraph, however, the exemption of small or less significant respondents should offset burden since a large number of previously consolidated entities may meet the exemption criteria.

*Threshold for nonbank reports (FR Y–7N and FR Y–7NS)*

The commenters correctly pointed out that the reporting threshold for the abbreviated FR Y–7NS was actually lowered in the proposal, from the existing threshold of $150 million in total assets for NFIS reporters to $100 million in total assets for proposed FR Y–7NS reporters. All else equal, this would create unintended additional burden for proposed FR Y–7NS reporters. Therefore, the proposed threshold for abbreviated reporting will be raised from the amount initially proposed ($100 million) to $250 million. In addition, there was a request to raise the threshold for nonbank subsidiaries that are exempt from reporting altogether. This threshold will be raised from the proposed $20 million in total assets to $50 million.

*Top–tier reporting for capital and asset information (FR Y–7Q)*

Several commenters expressed concern that for capital and asset reporting on the FR Y–7Q, some top–tier FBO's might have to file data for U.S. regulatory reports when they do not submit capital and asset data to their home country supervisor. Reporting requirements for capital and asset information placed on top–tier entities will generally mirror those of the home country supervisors. For clarification, the instructions will include examples of cases in which top-tier filers would be exempt. In those limited instances where home country reporting would not be required, filers should consult with the appropriate Federal Reserve Bank regarding specific reporting requirements for the top–tier entity.

*Total assets (FR Y–7Q)*

A trade group representing foreign banks requested that the item for total assets be removed or separately linked to the frequency with which the reporting bank reports its total assets to

[1] Note that respondents who file for a fiscal year-end of October 31, 2002 under the current NFIS reporting requirements will only have to file once, i.e., as of December 31, 2002.

its home country supervisor. The commenter stated that it would not be feasible for some banks to report this figure on a quarterly basis without significant changes to their internal financial reporting systems. Information on total assets is required as part of the FHC declaration and therefore ongoing periodic collection of this information is consistent with the regulatory framework. As noted above, requiring such information to be provided on a quarterly basis is consistent with the requirements imposed on U.S. banking organizations and helpful in monitoring comparability requirements. Therefore, this item will be collected.

*2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies*

*Agency form number:* FR Y–11 and FR Y–11S (formerly FR Y–11Q and FR Y–11I)
*OMB control number:* 7100-0244
*Frequency:* Quarterly and annually
*Reporters:* Bank holding companies (BHC's)
*Annual reporting hours:* 22,134 hours
*Estimated average hours per response:*
FR Y-11 (quarterly): 6 hours,
FR Y-11 (annual): 6 hours,
FR Y-11S (annual): 1 hour
*Number of respondents:*
*FR Y-11 (quarterly):* 843,
*FR Y-11 (annual):* 239,
*FR Y-11S (annual):* 468
Small businesses are affected.
*General description of report:* This information collection is mandatory (12 U.S.C. §§1844(b) and (c) and 12 CFR 225.5(b)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§522(b)(4) and (b)(6)].

*Abstract:* The FR Y–11 reports collect information that helps supervisory staff determine the condition of bank holding companies (BHC) that are engaged in nonbanking activities and helps monitor the volume, nature, and condition of their nonbanking subsidiaries. Financial information on nonbank subsidiaries is essential for monitoring their potential impact on the BHC's condition. The report collects information on assets, income, equity capital, and off–balance–sheet items.

*Current actions:* On August 19, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies, FR Y–11 series (67 FR 53797). The notice described the Federal Reserve proposal to streamline the existing reporting framework for all non–functionally–regulated[2] nonbank subsidiaries. The revised framework would both provide essential information to supervise and regulate non–functionally–regulated subsidiaries and reduce the burden on the industry. The proposed revisions included:

1) Implementing a uniform and streamlined reporting form for all nonbank subsidiary filers;

2) Reducing the burden by increasing or establishing consistent filing thresholds for all nonbank subsidiary filers;

3) Establishing filing thresholds for reporters, consistent with risk–focused supervision, based on asset size and off–balance–sheet activity (absolute measures), plus operating revenues and equity capital (relative measures);

4) Not allowing consolidation among filers; and

5) Eliminating reporting for the smallest filers.

The Federal Reserve Board has approved the proposed changes, with the modifications discussed below, effective for the December 31, 2002, as–of date. The Federal Reserve received comment letters from two banking organizations. Both commenters supported the Board's effort to streamline the reporting requirements, create more consistency among all nonbank subsidiary filers, and reduce burden.

Both commenters suggested that the Board permit nonbank subsidiaries to file consolidated or combined reports for entities engaged in similar activities. Currently, the nonbank subsidiaries of U.S. BHC's (FR Y–11 respondents) are required to file on a legal entity basis. Legal entity data allows supervisors to identify issues more efficiently and effectively, and consolidated data is not as useful because filers consolidate reports inconsistently. Therefore, the Federal Reserve maintains that these respondents must file on a legal entity basis. However, the initially proposed thresholds will be raised to reduce burden. Specifically, the threshold for abbreviated reporting will be raised from $100 million in total assets to $250 million and the exemption level (i.e., below which no report is required) will be raised from $20 million to $50 million. This is consistent with the new FR Y–7NS thresholds discussed above.

One commenter suggested that the FR Y-11 include a separate line item for federal funds sold. The Federal Reserve does not plan to collect a separate item for federal funds because the amount being reported was not substantial enough to warrant a separate item.

*3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations*

*Agency form number:* FR 2314 and FR 2314S (formerly FR 2314a, b, and c)
*OMB control number:* 7100-0073
*Frequency:* Quarterly and annually
*Reporters:* Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations
*Annual reporting hours:* 4,006 hours
*Estimated average hours per response:*
FR Y-2314 (quarterly): 6 hours,
FR Y-2314 (annual): 6 hours,
FR Y-2314S (annual): 1 hour
*Number of respondents:*
FR Y-2314 (quarterly): 123,
FR Y-2314 (annual): 128,
FR Y-2314S (annual): 537
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. §§324, 602, 625, and 1844). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§522(b)(4) and (b)(6)].

*Abstract:* The FR 2314 reports are collected from U.S. member banks, Edge and agreement corporations, and BHCs for their direct or indirect foreign subsidiaries. The FR 2314 reports collect information on assets, income, equity capital, and off–balance sheet items and the data are used to monitor the growth, profitability, and activities of these foreign companies.

*Current actions:* On August 19, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations, FR 2314 reports (67 FR 53797). The notice described the Federal Reserve proposal to streamline the existing reporting framework for all non–functionally–regulated nonbank subsidiaries. The revised framework will both provide essential information to supervise and

[2] As distinguished from the term ''functionally regulated'' nonbank subsidiaries, which are entities in which the primary regulator is an organization other than the Federal Reserve, namely the Securities and Exchange Commission, Commodity Futures Trading Commission, state insurance commissioners, or state securities departments. Provisions of the Gramm–Leach–Bliley Act direct that the Federal Reserve must first rely on reports and information provided by the primary regulator for functionally regulated subsidiaries.

regulate non–functionally–regulated subsidiaries and reduce the burden on the industry as discussed for the FR Y–11 reports above.

The Federal Reserve Board has approved the proposed changes, with the modifications discussed below, effective for the December 31, 2002, as–of date. The Federal Reserve received comment letters from two banking organizations. Both commenters supported the Board's effort to streamline the reporting requirements, create more consistency among all nonbank subsidiary filers, and reduce burden. They also provided other substantive comments that addressed consolidation and confidentiality, as discussed below.

*Consolidation*

Both commenters suggested that the Board permit nonbank subsidiaries to file consolidated or combined reports for entities engaged in similar activities and or located in the same country. In a change from current FR 2314 reporting requirements, the Federal Reserve proposed that foreign nonbank subsidiaries of U.S. banking organizations (FR 2314 respondents) no longer be permitted to file consolidated reports.

One commenter stated that precluding consolidation of FR 2314 respondents would increase burden. The same commenter indicated that a significant portion of the burden associated with filing legal entity based reports is due to the adjustments to switch financial statements from the accounting principles of their local country to U.S. generally accepted accounting principles (GAAP). The commenter indicted that, under the current consolidated reporting framework, reports based on local country accounting principles could be first consolidated and then converted to U.S. GAAP.

Legal entity data allows supervisors to identify issues more efficiently and effectively, and consolidated data is not as useful because filers consolidate reports inconsistently. Therefore, the Federal Reserve maintains that these respondents must file on a legal entity basis. To further reduce burden, FR 2314 respondents filing reports on a legal–entity basis will not be required to follow U.S. GAAP, as initially proposed. Respondents will be encouraged to follow U.S. GAAP but will continue to have the option to file reports based on local country accounting principles. Also, FR 2314 respondents that currently consolidate data will be permitted to report on a consolidated basis for December 2002 and March 2003 reporting periods to allow time to adjust their systems.

In addition, the initially proposed thresholds will be raised to reduce burden. Specifically, the threshold for abbreviated reporting will be raised from $100 million in total assets to $250 million and the exemption level (i.e., below which no report is required) will be raised from $20 million in total assets to $50 million. This is consistent with the new FR Y–11S and FR Y–7NS thresholds discussed above.

*Confidentiality*

One commenter suggested that the FR 2314 reports remain confidential, citing that disclosure of this information would likely be harmful to the competitive position of the reporting entities. As initially proposed, the FR 2314 respondents will no longer be accorded confidential treatment. Eliminating confidential treatment for the FR 2314 respondents is consistent with the goals of the Federal Reserve to increase public availability of regulatory reports, enhancing data transparency and market discipline. However, the Federal Reserve may grant confidential treatment, in whole or part, on a case–by case basis if requested and justified by the respondent.

*Other Comments*

One commenter suggested that the Federal Reserve allow electronic filing of the FR 2314. The Federal Reserve is investigating ways to allow the electronic submission of the FR 2314 at some point in the future and will notify respondents when this option becomes available.

Board of Governors of the Federal Reserve System, December 3, 2002.

**Jennifer J. Johnson**

*Secretary of the Board.*

[FR Doc. 02–30971 Filed 12–6–02; 8:45 am]

**BILLING CODE 6210–01–S**

## 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 December 23, 2002.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

*1. Betsy Z. Cohen; Edward E. Cohen; Daniel G. Cohen*, all of Philadelphia, Pennsylvania, and Jonathan Z. Cohen, New York, New York; to retain voting shares of TheBancorp, Inc., Wilmington, Delaware, and thereby indirectly retain voting shares of TheBancorp Bank, Wilmington, Delaware.

Board of Governors of the Federal Reserve System, December 3, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–30972 Filed 12–6–02; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. First Commerce Bankshares, Inc.*, Douglasville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Commerce Community Bank, Douglasville, Georgia (in organization).

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. FEB Bancshares, Inc.*, Neshkoro, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Golden Sands Bankshares, Inc., Neshkoro, Wisconsin, and thereby indirectly acquire voting shares of Farmers Exchange Bank of Neshkoro, Wisconsin.

*2. F T Bancshares, Inc.*, Aurelia, Iowa; to become a bank holding company by acquiring 61.58 percent of the voting shares of Aurelia F T & S Bankshares, Inc. Aurelia, Iowa, and thereby indirectly acquire voting shares of The First Trust & Savings Bank, Marcus, Iowa.

**C. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Heritage Bancshares, Inc.*, Topeka, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Topeka, Kansas (in organization).

Board of Governors of the Federal Reserve System, December 3, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–30973 Filed 12–6–02; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

**[Docket No. R–1137]**

## Federal Reserve Board Sponsorship for Priority Telecommunication Services of Organizations That Are Important to National Security/ Emergency Preparedness

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board is updating its sponsorship policy and procedures for National Security/Emergency Preparedness telecommunication programs administered by the National Communications System. The Board has expanded its sponsorship criteria for the Telecommunications Service Priority (TSP) and has adopted sponsorship criteria for the Government Emergency Telecommunications Service and the Wireless Priority Service programs that are similar to its TSP sponsorship criteria. The Board believes that these programs will help facilitate the operation and liquidity of banks and the stability of financial markets, particularly during periods of substantial operational disruptions.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ken Buckley, Assistant Director (202/452–3646), Karen Cunigan, Manager (202/452–2027), or Wayne Pacine, Senior IT Analyst (202/452–2210), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Communications System (NCS) was established in 1963 to provide priority communications support to critical government functions during emergencies. In 1984, NCS NS/EP responsibilities expanded, and NCS became an interagency group of 22 federal departments and agencies, including the Federal Reserve Board. This interagency group coordinates and plans NS/EP telecommunications to respond to crises and disasters. The NCS has developed a number of priority telecommunications services that are also available to private-sector entities through sponsorship by an NCS member department or agency. The events of September 11, 2001, put a new focus on the importance of these programs to the nation and to the financial sector.

In November 1988, the FCC adopted rules establishing the Telecommunications Service Priority (TSP) program for expedited restoration of disrupted telecommunication services and expedited provision of new telecommunication services that support national security and emergency preparedness (NS/EP) functions (47 CFR part 64, Appendix A). Telecommunication services necessary for NS/EP are defined as: ''those that are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NS/EP posture of the United States.''

Two categories of telecommunication services fall within this definition: Emergency NS/EP and Essential NS/EP. Under the FCC rule, Emergency NS/EP telecommunication services are those new services that are ''so critical as to be required to be provisioned at the earliest possible time without regard to the costs of obtaining them.'' An example of Emergency NS/EP service is federal government activity in response to a Presidential declared disaster or emergency.

Essential NS/EP telecommunication services must qualify under one of four subcategories: (A) National security leadership (the President of the United States); (B) national security posture and U.S. population attack warning; (C) public health, safety, and maintenance of law and order; and (D) public welfare and maintenance of national economic posture. Essential services are assigned a priority on a scale of 1 to 5 (with 1 as the highest priority) based on the appropriate subcategory. Services in subcategory A qualify for priority levels 1–5; those in subcategory B qualify for priority levels 2–5; those in subcategory C qualify for priority levels 3–5; and services in subcategory D qualify for priority levels 4–5.

The FCC delegated the administration of the NS/EP TSP program to the Executive Office of the President (EOP). The EOP's responsibilities under the NS/EP TSP program are administered by the NCS, established by Executive Orders 12472 and 13231.[1] In 2001 the NCS' mission was expanded to include protection of critical information assets as directed by the Office of Homeland Security. The NCS has enacted a range of priority telecommunications access programs to support its mission. In particular, NCS has established the Government Emergency Telecommunications Service (GETS) program, which provides emergency access and priority processing of local and long-distance calls over the terrestrial public switched network, and

[1] The administrative structure of the NCS consists of the executive agent, (the Secretary of Defense, as designated by the President), the Manager (designated by the executive agent) and the Committee for National Security and Emergency Preparedness (representatives from federal departments, agencies, and entities with significant national security or emergency preparedness telecommunications responsibilities). The Federal Reserve System was designated as a ''participating independent entity'' on the Committee for National Security and Emergency Preparedness. The EOP has assigned to the NCS Manager the administrative authority delegated to the EOP by the FCC, as well as the authority to administer the NS/EP programs after invocation of the President's war emergency powers. NCS policies and procedures for administering NS/EP telecommunication programs are available on NCS' Web site at *http://www.ncs.gov.*

the Wireless Priority Service (WPS) program, which provides priority routing of cellular calls during periods of severe network congestion. The Board's Division of Reserve Bank Operations and Payment Systems has responsibility for the Federal Reserve's NS/EP services and a division officer serves as a member of the Committee for National Security and Emergency Preparedness Communications.

Organizations other than federal government agencies must apply to participate in NCS NS/EP programs through a federal agency authorized to provide sponsorship. The Board and designated member agencies of the Financial and Banking Information Infrastructure Committee (FBIIC) of the President's Critical Infrastructure Protection Board may sponsor these organizations under the national economic posture category.[2] In its role as a sponsoring Federal organization, the Board supports the Treasury's specific NS/EP responsibilities as described in Executive Order 12656 on matters related to ''operation and liquidity of banks'' and ''maintenance and restoration of stable and orderly markets.''

## II. Criteria for Sponsorship of Organizations for NS/EP Telecommunication Programs

Telecommunications services are designated as essential where a disruption of ''a few minutes to one day'' could seriously affect the continued operations that support an NS/EP function. In 1993, the Board established policies and procedures for its sponsorship of organizations for priority provision and restoration of telecommunications services under the TSP program (58 FR 38569, July 19, 1993).[3] Under these policies, the Board sponsors:

(1) Backbone circuits used in large-value interbank funds transfer, securities transfer, or payment-related services (such as Fedwire, CHIPS, and SWIFT) that require same-day recovery and are critical to the operation and liquidity of banks or to the stability of financial markets,

(2) Access circuits connecting participants or their third-party processors to a sponsored large-value network that transmit a daily average aggregate value of funds and/or securities transfers of at least $2 billion,[4]

(3) Eligible dedicated voice circuits from the Federal Reserve Bank of New York to primary dealers,

(4) The domestic components of circuits from the New York Reserve Bank to foreign exchange counterparties and foreign central banks,

(5) Circuits used to connect the large competitive bidders using the Treasury Automated Auction Processing System to the New York Reserve Bank, and

(6) Other circuits that meet an alternate criterion acceptable to the Board's director of the Division of Reserve Bank Operations and Payment Systems.

The Board has expanded its 1993 TSP sponsorship criteria to explicitly include the following:

(7) Access circuits that connect settlement agents that settle a daily average of at least $2 billion (net, one side) to the Federal Reserve's net settlement service,

(8) Backbone circuits used by the networks of ACH operators, as well as the access circuits connecting depository institutions and third-party processors that originate a daily average of at least $2 billion to their ACH operator,

(9) Access circuits connecting customers of Fedwire, CHIPS, or SWIFT participants that originate a daily average of at least $2 billion per day to their bank,

(10) Backbone circuits used for the CLS Bank network, access circuits connecting customers to the CLS Bank, and circuits connecting CLS Bank customers to Fedwire,

(11) Access circuits connecting settlement banks to the Depository Trust Company, the Government Securities Clearing Corporation, the National Securities Clearing Corporation, the Options Clearing Corporation, the Mortgage Backed Securities Clearing Corporation, the Chicago Mercantile Exchange, the Board of Trade Clearing Corporation, or the New York Mercantile Exchange, and

(12) Additional circuits used internally by a sponsored organization that are essential for the smooth operation of the function for which its other circuits are given TSP designation.

The Board sponsors circuits meeting these criteria for a TSP priority level 4.

Under criterion 6, the Board may sponsor circuits leased by an organization that may not meet any of the other sponsorship criteria, if a disruption of that circuit for a few minutes to one day could seriously affect operations that support the maintenance of the national economic posture. If a financial institution believes that one or more of its circuits meet this standard and wishes that those circuits be given TSP designation, its application for TSP status should include an explanation of how the circuit is critical to the maintenance of the national economic posture. The Board will consult with the organization's primary regulator in considering such applications for TSP sponsorship.

Since 1993, the NCS has established two other NS/EP telecommunications programs in which the Board participates. The Government Emergency Telecommunications Service (GETS) program provides emergency access and priority processing of local and long-distance calls over the terrestrial public switched network. GETS is intended to be used in emergency or crisis situations when heavy call volumes decrease the probability of completing a call. The Board has sponsored key Federal Reserve staff and staff from organizations that qualify under its TSP criteria for the GETS program.

The Wireless Priority Service (WPS) program provides priority routing of cellular calls to provide participants a higher likelihood of completing calls during periods of severe network congestion. Key Federal Reserve, CHIPS, and SWIFT staff currently participate in the pilot WPS program being conducted in the Washington, DC and New York City metropolitan areas. The program should move to full nationwide rollout by late 2003.

The Board has adopted criteria for GETS sponsorship that are analogous to its TSP sponsorship criteria. Unlike the TSP program, where the Board sponsors specific leased-line circuits, in the GETS program the Board sponsors individuals in eligible organizations who play critical roles in the operation of the

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[2] FBIIC is a standing committee of the President's Critical Infrastructure Protection Board, and is charged with coordinating federal and state financial regulatory efforts to improve the reliability and security of the U.S. financial system. Treasury's Assistant Secretary for Financial Institutions chairs the committee. Members of the FBIIC include representatives of the Commodity Futures Trading Commission, the Conference of State Bank Supervisors, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Association of Insurance Commissioners, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Federal Housing Enterprise Oversight, the Offices of Homeland and Cyberspace Security, the Office of Thrift Supervision, and the Securities and Exchange Commission.

[3] Clearing systems operated by SEC-registered clearing agencies, securities exchanges, and other securities industry participants registered with the SEC should request TSP sponsorship from the SEC. Contract markets or clearing organizations for contract markets registered under the Commodity Exchange Act and other futures and options market participants subject to the jurisdiction of the CFTC should request TSP sponsorship from the CFTC.

[4] The Board currently sponsors Fedwire access circuits for 300 institutions, CHIPS access circuits for 56 institutions, and SWIFT access circuits for 18 institutions.

organization's payment services, business continuity, or crisis management structure. Unless another federal agency has primary responsibility for sponsoring the organization, the Board will sponsor for the GETS program key individuals in organizations whose circuits are eligible for TSP sponsorship as described above.[5,6] Once it reaches full-production status, the Board plans to sponsor individuals in eligible organizations for the WPS program using the same criteria it uses for GETS sponsorship.

The TSP and GETS programs have proven to be very valuable, particularly in the days following the September 11 attacks. During this period, the Board used the TSP program to provision eighty-four circuits to support the continued transmission of critical payments-related data. Use of the GETS program increased the likelihood of completing calls over the public switched network when there was significant congestion of the telecommunications network.

**III. Confidentiality of NS/EP Information**

The Board believes that information provided to acquire NS/EP telecommunication service designations and information included in subsequent reports will be, in most cases, proprietary. Applicants for NS/EP services may be required to provide information about individuals critical to their business continuity and crisis management, including telephone numbers, e-mail addresses, and operations center addresses. In addition, applicants for TSP designation may be required to describe the topology of their payments network and disaster-recovery capabilities and may be required to identify telecommunication service providers and the unique circuit identifiers. Because of the sensitive nature of this information, the Board will generally consider information related to NS/EP services exempt from the Freedom of Information Act under exemption 4 to protect both the interests of commercial entities that submit proprietary information to the government and the interests of the government in receiving continued access to such data (5 U.S.C. 552(b)(4)).

**IV. Revocation of NS/EP Eligibility**

Organizations whose circuits or employees are sponsored for NS/EP status must abide by NCS regulations governing each particular service and must keep accurate records and monitor for fraud or abuse. The Board may periodically revalidate the eligibility of the circuits or employees to continue their participation in NCS programs. The Board reserves the right, after consultation with the primary regulatory agency (if applicable), to cancel its sponsorship of any circuit or employee if the organization is not fulfilling the necessary requirements. The Board may also cancel sponsorship if it changes its sponsorship policies and the circuit or employee is no longer qualified.

**V. Telecommunications Service Priority**

The Telecommunications Service Priority (TSP) program was developed to ensure priority treatment for the nation's most important telecommunication services, services supporting either national security or emergency preparedness (NS/EP) missions. Following disasters, telecommunications service vendors may become overwhelmed with requests for new services and requirements to restore existing services. The TSP program authorizes and requires service vendors to provision and restore TSP assigned services prior to non-TSP services and provides vendors with legal protection for giving preferential treatment to NS/EP users over non-NS/EP users.

The TSP program has two components: (1) Expedited restoration of disrupted telecommunication service and (2) expedited provision of new telecommunication services. A restoration priority is applied to new or existing telecommunication services to ensure their restoration before any non-TSP services. Priority restoration is necessary for a TSP service because interruptions may have a serious adverse effect on the supported NS/EP function. TSP restoration priorities must be requested and assigned before a service outage occurs. In the event of a telecommunication disruption, carriers are obligated to restore TSP-designated circuits according to their priority and preempt, if necessary, any other restoration agreement for non-TSP circuits. As a matter of general practice, telecommunication service vendors restore existing TSP services before provisioning new TSP services. A provisioning priority is obtained to facilitate priority installation of new telecommunication services. Provisioning on a priority basis becomes necessary when a service user has an urgent need for a new NS/EP service that must be installed immediately, such as relocating to or establishing new facilities. Telecommunication service providers assess recurring monthly charges on circuits assigned TSP and a surcharge for providing new service.

TSP status can only be assigned to leased point-to-point circuits, including circuits that are leased between specific endpoints (such as between locations within a sponsored network) and ''last mile'' access circuits between a telecommunications central office switch and a sponsored network or customer location (such as data switch or PBX trunk lines). TSP status cannot be applied to switched services, such as voice or frame relay. TSP status should be limited to the minimum number of telecommunication circuits necessary to support an NS/EP function. TSP is invoked only as a last resort; therefore, telecommunication services covered by TSP should already have a high level of disaster-recovery and contingency capability.

In addition to the eligibility criteria for NS/EP program sponsorship described in section II, the following additional conditions will be applied for TSP sponsorship: (1) The organization seeking TSP sponsorship must clearly delineate its network and the endpoints of each access circuit; (2) network backbone circuits and the access circuits must be subject to adequate contingency backup; and (3) the organization must provide the Board with the opportunity to verify continuing TSP eligibility for sponsored circuits.

The party that leases the circuit is responsible for completing the application for TSP sponsorship.[7] An organization requesting sponsorship for TSP restoration of existing circuits must complete form SF–315, ''TSP Request for Service Users,'' for each circuit for which TSP status is sought. This form is described and included in the NCS Web site at *www.ncs.gov*. Applications for TSP sponsorship may be sent to the assistant director, Information Technology, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, Washington, DC 20551. Applications that warrant TSP status will be forwarded to the Office of the Manager NCS, which is responsible for

[5] An organization's eligibility for TSP status is based on criteria applied to determine a specific circuit's support of an NS/EP service, while eligibility for the GETS and WPS programs is based on criteria applied to the organization's overall NS/EP role.

[6] The Board's sponsorship criteria for the GETS program implements the policy recently adopted by FBIIC. Organizations should seek sponsorship from their primary regulatory agency. A copy of the FBIIC GETS policy and the application for organizations seeking Board sponsorship for GETS are included as an appendix to this notice.

[7] The Federal Reserve Banks are responsible for requesting sponsorship of eligible leased-line access circuits connecting institutions to Fedwire and other Federal Reserve services.

making TSP assignments. Any applicants determined to be ineligible would be informed of the decision.

The Board can invoke TSP to provision new telecommunication services on an as-needed basis as a result of emergencies or disasters warranting extraordinary action. The Board will consider requests from sponsored organizations to provision new service under TSP using the same sponsorship criteria adopted for the sponsorship of TSP restoration services. Board staff will submit form SF–315, ''TSP Request for Service Users,'' to the NCS for each circuit eligible for provisioning under TSP. The Board does not consider the emergency provision of new services to be an appropriate substitute for adequate network contingency-planning measures.

*A. Reconciliation of TSP Information*

NCS requires that telecommunication service providers maintain an accurate inventory of circuits that are assigned TSP status and reconcile this inventory against NCS records annually. Reconciliation is necessary to ensure that the user, service provider, and NCS maintain accurate TSP information in the event that a disaster or emergency requires the restoration of NS/EP telecommunication services. As a sponsoring organization and program administrator on behalf of participating FBIIC members, the Board must maintain accurate records of the assignment and disposition of TSP codes provided to sponsored payments system participants. Organizations receiving TSP assignments from the Board will be required to (1) provide information to the assistant director, Information Technology, Division of Reserve Bank Operations and Payment Systems, pertaining to the telecommunication carrier with identification codes for each circuit receiving a TSP assignment, (2) notify the assistant director of any engineering changes affecting TSP assigned circuits, and (3) notify the assistant director of any TSP codes that should be revoked. The Board may periodically review records pertaining to TSP-sponsored circuits and work with the sponsored organization to resolve any discrepancies identified in TSP service information. Sponsored organizations are responsible for maintaining current TSP records.

*B. Costs of TSP status*

Telecommunication carrier tariffs for providing TSP are filed with the FCC and state regulatory agencies. The tariffs permit carriers to assess a one-time charge and a monthly charge for each circuit assigned a TSP restoration authorization code. In the event new service is provisioned under TSP, carriers can apply a surcharge to the normal installation charges for each telecommunication service ordered. Finally, telecommunication carriers can assess a penalty to TSP customers for reporting an erroneous outage on a TSP circuit that is traced to the customer's premise equipment.

The TSP tariffs are cost-based and are not uniform between states or carriers. Tariffs are charged for Local Access and Transport Area (LATA) and inter-exchange TSP services. A single carrier generally collects TSP charges for all portions of the end-to-end service. TSP restoration assignment involves a one-time ''set-up'' charge and an ongoing monthly charge. For example, the one-time charge for assigning TSP currently ranges from $15 to $360 and ongoing monthly charges range from $.90 to $7.50 by LATA. TSP restoration charges for an inter-exchange circuit include LATA charges for each end of the circuit and currently incur an additional one-time charge of $235 and a recurring monthly charge of $9.00 for the inter-exchange portion of the circuit.[8] Under the TSP tariff, surcharges for the emergency provision of new service currently range from $50 to $200 for endpoint access circuits, depending on the LATA, and $400 for the inter-exchange portion of a circuit. The cost for initiating a service call resulting from an erroneous report of an outage on a TSP circuit is based on time and material charges.

The costs associated with TSP status for leased Federal Reserve owned access circuits used for priced services will be recovered through the electronic access fees charged to depository institutions.[9] The costs associated with TSP assignments for backbone circuits used for eligible services are distributed to the services and activities that use these services, and in the case of priced services, are recovered through the fees assessed for that service. The incremental costs associated with TSP status have not significantly affected Federal Reserve fees.

Private-sector organizations that lease circuits that are granted TSP status must bear the cost of all tariffs for TSP. In addition, the Federal Reserve will not reimburse any costs incurred by the sponsored organization for improvements to network facilities necessary to comply with NCS standards.

**VI. Government Emergency Telecommunications Service**

Under the GETS program, selected critical employees of eligible organizations are assigned a card and corresponding PIN, which they can use to obtain priority access to the public switched network.[10] The Federal Reserve will consider requests for GETS sponsorship for critical employees of organizations for which the Federal Reserve is the primary supervisor. Federal Reserve supervised organizations should complete the Board's Request for GETS Sponsorship form, which is available on the Board's Web site at *http://www.federalreserve.gov/forms/getssponsorship.pdf*. Other financial organizations should complete the GETS sponsorship form that is available on the FBIIC Web site at *http://www.fbiic.gov* and submit the completed form to their primary regulator. A GETS point of contact (POC) must be established within the requesting organization to administer cards and coordinate billing. The POC will have the authority to administer the GETS program within its organization. Once approved, the organization's information will be forwarded to the NCS for further processing and the issuance of GETS cards. Organizations whose employees obtain GETS cards are responsible for complying with all NCS guidelines and restrictions, monitoring fraudulent use, and revoking GETS cards from individuals no longer performing qualified activities.

Sponsored organizations are responsible for all costs associated with GETS. While there is no subscription fee, GETS calls are currently billed at the rate of $0.15 per minute for calls within the United States, Mexico, and most of the Caribbean. International calls are billed at commercial rates. More information about the GETS program, including Frequently Asked Questions, is available on the NCS Web

[8] For example, the cost of TSP restoration priority on an intra-LATA Fedwire access circuit in Philadelphia would include a one-time charge of $47.72 and monthly charges of $1.34. TSP restoration priority on an inter-LATA circuit from a Philadelphia endpoint to a Los Angeles endpoint would include the costs referenced above as well as an additional one-time charge of $358.46 and monthly charges of $5.20 for the Los Angeles LATA access portion of the circuit as well as an additional $235 one-time charge and monthly charges of $9.00 for the inter-exchange portion of the circuit.

[9] Depository institutions that use their access circuits solely for non-priced services are not assessed electronic connection fees and are not charged for TSP.

[10] The NCS publication ''GETS Planning Guide,'' which provides a detailed description of the GETS program and administrative procedures, is available on *www.ncs.gov*.

site (*http://www.ncs.gov*) under Programs.

## VII. Competitive Impact Analysis

The Board conducts a competitive impact analysis when considering an operational, legal, or other policy change, if that change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences.[11] Under the Board's policies for sponsorship for NS/EP services, the Federal Reserve Banks are subject to the same eligibility criteria as private-sector service providers; therefore, the Board does not believe that its policy adversely affects the ability of other service providers to compete effectively with Federal Reserve Banks in providing similar services.

## VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the notice under the authority delegated to the Board by the Office of Management and Budget (OMB).

This notice announces several collections of information for the TSP and GETS programs. An organization requesting Board sponsorship for TSP restoration of existing circuits must complete and submit application SF–315. An organization that received TSP assignments pursuant to Board sponsorship is subsequently required to notify Board staff of certain information affecting the TSP assignments. An organization requesting GETS sponsorship must complete and submit the GETS forms. To help ease the reporting burden, organizations can obtain copies of the TSP and GETS forms from the NCS and Board web sites.

The NCS is responsible for determining the paperwork burden associated with these collections of information. The NCS will submit all required information to OMB in compliance with the Paperwork Reduction Act.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding any aspect of these collections of information may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (NCS), Washington, DC 20503.

By order of the Board of Governors of the Federal Reserve System, December 3, 2002.

**Jennifer J. Johnson,**

*Secretary of the Board.*

## Appendix

*Financial and Banking Information Infrastructure Committee*

Sponsorship of Priority Telecommunications Access for Private Sector Entities Through the National Communications System Government Emergency Telecommunications Service (GETS).

The National Communications System (NCS) was established in 1963 to provide priority communications support to critical government functions during emergencies. In 1984 the National Security and Emergency Preparedness (NS/EP) capabilities of NCS were broadened and an interagency group (currently 22 federal departments and agencies) was formed to help coordinate and plan NS/EP services. The NCS has developed a number of priority telecommunications services that are also available to private sector entities through sponsorship by an NCS member department or agency. The events of September 11, 2001, put a new focus on the importance of these programs to the nation and to the financial sector.

In order to provide guidance to financial organizations seeking sponsorship for NCS services, the Financial and Banking Information Infrastructure Committee (FBIIC)[12] is developing a series of policies on the sponsorship of priority telecommunications access for private sector entities through the NCS. The goal of the policies is twofold: first, to make financial organizations aware of NCS programs and, second, to provide a consistent set of guidance regarding qualification criteria and the appropriate process for organizations that want to gain access to the programs.

As a first step, the FBIIC has established this policy and process to sponsor qualifying financial sector institutions for Government Emergency Telecommunications Service (GETS).[13] GETS is designed to help assure communication between key public and private sector personnel during times of crisis.

GETS is a telecommunications voice service that supports Federal, State, and local government; industry; and non-profit organizations in performing their NS/EP missions by providing emergency access and priority processing for voice communications services in the local and long-distance segments of the Public Switched Network (PSN). GETS is intended to be used in an emergency or crisis situation when heavy usage of the PSN by organizations and the public decreases the probability of completing a call. Private sector organizations that need to participate in the GETS program must be sponsored by an NCS member. While there is no subscription fee, GETS calls are billed at the rate of $0.15 per minute for calls within the United States, Mexico, and most of the Caribbean. International calls are billed at commercial rates. More information about the GETS program, including Frequently Asked Questions, is available on the NCS Web site (*http://www.ncs.gov/*) under Programs.

There are five broad categories that serve as guidelines for determining who may qualify as a GETS user: (1) National Security Leadership, (2) National Security Posture and U.S. Population Attack Warning, (3) Public Health, Safety, and Maintenance of Law and Order, (4) Public Welfare and Maintenance of National Economic Posture and (5) Disaster Recovery. The FBIIC agencies have determined that to qualify for GETS sponsorship, organizations must support the performance of NS/EP functions necessary to maintain the national economic posture during any national or regional emergency. In particular, the FBIIC agencies view maintenance of the national economic posture as the minimization of systemic disruption to the financial system directly related to the operation of critical financial markets and related essential services and systems.

Essential services and systems are those that have no easily accessible substitute and that are necessary to support one of three critical NS/EP functions in key financial markets and payment mechanisms: Necessary crisis response and coordination activities; resumption and maintenance of economic activity; and the orderly completion of outstanding financial transactions and necessary offsetting transactions. For example, essential services and systems include: critical funds transfers systems (wholesale/large-value payment systems), securities and derivatives clearing and settlement systems, supporting communication systems and service providers, and key financial market trading systems and exchanges.

Private sector financial organizations and their service providers may qualify for GETS sponsorship if they play a significant role in one or more financial markets or essential

[11] These procedures are described in the Board's policy statement ''The Federal Reserve in the Payments System,'' as revised in March 1990 (55 FR 11648, March 29, 1990).

[12] The Financial and Banking Information Infrastructure Committee (FBIIC) is a standing committee of the President's Critical Infrastructure Protection Board, and is charged with coordinating federal and state financial regulatory efforts to improve the reliability and security of the U.S. financial system. Treasury's Assistant Secretary for Financial Institutions chairs the committee. Members of the FBIIC include representatives of the Commodity Futures Trading Commission, the Conference of State Bank Supervisors, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Association of Insurance Commissioners, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Federal Housing Enterprise Oversight, the Offices of Homeland and Cyberspace Security, the Office of Thrift Supervision, and the Securities and Exchange Commission.

[13] It is anticipated that subsequent policies will address other NCS programs, for example, Telecommunications Service Priority (TSP) and Wireless Priority Service (WPS).

services or systems. Factors which the appropriate FBIIC member agency will consider in determining whether individual organizations play a significant role in an essential market, service or system include consideration of whether the organization: (1) Is a registered securities or futures exchange, self-regulatory organization, registered securities clearing agency/depository and futures clearinghouse, and their critical service providers and utilities; (2) acts as market utility for effecting payments or clearance and settlement of transactions; (3) processes a large aggregate value of daily payments; (4) provides critical services or systems to financial institutions; (5) has a national or large regional presence in one or more product lines; or (6) demonstrates other facts or circumstances that suggest facilitating the organization's access to the GETS priority service in times of national emergency would serve to maintain the national economic posture.

Organizations seeking GETS sponsorship should complete the attached FBIIC Request for GETS Sponsorship and submit it to their primary financial regulator. Requesting organizations must support their request for sponsorship under the general NS/EP criteria stated above.

The FBIIC agencies may contact those organizations that clearly qualify under these criteria and inform them of the availability of GETS Sponsorship.[14]

Individuals being nominated for GETS usage should be limited to those individuals who play critical roles in the organization's business continuity or crisis response management structure.

**Board of Governors of the Federal Reserve System**

*Request for GETS Sponsorship*

Upon reviewing the Government Emergency Telecommunications Service (GETS) information provided and based on our emergency telecommunications requirements, our organization requests Financial and Banking Information Infrastructure Committee sponsorship to the GETS program for the following individual(s):

NAME OF ORGANIZATION: _____

| Name and Title of Individual | Critical Role | Citizenship |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |

We acknowledge that our organization:

(1) May not reference the GETS card in our marketing activities or for other competitive advantage purposes.

(2) Must establish a GETS Point of Contact (POC) for administering GETS and to ensure accountability for each card issued to it.

(3) Will withdraw the GETS card from any individual that no longer fulfills the designated role or function that meets the criteria.

(4) Must establish a billing contact for payment of bills for GETS usage. We understand that upon approval of this request, we will be provided a letter notifying us of the sponsorship and requesting that we establish a Billing Account with a Program Designator Code (PDC) for billing and payment of our GETS calls.[15]

We further understand that cards issued under this sponsorship program may be cancelled at the discretion of the National Communications System or the Federal Reserve Board.

*GETS Point of Contact*

Name: _____
Title: _____
Mail Address: _____
Phone: _____
FAX: _____
E-Mail: _____

Please fax this request to *(202) 872–7574* to the attention of Edna Jacobs.

*Please note that other FBIIC agencies members have a sponsorship application for their institutions.

[FR Doc. 02–30969 Filed 12–6–02; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 2 p.m. (EST). December 16, 2002

**PLACE:** 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC

**STATUS:** Parts will be open to the public and parts closed to the public.

**MATTERS TO BE CONSIDERED:** Parts Open to the Public

1. Discussion of the minutes of the November 18, 2002, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director (including Legislation and New System Development).

3. Review of the Labor Department's Executive Summary of its FY 2002 audit program.

[14] In its role as a payments system operator, the Federal Reserve has traditionally sponsored significant participants in the payments system for NCS services. The Federal Reserve therefore intends to contact those organizations that clearly qualify under the criteria and ask them to provide the names of individuals who should receive GETS cards. The Federal Reserve will notify the other FBIIC agencies of institutions they have contacted.

[15] While there is no subscription fee, GETS calls are billed at the rate of $0.15 per minute for calls within the United States, Mexico, and most of the Caribbean. International calls are billed at commercial rates.

**Parts Closed to the Public**

1. Discussion of litigation.
2. Discussion of personnel matters.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 4, 2002.

**David L. Hutner,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 02–31117 Filed 12–4–02; 4:28 pm]

**BILLING CODE 6760–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02P–0462]**

### Food Labeling: Nutrient Content Claims; Implied Nutrient Content Claim in the Brand Name CARBOLITE; Availability of Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability for comment of a petition submitted by Carbolite Foods, Inc. (the petitioner), for the use of an implied nutrient content claim in their brand name CARBOLITE.

**DATES:** Submit written or electronic comments on the petition by January 8, 2003.

**ADDRESSES:** Submit written comments 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. The petition is available for review at the Dockets Management Branch or electronically on the agency's Web site at http://www.fda.gov/ohrms/dockets. You also may request a copy of the petition from the Dockets Management Branch.

**FOR FURTHER INFORMATION CONTACT:** Constance Henry, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 20740–3835, 301–436–1450.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 403(r)(4)(A)(iii) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 343(r)(4)(A)(iii)), provides that any person may petition the Secretary of Health and Human Services (and by delegation FDA) for permission to use an implied claim characterizing the level of a nutrient (nutrient content claim) in a brand name. Under § 101.69(o)(3) (21 CFR 101.69(o)(3)), FDA will publish a notice of the petition in the **Federal Register** announcing its availability to the public and seeking comment on the petition. Within 100 days of the date of receipt of a petition accepted for review, FDA will notify the petitioner by letter of its decision to: (1) Grant the petitioner permission to use the proposed brand name, if such use is not misleading, specifying any conditions or limitations on such use, or (2) deny the petition, stating the reasons for the denial.

FDA must grant the petition if it finds that the petitioned claim is not misleading and is consistent with terms defined by regulation under section 403(r)(2)(A)(i) of the act. If FDA fails to notify the petitioner of its decision to grant or deny the petition within the 100-day period, the petition shall be considered to be granted. We have determined this 100-day deadline to be January 15, 2003.

#### II. Nutrient Content Claim in a Brand Name Petition

Carbolite Foods, Inc., submitted a petition to FDA on October 7, 2002, under section 403(r)(4)(A)(iii) of the act (§ 101.69(o)) seeking permission to use its brand name CARBOLITE as an implied nutrient content claim in a brand name.

In accordance with § 101.69(o), Carbolite's petition for a nutrient content claim in a brand name must identify the implied nutrient content claim for CARBOLITE, the nutrient the claim is intended to characterize (sugar), the corresponding term for characterizing the level of such nutrient as defined by a regulation under section 403(r)(2)(A)(i) of the act (''zero sugar'' (also referred to as ''sugar free'' and defined in 21 CFR 101.60(c)(1)) and ''reduced sugar'' (defined in 21 CFR 101.60(c)(5))), and the brand name of which the implied claim is intended to be a part—CARBOLITE. The petition states that the petitioner seeks permission ''to use the company brand name 'CARBOLITE' for its line of 'zero sugar' and 'reduced sugar' food products.''

#### III. Comments

You may submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**). Groups or organizations must submit two copies of any mailed comments. Individuals may submit one copy of their comments. Submit only one copy of your comment if submitting an electronic comment. Identify your written or electronic comments with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 3, 2002.

**Margaret M. Dotzel,**

*Assistant Commissioner for Policy.*

[FR Doc. 02–31067 Filed 12–4–02; 3:17 pm]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel, NRSA Individual Predoctoral Fellowship and Career Development Award Applications.

*Date:* December 3, 2002.

*Time:* 10:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 1 Democracy Plaza, Democracy 1, 6701 Democracy, 710, Bethesda, MD 20892–4870, (Telephone Conference Call).

*Contact Person:* John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: November 29, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–30955 Filed 12–6–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; 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 552(b)(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 Drug Abuse Special Emphasis Panel, Program Project.

*Date:* December 17, 2002.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Mark R. Green, Phd, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 29, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–30957 Filed 12–6–02; 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; 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 provision is 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Organ Transplantation in Animals and Man.

*Date:* December 18, 2002.

*Time:* 8 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *Is38z@nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Islet Transplantation Tolerance.

*Date:* December 20, 2002.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *Is38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: November 29, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–30958 Filed 12–6–02; 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, Parkinson's Disease and Stem Cells.

*Date:* December 4, 2002.

*Time:* 10:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

*Contact Person:* Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892. 301–435–1785. *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Basic and Clinical Studies of Anterior Eye Diseases.

*Date:* December 11, 2002.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

*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. (301) 435–1164. *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Structure and Function of Developmental Regulators in the Nervous System.

*Date:* December 19, 2002.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

*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 20817. (301) 435–4433. *einsteig@csr.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: November 29, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–30956 Filed 12–6–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: ''Coil for Transcranial Magnetic Stimulation''

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is a public notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the inventions embodied in:

Employee Invention Report E–223–00/0, ''Coil for Magnetic Stimulation,'' PCT Application No. PCT/US01/50737 by Zangen *et al.*

to BrainGate, Inc., having a place of business at 25883 Goose Neck Rd, Royal Oak, MD 21662.

The United States of America is the assignee to the patent rights of these inventions.

The contemplated exclusive license may be restricted to the fields of Transcranial Magnetic Stimulation (TMS) therapies and apparatus.

**DATES:** Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before February 7, 2003, will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Dale D. Berkley, Ph.D., J.D. Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *berkleyd@od.nih.gov.* A signed confidential disclosure agreement will be required to receive copies of the patent application.

**SUPPLEMENTARY INFORMATION:** The invention is a magnetic stimulator that is placed in contact with the head of a subject to magnetically stimulate the brain. The device has applications in the treatment of cardiovascular or neurophysiological conditions, and may be of particular utility in the treatment of disorders associated with deep regions of the brain, such as drug addiction and depression. The unique coil shape of the stimulator is designed to target the nucleus accumbens, a region deep within the brain associated with the biological mechanism underlying drug abuse. Deep regions of the brain are also implicated in depressive disorders, and this coil is likely to offer an improvement in the transcranial magnetic stimulation therapy currently being tested for treatment of depression.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 29, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 02–30959 Filed 12–5–02; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR): Availability of Draft Expert Panel Reports on Ethylene Glycol and Propylene Glycol, Request for Public Comment, and Expert Panel Meeting Planned

*Summary:* The NTP CERHR announces:

1. The availability of the draft expert panel reports on ethylene glycol and propylene glycol and solicits written public comments on the reports January 23, 2003.

2. An expert panel meeting on February 11–13, 2003, at the Holiday Inn Old Town Select, Alexandria, Virginia and invites the public to present oral comments at this meeting.

Questions about the draft expert panel reports, submission of public comments, and the expert panel meeting should be directed to Dr. Michael Shelby, CERHR director (contact information below).

**Draft Expert Panel Reports on Ethylene Glycol and Propylene Glycol Available**

The CERHR announces the availability of draft expert panel reports on ethylene glycol (CASRN 107–21–1) and propylene glycol (CASRN 57–55–6). Most ethylene glycol is used as a chemical intermediate in the production of polyester compounds. There is widespread public exposure to ethylene glycol due to its use as automotive antifreeze and as a de-icer for aircraft. The toxicology database on ethylene glycol includes recent mechanistic data and occupational exposure information. Propylene glycol, similar in structure to ethylene glycol, is used as an antifreeze and de-icing solution and in various paints and coatings. Propylene glycol is approved for use in foods, drugs, and cosmetics.

Each draft expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be written at expert panel meeting)

Sections 1–4 will be available to the public by December 4, 2003, and can be obtained electronically on the CERHR web site (*http://cerhr.niehs.nih.gov*) or in hard copy by contacting Dr. Michael Shelby, Director CERHR (NIEHS, 79

T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, telephone: (919) 541–3455; facsimile: (919) 316–4511; *shelby@niehs.nih.gov*).

**Request for Written Comments on Draft Expert Panel Reports**

The CERHR invites written public comments on sections 1–4 of the draft expert panel reports on ethylene glycol and propylene glycol. Comments can be submitted in hard copy or electronic format and must be received by the CERHR by January 23, 2003. These comments will be distributed to the expert panel and CERHR staff for consideration in revising the draft reports and in preparing for the expert panel meeting. They will be posted on the CERHR website prior to the expert panel meeting. These comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any).

**Expert Panel Meeting Planned**

The CERHR will hold an expert panel meeting February 11–13, 2002, at the Holiday Inn Old Town Select, 480 King Street, Alexandria, VA 22314 (telephone: 703–549–6080, facsimile: 684–6508). The CERHR will ask the expert panel to review the scientific evidence regarding the potential reproductive and/or developmental toxicity associated with exposure to ethylene glycol and to propylene glycol. The expert panel will review and revise the draft expert panel reports and reach conclusions regarding whether exposure to ethylene glycol or propylene glycol is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs.

This meeting is open to the public and attendance is limited only by the available meeting room space. The meeting will begin at 8:30 a.m. each day. On February 11 and 12 it is anticipated that a lunch break will occur from noon–1 p.m. and that the meeting will adjourn 5–6 p.m. The meeting is expected to adjourn by noon on February 13; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below. Following the expert panel meeting and completion of the expert panel reports, the CERHR will post the reports on its website and solicit public comment through a **Federal Register** notice.

*Preliminary Meeting Agenda*

February 11, 2003

Opening remarks (8:30 a.m.).

Oral public comments (7 min per speaker; one representative per group, *see* below).

Review of sections 1–4 of the draft expert panel reports on ethylene glycol and propylene glycol.

Discussion of section 5.0 summary, conclusions, and critical data needs.

February 12, 2002

Discussion of section 5.0 summary, conclusions, and critical data needs (8:30 a.m.).

Preparation of draft summaries and conclusion statements.

February 13, 2003

Presentation, discussion of, and agreement on summaries and conclusions (8:30 a.m.).

Closing comments.

*Oral Public Comments Welcome at Expert Panel Meeting*

Time is set-aside on February 11, 2003, for the presentation of oral public comments at the expert panel meeting. To facilitate planning, those persons wishing to make oral public comments are asked to contact Dr. Shelby by January 31, 2003 (contact information provided above). Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, e-mail and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to Dr. Shelby by February 3, 2003. This information will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on February 11, 2003 (7:30–8:30 a.m.). Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points.

In lieu of making an oral presentation at the meeting, the public is invited to submit a written statement to CERHR by February 3, 2003. This statement will be distributed to CERHR staff and the expert panel, noted in the meeting record, and posted on the CERHR website.

**Ethylene Glycol and Propylene Expert Panel**

The CERHR will convene an expert panel of independent scientists whose members were selected for their scientific expertise in reproductive and/or developmental toxicology and other areas of science relevant for this review.

*Expert Panel Members and Affiliation*

Elaine Faustman, PhD, DABT Chair)—University of Washington, Seattle, WA

Cynthia F. Bearer, MD, PhD—Rainbow Babies & Children's Hospital, Cleveland, OH

John M. DeSesso, PhD—Mitretek Systems, Falls Church, VA

Bruce A. Fowler, PhD— Agency for Toxic Substances Diseases Registry, Atlanta, GA

Gary L. Ginsberg, PhD—Connecticut Department of Public Health, Hartford, CT

Deborah K. Hansen, PhD—National Center for Toxicological Research, Jefferson, AR

Cynthia J. Hines, MS—National Institute for Occupational Safety and Health, Cincinnati, OH

Ronald N. Hines, PhD—Medical College of Wisconsin, Milwaukee, WI

Ken Portier, PhD—University of Florida, Gainesville, FL

Karl K. Rozman, PhD—University of Kansas Medical Center, Kansas City, KS

John A. Thomas, PhD—University of Texas, San Antonio, TX

**Background Information About the CERHR**

The NTP established the NTP CERHR in June 1998 (63 FR 68782, December 14, 1998). The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (66 FR 37047–48) and is available on the CERHR website under ''About CERHR'' or in printed copy from the CERHR.

Dated: November 18, 2002.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences.*

[FR Doc. 02–30960 Filed 12–6–02; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of the Recovery Plan for the Bruneau Hot Springsnail (*Pyrgulopsis bruneauensis*)

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife (Service) announces the availability of the final recovery plan for the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*; springsnail). This endangered freshwater snail is a member of the family Hydrobiidae and occurs in a 5-mile reach of the Bruneau River and the lower one-third of Hot Creek in Owyhee County, Idaho.

**ADDRESSES:** Recovery plans that have been approved by the U.S. Fish and Wildlife Service are available on the World Wide Web at: *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.* In addition, recovery plans for the springsnail may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301–429–6403 or 800–582–3421. The fee for the plan varies.

**FOR FURTHER INFORMATION CONTACT:** Steven Lysne or Jeri Wood, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, Idaho 83709 (telephone; 208–378–5243).

**SUPPLEMENTARY INFORMATION:**

#### Background

Recovery of endangered or threatened animals and plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate the time and cost associated with implementing the measures needed for recovery.

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that during recovery plan development, the Service provide public notice and an opportunity for public review and comment. Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in an appendix to the recovery plan. The Service will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The springsnail was listed as endangered on June 17, 1998 (FR 63 32981). This freshwater, aquatic snail exists only in an approximately 5-mile reach of the Bruneau River and its tributary, Hot Creek, in southwestern Idaho. The springsnail inhabits flowing geothermal springs and seeps with temperatures ranging from 15.7 to 36.9 degrees Celsius. The springsnail is found in these habitats on the exposed surfaces of various substrates including rocks, gravel, sand, mud, and algal films. The principal threat to the springsnail is the reduction and/or elimination of their geothermal spring habitat as a result of agricultural groundwater withdrawals.

The objective of this plan is to provide a framework for the recovery of the springsnail so that protection by the Act is no longer necessary. Recovery is contingent upon protecting and managing the remaining springsnail habitat to maintain and enhance viable populations of the springsnail.

The springsnail will be considered for reclassification when: (1) Water levels in the regional geothermal aquifer have increased and stabilized at 815 meters (2,674 feet) in elevation; (2) the total number of geothermal springs discharging within the recovery area is 200 or more and are distributed within the current range of the springsnail; (3) more than two-thirds of available geothermal springs within the recovery area are occupied by stable, medium to high density populations of reproducing hot springsnails; and (4) groundwater levels are permanently protected against further reductions through implementation of groundwater management activities.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 30, 2002.

**Anne Badgley,**

*Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 02–30982 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of extension to approved Tribal-State Compact.

**SUMMARY:** Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of the approved Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through this delegated authority, has approved the extension agreement to the class III gaming compact between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 13, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–30966 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–4N–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved amendment to Tribal-State Compact.

**SUMMARY:** Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of approved

Tribal-State Compacts for the purpose of engaging in class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the second amendment to the Tribal-State Compact for class III gaming between the Quinault Indian Nation and the State of Washington.

**EFFECTIVE DATES:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 22, 2002

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–30968 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–4N–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Nation—State Gaming Compact taking effect.

**SUMMARY:** Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing the notice that the Nation-State Compact for class III gaming between the Seneca Nation of Indians and the State of New York executed on August 18, 2002, is considered approved. By the terms of IGRA, this compact is considered approved, but only to the extent the compact is consistent with the provisions of IGRA.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 18, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–30967 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–4N–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ 020–03–1610–DO–089A]**

### Notice of Intent To Prepare a Resource Management Plan and Environmental Impact Statement for the Phoenix Field Office

**AGENCY:** Bureau of Land Management, Phoenix Field Office.

**ACTION:** Notice of intent to prepare a Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Phoenix Field Office. These lands are located in Maricopa, Pinal, Pima, and Gila Counties, Arizona.

**SUMMARY:** This document provides notice that the Bureau of Land Management (BLM), Phoenix Field Office intends to prepare a RMP for the southern portion of the Phoenix Field Office (referred to as Phoenix South RMP) in association with the Sonoran Desert National Monument RMP (notice published in the **Federal Register** Vol. 67, No. 79, 20158; Wednesday April 24, 2002) with one associated EIS for the two planning efforts. This planning activity encompasses approximately 1 million acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), other laws, regulations, and BLM management policies. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. The first phase of the planning process is scoping which includes the identification of issues that should be addressed in the planning process and development of planning criteria.

**DATES:** The scoping comment period commences with the publication of this notice and will continue for at least 60 days. Public meetings will be held in approximately late 2002–early 2003. Public notice will be provided specifying when the meetings will occur and will include notification of when the scoping period will close.

*Public Participation:* Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meeting locations will be rotated among towns in the planning area. Towns in the planning area include the metro-Phoenix area, Tonopah, Buckeye, Gila Bend, Maricopa, Ajo, Sells, Casa Grande, and Miami-Globe. Early participation by all those interested is encouraged and will help determine the future management of the public lands. At least 15 days public notice will be given for activities where the public is invited to attend. Written comments will be accepted throughout the planning process. Meetings and comment deadlines will be announced through the local news media, newsletters, and the BLM Web site *(http://www.az.blm.gov).* In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the draft RMP/EIS.

**ADDRESSES:** Phoenix South—Sonoran Desert NM Planning, Bureau of Land Management, Phoenix Field Office, 21605 N. 7th Avenue, Phoenix, AZ 85027; Fax 623–580–5580. For further information and/or to have your name added to our mailing list, contact the Phoenix Field Office, Telephone 623–580–5500.

**SUPPLEMENTARY INFORMATION:** The planning area is generally bounded by: Interstate 10 and Highway 60 on the north, the Maricopa-Yuma County line on the west, the U.S.-Mexican border on the south, and the eastern Phoenix Field Office boundary on the east. The resulting Phoenix South RMP will replace the Lower Gila South RMP, and parts of the Lower Gila North MFP and the Phoenix RMP. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. Additional issues and modifications to known issues will be identified during public scoping. The major issues that will be addressed in the plan effort include, but are not limited to, management of public land resources including natural resource management; cultural resource management and protection; recreation/visitor use and safety; access and transportation on the public lands; location and management of utility corridors; management of grazing, mining, mineral materials, and other uses; and integration of public land management, local community, tribal, and other agency needs and plans.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;

2. Issues resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include rangeland, minerals and geology, outdoor recreation, archaeology, wildlife, wilderness, lands and realty, hydrology, soils, sociology, and economics. Where necessary, outside expertise may be used.

**Mervin G. Boyd,**

*Acting Manager, Phoenix Field Office.*

[FR Doc. 02–30992 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–310–1820–AE]**

### Notice of Public Meeting: Northeast California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held Thursday and Friday, Jan. 9 and 10, 2003, in the Conference Room of the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Dr., Susanville, California. On Oct. 9, the meeting begins at 1 p.m. On Oct. 10, the council will convene at 8 a.m. Time for public comments has been set aside for 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Tim Burke, Field Manager, BLM Alturas Field Office, 708 West 12th St., Alturas, CA, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

**SUPPLEMENTARY INFORMATION:** The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and Northwest Nevada. At this meeting, agenda topics will include an update on wild horse and burro management, council involvement development of new BLM land use plans and an update on development of a juniper management strategy. The council will also hear status reports from the managers of the BLM's Alturas, Eagle Lake and Surprise field offices.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: December 2, 2002.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 02–30961 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–670–1430–01; AZA 12865/CAAZRI 06106]**

### Public Land Order No. 7547; Partial Revocation of Secretarial Order Dated October 16, 1931; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order partially revokes a Secretarial Order dated October 16, 1931, insofar as it affects 31.25 acres of land withdrawn for the Bureau of Reclamation's Colorado River Storage and Survey Projects. This order makes the land available for conveyance under the Recreation and Public Purposes Act.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kathy Gary, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886, 916–978–4677.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation no longer needs the land and concurs with the partial revocation.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated October 16, 1931, which withdrew land for the Bureau of Reclamation's Colorado River Storage and Survey Projects, is hereby revoked insofar as it affects the following described land:

**San Bernardino Meridian**

T. 9 S., R. 21 E.,
sec. 15, S½SW¼SW¼NE¼SW¼, SE¼SE¼SE¼NW¼SW¼, E½E½NE¼SW¼ SW¼, N½SE¼SW¼, NW¼SW¼SE¼SW¼, N½NE¼SW¼SE¼SW¼, SW¼NE¼SW¼SE¼SW¼, and N½N½SE¼SE¼SW¼.

The area described contains 31.25 acres in Imperial County.

2. The land described in Paragraph 1 is hereby made available for conveyance under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 (1994).

Dated: November 20, 2002.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 02–30989 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–930–1430–ET; COC–28504]**

### Public Land Order No. 7548; Partial Revocation of Executive Order No. 5672; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order partially revokes an Executive Order which withdrew lands in Colorado and Wyoming for Public Water Reserve No. 143. This order only affects lands in Colorado and opens 209.61 acres to the operation of the public land laws and to nonmetalliferous location and entry under the United States mining laws. The lands have been and will remain open to mineral leasing and to metalliferous mining.

**EFFECTIVE DATE:** January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

**SUPPLEMENTARY INFORMATION:** The lands do not contain a water source and one of the parcels has been identified for disposal.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 5672, dated August 3, 1931, which withdrew lands for Public Water Reserve No. 143, is hereby revoked insofar as it affects the following described lands:

**Sixth Principal Meridian**

T. 8 N., R. 97 W., sec. 1, W½SW¼; sec. 2, N½SE¼; sec. 29, lots 17, 25, 26, 29, and 30 (previously lots 8 and 9).

The areas described aggregate 209.61 acres in Moffat County, Colorado.

2. At 9 a.m. on January 8, 2003, the lands described in paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 8, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on January 8, 2003, the lands described in paragraph 1 will be opened to nonmetalliferous location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order to nonmetalliferous mining under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 20, 2002.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 02–30987 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WY–921–1430–ET; WYW 132601]**

## Public Land Order No. 7546; Withdrawal of Public Lands for Protection of Sweetwater River Recreational, Scenic, Riparian, Historic, and Wildlife Resources; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 4,943.13 acres of public lands from surface entry and mining for a period of 20 years to protect and preserve significant recreational, scenic, riparian, historic, and wildlife resources along segments of the Sweetwater River. The lands are not available for mineral leasing in accordance with the Bureau of Land Management Green River Resource Management Plan.

**EFFECTIVE DATE:** December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Janet Booth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect and preserve significant recreational, scenic, riparian, historic, and wildlife resources:

**Sixth Principal Meridian**

T. 28 N., R. 102 W.,
Sec. 3, lots 2, 3, and 4, SW¼, W½SE¼, and SE¼SE¼;
Sec. 4, lots 1 to 4, inclusive, N½SW¼, E½SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 5, lot 1 and NE¼SE¼;
Sec. 9, W½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼NW¼, and N½NE¼SE¼;
Sec. 10, S½NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, N½SW¼, N½SE¼SW¼, N½SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 11, SW¼NW¼, NW¼SW¼, SW¼SE¼NW¼, and W½NE¼SW¼.
T. 29 N., R. 102 W.,
Sec. 5, lots 3 and 4, S½NW¼, N½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 6, lot 1 and SE¼NE¼;
Sec. 8, NE¼, NE¼NW¼, E½SE¼NW¼, E½E½SW¼, and SE¼;
Sec. 9, W½W½NW¼, W½NW¼SW¼, and SW¼SW¼;
Sec. 17, N½NE¼, E½SW¼NE¼, SE¼NE¼, and NE¼SE¼;
Sec. 27, SW¼NE¼, E½SW¼, W½NE¼SE¼, and W½SE¼;
Sec. 34, NW¼NE¼, S½NE¼, NE¼NE¼NW¼, and N½SE¼;
Sec. 35, W½W½.
T. 30 N., R. 102 W.,
Sec. 19, lots 1 to 4, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 30, W½NE¼, W½SE¼NE¼, E½NW¼, E½SW¼, W½NE¼SE¼, W½SE¼, and SE¼SE¼;
Sec. 31, NE¼, E½NW¼, E½NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 32, SW¼.

The areas described aggregate 4,943.13 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: November 20, 2002.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 02–30986 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CA–360–02–1430–EU; CACA–42488]**

## Notice of Realty Action, Noncompetitive Sale of Public Lands in Trinity County, California

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of Segregation and Sale of Public Land.

**SUMMARY:** The following public lands have been found suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $5,000.00. The land will not be offered for sale until at least 60 days after the date of publication of the Notice of Realty Action.

**Mount Diablo Meridian**

T.33N., R.10W., Section 8, Lot 14.
Containing 1.39 Acres more of less.

**DATES:** Submit comments on or before January 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Susie Rodriguez, Redding Field Office, 355 Hemsted Drive, Redding, CA. 96002; 530–224–2142.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. This land is being offered by direct sale to the sole adjoining land owner, Charles Capelli, consistent with 43 CFR 2711.3–3(a)(5) and meets the criteria as described in 43 CFR 2710.0–6 (c)(3)(iii). It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests not reserved to the United States. The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued, will contain certain reservations to the United States and will be subject to all existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Redding Field Office Bureau of Land Management, 355 Hemsted Dr. Redding, California 96002. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: October 3, 2002.

**Charles M. Schultz,**

*Field Office Manager.*

[FR Doc. 02–30990 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NM–030–5440–G504; NMNM104115]**

## Realty Action; Conveyance of Public Land; New Mexico

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of realty action; airport conveyance to the city of truth or consequences.

**SUMMARY:** The following public land in Sierra County, New Mexico has been found suitable for conveyance to the City of Truth or Consequences for airport purposes under the Act of May 24, 1928, as amended, and Section 516 of the Airport and Airway Improvement Act of September 3, 1982.

T. 12 S., R. 4 W., NMPM Section 33: W½ SE¼ NW¼ NW¼, N½ SW¼ NW¼, NE¼ SW¼ SW¼ NW¼, N½ SE¼ SW¼ NW¼, SW¼ SE¼ SW¼ NW¼, Containing approximately 35 acres.

**DATES:** Comments regarding the proposed conveyance must be submitted on or before January 23, 2003.

**ADDRESSES:** Comments should be sent to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Gilda Fitzpatrick, Realty Specialist, at the address above or at (505) 524–4454.

**SUPPLEMENTARY INFORMATION:** Conveyance of the land is consistent with applicable Federal and county land use plans and will help meet the needs of Sierra County residents for air transportation.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. Additionally the conveyance will be subject to rights of record including right-of-way NMNM44852, to Valor Telecommunications of New Mexico, LLC, for a telephone line.

Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the BLM Las Cruces Field Office.

The conveyance is consistent with the BLM White Sands Resource Area Management Plan. The land is not required for any other Federal purpose.

This notice segregates the above described public land from all forms of appropriation under the public land laws, including the general mining laws, except application for airport purposes and leasing under the mineral leasing laws.

On or before January 23, 2003, interested parties may submit comments to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

Dated: October 30, 2002.

**Amy L. Lueders,**

*Field Manager, Las Cruces.*

[FR Doc. 02–30988 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–VC–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–010–1220–AD]**

## Recreation Management Restrictions, etc: Yellowstone County, MT; Firearms Target Shooting Emergency Closure

**AGENCY:** Bureau of Land Management, Billings Field Office, Montana State Office.

**ACTION:** Notice of emergency closure of firearms target shooting on certain public lands administered by the Bureau of Land Management in Yellowstone County, Montana.

**SUMMARY:** Notice is hereby given that certain areas are closed to firearms target shooting from October 1, 2002, to September 30, 2003, to protect public safety and natural resources. The closed areas are Shepherd Ah-Nei, 21-Mile, and Acton Ah-Nei areas and are legally described as:

That area of public lands commonly referred to the ''Shepherd Area,'' or ''Shepherd Ah Nei'' located at:

T 4 N, R 27 E, Sec 24, NE¼, S½; Sec 25, all. Sec 36, all.
T 3 N, R 27 E, Sec 1, all.
T 4 N, R 28 E, Sec 19, all. Sec 20, W½. Sec 30, Lots 1, 2, N½NE¼. Sec 31, all
T 3 N, R 28 E, Sec 6, Lots 3, 4, 7, 8, 9, 10, 11, 12, E½, Principal Montana Meridian, and

That area of public lands commonly referred to the ''21-Mile Area '' located north of Billings and west of the Roundup Road, Highway 87 North and the 21 Mile Road at:

T 4 N, R 25 E, Sec 24, all. Principal Montana Meridian, and

That area of public lands commonly referred to as the ''Acton Area'' or ''Acton Ah-Nei'' located east of Broadview, Montana at:

T 4 N, R 25 E, Sec 31, E½.
T 3 N, R 25 E, Sec 5, all, Sec 6, Lots 1, 2, S½, NE¼; Sec 7, Lots 1, 2, E½ NW¼, E½ SW¼, E½; Sec 8, all. Sec 9, all. Sec 17, all.

Sec 20, N½ N½. Principal Montana Meridian, all in Yellowstone County, in the State of Montana.

Closure signs will be posted at the major entry points to this area. Maps of the closure and information may be obtained from the Billings Field Office.

**DATES:** This closure will be in effect from October 1, 2002, to September 30, 2003, unless superceded by permanent rulemaking action.

*Discussion of the Emergency Closure:* This emergency closure is necessary for the management of actions, activities, and public use on certain public lands which may have, or are having, adverse impacts on persons using public lands, on property, and on resources located on public lands until permanent management action can be taken. Increasing levels of public use are creating conflicts between different user groups. The subject lands are utilized for recreational hiking, horseback riding, mountain biking, off-highway vehicle use, wildlife observation, hunting, and target shooting.

While hikers, horseback riders, mountain bicyclists and other users can schedule their use around published hunting seasons for safety reasons, they are not able to avoid random target shooting. Local conditions including heavy timber and rough terrain reduce visibility and increase the hazard to other users from target shooters. Recent incidents involving random target shooting have resulted in endangerment and injury to other users. In addition, resource damage is occurring from the accumulation of debris from target materials. To reduce the incidence of future conflicts, three areas of public land known as the Acton Area, 21-Mile Area, and Shepherd Ah-Nei, located north of Billings, Montana are being closed to target shooting with firearms. These areas will remain open to hunting by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

This emergency closure does not apply to other lands, specifically the ''17-Mile'' area located west of Highway 87, north of Billings, Montana, on the Crooked Creek Road.

**SUPPLEMENTARY INFORMATION:** Under the authority of 43 CFR 9268.3(d)(1)(i) and 43 CFR 8364.1(a) the Bureau of Land Management will enforce the following emergency closure on public lands within the closed area.

**Emergency Closure**

*1.0 Emergency Closure of Certain Public Lands to Target Shooting.*

The following is prohibited:

The discharge of firearms for the purpose of target shooting.

*(2.0) Exceptions:*

(a) This regulation does not apply to the hunting of lawful game by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

(b) This regulation does not apply to archery marksmanship at fixed targets affixed to a backstop sufficient to stop and hold target or broad-head arrows or the use of compressed gas paintball projectors.

(c) This regulation does not apply to special target shooting events, which may be authorized by the authorized officer under special permit.

*Penalties:* The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1733 (a) and 43 CFR 9268.3(e)(2), 43 CFR 8360.0–7, and 43 CFR 8365.1–6. Violations of this regulation are punishable by a fine in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et seq.*), and/or imprisonment not to exceed 12 months for each offense.

Dated: September 10, 2002.

**Sandra S. Brooks,**

*Field Office Manager, Billings Field Office.*

**FOR FURTHER INFORMATION CONTACT:** Sandra S. Brooks, Field Manager, BLM, Billings Field Office, P.O. Box 36800, 5001 Southgate Drive, Billings, MT 50107–6800 or call 406–896–5013.

[FR Doc. 02–30993 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–$$–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collection, Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (OMB Control Number 1010–0113).

**SUMMARY:** To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''30 CFR part 206, Subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report).''

**DATES:** Submit written comments on or before February 7, 2003.

**ADDRESSES:** Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or e-mail *sharron.gebhardt@mms.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 206, Subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report).

*OMB Control Number:* 1010–0113.

*Bureau Form Number:* Form MMS–4416.

*Abstract:* The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires the Secretary to ''establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.'' To accomplish these tasks more effectively, MMS published a proposed rule in the **Federal Register** on February 12, 1998 (63 FR 7089) and a supplementary proposed rule on

January 5, 2000 (65 FR 403). The rules proposed add more certainty to valuation of oil produced from Indian lands and eliminate any direct reliance on posted prices by, among other provisions, requiring Indian lessees and purchasers to submit certain contract information to MMS.

MMS awaited the Solicitor General's approval of the appeal in the Federal Energy Regulatory Commission 636 case regarding duty to market before publishing a final rule. MMS intends to publish a final rule in Fiscal Year 2003. Because OMB approval of this information collection expires February 28, 2003, we are seeking OMB approval to renew these reporting requirements until a final rule is published.

Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to the Indian lessor due to royalties not being collected on prices received under higher priced long-term sales contracts. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from ''Indian Crude Oil Valuation Report (Form MMS–4416)'' to ''30 CFR part 206, Subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report)'' to clarify the regulatory language we are covering under 30 CFR part 206.

*Frequency:* Monthly.

*Estimated Number and Description of Respondents:* 225 payors-purchasers.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 2,362 hours.

The following chart shows the breakdown of the burden hours by CFR section and paragraph:

| Proposed 30 CFR section | Reporting requirement | Burden hours per response | Annual number of responses | Annual burden hours |
|---|---|---|---|---|
| § 206.61(d)(5) ..... | You must submit information on Form MMS–4416 related to all of your crude oil production from Indian leases. You must initially submit Form MMS–4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this regulation takes effect], and by October 31 of each succeeding year. | .1667 | [1] 2,025 | 337.5 |
| | In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply. All other purchasers of crude oil from designated areas likewise are subject to the requirements of this paragraph (d)(5). | .5 | [2] 4,050 | 2,025 |
| | Total ..... | ..... | 6,075 | 2,363 |

[1] 1,350 payor-purchaser agreements or contracts plus 675 non-payor-purchaser agreements or contracts.
[2] 225 payor-purchasers X 6 agreements or contracts per payor X ½ hour per submission X 2 submissions per year plus 675 agreements or contracts submitted by non-payor-purchasers X ½ hour per submission X 2 submissions per year.

*Estimated Annual Reporting and Record keeping ''Non-hour Cost'' Burden:* We have identified no ''non-hour'' cost burdens.

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) provides 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. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or record keepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

*Public Comment Policy:* We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public

record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: December 4, 2002.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. 02–31042 Filed 12–6–02; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–41,699]**

### Liberty Sportswear, Inc., Jean Michael's Inc., Riverview, Willingboro, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 26, 2002, applicable to workers of Liberty Sportswear, Inc., a Division of Jean Michael's Inc. located in Willingboro, New Jersey. The notice was published in the **Federal Register** on September 10, 2002 (FR 67 57456).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of women's skirts. New information shows that workers of Riverview, under the same Liberty Sportswear umbrella were inadvertently excluded from the certification. Accordingly, the Department is amending the certification to include workers of Riverview.

The intent of the Department's certification is to include all workers of Liberty Sportswear, Inc., Willingboro, New Jersey, who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,699 is hereby issued as follows:

''All workers of Liberty Sportswear, Inc., Jean Michael's Inc., and Riverview, Willingboro, New Jersey, who became totally or partially separated from employment on or after June 3, 2001, through August 26, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 26th day of November 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31062 Filed 12–6–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–40,728]**

### Mikan Group, Inc., Long Island City, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 2002, applicable to workers of Milkan Group, New York, New York. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67420).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced ladies' skirts and pants. The review shows that the notice incorrectly identified the company name and city. Consequently, the Department is amending the certification to reflect the correct spelling of the company name to read Mikan Group, Inc., and the city in New York where the plant was located to read Long Island City.

The amended notice applicable to TA–W–40,728 is hereby issued as follows:

''All workers at Mikan Group, Inc., Long Island City, New York, who became totally or partially separated from employment on or after December 5, 2000, through October 23, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 13th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31060 Filed 12–6–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,651]**

### Nortel Networks, Xros, Inc., Northern Telephone, Alteon Networks, Santa Clara, California; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 30, 2000, applicable to workers of Nortel Networks, Santa Clara, California. The notice was published in the **Federal Register** on June 29, 2000 (65 FR 40135).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches.

New information provided by the State shows that some workers separated from employment at the Santa Clara, California location of Nortel Networks had their wages reported under three separate unemployment insurance (UI) tax accounts for Xros, Inc. and Northern Telephone, Santa Clara, California and Alteon Networks, Santa Clara, California and San Jose, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Nortel Networks who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,651 is hereby issued as follows:

''All workers of Nortel Networks, Santa Clara, California; and workers of Xros, Inc., Northern Telephone, and Alteon Networks, producing telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches, at Nortel Networks, Santa Clara, California, who became totally or partially separated from employment on or after April 20, 1999, through May 30, 2002, are eligible to apply

for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 26th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31058 Filed 12–6–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–41,770]**

## RFS Ecusta, Pisgah Forest, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on November 4, 2002, applicable to workers of RFS Ecusta, Pisgah Forest, North Carolina. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced tobacco, specialty, and printing paper. Information provided by the State shows that workers of RFS Ecusta were previously certified (TA–W–37,854) which expired July 24, 2002. To avoid an overlap in worker group coverage, the Department is amending the impact date for TA–W–41,770 from May 21, 2001, to July 25, 2002.

The amended notice applicable to TA–W–41,770 is hereby issued as follows:

''All workers of RFS Ecusta, Pisgah Forest, North Carolina, who became totally or partially separated from employment on or after July 25, 2002, through November 4, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 19th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31063 Filed 12–6–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–40,941 and TA–W–40,941A]**

## Wheland Automotive Industries, Warrenton, Georgia and Wheland Automotive Industries, Chattanooga, Tennessee; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 3, 2002, applicable to workers of Wheland Automotive Industries, located in Warrenton, Georgia. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35141).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The workers produced castings for brake drums and disc brake rotors. The company official reported that employment at the company's Chattanooga, Tennessee plant has declined. The sales of castings for brake drums and disc brake rotors at Chattanooga, Tennessee, have also declined. Layoffs of workers at the company's headquarters in Chattanooga, Tennessee, providing administrative support services to Whelan Automotive Industries has also occurred. The output of castings for brake drums and disc brake rotors at the Chattanooga plant were for the same customer base as the Warrenton, Georgia plant.

Based on the new information provided by the company, the Department is amending the certification to expand coverage to workers of Wheland Automotive Industries in Chattanooga, Tennessee, including the workers at headquarters, engaged in employment related to the production of castings for brake drums and disc brake rotors.

The amended notice applicable to TA–W–40,941 is hereby issued as follows:

''All workers of Wheland Automotive Industries, Warrenton, Georgia (TA–W–40,941), and workers of Wheland Automotive Industries, including headquarters staff, engaged in employment related to the production of castings for brake drums and disc brake rotors at Chattanooga, Tennessee (TA–W–40,941A), who became totally or partially separated from employment on or after January 14, 2001, through May 3, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 20th day of November, 2002.

**Linda G. Poole**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31061 Filed 12–6–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

## Employment and Training Administration

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 26th day of November, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted between 11/12/2002 and 11/15/2002]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 50,044 | Wrought Washer Manufacturing Company (USWA). | Milwaukee, WI | 11/12/2002 | 11/07/2002 |
| 50,045 | Domestic Manufacturing Corporation (Comp) | Kinston, NC | 11/12/2002 | 11/12/2002 |
| 50,046 | Crown North America (Wkrs) | Wooster, OH | 11/12/2002 | 11/07/2002 |
| 50,047 | Andrew Corporation (Comp) | Denton, TX | 11/12/2002 | 11/04/2002 |
| 50,048 | Cooper Power Systems (WIA) | S. Milwaukee, WI | 11/12/2002 | 11/12/2002 |
| 50,049 | Cooper Power Systems (WIA) | Waukesha, WI | 11/12/2002 | 11/12/2002 |
| 50,050 | Advanced Energy (Wkrs) | Austin, TX | 11/12/2002 | 11/08/2002 |
| 50,051 | Blue Ridge Sportswear (Comp) | Palmerton, PA | 11/12/2002 | 11/08/2002 |
| 50,052 | MeadWestvaco (Wkrs) | Front Royal, VA | 11/12/2002 | 11/05/2002 |
| 50,053 | Advance Transformer Company (Comp) | Monroe, WI | 11/12/2002 | 11/07/2002 |
| 50,054 | Universal Automotive, Inc. (Comp) | Cuba, MO | 11/12/2002 | 11/08/2002 |
| 50,055 | Kraft Foods (Comp) | Chicago, IL | 11/12/2002 | 11/08/2002 |
| 50,056 | Ehlert Tool Co. (WIA) | New Berlin, WI | 11/12/2002 | 11/08/2002 |
| 50,057 | Evans Rule Company, Inc. (Comp) | Charleston, SC | 11/12/2002 | 11/12/2002 |
| 50,058 | Ely Shoshone Tribe (Wkrs) | Ely, NV | 11/12/2002 | 11/04/2002 |
| 50,059 | Flowserve (Wkrs) | Williamsport, PA | 11/12/2002 | 11/12/2002 |
| 50,060 | GKN Sinter Metals (Comp) | Gallipolis, OH | 11/12/2002 | 11/13/2002 |
| 50,061 | VF Jeanswear Limited Partnership (Comp) | Woodstock, VA | 11/13/2002 | 11/06/2002 |
| 50,062 | After Six, Inc. (Comp) | Athens, GA | 11/13/2002 | 11/05/2002 |
| 50,063 | Valeo Electrical Systems, Inc. (Wkrs) | Rochester, NY | 11/13/2002 | 11/06/2002 |
| 50,064 | Cerro Fabricated Products (UAW) | Bristol, CT | 11/13/2002 | 11/12/2002 |
| 50,065 | Rawlings Sporting Goods (UNITE) | Licking, MO | 11/13/2002 | 11/11/2002 |
| 50,066 | Square D (IBEW) | Lincoln, NE | 11/13/2002 | 11/08/2002 |
| 50,067 | Advanced Glassfiber Yarns (Comp) | Aiken, SC | 11/13/2002 | 11/08/2002 |
| 50,068 | Velvet Drive Transmissions (UAW) | New Bedford, MA | 11/13/2002 | 11/07/2002 |
| 50,069 | L.W. Packard and Company, Inc. (Wkrs) | Ashland, NH | 11/13/2002 | 11/08/2002 |
| 50,070 | Eaton Corporation (Comp) | Mooresville, NC | 11/13/2002 | 11/07/2002 |
| 50,071 | Graphic Metals, Inc. (UAW) | Bay City, MI | 11/13/2002 | 11/11/2002 |
| 50,072 | Federal Mogul Powertrain Systems (UAW) | Orangeburg, SC | 11/13/2002 | 11/11/2002 |
| 50,073 | Collins and Aikman (UAW) | Marshall, WI | 11/13/2002 | 11/12/2002 |
| 50,074 | Summit Manufacturing LLC (Wkrs) | West Hazleton, PA | 11/14/2002 | 11/08/2002 |
| 50,075 | Mayville Engineering Company (Wkrs) | Mayville, WI | 11/14/2002 | 11/13/2002 |
| 50,076 | Altadis USA Inc. (IBT) | McAdoo, PA | 11/14/2002 | 11/04/2002 |
| 50,077 | Northern Cambria Shirt Co. (UFCW) | Northern Cambria, PA | 11/14/2002 | 11/06/2002 |
| 50,078 | Auburn Hosiery Mills, Inc. (Comp) | Auburn, KY | 11/14/2002 | 11/05/2002 |
| 50,079 | ITT Industries, Automotive Div. (Comp) | Searcy, AR | 11/14/2002 | 11/13/2002 |
| 50,080 | VF Jeanswear Limited Partnership (Comp) | El Paso, TX | 11/14/2002 | 11/06/2002 |
| 50,081A | Cutting Co., Inc. (The) (Comp) | Miami, FL | 11/14/2002 | 11/13/2002 |
| 50,081 | Drusco, Inc. (Comp) | Miami, FL | 11/14/2002 | 11/13/2002 |
| 50,082 | Playtex Apparel (Wkrs) | Dover, DE | 11/14/2002 | 11/06/2002 |
| 50,083 | Rayonier (Comp) | Lumber City, GA | 11/14/2002 | 11/08/2002 |
| 50,084 | Henry Pratt Company (IAM) | Dixon, IL | 11/14/2002 | 11/07/2002 |
| 50,085 | Pass and Seymour (Comp) | Concord, NC | 11/14/2002 | 11/12/2002 |
| 50,086 | J.C. Apparel, Inc. (Comp) | Sebastopol, MS | 11/15/2002 | 11/14/2002 |
| 50,087 | VF Jeanswear Limited Partnership (Comp) | Okemah, OK | 11/15/2002 | 11/06/2002 |
| 50,088 | Charles and Sons (NJ) | W. New York, NJ | 11/15/2002 | 11/07/2002 |
| 50,089 | E-Mu Systems (Comp) | Scotts Valley, CA | 11/15/2002 | 11/05/2002 |
| 50,090 | YKK USA, Inc. (Wkrs) | El Paso, TX | 11/15/2002 | 11/08/2002 |
| 50,091 | Cook Inlet Processing, Inc. (AK) | Kodiak, AK | 11/15/2002 | 11/14/2002 |
| 50,092 | Kus, Inc. (UAW) | Ft. Wayne, IN | 11/15/2002 | 11/14/2002 |
| 50,093 | Kane Magnetics International (Comp) | Kane, PA | 11/15/2002 | 11/06/2002 |
| 50,094 | Chiquola Industrial Products Group, LLC | Honea Path, SC | 11/15/2002 | 11/05/2002 |
| 50,095 | Johnson Controls, Inc. (Wkrs) | Kennesaw, GA | 11/15/2002 | 11/03/2002 |
| 50,096 | Burlington Industries (Wkrs) | Reidsville, NC | 11/15/2002 | 11/08/2002 |
| 50,097 | S. Goldberg (NJ) | Hackensack, NJ | 11/15/2002 | 11/04/2002 |
| 50,098 | Interstate Foam Processors, Inc. (NJ) | Passaic, NJ | 11/15/2002 | 11/04/2002 |
| 50,099 | Sweater Project (NJ) | North Bergen, NJ | 11/15/2002 | 11/07/2002 |
| 50,100 | Smith Systems (Comp) | Princeton, MN | 11/15/2002 | 11/12/2002 |
| 50,101 | Magna Power Tech (Wkrs) | Grand Rapids, MI | 11/15/2002 | 11/14/2002 |
| 50,102 | MMG North America (NJ) | Paterson, NJ | 11/15/2002 | 11/07/2002 |
| 50,103 | K and C Knitting, Inc. (NJ) | Passaic, NJ | 11/15/2002 | 11/07/2002 |
| 50,104 | Thermodisc, Inc. (Comp) | London, KY | 11/15/2002 | 11/14/2002 |
| 50,105 | Ericsson, Inc. (Comp) | Durham, NC | 11/15/2002 | 11/15/2002 |
| 50,106 | Profile Group LLC (Wkrs) | Coldwater, MI | 11/15/2002 | 11/12/2002 |

[FR Doc. 02–31057 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA–6509]

### Dana Corporation, Perfect Circle Division, Hastings, Nebraska; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 30, 2002, applicable to workers of Dana Corporation, Perfect Circle Division, located in Hastings, Nebraska. The notice was published in the **Federal Register** on November 22, 2002 (67 FR 76402).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The certification issued for the worker group at Dana Corporation, Perfect Circle Division, Hastings, Nebraska, was limited to workers engaged in the manufacture of piston rings. The company has reported that workers at the division are not separately identifiable by product.

The intent of the Department's certification is to include all workers of the firm adversely affected by the shift in production from Hastings, Nebraska to Mexico. Accordingly, the Department is amending the certification to expand worker group coverage to all workers of the Perfect Circle Division of Dana Corporation in Hastings, Nebraska.

The amended notice applicable to NAFTA–6509 is hereby issued as follows:

''All workers of Dana Corporation, Perfect Circle Division, Hastings, Nebraska, who became totally or partially separated from employment on or after August 23, 2001, through October 30, 2004, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.''

Signed in Washington, DC this 26th day of November 2002.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31066 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA–6334]

### Nortel Networks Corp., Manufacturing Operations, Billerica, Massachusetts; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on November 5, 2002, applicable to workers of Nortel Networks Corporation, Billerica, Massachusetts. The notice was published in the **Federal Register** on November 22, 2002 (67 FR 70462).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce computer network systems components. The certification was issued for all workers of Nortel Networks Corporation, Billerica, Massachusetts. New information provided by the company shows that the petition was filed on behalf of workers in the Manufacturing Operations group. Workers in this group are separately identifiable from other worker groups at the Billerica location of the firm.

It is the Department's intent to provide coverage to those workers adversely affected by the shift in production from the workers' firm to Canada. Accordingly, the certification is being amended to limit the certification to workers of Nortel Networks, Billerica, Massachusetts, Manufacturing Operations.

The amended notice applicable to NAFTA–6334 is hereby issued as follows:

Workers of Nortel Networks Corporation, Manufacturing Operations, Billerica, Massachusetts, who became totally or partially separated from employment on or after July 1, 2001, through November 5, 2004, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed in Washington, DC this 26th day of November 2002.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31065 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA–03891]

### Nortel Networks, Xors, Inc., Northern Telephone, Alteon Networks, Santa Clara, CA; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on May 30, 2000, applicable to workers of Nortel Networks, Santa Clara, California. The notice was published in the **Federal Register** on June 8, 2000 (65 FR 36470).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches.

New information provided by the State shows that some workers separated from employment at the Santa Clara, California location of Nortel Networks had their wages reported under three separate unemployment insurance (UI) tax accounts for Xros, Inc. and Northern Telephone, Santa Clara, California and Alteon Networks, Santa Clara, California and San Jose, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Nortel Networks who were adversely affected by a shift of production of telecommunication equipment to Canada.

The amended notice applicable to NAFTA—03891 is hereby issued as follows:

All workers of Nortel Networks, Santa Clara, California; and workers of Xros, Inc., Northern Telephone, Alteon Networks, producing telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches at Nortel Networks, Santa Clara, California, who became totally or partially separated from employment on or after April 27, 1999, through May 30, 2002, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974;

Signed at Washington, DC this 26th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31059 Filed 12–6–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–42,023; Saturn Electronics and Engineering, Inc., Auburn Hills, MI.*

*TA–W–41,611; Dean Specialty Foods Group, Atkins, AR.*

*TA–W–42,299; Alcoa Printing Plant, Gilbertsville, PA.*

*TA–W–42,050; CommScope, Inc. of North Carolina, Catawba Facility, Catawba, NC, A; Claremont Facility, Claremont, NC, B; Cable Technology Center, Newton, NC, C; Corporate Office, Hickory, NC, D; Denver Sales Office, Greenwood Village, CO.*

*TA–W–41,788; Johnson Controls, Automotive Systems Group-Interiors, Lapeer, MI.*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–42,007; Milwaukee Valve Company, Milwaukee, WI.*

*TA–W–42,326; Micro C Technologies, Inc., Grand Rapids, MI.*

*TA–W–42,262; Pollak, Actuator Products Div., Boston, MA.*

*TA–W–41,887; Storage Technology Corp., Printed Wire Assembly Workers, Louisville, CO.*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–42,215; Agilent Technologies, Colorado Springs, CO.*

*TA–W–50,058; Ely Shoshone Tribe, Small World Daycare, Ely, NE.*

*TA[1]W–42,327; Aspen International Cable Corp., Salem, OR.*

*TA–W–41,928; Veco Alaska, Inc., Anchorage, AK.*

*TA–W–42,307; Cadence Design Systems, Inc., Irvine Office, Irvine, CA.*

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

*TA–W–50,011; Cooper Power Systems, Cooper Industries, East Stroudsburg, PA: November 4, 2001.*

*TA–W–42,347; Shur-Line, a Div. of Newell Rubbermaid, Johnson City, TN: October 8, 2001.*

*TA–W–42,281; Dorel Juvenile Group, Cartersville, GA: October 9, 2001.*

*TA–W–42,228 & A; Pent Products, Inc., Ardmore, AL and Ashley, IN: September 23, 2001.*

*TA–W–42,220; Bo-Jan Garment, Inc., Schuylkill Haven, PA: September 19, 2001.*

*TA–W–42,198; Tritex Sportswear, Inc., Altoona, PA: September 9, 2001.*

*TA–W–42,184; Graphic Sportswear Unlimited, Austin, TN: September 10, 2001.*

*TA–W–42,122; Neshoba Lumber Company, Philadelphia, MS: August 28, 2001.*

*TA–W–42,037; Black Diamond Equipment, Ltd., Sew Plant, Salt Lake City, UT: August 15, 2001.*

*TA–W–41,964; Donaldson Co., Inc., Baldwin, WI: July 18, 2001.*

*TA–W–50,118; Volex, Inc., Power Cord Div., Clinton, AR: November 7, 2001.*

*TA–W–50,028; Tyco Electronics, Winston-Salem, NC: November 5, 2001.*

*TA–W–42,349; Maxoptix Corp., Peak Storage Solutions Div., Louisville, CO: October 23, 2001.*

*TA–W–42,348; Lexington Home Brands, Plant 11, Mocksville, NC: October 30, 2001.*

*TA–W–42,346; Haemer-Wright Tool and Die, Inc., Saegertown, PA: July 22, 2001.*

*TA–42,334; Pine State Knitwear Co., Inc., Mt. Airy, NC: October 21, 2001.*

*TA–W–42,275; The ESAB Group, Niagara Falls, NY: October 2, 2001.*

*TA–W–42,233; M.J. Soffe Company, Wallace, NC: September 25, 2001.*

*TA–W–42,171; Foothills Apparel, Inc., Albany, KY: September 10, 2001.*

*TA–W–41,558; BASF Corp., Nutritional Manufacturing Div., Wilmington, NC: May 2, 2001.*

*TA–W–41,503; Kimble Glass Co., Vineland, NJ: April 8, 2001.*

TA–W–41,493; Sun-Chemical, Inc. (GPI), Linden, NJ: April 16, 2001.

TA–W–41,963; Peterson Spring Corp., Three Rivers, MI: ''All workers engaged in employment related to the production of compression springs who became totally or partially separated on or after August 7, 2001. ''All workers engaged in the production of coiled retaining rings are denied eligibility to apply for adjustment assistance under Section 223 of the trade Act of 1974.''

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate

subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–07658; Atlas Copco Wagner, Inc., Portland, OR.*

*NAFTA–TAA–06222; Dean Specialty Foods Group, Atkins, AR.*

*NAFTA–TAA–06306; Signa Molds, Price Pfister, Black & Decker, Pacoima, CA.*

*NAFTA–TAA–06404; Clark Alabama, Inc., Pell City, AL.*

*NAFTA–TAA–06507; Autoline Industries, Inc., Argyle Industries, Inc. Div., Argyle, WI.*

*NAFTA–TAA–06527; Autoline Industries, Inc., Autoline East Div., MeElhatten, PA.*

*NAFTA–TAA–06330; Johnson Controls, Automotive Systems Group-Interiors, Lapeer, MI.*

*NAFTA–TAA–06395; Switching Systems International, Anaheim, CA.*

*NAFTA–TAA–07606; M.J. Soffe Company, Wallace, NC.*

*NAFTA–TAA–07625; Pollak, Actuator Products Div., Boston, MA.*

*NAFTA–TAA–07638; Haemer-Wright tool and Die, Inc., Saegertown, PA.*

*NAFTA–TAA–06484; CommScope, Inc., of North Carolina, Catawba. Facility, Catawba, NC, A; Claremont Facility, Claremont, NC, B; Cable Technology Center, Newton, NC, C; Corporate Office, Hickory, NC, D; Denver Sales Office, Greenwood Village, CO.*

*NAFTA–TAA–07649; Graphic Sportswear Unlimited, Inc., Austin, TX.*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

*NAFTA–TAA–06495 & A; Hasler, Inc., Meter Repair Department (MRD), Shelton, CT and Canadian Support Services (CSS), Shelton, CT.*

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

*NAFTA–TAA–06750; State of Alaska Commercial Fisheries Entry Commission Permit #56712U, Egegik, AK.*

*NAFTA–TAA–06724; State of Alaska Commercial Fisheries Entry Commission Permit #55585P, Dillingham, AK.*

*NAFTA–TAA–06681; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T62112B, Dillingham, AK.*

*NAFTA–TAA–06661; State of Alaska Commercial Fisheries Entry Commission Permit #61386Z, Dillingham, AK.*

*NAFTA–TAA–06626; State of Alaska Commercial Fisheries Entry Commission Permit #58548X, Dillingham, AK.*

*NAFTA–TAA–06540; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T56859Q, Dillingham, AK.*

*NAFTA–TAA–06541; Permit #58590X, Aleknagik, AK.*

*NAFTA–TAA–06543; State of Alaska Commercial Fisheries Entry Commission Permit #65605V, Aleknagik, AK.*

*NAFTA–TAA–06546; State of Alaska Commercial Fisheries Entry Commission Permit #60381N, Aleknagik, AK.*

*NAFTA–TAA–06549; State of Alaska Commercial Fisheries Entry Commission Permit #55917A, Aleknagik, AK.*

*NAFTA–TAA–06550; Permit #68828I, Aleknagik, AK.*

*NAFTA–TAA–06552; Permit #57749J, Aleknagik, AK.*

*NAFTA–TAA–06555; State of Alaska Commercial Fisheries Entry Commission Permit #61932R, Aleknagik, AK.*

*NAFTA–TAA–06562; State of Alaska Commercial Fisheries Entry Commission Permit #57738S, Dillingham, AK.*

*NAFTA–TAA–06625; State of Alaska Commercial Fisheries Entry Commission Permit #57496U, Dillingham, AK.*

*NAFTA–TAA–06646; State of Alaska Commercial Fisheries Entry Commission Permit #64700S, Dillingham, AK.*

*NAFTA–TAA–06672; State of Alaska Commercial Fisheries Entry Commission Permit #61339M, Dillingham, AK.*

*NAFTA–TAA–06709; State of Alaska Commercial Fisheries Entry Commission Permit #61671P, Dillingham, AK.*

*NAFTA–TAA–06720; State of Alaska Commercial Fisheries Entry Commission Permit #57857G, Dillingham, AK.*

*NAFTA–TAA–06726; State of Alaska Commercial Fisheries Entry Commission Permit #59682R, Dillingham, AK.*

*NAFTA–TAA–06673; State of Alaska Commercial Fisheries Entry Commission Permit #55600F, Dillingham, AK.*

*NAFTA–TAA–06783; State of Alaska Commercial Fisheries Entry Commission Permit #58843M, King Salmon, AK.*

*NAFTA–TAA–06791; State of Alaska Commercial Fisheries Entry Commission Permit #58446F, King Salmon, AK.*

*NAFTA–TAA–06828; State of Alaska Commercial Fisheries Entry Commission Permit #59510O, Manokotak, AK.*

*NAFTA–TAA–06874; State of Alaska Commercial Fisheries Entry Commission, Permit #57536Q, Naknek, AK.*

*NAFTA–TAA–06880; State of Alaska Commercial Fisheries Entry Commission, Permit #59239P. Naknek, AK.*

*NAFTA–TAA–06883; State of Alaska Commercial Fisheries Entry Commission, Permit #58312I, Naknek, AK.*

*NAFTA–TAA–06914; State of Alaska Commercial Fisheries Entry Commission Permit #56941N, New Stuyahok, AK.*

*NAFTA–TAA–06941; State of Alaska Commercial Fisheries Entry Commission Permit #50106V, New Stuyahok, AK.*

*NAFTA–TAA–06946; State of Alaska Commercial Fisheries Entry Commission Permit #58952X, Newhalen, AK.*

*NAFTA–TAA–06984; State of Alaska Commercial Fisheries Entries Commission Permit #56961J, South Naknek, AK.*
*NAFTA–TAA–07016; State of Alaska Commercial Fisheries, Entry Commission Permit #57321O, Togiak, AK.*
*NAFTA–TAA–07021; State of Alaska Commercial Fisheries Entry Commission Permit #58106M, Togiak, AK.*
*NAFTA–TAA–07051; State of Alaska Commercial Fisheries Entry Commission Permit #57660O, Togiak, AK.*
*NAFTA–TAA–07051; State of Alaska Commercial Fisheries Entry Commission Permit #60568H, Togiak, AK.*
*NAFTA–TAA–07060; State of Alaska Commercial Fisheries Entry Commission Permit #58898N, Togiak, AK.*
*NAFTA–TAA–07068; State of Alaska Commercial Fisheries Entry Commission Permit #66920F, Togiak, AK.*
*NAFTA–TAA–07070; State of Alaska Commercial Fisheries Entry Commission, Permit #57329E, Togiak, AK.*
*NAFTA–TAA–07085; State of Alaska Commercial Fisheries Entry Commission Permit #64752U, Dillingham, AK.*
*NAFTA–TAA–07091; State of Alaska Commercial Fisheries Entry Commission Permit #59461O, Aleknagik, AK.*
*NAFTA–TAA–07135; State of Alaska Commercial Fisheries Entry Commission Permit #61851O, Dillingham, AK.*
*NAFTA–TAA–07153; State of Alaska Commercial Fisheries Entry Commission Permit #64872Z, Dillingham, AK.*
*NAFTA–TAA–07170; State of Alaska Commercial Fisheries Entry Commission Permit #59044L, Dillingham, AK.*
*NAFTA–TAA–07173; State of Alaska Commercial Fisheries Entry Commission Permit #64971P, Dillingham, AK.*
*NAFTA–TAA–07352; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59919I, Naknek, AK.*
*NAFTA–TAA–07353; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60518U, Naknek, AK.*
*NAFTA–TAA–07362; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T64955OD, Naknek, AK.*
*NAFTA–TAA–07365; State of Alaska Commercial Fisheries Entry Commission Permit #60094O, Naknek, AK.*
*NAFTA–TAA–07368; State of Alaska Commercial Fisheries Entry Commission Permit #59358F, Naknek, AK.*
*NAFTA–TAA–07379; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59928N, Naknek, AK.*
*NAFTA–TAA–07400; State of Alaska Commercial Fisheries Entry Commission Permit #60851P, Naknek, AK.*
*NAFTA–TAA–07435; State of Alaska Commercial Fisheries Entry Commission Permit #59857G, South Naknek, AK.*
*NAFTA–TAA–07436; State of Alaska Commercial Fisheries Entry Commission Permit #59927V, South Naknek, AK.*
*NAFTA–TAA–07438; State of Alaska Commercial Fisheries Entry Commission Permit #60290M, South Naknek, AK.*
*NAFTA–TAA–07441; State of Alaska Commercial Fisheries Entry Commission Permit #57510S, Naknek, AK.*
*NAFTA–TAA–07457; State of Alaska Commercial Fisheries Entry Commission Permit #60431K, South Naknek, AK.*
*NAFTA–TAA–07459; State of Alaska Commercial Fisheries Entry Commission Permit #59938L, South Naknek, AK.*
*NAFTA–TAA–07460; State of Alaska Commercial Fisheries, Entry Commission Permit #65617G, South Naknek, AK.*
*NAFTA–TAA–07461; State of Alaska Commercial Fisheries Entry Commission Permit #65649J, South Naknek, AK.*
*NAFTA–TAA–07486; State of Alaska Commercial Fisheries Entry Commission Permit #65849B, Togiak, AK.*
*NAFTA–TAA–07493; State of Alaska Commercial Fisheries Entry Commission Permit #60432C, Togiak, AK.*
*NAFTA–TAA–07534; State of Alaska Commercial Fisheries Entry Commission Permit #55895Q, Togiak, AK.*
*NAFTA–TAA–07508; State of Alaska Commercial Fisheries Entry Commission Permit #60519M, Togiak, AK.*
*NAFTA–TAA–07522; State of Alaska Commercial Fisheries Entry Commission Permit #64744H, Togiak, AK.*
*NAFTA–TAA–07530; State of Alaska Commercial Fisheries Entry Commission Permit #59948J, Togiak, AK.*
*NAFTA–TAA–07532; State of Alaska Commercial Fisheries Entry Commission Permit #60958V, Togiak, AK.*
*NAFTA–TAA–07534; State of Alaska Commercial Fisheries Entry Commission Permit #55895Q, Togiak, AK.*
*NAFTA–TAA–07539; State of Alaska Commercial Fisheries Entry Commission Permit #64763K, Togiak, AK.*
*NAFTA–TAA–07540; State of Alaska Commercial Fisheries Entry Commission Permit #65091H, Togiak, AK.*
*NAFTA–TAA–07543; State of Alaska Commercial Fisheries Entry Commission Permit #66274F, Twin Hills, AK.*
*NAFTA–TAA–06869; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T61970Z, Naknek, AK.*
*NAFTA–TAA–06899; State of Alaska Commercial Fisheries Entry Commission Permit #63850R, Naknek, AK.*
*NAFTA–TAA–06903; State of Alaska Commercial Fisheries Entry Commission Permit #61951V, Naknek, AK.*
*NAFTA–TAA–06958; State of Alaska Commercial Fisheries Entry Commission Permit #56815GT, Dillingham, AK.*
*NAFTA–TAA–06969; State of Alaska Commercial Fisheries Entry Commission Permit #58130B, Port Heiden, AK.*
*NAFTA–TAA–06971; State of Alaska Commercial Fisheries Entry Commission Permit #58536P, Port Heiden, AK.*
*NAFTA–TAA–06975; State of Alaska Commercial Fisheries Entry Commission Permit #58130BT, Port Heiden, AK.*
*NAFTA–TAA–06976; State of Alaska Commercial Fisheries Entry Commission Permit #58396K, Port Heiden, AK.*
*NAFTA–TAA–07200; State of Alaska Commercial Fisheries Entry Commission Permit #64416W, Dillingham, AK.*
*NAFTA–TAA–07203; State of Alaska Commercial Fisheries Entry Commission Permit #59261W, Dillingham, AK.*
*NAFTA–TAA–07207; State of Alaska Commercial Fisheries Entry Commission Permit #60660E, Dillingham, AK.*
*NAFTA–TAA–07242; State of Alaska Commercial Fisheries Entry Commission Permit #57388A, King Salmon, AK.*
*NAFTA–TAA–07246; State of Alaska Commercial Fisheries Entry*

*Commission Permit #65619P, King Salmon, AK.*

*NAFTA–TAA–07249; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60024F, King Salmon, AK.*

*NAFTA–TAA–07250; State of Alaska Commercial Fisheries Entry Commission Permit #58844H, King Salmon, AK.*

*NAFTA–TAA–07274; State of Alaska Commercial Fisheries Entry Commission Permit #56856Q, Levelock, AK.*

*NAFTA–TAA–07279; State of Alaska Commercial Fisheries Entry Commission Permit #60517C, Manokotak, AK.*

*NAFTA–TAA–07321; State of Alaska Commercial Fisheries Entry Commission Permit #62119A, Manokotak, AK.*

*NAFTA–TAA–07327; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59937S, Naknek, AK.*

*NAFTA–TAA–07339; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T65135, Naknek, AK.*

*NAFTA–TAA–07341; State of Alaska Commercial Fisheries Entry Commission Permit #60440P, Naknek, AK.*

*NAFTA–TAA–07598; General Mills, Bakeries and Food Service, Hillsdale, MI.*

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

*NAFTA–TAA–07282; State of Alaska Commercial Fisheries Entry Commission Permit #65919Q, Manokotak, AK.*

**Affirmative Determinations NAFTA–TAA**

*NAFTA–TAA–05527; Freudenburg-NOK, Bennsenville, IL: October 31, 2000.*

*NAFTA–TAA–06193; Kimble Glass Co., Vineland, NJ: May 9, 2001.*

*NAFTA–TAA–06581; State of Alaska Commercial Fisheries Entry Commission Permit #64799G, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–06634; Permit #59335F, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–06636; State of Alaska Commercial Fisheries Entry Permit #58354J, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–06653; State of Alaska Commercial Fisheries Entry Commission Permit #64659G, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–06679; Permit #613030, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–06686; Permit #57593B, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–06832; Permit #58553J, Manokotak, AK: September 5, 2001.*

*NAFTA–TAA–06838, Permit #58905O, Manokotak, AK: September 5, 2001.*

*NAFTA–TAA–06856; State of Alaska Commercial Fisheries Entry Commission Permit #63408I, Monokotak, AK: September 5, 2001.*

*NAFTA–TAA–06962; Permit #61905B, Port Alsworth, AK: September 5, 2001.*

*NAFTA–TAA–06978; State of Alaska Commercial Fisheries Entry Commission Permit #66896K, Portage Creek, AK: September 5, 2001.*

*NAFTA–TAA–06994; State of Alaska Commercial Fisheries Entry Commission Permit #55948L, South Naknek, AK: September 5, 2001.*

*NAFTA–TAA–07035; State of Alaska Commercial Fisheries Entry Commission Permit #57360N, Togiak, AK: September 5, 2001.*

*NAFTA–TAA–07082; State of Alaska Commercial Fisheries Entry Commission Permit #60547S, Ugashik, AK: September 5, 2001.*

*NAFTA–TAA–07147; Permit #59888Q, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–07171; Permit #66515L, Dillingham, AK: September 5, 2001.*

*NAFTA–TAA–07496; Permit #56260G, Naknek, AK: September 5, 2001.*

*NAFTA–TAA–07485; Permit #60019S, Togiak, AK: September 5, 2001.*

*NAFTA–TAA–07453; Permit #57389R, South Naknek, AK: September 5, 2001.*

*NAFTA–TAA–07553; Foothills Apparel, Inc., Albany, KY: September 10, 2001.*

*NAFTA–TAA–07648; Concise Fabricators, Inc., Tucson, AZ: October 29, 2001.*

*NAFTA–TAA–06464; Saturn Electronics and Engineering, Inc., Auburn Hills, MI: August 6, 2001.*

*NAFTA–TAA–07288; Permit #55655I, Manokotak, AK: September 5, 2001.*

*NAFTA–TAA–07343; Permit #59332F, Naknek, AK: September 5, 2001.*

*NAFTA–TAA–07306; Permit #58531G, Manokotak, AK: September 5, 2001.*

*NAFTA–TAA–07344; Permit #60565H, Naknek, AK: September 5, 2001.*

*NAFTA–TAA–07395; Permit #65134G, Naknek, AK: September 5, 2001.*

*NAFTA–TAA–07563; DJ Orthopedics, LLC, Vista, CA: September 16, 2001.*

*NAFTA–TAA–07569; Emerson Power Transmission, Rollway Bearing Corp., Liverpool, NY: September 4, 2001.*

*NAFTA–TAA–07591; Barth and Dreyfuss of California, Burbank, CA: June 27, 2001.*

*NAFTA–TAA–06454; Peterson Spring Corp., Three Rivers, MI: ''All workers engaged in employment related to the production of compression spring who became totally or partially separated from employment on or after August 7, 2001 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.'' ''All workers of Peterson Spring Corp. engaged in employment related to the production of rings are denied eligibility to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.''*

*NAFTA–TAA–07599; Waltec Forgings, Inc., Port Huron, MI: September 30, 2001.*

I hereby certify that the aforementioned determinations were issued during the months of November, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 25, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance .*

[FR Doc. 02–31064 Filed 12–6–02; 8:45 am]

**BILLING CODE 4510–30–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request reinstatement and approval of this data collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this information collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or

other forms of information technology; 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.

**DATES:** Written comments should be received by February 7, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

**FOR FURTHER INFORMATION CONTACT:** Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* 2003 and 2005 Survey of Scientific and Engineering Research Facilities.

*Expiration Date of Approval:* August 31, 2002.

*Type of Request:* Intent to seek approval to reinstate, with revisions, an information collection for three years.

*Proposed Project:* The National Science Foundation Survey of Scientific and Engineering Research Facilities is a Congressionally mandated (Pub. L. 99–159), biennial survey that has been conducted since 1986. The survey collects data on the amount, condition, and costs of the physical facilities used to conduct science and engineering research. It was expected by Congress that this survey would provide the data necessary to describe the status and needs of science and engineering research facilities and to formulate appropriate solutions to documented needs. During the 1999 and 2001 survey cycles, data were collected from a population of approximately 600 research-performing colleges and universities. This survey population was supplemented with approximately 250 nonprofit biomedical research institutions receiving research support from the National Institutes of Health. During the 2001 cycle, a very limited survey consisting of two questions was fielded in order to allow the National Science Foundation to focus on updating and redesigning the survey. Through this extensive redesign effort, a new section has been added to the survey requesting information on the computing and networking capacity at the surveyed institutions, an increasingly important part of the infrastructure for science and engineering research. Other important changes include the deletion of a question on the adequacy of research space, the deletion of the Large Facilities Follow-up Survey, the additional collection of data on individual construction projects and the addition of a more detailed question on how research space is divided among laboratories, laboratory support space, and office space.

*Use of the Information:* Analysis of the Facilities Survey data will provide updated information on the status of scientific and engineering research facilities. The information can be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by academic officials, the scientific/engineering establishment, and state agencies that fund universities.

*Burden on the Public:* The Facilities Survey will be sent by mail to approximately 600 academic institutions and 250 nonprofit research organizations and hospitals. The completion time per academic institution is expected to average 30 hours and the completion time per research organization/hospitals is expected to average 5 hours. Assuming a 90% response rate, this would result in an estimated burden of 16,200 hours for academic institutions and 1,125 hours for nonprofit research organizations/hospitals.

Dated: December 4, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–31006 Filed 12–6–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Sunshine Act Meeting

**TIME AND DATE:** 2 PM, Wednesday, December 11, 2002.

**PLACE:** Washington Hilton & Towers Hotel, 1919 Connecticut Avenue NW, Cabinet Room, Concourse Level, Washington, DC 20009.

**STATUS:** Open/Closed.

**CONTACT PERSON FOR MORE INFORMATION:** Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372.

**Agenda**

I. Call to Order
II. Approval of Minutes: September 10, 2002 Regular Meeting
III. Audit Committee Meeting 11/18/02
IV. Treasurer's Report
V. Executive Directors Report
VI. Executive Session (CLOSED)
A. Personnel Committee Meeting 11/15/02
VII. Adjournment

**Jeffrey T. Bryson,**

*General Counsel Secretary.*

[FR Doc. 02–31142 Filed 12–5–02; 11:17 am]

**BILLING CODE 7570–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–269, 50–270, and 50–287]**

### Duke Energy Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its December 6, 2002, application for proposed amendments to Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 for the Oconee Nuclear Station, Units 1, 2, and 3 located in Seneca, South Carolina.

The proposed amendments would have revised Technical Specification (TS) 3.7.16, ''Control Room Area Cooling System (CRACS),'' that currently requires entry into TS 3.0.3 when two trains of CRACS are inoperable. The proposed amendments would have eliminated the required entry into TS 3.0.3 and would have allowed 6 hours to restore the operability of one train.

The Commission had previously issued a notice of consideration of issuance of amendment published in the **Federal Register** on February 5, 2002 (67 FR 5326). However, by letter dated November 26, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 6, 2002, and the licensee's letter dated November 26, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public

Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 2nd day of December 2002.

For the Nuclear Regulatory Commission.

**Leonard N. Olshan,**

*Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–31002 Filed 12–6–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–309–OM & 72–30–OM; ASLBP No. 03–806–01–OM]**

### Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station.

This Board is being established pursuant to a November 15, 2002, petition to intervene and request for hearing submitted by the State of Maine. The petition was filed in response to an NRC staff ''Order Modifying Licenses (Effective Immediately)'' published in the **Federal Register** (67 FR 65150 (October 23, 2002)). The order requires licensees who currently store, or who have near-term plans to store, spent nuclear fuel in an independent spent fuel storage installation to maintain the security procedures specified in attachment 2 to the order.

The Board is comprised of the following administrative judges:

Ann M. Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued in Rockville, Maryland, this 3rd day of December, 2002.

**G. Paul Bollwerk, III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 02–31003 Filed 12–6–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–261]**

### Carolina Power & Light Company; H. B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 55, section 55.59(c) for Facility Operating License No. DPR–23, issued to Carolina Power & Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), located in Darlington County, South Carolina. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt the licensee on a one-time basis from the schedular requirements of 10 CFR 55.59(c) for conducting the licensed operator requalification annual operating test and biennial comprehensive written examination at HBRSEP2.

The proposed action is in accordance with the licensee's application for exemption dated October 11, 2002.

*The Need for the Proposed Action*

The proposed action would extend the date for the licensee to complete the licensed operator requalification annual operating test and biennial comprehensive written examinations at HBRSEP2. The proposed action would extend the date for completing the examinations from December 31, 2002, to March 31, 2003, therefore extending the examination schedules by 3 months over the schedules required by 10 CFR 55.59(c). This proposed action is needed to allow HBRSEP2 to complete an unusually heavy workload associated with a plant refueling outage and a power uprate, including conducting associated additional training and modifying the plant-specific simulator, in a timely and safe fashion without undue hardship to plant personnel and licensed plant operators.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the extension of the operator requalification examinations from December 31, 2002, to March 31, 2003.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for HBRSEP2.

*Agencies and Persons Consulted*

On November 26, 2002, the staff consulted with the South Carolina State official, regarding the environmental

impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 11, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of December 2002.

For the Nuclear Regulatory Commission.

**Allen G. Howe,**

*Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–31000 Filed 12–6–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–445 and 50–446]**

## TXU Generation Company, LP; Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, issued to TXU Generation Company, LP, for operation of Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively. CPSES, Units 1 and 2, are located in Somerville and Hood Counties, Texas. Therefore, as required by Section 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would change the CPSES Facility Operating Licenses as follows: Section 2.C.(4)(b) would be changed to be consistent with the license conditions stated in the NRC Order and Safety Evaluation dated December 21, 2001, which approved the direct transfer of ownership interest and operating authority for CPSES to TXU Generation Company LP; Section 2.E which requires reporting any violations of the requirements contained in Section 2.C of the licenses would be deleted. Additionally, Technical Specification Table 5.5–2 ''Steam Generator Tube Inspection,'' Table 5.5–3, ''Steam Generator Repaired Tube Inspection for Unit 1 Only,'' and Section 5.6.10, ''Steam Generator Tube Inspection Report,'' would be revised to delete the requirement to notify the NRC pursuant to 10 CFR 50.72(b)(2) if the steam generator tube inspection results are in a C–3 classification.

The proposed action is in accordance with the licensee's application dated July 25, 2002.

*The Need for the Proposed Action*

The proposed action is needed to make the facility operating licenses consistent with the license conditions stated in the NRC Order and Safety Evaluation dated December 21, 2001, and to delete unnecessary reporting requirements.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the proposed amendments are administrative in nature.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement related to the operation of CPSES, Units 1 and 2, dated September 1981.

*Agencies and Persons Consulted*

On September 24, 2002, the staff consulted with the Texas State official, Mr. Arthur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 25, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of November, 2002.

For the Nuclear Regulatory Commission.

**Robert A. Gramm,**

*Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–30999 Filed 12–6–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–1151]**

## Environmental Assessment and Final Finding of No Significant Impact of License Amendment for Westinghouse Electric Company LLC

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Amendment of Westinghouse Electric Company LLC, Materials License SNM–1107 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials (*e.g.* radwaste) containing low concentrations of uranium-235 contamination and to impose limits on these shipments.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–1107 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials (e.g. radwaste) containing low concentrations of uranium-235 contamination at the Westinghouse Electric Company LLC facility located in Columbia, SC, and to impose limits on these shipments, and has prepared an Environmental Assessment in support of this action.

### Environmental Assessment

### 1.0 Introduction

*1.1 Background*

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of the exemption of Westinghouse Electric Company from the fissile material package standards for shipment of certain bulk materials (e.g. radwaste) containing low concentrations of uranium-235 contamination, with limits placed on the shipments to ensure adequate controls for nuclear criticality safety. This Environmental Assessment (EA) has been prepared pursuant to NRC regulations (10 CFR Part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The Westinghouse facility in Columbia, SC, is authorized under NRC Materials License SNM–1107 to manufacture nuclear reactor fuel utilizing Special Nuclear Material (SNM), specifically low-enriched uranium, and to receive, possess, use, store and transfer source material. These activities generate low-level, radioactive waste. Examples of this waste include, but are not limited to, dry activated waste such as pipes, building debris, insulation, wire, concrete, plastic, ductwork, cabinets, furniture, and some flowable materials like dirt and blasting sand.

*1.2 Review Scope*

In accordance with 10 CFR Part 51, this EA serves to (1) present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitate preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared.

*1.3 Proposed Action*

The proposed action is to amend NRC Materials License SNM–1107 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials containing low concentrations of uranium-235 contamination and to impose limiting conditions to ensure adequate controls for nuclear criticality safety. These materials would be exempt from fissile material classification and the fissile material package standards of 10 CFR 71.55 and 71.59, but subject to other requirements of 10 CFR part 71 and the further limiting conditions. A Safety Evaluation Report (SER) has been prepared by the NRC staff and contains a discussion of the safety considerations for approval of the amendment. The SER will be included in the license amendment when it is issued.

*1.4 Need for Proposed Action*

Westinghouse is currently manufacturing nuclear reactor fuel at its Columbia, SC facility. It is requesting the exemption for transportation of low level radioactive waste (LLRW) generated during normal, routine operations. The reason for this request is to better utilize shipping containers and transportation.

On February 10, 1997, the NRC issued an emergency direct final rule (62 FR 5913) changing the fissile material exemption specifications of 10 CFR part 71. The revised rule limits the fissile-material mass in a consignment and restricts the presence of select moderators with very low neutron-absorption properties (i.e., special moderators). Under this rule, specifically 10 CFR 71.53(a), Westinghouse is limited to 400 grams of U–235 per consignment. The imposition of this 400-gram U–235 limit per consignment increases the number of shipments required to dispose of LLRW.

Westinghouse must make many small LLRW shipments to comply with the current SNM limits. With this amendment, Westinghouse will be able to utilize the entire volume of a strong-tight, twenty-foot sea/land van; thus, shipping, in one shipment, LLRW that currently takes ten shipments. Therefore, Westinghouse submitted this license amendment request for a specific exemption from the requirements of 10 CFR 71.55 and 71.59 for specified SNM shipments with greater than 400 grams U–235 per consignment.

On April 15, 2002, the Westinghouse facility in Hematite, MO (SNM–33), received a fissile material exemption for use in decommissioning the Hematite facility (NRC, 2002). This action requests the same exemption for the Columbia, SC facility (SNM–1107).

*1.5 Alternatives to the Proposed Action*

No Action (i.e., deny the request).

### 2.0 Affected Environment

The affected environment for the proposed action would be the immediate vicinity of the vehicle used to transport the material to a licensed disposal facility.

The affected environment for no action is the Westinghouse site. A full description of the site and its characteristics is given in the 1995 Environmental Assessment for the Renewal of the NRC license for Westinghouse (NRC, 1995). The Westinghouse facility is located on a site of about 1200 acres in Richland County, South Carolina, approximately 8 miles southeast of the city of Columbia.

### 3.0 Environmental Impacts of Proposed Action and Alternatives

*3.1 Occupational and Public Health*

Proposed Action

The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The principal radiological

environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR Part 20 requirement of 100 mrem for a member of the public. The proposed action would result in fewer shipments. Fewer shipments would expose fewer members of the public to radiation, reduce nonradiological truck emissions, and reduce the risk of injuries from traffic accidents. However, the reductions would be so small that the differences would be negligible.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The average annual occupational dose to the driver(s) is estimated to be 8.7 mSv (870 mrem), which is below the 10 CFR Part 20 requirement of 50 mSv (5000 mrem). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose rate may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied in a motor vehicle. The proposed action would not cause dose rates to the driver exceeding the DOT limit.

The NRC staff evaluated the possibility of a criticality accident due to transportation of this material. Based on the statements and representations in the application, the staff concluded that limiting the contents as described in the application will provide adequate assurance that an inadvertent criticality cannot occur if the materials are exempt from the fissile material classification and fissile material package standards of 10 CFR 71.55 and 71.59. A detailed discussion of this analysis can be found in the Safety Evaluation Report for this amendment.

Under the proposed action, the doses to the public and to the workers are not increased beyond those considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). Therefore, shipment of these materials as proposed would be consistent with the assessment of environmental impacts and the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

No Action

Denying this amendment request would not result in any significant difference in the risk to the public health from radiological materials. If this amendment request is denied, the licensee would be required to ship the contaminated waste more frequently in smaller containers. The larger number of shipments also is consistent with the assessment of environmental impacts and the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). As noted above, the level of nonradiological truck emissions and the risk of injuries from traffic accidents would be higher, but the differences would be negligible.

The occupational health impacts would not change significantly as a result of denial of this amendment request. Occupational doses at the facility may be slightly higher as a result of the larger number of packages that workers must prepare and handle; however, the facility will continue to implement NRC-approved, radiation safety procedures for handling radioactive materials. Thus, the dose to workers under the no action alternative will remain within acceptable regulatory limits.

*3.2 Effluent Releases, Environmental Monitoring, Water Resources, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources*

Proposed Action

The NRC staff has determined that the approval of the proposed amendment will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources under normal transport conditions.

No Action

The NRC staff has determined that denial of the proposed amendment will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the Westinghouse site.

*3.3 Conclusions*

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are not significant and, therefore, do not warrant denial of the license amendment request. The staff has determined that the proposed action, approval of the license amendment request as submitted, is the appropriate alternative for selection. Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**.

**4.0 Agencies and Persons Contacted**

The NRC provided the draft Environmental Assessment and FONSI to staff from the South Carolina Department of Health and Environmental Control (DHEC) on September 27, 2002. NRC staff provided the licensee's exemption request and NRC's Safety Evaluation Report supporting the exemption. During a conference call with DHEC staff on October 17, 2002, NRC staff confirmed that the proposed action would not affect the regulation in 10 CFR 70.42 requiring Westinghouse to verify that waste disposal facilities are authorized to receive their shipments. DHEC had no comments or concerns with the proposed action.

Because the proposed action is entirely within existing facilities and roadways, the NRC has concluded that there is no potential to affect endangered species or historic resources, and therefore consultation with the State Historic Preservation Society and the U.S. Fish and Wildlife Service was not necessary.

**5.0 References**

U.S. Nuclear Regulatory Commission (NRC), December 1977, ''Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes.''

U.S. Nuclear Regulatory Commission (NRC), July 1995, ''Environmental Assessment for Renewal of Special Nuclear Material License SNM–1107.''

U.S. Nuclear Regulatory Commission (NRC), April 2002, ''Westinghouse Electric Company, LLC, Hematite Amendment 41 to Authorize Exemption to Fissile Material Classification and Package Standards in Transport,'' ADAMS no. ML021060797.

**Final Finding of No Significant Impact**

The Commission has prepared the above Environmental Assessment related to the amendment of Special Nuclear Material License SNM–1107. 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/adams.html* (the Public Electronic Reading Room).

The NRC contact for this licensing action is Kevin M. Ramsey, who may be contacted at (301) 415–7887 or by e-mail at kmr@nrc.gov for more information about the licensing action.

Dated at Rockville, Maryland, this 29th day of November 2002.

For the Nuclear Regulatory Commission.

**Daniel M. Gillen,**

*Acting Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02–31001 Filed 12–6–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Notice; Correction

On November 12, 2002 (67 FR 68728), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses. On page 68745, in the first column, the heading that reads ''Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee'' should read ''Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.''

Dated at Rockville, Maryland, this 3rd day of December 2002.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–30998 Filed 12–6–02; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Fiscal Year 2003 Tortiously Liable Third Party Medical and Dental Rates (Department of Defense)

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notification of Department of Defense's Fiscal Year 2003 tortiously liable third party medical and dental rates.

**SUMMARY:** The Fiscal Year 2003 Department of Defense reimbursement rates are provided in accordance with Title 10, United States Code, section 1095. The medical and dental service rates in this package and at the Unformed Business Office Web site *(http://www.tricare.osd.mil/ebc/rm__home/ubo__documents__rates__tables.cmf)* are effective October 1, 2002.

The Medical Care Expense Recovery Act (Pub. L. 87–693) allows the Federal government to recover reasonable charges from third parties for the provision of services necessitated by a tort liability. Executive Order No. 11060 directs that the Director of the Office of Management and Budget set rates for the recovery of cost of medical care from tortiously liable third parties. These rates are used to charge third parties for the health care provided through the Defense Health System.

**Mitchell E. Daniels, Jr.,**

*Director.*

[FR Doc. 02–31024 Filed 12–6–02; 8:45 am]

**BILLING CODE 3110–01–M**

## OFFICE OF MANAGEMENT AND BUDGET

### Public Availability of Year 2002 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Public Availability of Agency Inventories of Activities That Are Not Inherently Governmental and of Activities That Are Inherently Governmental.

**SUMMARY:** Agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below, in accordance with the ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (''FAIR Act''). Agency inventories of activities that are inherently governmental are also now available to the public from the agencies listed below. This is the second release of the 2002 FAIR Act inventories. The Office of Federal Procurement Policy has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html*. The User's Guide should help interested parties review 2002 FAIR Act inventories, and gain access to agency inventories through agency web-site addresses.

The FAIR Act requires OMB to publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, the agency inventories are made available to the public. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list and, if not satisfied with this review, may also demand a higher agency review/appeal.

**Mitchell E. Daniels, Jr.,**

*Director.*

SECOND FAIR ACT RELEASE 2002

| Agency | Contact |
|---|---|
| Advisory Council on Historic Preservation | John Fowler, (202) 606–8503, www.achp.gov. |
| African Development Foundation | Tom Coogan, (202) 673–3946, www.adf.gov. |
| Appalachian Regional Commission | Guy Land, (202) 884–7674, www.arc.gov. |
| Broadcasting Board of Governors | Monica Smith, (202) 619–3988, www.bbg.gov. |
| Council on Environmental Quality | Dinah Bear, (202) 395–7421, www.whitehouse.gov/ceq. |
| Department of Education | Glenn Perry, (202) 708–8488, www.ed.gov/offices/OCFO. |
| Department of Housing and Urban Development (IG) | John Harr, (202) 708–0614, x8164, www.hud.gov/oig/oigindex.html. |
| Department of the Interior | Dorothy Sugiyama, (202) 208–3433, www.doi.gov. |
| Department of the Interior (IG) | Steve Suprun, (202) 208–6523, www.oig.doi.gov. |
| Environmental Protection Agency | Timothy McProuty, (202) 564–4996, www.epa.gov. |

SECOND FAIR ACT RELEASE 2002—Continued

| Agency | Contact |
|---|---|
| Environmental Protection Agency (IG) | Elissa Karpf, (202) 566–2604, www.epa.gov/oigearth. |
| Equal Employment Opportunity | James Israel, (202) 663–4250, www.eeoc.gov. |
| Federal Communications Commission | Michele Sutton, (202) 418–0100, www.fcc.gov. |
| Federal Communications Commission (IG) | Charles Willoughby, (202) 418–0472, www.fcc.gov/oig/oigreports.html. |
| Federal Emergency Management | Agency Margaret Chan, (202) 646–2931, www.fema.gov. |
| Federal Mediation and Conciliation Service | Karen Kline, (202) 606–5488, www.fmcs.gov. |
| Federal Mine Safety and Health Review Commission | Richard Baker, (202) 434–9900, www.fmshrc.gov. |
| Federal Trade Commission | Darleen Cossette, (202) 326–3255, www.ftc.gov. |
| Inter-American Foundation | Linda Borst-Kolko, (703) 306–4308, www.iaf.gov. |
| International Trade Commission | Judith Gwynn, (202) 205–2202, www.usitc.gov. |
| Japan-U.S. Friendship Commission | Eric Gangloff, (202) 418–9800, www.jusfc.gov/commissn/commissn.html. |
| Morris-Udall Foundation | Christopher Helms, (520) 670–5299, www.udall.gov. |
| National Archives and Records Administration | Lori Lisowski, (301) 837–1850, www.archives.gov. |
| National Archives and Records Administration (IG) | James Springs, (301) 837–3018, www.archives.gov/about_us/office_of_the_inspector_general/. |
| National Capital Planning Commission | Sandra Quick, (202) 482–7200, www.ncpc.gov. |
| National Gallery of Art | William Roache, (202) 842–6329, www.nga.gov. |
| National Endowment for the Arts | Larry Baden, (202) 682–5408, www.nea.gov. |
| National Labor Relations Board | Mike Erickson, (202) 273–0054, www.nlrb.gov. |
| National Labor Relations Board (IG) | Emil George, (202) 273–1960, www.nlrb.gov/ig/igindex.htm. |
| National Mediation Board | Grace Ann Leach, (202) 692–5010, www.nmb.gov. |
| National Science Foundation | Gary Scavongelli, (703) 292–8102, www.nsf.gov. |
| Occupational Safety and Health Review Commission | Ledia Bernal, (202) 606–5390, www.oshrc.gov. |
| Office of Management and Budget | Trish Haney, (202) 395–4754, www.whitehouse.gov/omb/. |
| Peace Corps | Christine Arnold, (202) 692–1100, www.peacecorps.gov. |
| Railroad Retirement Board | Steven Bartholow, (312) 751–4935, www.rrb.gov. |
| Railroad Retirement Board (IG) | William Tebbe, (312) 751–4350, www.rrb.gov/oig/Rrboig.html. |
| Small Business Administration | Robert Moffitt, (202) 205–6610, www.sba.gov. |
| U.S. Patent and Trademark Office | W. Dan Haigler, (703) 305–8161, www.uspto.gov. |
| U.S. Trade and Development Agency | Larry Bevan, (703) 875–4357, www.tda.gov. |
| U.S. Trade Representative | Susan Buck, (202) 395–9412, www.ustr.gov. |

[FR Doc. 02–31023 Filed 12–6–02; 8:45 am]
**BILLING CODE 3110–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46935; File No. SR–CBOE–2002–27]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of the 100 Spoke RAES Wheel Pilot Program and Elimination of the ''Vacation Penalty''

December 2, 2002.

### I. Introduction

On May 24, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 proposal to amend its rules to eliminate the pilot program and make permanent the 100 Spoke RAES Wheel System. The CBOE further proposed to modify the calculation of the participation distribution for market makers participating on the 100 Spoke RAES Wheel by eliminating the ''vacation penalty.'' On July 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 26, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On October 17, 2002, the Commission published the proposed rule change and Amendments No. 1 and 2 in the **Federal Register**.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

### II. Description of the Proposal

On May 25, 2000, the Commission approved, on a pilot basis, the Exchange's proposal to amend Rule 6.8 to provide the appropriate Floor Procedure Committee (''FPC'') with a third choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.[6] In those classes where the 100 Spoke RAES Wheel is employed, the allocation of RAES trades to participating market makers is commensurate with the distribution of in-person agency market-maker trades for non-RAES trades in that class. The pilot program has been extended five times, most recently until November 28, 2002.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2002 (''Amendment No. 1'').

[4] *See* Letter from Madge M. Hamilton, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002 (''Amendment No. 2'').

[5] See Securities Exchange Act Release No. 46683 (October 17, 2002), 67 FR 65384 (October 24, 2002).

[6] Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000). RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[7] Securities Exchange Act Release No. 46644 (October 10, 2002) (pilot program extended until November 28, 2002) (SR–CBOE–2002–60); Securities Exchange Act Release No. 46149 (June 28, 2002), 67 FR 45161 (July 8, 2002) (pilot program extended until September 28, 2002) (SR–CBOE–2002–34); Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (pilot program extended until June 28, 2002) (SR–CBOE–2001–68); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (pilot program extended until December 28, 2001) (SR–CBOE–2001–47); Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (pilot program extended until August 28, 2001) (SR–CBOE–01–07).

Under the 100 Spoke RAES Wheel, RAES orders are assigned to market makers according to the percentage of their in-person agency contracts (excluding RAES contracts) traded in that class compared to the in-person agency contracts (excluding RAES contracts) of all of the market makers traded during the review period. Agency contracts are any contracts represented by an agent (booked orders and orders represented by brokers) and do not include contracts traded between market makers in person in the trading crowd. A particular market maker's entitlement will change based upon the percentage of agency contracts that market-maker traded in the review period. For example, if a particular market maker traded 10% of all the in-person agency contracts (excluding RAES contracts) of class ABC for a particular review period, then that market maker would be assigned 10% of the RAES contracts during the next trading period. The review period is determined by the appropriate FPC.

The RAES Wheel can be envisioned as having a number of spokes, each generally representing one percent of the total participation of all market makers in the class. Thus, a market maker generally will be assigned one spoke for each one percent of his or her market maker participation during the review period. If the spoke size is one and all market makers who traded in-person agency contracts in that option class during the review period are logged onto RAES, and no other market makers are logged on, the RAES Wheel would consist of 100 spokes, representing 100 percent of all market maker activity during the review period. The appropriate FPC may establish a larger spoke size. Setting the spoke size to five contracts, for example, would redefine the RAES Wheel for a particular option class as a Wheel of 500 contracts. A larger Wheel would mean the Wheel would not revolve as quickly through the logged on market makers, but a larger Wheel would not change the participation percentage of the individual market makers.

A wedge is the maximum number of spokes that may be consecutively assigned at any one time to a market maker during a rotation of the RAES Wheel. The purpose of the wedge is to break up the distribution of contracts into smaller groupings to reduce the exposure of any one market maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market maker may be entitled based on his or her participation percentage, then that market maker would receive one or more additional assignments during one revolution of the RAES Wheel. For example, in the case where one spoke is equal to one contract and the market maker's participation percentage is 15 percent (15 percent of 100 spokes) and the wedge size is ten, that market maker first would be assigned ten contracts on the RAES Wheel and then five contracts at a different place on the RAES during the same revolution of the RAES Wheel. The wedge size is variable at the discretion of the appropriate FPC and may be established at different levels for different classes, or at the same level for all classes.

In its filing, the Exchange represented that the 100 Spoke RAES Wheel has worked as anticipated by providing an efficient and effective alternative allocation method for assigning RAES trades. The Exchange further represented that, in those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades is essentially identical to the distribution of in-person agency market maker trades on non-RAES trades in that class during the relevant review period.

The Exchange also clarified the calculation of the participation distribution for market makers participating on the 100 Spoke RAES Wheel.[8] Specifically, the applicable review period would be adjusted to account for vacations by market makers. CBOE indicated that without this revision, if a market maker takes even a single trading day off over the two-week review period, the market maker is allocated a number of spokes that is less than the market-maker's average daily percentage of the trading volume, resulting in a ''vacation penalty.'' Thus, rather than a maximum review period of two weeks, as provided in the current rule, the review period will be a maximum of 10 trading days, *i.e.*, last ten days in which the market maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). Under the proposed rule, the trading days within the review period may be non-consecutive trading days, and the percentage allocation will be calculated at the conclusion of each trading day and will be applied to the 100 Spoke RAES Wheel distribution on the following trading day.

Further, CBOE explained that, in calculating the review period, the 10 trading days used to compute one market maker's RAES participation distribution may be a different 10 trading days than another market maker signed onto RAES in the same trading crowd, and that the 10-day review periods of individual market makers may overlap.[9] In addition, CBOE clarified that the individual market makers have no discretion over which 10 trading days will be used in the calculation. The proposed rule change permits the appropriate FPC to set a review period not to exceed 10 trading days.[10] Once the appropriate FPC has set the number of days to be used in the calculation of the market maker's participation distribution, the Exchange looks back that number of trading days to calculate each market maker's participation right.

CBOE further noted that, under the proposed rule, the Exchange will conduct the calculation for the market maker participation distribution at the conclusion of each trading day and apply the market makers' RAES participation distribution to the following trading day. CBOE further explained that, since the calculation of the participation distribution is done at the end of each trading day, the 10 day review period for each market maker will be done on a rolling basis, *i.e.*, each time the calculation is conducted, the non-RAES agency trading volume for the current day, if any, is added to the 10 day review period, and the non-RAES agency trading volume for the oldest day used for the previous day's calculation is deleted. According to CBOE, this calculation encourages market makers to actively trade every day, since each day's trading activity will have an effect on the market maker's RAES participation distribution for the next trading day.[11] Finally,

[8] *See* Amendment No. 1, *supra* n. 3.

[9] *See* Amendment No. 2, *supra* n. 4. As noted above, the review period of a maximum of 10 trading days (*i.e.*, the last ten days in which the market maker had trading activity) cannot extend back more than 30 calendar days.

[10] The Exchange represents that under the proposed rule change, as amended, all market makers' review periods will be of equal size, regardless of whether the Exchange may look at different underlying time periods to ascertain the most recent days of trading activity for a specific market maker. Telephone conference among Madge Hamilton, Legal Division, CBOE, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission (November 26, 2002).

[11] Any market maker that logs on the system during a particular review period will be guaranteed to receive an entitlement during that review period of no less than 1 percent of RAES contracts, or one ''spoke.'' The minimum entitlement applies to any market maker in a particular option class who logs on RAES during a given review period. Thus, new market makers who have not yet had time to acquire market share on the trading floor will be allocated a single spoke if

Continued

CBOE noted the formula for determining market maker participation percentage on the 100 Spoke RAES Wheel. CBOE explained that in order to calculate a market maker's participation percentage, the ''non-RAES agency trading volume'' for a given market maker is divided by the ''total volume,'' *i.e.*, the sum of the volume of the non-RAES agency trades for all traders in a particular options class (which is determined by adding together the trading volume for each market maker and DPM during his or her relevant review period).

**III. Discussion**

After careful review, the Commission finds that implementation of the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act [12] and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes that the proposal, as amended, is consistent with Sections 6(b)(5) and 6(b)(8) of the Act.[14] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[15] Section 6(b)(5) also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

As the Commission stated in its original approval order for the 100 Spoke RAES Wheel as a pilot program, the Commission believes that CBOE's implementation of the 100 Spoke RAES Wheel system as a pilot program was an important step forward, as it rewarded those market makers who consistently execute a greater portion of agency orders in the trading crowd, rather than randomly assigning contracts to all market makers logged on RAES. Although the 100 Spoke RAES Wheel does not reward a market maker for improving the Exchange's displayed quotation, it does reward the market maker for providing liquidity to orders in the trading crowd by linking the market maker's percentage of RAES contracts to the percentage of agency contracts it executed in the trading crowd.

Unlike the two means of allocation that were used exclusively prior to the 100 Spoke RAES Wheel pilot program, under which the size of the order assigned to a particular market maker is determined randomly,[16] the 100 Spoke RAES Wheel more closely allocates the percentage of contracts that a particular market maker can receive on a single revolution of the Wheel to the percentage of in-person agency contacts (excluding RAES contracts) traded on CBOE by that market maker. With the 100 Spoke RAES Wheel, market makers have a greater incentive to compete effectively for orders in the crowd, and this, in turn, should benefit investors and promote the public interest.

The Commission reiterates that implementation of the 100 Spoke RAES Wheel will have no effect on the prices offered to customers. Under CBOE Rule 6.8(d)(i), RAES automatically provides to each retail customer order its execution price, generally determined by the prevailing market quote at the time of the order's entry into the system. The 100 Spoke RAES Wheel merely provides for a different contract allocation system than currently exists for automatic execution of small retail orders.

The proposed rule change also will eliminate the ''vacation penalty'' that resulted under the original rule when a market maker was absent for one or more days. Under the proposed rule change, as amended, the review period will be the period not in excess of 10 trading days, *i.e.*, last ten days in which the market maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). In addition, the Commission notes that under the proposal, all market maker's review periods will be of equal size, regardless of whether the Exchange may look at different underlying time periods to ascertain the most recent days of trading activity for a specific market maker. The Commission finds that these changes relating to the ''vacation penalty'' are consistent with the Act.

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended (SR–CBOE–2002–27) is approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

they log on RAES during the first review period they traded that class on the Exchange floor. Telephone conference among Madge Hamilton, Legal Division, CBOE, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission (November 26, 2002).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5) and (b)(8).

[15] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] Under Variable RAES, the market maker has some flexibility in limiting the extent of its exposure during each revolution of the Wheel.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46932; File No. SR–CHX–2002–34]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Trading of Nasdaq/NM Securities

November 29, 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 October 25, 2002, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The current pilot expired on November 1, 2002. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2003. The text of the proposed rule change is available at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal offices of the CHX and at the Commission. This proposed extension of the pilot does not alter the text of the pilot language, but simply extends the expiration date of the pilot through November 1, 2003.

**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 Exchange included statements concerning the purpose of, and the 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. CHX 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 has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amends Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules. The pilot program currently is due to expire on November 1, 2002; the Exchange proposes that the pilot remain in effect through November 1, 2003.

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[3] Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the ''MAX'' system).[4]

On January 3, 1997, the Commission approved, on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to SEC Rule 11Ac1–1 (the ''NBBO'').[5] When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[6] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis. On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[7] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[8] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[9] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[10] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[11] On May 1, 2000, the Commission approved the pilot for an additional six-month period, until November 1, 2000.[12] On November 15, 2000, the Commission approved the pilot for an additional one-year period, until November 1, 2001.[13] On November 1, 2001, the pilot was extended for an additional one-year period, until November 1, 2002.[14] In light of the evolving nature of the Nasdaq market and unlisted trading of Nasdaq/NM securities, the Exchange now requests another extension of the current pilot program, through November 1, 2003. The Exchange is not requesting approval of any changes to the pilot program in this submission.

Under the pilot program, specialists must continue to accept agency market orders[15] or marketable limit orders, but only for orders of 100 to 5099 shares in Nasdaq/NM securities. This threshold order acceptance requirement is referred to as the ''auto acceptance threshold.'' Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. Specialists are required to automatically execute Nasdaq/NM orders in accordance with certain amendments to the pilot program that were approved by the Commission.[16]

The pilot program requires the specialist to set the MAX auto-execution threshold at 100 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the size of the specialist's quote are

[3] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSER–87–2); *see also*, Securities Exchange Act Release Nos. 8146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expending the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[4] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Article XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[5] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[6] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

[7] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[8] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[9] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[10] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999) (the Commission notes that it requested additional data regarding the CHX's pilot in connection with this Release).

[11] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

[12] *See* Securities Exchange Act Release No. 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

[13] *See* Securities Exchange Act Release No. 43565 (November 15, 2000), 65 FR 71166 (November 29, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

[14] *See* Securities Exchange Act Release No. 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001).

[15] The term ''agency order'' means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Article XXX, Rule 2, Interpretation and Policy .04. The rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[16] *See* Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001) (SR–CHX–2001–11).

executed automatically (in an amount up to the size of the specialist's quote). Orders of a size greater than the specialist's quote are automatically executed up to the size of the specialist's quote, with the balance of the order designated as an open order in the specialist's book, to be filled in accordance with the Exchange's rules for manual execution of orders for Nasdaq/NM securities. Such rules dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO for 100 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.

Whether the specialist is quoting at the NBBO or not, ''oversized'' orders, *i.e.*, orders that are of a size greater than the auto acceptance threshold of 5099 shares (as designated by the specialist), are not subject to the foregoing requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] generally, and Section 6(b)(5) of the Act[18] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CHX 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6)[20] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The CHX has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[21] The Commission notes that waiver of the 5-day pre-filing requirement and acceleration of the operative date will prevent the Exchange's pilot program relating to the trading of Nasdaq/NM securities from lapsing.

The Commission notes that in approving prior extensions of this pilot program, it has found that the Exchange's program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] Specifically, the Commission has found that the proposed rule change is consistent with Section 6(b)(5)[23] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has also stated its belief that the proposal is consistent with Section 11A(a)(1)(C)[24] and 11A(a)(1)(D)[25] of the Act. The Commission has found that the proposal is consistent with Section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions, and with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[26] In connection with this effort, the Commission requests an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* Securities Exchange Act Release Nos. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000)(SR–CHX–99–27) and 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000)(SR–CHX–00–11).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C).

[25] 15 U.S.C. 78k–1(a)(1)(D).

[26] *See* January 1997 Order, *supra* note 7.

automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for one year so that the Exchange may continue to compile this data for the Commission's review.

The Commission also requests that the Exchange continue its effort to rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. Therefore, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–34 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46938; File No. SR–NASD–2002–149]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Make Permanent Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities, and To Increase the Percentage of Revenue Available for Distribution From 40% to 50%

December 3, 2002.

On October 18, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''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 to codify on a permanent basis Nasdaq's InterMarket Transaction Credit Pilot Program (''Program''), and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. The proposed rule change was published for notice and comment in the **Federal Register** on October 29, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Nasdaq proposes to make the Program permanent, and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. As set forth in its July 2, 2002 Order of Summary Abrogation (''Abrogation Order''),[4] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow Nasdaq to make its Program permanent, and increase the revenue available for distribution, because these changes to the Program leave Nasdaq on substantially similar footing as other self-regulatory organizations.[5]

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of Section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow Nasdaq to make permanent its Program, and to increase the percentage of revenue available for distribution, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[9], that the proposed rule change (SR–NASD–2002–149) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–30965 Filed 12–6–02; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46712 (October 23, 2002), 67 FR 66031.

[4] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR-NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[5] *See e.g.*, Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR–CSE–99–03).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46939; File No. SR–NASD–2002–127]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend Rule 11890 Concerning Clearly Erroneous Transactions

December 3, 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 September 24, 2002, the National Association of Securities Dealers, Inc., through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 Nasdaq. On November 1, 2002, Nasdaq filed Amendment No. 1 to its proposal with the Commission.[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

Nasdaq proposes to amend NASD Rule 11890 (Clearly Erroneous Transactions) to implement a number of clarifications and modifications to the text of the existing rule. Nasdaq will make the proposed rule change effective immediately upon Commission approval.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**11890. Clearly Erroneous Transactions**

(a) Authority to Review Transactions *Pursuant to Complaint of Market Participant*

(1) *Scope of Authority.* [For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.]

[(2)] Officers of [The] Nasdaq [Stock Market, Inc. (''Nasdaq'')] designated by [the] *its* President [of Nasdaq] shall, pursuant to the procedures set forth in paragraph [(b)] *(a)(2)* below, have the authority to review any transaction arising out of the use or operation of any [automated quotation,] execution[,] or communication system owned or operated by Nasdaq and approved by the Commission, *including transactions entered into by a member of a national securities exchange with unlisted trading privileges in Nasdaq-listed securities (a ''UTP Exchange'') through such a system; provided, however, that the parties to the transaction must be readily identifiable by Nasdaq through its systems* [excluding transactions arising from use of the Nasdaq Application of OptiMark]. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous[, or,]. [i]*If* the officer determines the transaction in dispute is clearly erroneous, *however,* he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, *as* [that] they would have been in had the error not occurred. [Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a written confirmation of the determination.] *For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.*

[(b) Procedures for Reviewing Transactions]

[(1)] *(2) Procedures for Reviewing Transactions*

*(A)* Any member*, member of a UTP Exchange,* or person associated with [a] *any such* member that seeks to have a transaction reviewed pursuant to paragraph (a)*(1)* hereof[,] shall submit a written complaint[, via facsimile or otherwise,] to Nasdaq Market Operations in accordance with the following time parameters:

[(A)] *(i)* for transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10 a.m., Eastern Time, complaints must be [submitted] *received by Nasdaq* by 10:30 a.m., Eastern Time; and

[(B)] *(ii)* for transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10:00 a.m., Eastern Time, complaints must be [submitted] *received by Nasdaq* within thirty minutes.

[(2)] *(B)* Once a complaint has been received in accord with subparagraph [(b)(1)] *(a)(2)(A)* above:

[(A)] *(i)* the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph [(a)(2)] *(a)(1)[*, via facsimile or otherwise];

[(B)] *(ii)* the counterparty to the trade shall be [verbally] notified of the complaint *via telephone* by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph [(a)(2)] *(a)(1)[*, via facsimile or otherwise]; and

[(C)] *(iii)* either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.

[(3)] *(C)* Notwithstanding *sub*paragraph [(b)(2)] *(a)(2)(B)* above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph [(a)(2)] *(a)(1)* above.

[(4)] *(D)* Each member, *member of a UTP Exchange, or person associated*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002 (''Amendment No. 1''), which replaced the original form 19b-4 in its entirety. In Amendment No. 1, Nasdaq, in part, reinstated the requirement that a Nasdaq officer must notify a market participant within 30 minutes of a disruption or malfunction in the Nasdaq market when Nasdaq acts on its own motion to modify or nullify a trade. Nasdaq also provided an example, in Amendment No. 1, of a situation where the number of transactions affected by a decision to break or modify trades on Nasdaq's own motion would be such that the decision would have to be accorded immediate finality in order to maintain a fair and orderly market, or to protect investors and the public interest. In addition, Amendment No. 1 clarified that market participants should submit materials to Nasdaq via facsimile for the purpose of seeking Nasdaq's review of a particular transaction, unless the market participant receives Nasdaq's permission to submit the materials via electronic mail.

*with any such member* [and/or person associated with a member] involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in *sub*paragraph [(b)(2)] *(a)(2)(B)* above.

[(5)] *(E)* Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph [(a)(2)] *(a)(1).*

[(c)] *(b)* Procedures for Reviewing Transactions [Executed During System Disruptions or Malfunctions] *on Nasdaq's Own Motion*

In the event of *(i)* a disruption or malfunction in the use or operation of any [automated] quotation, execution, [or] communication, *or trade reporting* system owned or operated by Nasdaq and approved by the Commission, *or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President[,* acting through an officer designated by the President of Nasdaq pursuant to paragraph (a)(2)], may, on [its] *his or her* own motion*, [*pursuant to the standards set forth in paragraph (a), declare] *review any* transaction[s] arising out of *or reported through* [the use or operation of such systems during the period of such disruption or malfunction] *any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction* null and void or modify the terms of [these] *any such* transaction[s] *if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest*; provided*, however*, that, in the absence of extraordinary circumstances, [a] *the* [Nasdaq] officer must take action pursuant to this [paragraph] *subsection* within thirty (30) minutes of detection of the [erroneous] transaction[(s)], but in no event later than [6]*3*:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. [When Nasdaq takes action pursuant to this subparagraph, the member firms involved in the transaction shall be notified as soon as is practicable and shall have a right to appeal such action in accordance with paragraph (d)(1) below.]

[(d)] *(c)* Review by the Market Operations Review Committee (''MORC'')

(1) A member*, member of a UTP Exchange*, or person associated with [a] *any such* member may appeal a determination made under [paragraphs] *subsection* (a)[(2) or (c)] to the MORC*. A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under subsection (b) to the MORC unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.* [provided such] *An* appeal *must be* [is] made in writing[, via facsimile or otherwise], *and must be received by Nasdaq* within thirty (30) minutes after the [member or person associated with a member receives verbal] *person making the appeal is given* notification of [such] *the* determination *being appealed,* except that if Nasdaq notifies the parties of action taken pursuant to paragraph [(c)] *(b)* after 4:00 p.m., [either party has until] *the appeal must be received by Nasdaq by* 9:30 a.m. the next trading day [to appeal]. Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information[, via facsimile or otherwise,] up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination [made pursuant to paragraph (a)(2) or (c) above] *being appealed*. Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee. Upon consideration of the record, and after such hearings as it may in its discretion order, the Committee, pursuant to the standards set forth in [paragraph (a)] *this section*, shall affirm, modify, reverse, or remand the determination [made under paragraph (a)(2) or (c) above].

(2) The decision of the Committee *pursuant to an appeal, or a determination by a Nasdaq officer that is not appealed,* shall be final and binding upon *all* [any member or person associated with a member] *parties* and shall constitute final Association action on the matter in issue. Any [adverse] determination by a Nasdaq officer pursuant to paragraph (a)[(2)] or [(c)] *(b)* or any [adverse] decision by the Committee pursuant to paragraph [(d)] *(c)*(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

*(d) Communications*

*(1) All materials submitted to Nasdaq or the MORC pursuant to this Rule shall be submitted via facsimile machine and within the time parameters specified herein; provided, however, that if requested, Nasdaq staff may authorize submission of material via electronic mail on a case-by-case basis. Materials shall be deemed received at the time indicated by the equipment (i.e., facsimile machine or computer) receiving the materials. Nasdaq, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein.*

*(2) Nasdaq shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to subsection (b), Nasdaq may instead provide notice to parties via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.*

**IM–11890. Refusal to Abide by Rulings of a Nasdaq Officer or the MORC**

*It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq officer or the MORC under Rule 11890.*

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to amend NASD Rule 11890, which provides Nasdaq with authority to nullify or modify transactions. The proposed rule change is designed to achieve three primary goals: first, to clarify the conditions under which Nasdaq will consider petitions by market participants to review transactions; second, to clarify Nasdaq's authority to nullify or modify transactions on its own motion; and third, to clarify procedural aspects of the process of reviewing transactions. Unless otherwise noted below, the proposed rule change is not designed to modify the current scope of the rule, but is rather intended to rewrite the rule using more precise language that more clearly describes the current application of the rule.

*a. Review of Transactions Pursuant to Complaint of Market Participant*

Since 1990, Nasdaq has had the authority to receive petitions from market participants requesting that designated officers of Nasdaq review the terms of a transaction and nullify or modify it if the transaction is found to be clearly erroneous. Under subsections (a) and (b) of current NASD Rule 11890, a market participant may seek review by submitting a written complaint to Nasdaq Market Operations within specified time parameters—by 10:30 a.m. for transactions occurring within the first half hour of the regular trading day, and within thirty minutes of the time of the transaction for all other transactions. Following timely receipt of a complaint, the complainant and the counterparty to the disputed trade are given an opportunity to submit supporting information in writing and the matter is then adjudicated by a Nasdaq officer.

Currently, subsection (a) of NASD Rule 11890 states that it applies to ''any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission.'' Nasdaq believes that this language could be construed to cover not only transactions executed through Nasdaq systems, such as SuperMontage, SuperSOES, and SelectNet, but also transactions whose only nexus with Nasdaq systems is the posting of quotations on Nasdaq's quotation montage. For example, a transaction executed entirely through an electronic communications network (an ''ECN'') or an exchange trading Nasdaq securities pursuant to unlisted trading privileges (a ''UTP exchange''), or a trade that is crossed internally by a market maker, may arise out of a quotation posted on the Nasdaq quotation montage.

Nasdaq, however, has not generally adjudicated trades unless they have actually been executed through a Nasdaq system. Nasdaq asserts several reasons for delineating the scope of its authority in this fashion. First, broker-dealers and exchanges through which trades are executed are likely to have their own procedures for reviewing and breaking trades. Second, because Nasdaq may not be able to identify the counterparty to a transaction executed through a non-Nasdaq system without obtaining this information from the entity through which the transaction was executed, it may not be possible to provide a prompt adjudication. As a result of these considerations, Nasdaq has received few ''clearly erroneous'' petitions concerning transactions that are not executed through Nasdaq systems and has generally declined to adjudicate the petitions that it has received, on the grounds that the transaction can more appropriately be reviewed by the market center through which it was executed. Accordingly, Nasdaq believes that NASD Rule 11890(a) should be amended to explicitly limit its purview to transactions arising out of the use or operation of Nasdaq execution or communication systems [4] and to explicitly require that the parties to a reviewable transaction be readily identifiable by Nasdaq through its systems.

Other proposed changes to NASD Rule 11890(a) governing review of complaints by market participants include the following:

- Consolidating subsections (a) and (b) of the rule into a new subsection (a).
- Clarifying that the rule covers transactions entered into by a member of a UTP exchange through a Nasdaq execution system. Thus, the rule would cover transactions executed between a Nasdaq member and a member of UTP exchange that had agreed to accept automatic executions through SuperSOES or SuperMontage, but would not cover transactions where the UTP exchange merely posted a quote and was accessible only via telephone.
- Clarifying that information submitted by parties to Nasdaq must be received by Nasdaq within the time frames specified by the rule.
- Eliminating redundant references to communications via facsimile and making other miscellaneous changes designed to improve the wording of the rule.

*b. Review of Transactions on Nasdaq's Own Motion*

Since 1998, Nasdaq has had the authority to nullify or modify transactions on its own motion. Nasdaq represents that it has used its authority in circumstances where Nasdaq believed that market integrity was threatened by aberrant market activity and a large number of trades had to be broken to protect investors. Nasdaq believes, however, that the language of NASD Rule 11890 should be amended to provide greater clarity as to its scope.

Specifically, Nasdaq proposes to amend subsection (b) of NASD Rule 11890 to state that Nasdaq's authority may be exercised in the event of extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Because NASD Rule 11890 is designed to allow Nasdaq to respond to aberrational market conditions, Nasdaq believes that its scope must be broad and flexible in light of the difficulty of defining *ex ante* all situations in which application of the rule might be necessary. However, Nasdaq expects that the amended rule, like the current rule, would be used primarily in circumstances where the disruption or malfunction of a system resulted in the execution of trades with obvious errors, such as a price substantially unrelated to the inside market.[5]

[4] At present, the systems covered by the rule would be SuperSOES, SOES, SelectNet, SuperMontage, Primex, Liquidity Tracker, and CAES. The Over-the-Counter Bulletin Board would not be covered, because it is only a quotation system, but the proposed Bulletin Board Exchange (''BBX'') would be covered, because it will allow executions. It should also be noted that Nasdaq is not proposing to delete the phrase ''approved by the Commission'' from Rule 11890, but that Nasdaq construes the rule language to include systems and aspects of systems that are exempted from formal approval under section 19(b)(2) of the Act by section 19(b)(3)(A) of the Act or SEC Rules 19b–4(f) or 19b–5.

[5] Nasdaq notes that, in the event of an emergency or extraordinary market conditions, Article VII, section 3 of the NASD By-Laws grants the NASD Board of Governors or persons designated by the NASD Board the authority to take any action regarding, among other things, trading in the over-

Proposed subsection (b) of NASD Rule 11890 also clarifies that this portion of the rule may be applied to any transaction arising out of or reported through a Nasdaq quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP exchange through a Nasdaq execution system (but excluding transactions entered into through, or reported to, a UTP exchange). In contrast to proposed subsection (a) of the rule, which focuses on errors made by the parties to a specific trade, the focus of proposed subsection (b) is on errors that may affect numerous trades. Nasdaq believes that the scope of the rule must be broad to ensure that, to the greatest extent possible, similarly situated trades may be given similar treatment. Thus, in a situation where the malfunction of a Nasdaq system or a member's system results in numerous market participants entering into trades on the basis of erroneous price information, the proposed rule change would expressly authorize Nasdaq to break or modify not only trades executed through its systems, but also trades executed through the systems of members that are reported to Nasdaq. In recognition of the authority of other self-regulatory organizations, Nasdaq does not assert authority to break or modify trades entered into through, or reported to, a UTP exchange. As it does under the current rule, however, Nasdaq would endeavor to coordinate its actions with other market centers in an attempt to achieve consistent treatment of trades outside of Nasdaq's jurisdiction.

Other proposed changes to NASD Rule 11890(b) governing Nasdaq's authority to review transactions on its own motion include the following:

• Providing that the authority conferred by the rule may be exercised only by Nasdaq's President or an Executive Vice President designated by the President. Currently, Nasdaq's authority to review trades on its own motion may be exercised by any officer designated by Nasdaq's President. Because this authority may affect a broad range of market participants, Nasdaq believes that it should be exercised only by senior management.

• Providing that Nasdaq may act to nullify or modify a trade if it is clearly erroneous or if action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. This change will serve to clarify the scope of Nasdaq's authority in situations where quotations for a security have been affected by a system malfunction or erroneous market information. In such circumstances, the prices of trades might not be deemed ''clearly erroneous'' when measured against the national best bid and offer, but it might nevertheless be necessary, for the protection of investors, to nullify or modify transactions executed during the time frame when questionable quotations were posted.

• Amending the time frame for action under the current rule to require that the Nasdaq officer, on Nasdaq's own motion, act, except in extraordinary circumstances, no later than 3:00 p.m. on the next trading day.

Finally, Nasdaq is adding interpretative material after the rule to provide that it shall be considered conduct inconsistent with just and equitable principles of trade for a member to refuse to take action that is necessary to effectuate a final decision of a Nasdaq officer or the Market Operations Review Committee (''MORC''). When Nasdaq acts to nullify or modify a trade that has been executed through Nasdaq's systems, Nasdaq can effectuate the decision through those systems. However, in circumstances where Nasdaq takes action with respect to a trade executed through a non-Nasdaq system, the members that are parties to the transaction and/or that operate the execution system must effectuate Nasdaq's decision. Accordingly, Nasdaq believes that it is important that members be required to abide by decisions made under the rule.

*c. Review by the Market Operations Review Committee*

Current NASD Rule 11890(d) (which Nasdaq is redesignating as NASD Rule 11890(c)) governs review by the MORC, a standing committee composed of representatives of member firms as well as ''non-industry'' representatives. Persons seeking to appeal a determination by Nasdaq must submit their appeal within the time parameters specified by the rule. Both parties are then given the opportunity to submit supporting arguments in writing, and the matter is submitted to the MORC for a determination. Nasdaq believes that most of the changes to proposed subsection (c) are non-substantive clarifications of rule language. However, Nasdaq is also proposing that an officer empowered to review transactions on Nasdaq's own motion (*i.e.*, the President or an Executive Vice President) may determine that the number of transactions affected by a decision to break or modify trades on Nasdaq's own motion is such that the decision must be accorded immediate finality in order to maintain a fair and orderly market and to protect investors and the public interest. Although Nasdaq expects that it would use this authority only on rare occasions, Nasdaq believes that there will be circumstances in which review by the MORC of a large number of trades would be impractical and could expose market participants to unacceptable levels of risk.[6] In such cases, Nasdaq believes that the market will be best served by finality. Other changes to the provision include clarifying that determinations of Nasdaq officers that are not appealed are final and binding and constitute final action by the NASD on the matter.

*d. Communications between Nasdaq and Market Participants*

Nasdaq is proposing to add a new subsection (d) to NASD Rule 11890 to describe in greater detail the parameters for communications between Nasdaq and market participants. Specifically, proposed subsection (d) provides that:

• Materials submitted to Nasdaq or the MORC must be submitted via facsimile machine and must be received within the time parameters specified by the rule. However, if requested, Nasdaq staff may authorize submission of materials via electronic mail on a case-by-case basis.[7] Materials shall be deemed received at the time indicated by a facsimile machine or computer that receives the materials. Nasdaq reserves the right to reject or accept material that is not received within the time parameters specified by the rule.

Nasdaq will provide notice of determinations under the rule via facsimile machine, electronic mail, or

the-counter securities market, the operation of Nasdaq systems and the trading of securities therein, and the operation of member firms' offices and systems. Thus, even in the absence of NASD Rule 11890, Nasdaq believes that there would be authority to break trades when the existence of extraordinary market conditions makes such actions necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace. Nasdaq believes, however, that NASD Rule 11890's specific focus on the nullification or modification of trades, as well as the defined procedural mechanisms contained in the rule, provide a more tailored approach for addressing most situations in which aberrant transactions might occur.

[6] For example, Nasdaq believes that if an erroneously priced order or quote causes a large number of transactions to occur at prices far in excess of a security's true value and if a decision is made to break all of the affected trades, some sellers may appeal the decision to break the trades. If a market participant is a party to trades on both sides of the market, and some remain broken while others are appealed and reinstated, it will suffer losses that arise solely from the inconsistent treatment of its trades.

[7] For example, if a party wishes to submit, pursuant to subparagraph (a)(2)(A) of the amended rule, a large document containing supporting information, it may be preferable to submit the document via electronic mail. Electronic mail may be used only when specifically authorized by Nasdaq staff, however, because it is impossible to control the delivery time of electronic mail.

telephone (including voicemail). However, in cases where an officer nullifies or modifies a large number of transactions pursuant to Nasdaq's authority to act on its own motion, individual notice may not be practicable. In that case, Nasdaq may provide notice to market participants via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general and with section 15A(b)(6) of the Act,[9] in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest. Nasdaq believes that the proposed rule change will promote the fair and efficient resolution of disputes involving clearly erroneous transactions and will clarify Nasdaq's authority to review transactions on its own motion. Accordingly, Nasdaq believes that the proposed rule change will lessen the impact of erroneous transactions on the public by allowing Nasdaq to correct erroneous transactions quickly and by defining more clearly the scope of Nasdaq's authority.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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 that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–127 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–31019 Filed 12–6–02; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46940; File No. SR–NASD–2002–89]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Listing Standards Pertaining to American Depositary Receipts, Preferred and Secondary Classes of Stock, Bid Price Compliance and Monitoring Periods, Categories of Securities Eligible for Initial Inclusion on Nasdaq, and the Market Capitalization Compliance Period

December 3, 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 January 7, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 Nasdaq. On November 1, 2002, NASD filed Amendment No. 1 to the proposed rule change.[3] On December 2, 2002, NASD filed Amendment No. 2 to the proposed rule change.[4] 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**

Nasdaq is proposing to modify Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, categories of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period. Below is the text of the proposed rule change. Proposed new language is in *italic;* proposed deletions are in [brackets].

* * * * * *

**4310. Qualification Requirements for Domestic and Canadian Securities**

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(3) No change.

(4) For initial inclusion, [common or preferred stock] *common stock, preferred stock and secondary classes of common stock* shall have a minimum bid price of $4 per share. For continued inclusion, the minimum bid price shall be $1 per share.

(5) No change

(6)*(A)* In the case of common stock, there shall be at least 300 round lot holders of the security. [An account of a member that is beneficially owned by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002.

[4] *See* letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2002.

a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by a member.]

*(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security is traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.*

*(C) An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by a member.*

(7)*(A)* In the case of common stock, there shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. For initial inclusion such shares shall have a market value of at least $5 million. For continued inclusion such shares shall have a market value of at least $1 million. [Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.]

*(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least $2 million for initial inclusion and 100,000 publicly held shares having a market value of $500,000 for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.*

*(C) Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.*

(8)(A)–(D) No change

*(E) Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least $1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).*

(9)–(29) No change

(d) No change

**4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts**

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the [following] criteria *set out in this subsection* for inclusion in Nasdaq.[:] *In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.*

(1)–(2)(D) No change.

[(E) In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.]

(3) No change.

(4)*(A)* [In the case of foreign shares, t]*T*here shall be at least 300 round lot holders of the security. [An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.]

*(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security is traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.*

*(C) An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.*

(5) [In the case of foreign shares, t]*T*here shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. *In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares for initial inclusion and 100,000 publicly held shares for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be included in Nasdaq so long as the security satisfies the listing criteria for common stock.* Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered publicly held.

(6) In the case of rights, warrants and ADR[']s for initial inclusion only, at least 100,000 shall be issued. *Issuers of ADRs must also meet the round lot holders and publicly held shares requirements set forth in subsections (4) and (5) above.*

(7)–(25) No change.

(f) No change

* * * * *

**4420. Quantitative Designation Criteria**

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), $(i)_2$, [or] (j) *or (k)* below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a) Entry Standard 1—*First Class of Common Stock, Shares or Certificates of*

*Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(7) No change

(b) Entry Standard 2—*First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(7) No change

(c) Entry Standard 3—*First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(6) No change

(d)–(j) No change

*(k) Quantitative Designation Criteria—Preferred Stock and Secondary Classes of Common Stock*

*For initial inclusion, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or a national securities exchange, the issue shall have:*

*(1) At least 200,000 publicly held shares;*

*(2) A market value of publicly held shares of at least $4,000,000;*

*(3) A minimum bid price per share of $5;*

*(4) A minimum of 100 round lot shareholders;*

*(5) At least three registered and active market makers.*

*Alternatively, in the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.*

* * * * *

**4450. Quantitative Maintenance Criteria**

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), [and] (f), *(g) (h) or (i)* below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) Maintenance Standard 1—*First Class of* Common Stock, [Preferred Stock,] Shares or Certificates of Beneficial Interest of Trusts, [and] Limited Partnership Interests in Foreign or Domestic Issues *and American Depositary Receipts*

(1)–(6) No change

(b) Maintenance Standard 2—*First Class of* Common Stock, [Preferred Stock,] Shares or Certificates of Beneficial Interest of Trusts, [and] Limited Partnership Interests in Foreign or Domestic Issues *and American Depositary Receipts*

(1)–(6) No change

(c)–(d) No change

(e) Compliance Periods

(1) No change

(2) *For issuers subject to the $1 bid price requirement under Maintenance Standard 1 or the $3 bid price requirement under Maintenance Standard 2, a* [A] failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period. *Nasdaq may, in its discretion, require an issuer under Maintenance Standard 1 to maintain a bid price of at least $1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).* [If the issuer has not been deemed in compliance prior to the expiration of the 90 day compliance period, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). Upon such transfer, a domestic or Canadian Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series. The 90-day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Non-Canadian foreign issuers that transfer to The Nasdaq SmallCap Market are not subject to the $1 minimum bid price requirement pursuant to Rule 4320. Any issuer (including a non-Canadian foreign issuer) that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the $1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. Such an issuer is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.]

(3) No change

*(4) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.*

(f)–(g) No change

*(h) Quantitative Maintenance Criteria—Preferred Stock and Secondary Classes of Common Stock*

*For continued inclusion, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or a national securities exchange, the issue shall have:*

*(1) At least 100,000 publicly held shares;*

*(2) A market value of publicly held shares of at least $1,000,000;*

*(3) A minimum bid price per share of $1;*

*(4) A minimum of 100 round lot shareholders;*

*(5) At least two registered and active market makers.*

*Alternatively, in the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.*

*(i) Transfers between The Nasdaq National and SmallCap Markets For Bid Price Deficient Issuers*

*(1) If a National Market issuer has not been deemed in compliance prior to the expiration of the 90 day compliance period for bid price, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.*

*(2) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), a domestic or Canadian Nasdaq National Market issuer under Maintenance Standard 1 will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The 90 day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Any issuer that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the $1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.*

*(3) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), an issuer formerly qualifying for listing on The Nasdaq National Market under Maintenance Standard 2 or a non-Canadian foreign issuer, which is not subject to the $1 bid price requirement, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the applicable bid price requirement for continued listing on The Nasdaq National Market for a minimum of 30 consecutive business days within 360 days following the notification of the initial bid price deficiency, and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.*

* * * * *

## 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

The purpose of the proposed rule change is to amend Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, types of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period.

*a. Standards for Preferred Stock and Secondary Classes of Common Stock*

Nasdaq proposes to establish listing standards pertaining to round lot shareholders, publicly held shares and market value of publicly held shares for preferred stock and secondary classes of common stock. Currently, Nasdaq listing standards do not distinguish between common stock and preferred stock or secondary classes of common stock for purposes of these requirements. Nasdaq believes that it is appropriate to establish separate liquidity standards for preferred and secondary classes of common stock as these securities are generally not as widely held nor as liquid as primary classes of common stock.[5]

The new National Market listing standards would require 100 round lot shareholders; 200,000 publicly held shares; and $4,000,000 in market value of publicly held shares for initial inclusion, and 100 round lot shareholders; 100,000 publicly held shares; and $1,000,000 in market value of publicly held shares for continued inclusion. The round lot shareholders and publicly held shares listing requirements would be the same for the SmallCap Market; however, the market value of publicly held shares requirement would be $2,000,000 and $500,000 for initial and continued inclusion, respectively.

Preferred stock or secondary classes of common stock would be included under the proposed new standards only if the issuer's common stock or common stock equivalent is traded on either Nasdaq or a national securities exchange. In situations where an issuer's common stock or common stock equivalent is not traded on either Nasdaq or a national securities exchange, the preferred stock or secondary class of common stock would need to meet the initial inclusion listing standards pertaining to common stock.

*b. Transfer of Maintenance Standard 2 Issuers to the National Market*

Nasdaq Rule 4450(e)(2) currently allows a National Market issuer that has transferred to the SmallCap Market to transfer back to the National Market pursuant to the National Market maintenance criteria provided it meets certain conditions, including compliance with the $1.00 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods set forth in Rule 4310(c)(8)(D). In effect, current Rule 4450(e)(2) only applies to National Market issuers that qualify for continued listing under Maintenance Standard 1. In contrast, National Market issuers that qualify for continued listing

[5] The New York Stock Exchange (''NYSE'') and the American Stock Exchange (''AMEX'') also have separate listing standards for preferred stock. *See* NYSE Listed Company Manual, Section 703.05; Amex Listing Standards, Policies and Requirements, Section 103.

under Maintenance Standard 2[6] must maintain a minimum bid price of at least $3.00. Thus, while a Maintenance Standard 2 issuer with a bid price between $1.00 and $2.99 would be eligible to transfer to the SmallCap Market, it would not be eligible for the compliance period set forth in Rule 4310(c)(8)(D), and, by implication, would not be eligible to transfer back to the National Market without satisfying the initial inclusion criteria.

In order to eliminate the disparate treatment between Maintenance Standard 1[7] and Maintenance Standard 2 issuers, Nasdaq proposes to provide Maintenance Standard 2 issuers the same compliance period and ability to transfer back to the National Market based on the Standard 2 maintenance criteria (including the $3 minimum bid price) as is currently provided for Maintenance Standard 1 issuers.

*c. Clarification of the Bid Price Monitoring Period*

The majority of companies listed on Nasdaq are required to maintain a $1.00 minimum bid price for continued inclusion although, as noted above, National Market companies listed under Maintenance Standard 2 are required to maintain a bid price of at least $3.00. In accordance with Rules 4310(c)(8)(D) and 4450(e)(2), once an issuer's bid price falls below the applicable standard for 30 consecutive business days, the issuer is automatically afforded a grace period in which to regain compliance. These rules further provide that compliance with the bid price requirement can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the compliance period. The rules currently do not differentiate between companies that must maintain a bid price of at least $1.00 and those that must maintain a $3.00 minimum bid price.

Nasdaq proposes to amend the bid price rule for Maintenance Standard 2 issuers to clearly indicate that the monitoring period will be limited to ten business days. This proposal is based upon Nasdaq's belief that trading in the securities of Maintenance Standard 2 companies is less subject to market manipulation than the trading in the securities of Maintenance Standard 1 issuers. Therefore, Nasdaq believes that a ten-day monitoring period for Maintenance Standard 2 issuers is sufficient to determine the compliance status of these issuers.

Nasdaq further proposes to amend its bid price rules to set forth the following factors that will be considered when determining whether to monitor the bid price beyond 10 business days for those issuers that must maintain a minimum $1.00 bid price: (i) The margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down). Generally, Nasdaq will not monitor an issuer's bid price for more than 20 consecutive business days.[8]

*d. Clarification of the Securities that are Eligible for Initial Inclusion on the National Market*

The requirements for continued listing on the National Market, as set forth in Rules 4450(a) and (b), list the specific types of securities that are eligible for continued inclusion, specifically, common stock, preferred stock, shares or certificates of beneficial interest of trusts and limited partnership interests in foreign or domestic issues. The requirements for initial inclusion on the National Market, as set forth in Marketplace Rules 4420(a), (b) and (c), however, do not cite the specific types of securities subject to the rule. Accordingly, Nasdaq proposes to amend Rules 4420(a), (b) and (c) in order to specify that these rules apply to the same securities as those cited in Rules 4450(a) and (b). To provide greater transparency, Nasdaq also proposes to amend the initial and continued inclusion requirements to indicate that American Depositary Receipts are also eligible for inclusion on the National Market.

*e. Market Capitalization Compliance Standard for the National Market*

To provide greater transparency, Nasdaq proposes to amend Rule 4450(e), which sets forth the compliance periods for National Market issuers, to include a compliance period for the market capitalization listing standard. The text of the proposed rule is identical to the standard currently set forth in Rule 4310(c)(8)(C).

*f. American Depositary Receipts*

Nasdaq proposes to clarify that ADRs must meet the publicly held shares and round lot holders requirements set forth in Rules 4320(e)(4) and (5). As currently drafted, the rules are unclear as to whether ADRs must only meet the distribution requirement set forth in Rule 4320(e)(6) or whether they must also meet the publicly held shares and round lot holders requirements in Rules 4320(e)(4) and (5). In order to avoid any potential confusion, Nasdaq proposes to clarify the requirements with respect to ADRs.

*g. Implementation*

Nasdaq recognizes the potential impact of the proposed listing standards relating to preferred stock and secondary classes of common stock. Therefore, Nasdaq proposes to provide those issuers that have preferred stock or secondary classes of common stock listed on Nasdaq at the time the rule filing is approved by the Commission eighteen months to come into compliance with these new listing standards. All other changes proposed in the rule filing would become effective at the time of Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which require, 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. Specifically, the proposed rule changes are designed to provide greater transparency and consistency to Nasdaq's listing standards.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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

[6] Rule 4450(b).

[7] Rule 4450(a).

[8] Nasdaq will monitor an issuer's bid price beyond 20 business days only in unusual circumstances. For example, Nasdaq may monitor an issuer's bid price beyond 20 days if the issuer maintains a minimum bid price of $1.00 for ten consecutive business days and then there is no trading in the issuer's securities for the following ten consecutive business days.

[9] 15 U.S.C. 78o–3(b)(6).

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–89 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–31020 Filed 12–6–02; 8:45 am]

**BILLING CODE 8010–01–P**

[10] 17 CFR 200.30–3(a)(12)

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before February 7, 2003.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to James O'Connor, Director, Office of Entrepreneurial Development, Small Business Administration, 409 3rd Street, SW., Suite 6200, Washington DC 20416.

**FOR FURTHER INFORMATION CONTACT:** James O'Connor, Director, (202) 205–6929 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Entrepreneurial Development Management Information System (EDMIS).

*Form Nos:* 641, 641a.

*Description of Respondents:* SBA Resource Partners.

*Annual Responses:* 1,200,000.

*Annual Burden:* 60,000.

*Title:* Business Information Center Customer Satisfaction Survey.

*Form No:* 1916.

*Description of Respondents:* New established and prospective Small Business Owners Using the services and programs offered by the Business Information Center Program.

*Annual Responses:* 22,500.

*Annual Burden:* 1,867.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Pitts, Program Analyst, (202) 205–7570 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disaster Home Loan Application.

*Form Nos:* 5C, 739.

*Description of Respondents:* Applicant's Requesting SBA Disaster Home Loan.

*Annual Responses:* 53,975.

*Annual Burden:* 80,963.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Pam Swilling, Program Review Analyst, Office of Surety Guarantees, Small Business Administration, 409 3rd Street, SW., Suite 8600, Washington DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Pam Swilling, Program Review Analyst, (202) 205–6546 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Surety Bond Guarantee Assistance.

*Form Nos:* 990, 991, 994, 994B, 994C, 994F and 994H.

*Description of Respondents:* Small Business Contractors Applying for the Surety Bond Guarantee Program.

*Annual Responses:* 195.930.

*Annual Burden:* 53,375.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Roberts, Director, Office of Security Operations, Small Business Administration, 409 3rd Street, SW., Suite 5600, Washington DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Linda Roberts, Director, (202) 205–6223 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Personal History.

*Form No:* 912.

*Description of Respondents:* Applicant's for Assistance or Temporary Employment in Disaster.

*Annual Responses:* 55,000.

*Annual Burden:* 13,750.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Bready, Business Development Specialist, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, SW., Suite 4600, Washington DC 20416

**FOR FURTHER INFORMATION CONTACT:** Joan Bready, Business Development Specialist, (202) 205–7384 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* SBDC Program and Financial Reports.

*Form Nos:* SF–269, SF–270.

*Description of Respondents:* SBDC Directors.

*Annual Responses:* 114.

*Annual Burden:* 7,524.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02–31046 Filed 12–6–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3452]**

### State of Louisiana; Amendment #4

In accordance with a notice received from the Federal Emergency Management Agency, dated November 29, 2002, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 14, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is July 3, 2003.

Dated: December 2, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–30985 Filed 12–6–02; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 4205]**

### Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Kurdistan Workers' Party (PKK)

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby amend the November 2, 2001 designation of the Kurdistan Workers' Party (PKK and other aliases) to add the following names as aliases of the PKK:

**Kurdistan Freedom and Democracy Congress**

**Freedom and Democracy Congress of Kurdistan**

**KADEK**

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: December 3, 2002.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 02–31026 Filed 12–6–02; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending November 29, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2002–13976.

*Date Filed:* November 29, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC23/TC123 Africa-TC3, Africa-Japan/Korea and Africa-South East Asia, Mail Vote 249—Africa-Japan/Korea, Mail Vote 250—Africa-South East Asia, PTC23 AFR–TC3 0182 dated 21 October 2002, Africa-Japan/Korea Resolutions r1–r23, PTC23 AFR–TC3 0188 dated 15 November 2002 (Affirmative), PTC23 AFR–TC3 0183 dated 21 October 2002, Africa-South East Asia Resolutions r24–r37, PTC23 AFR–TC3 0190 dated 19 November 2002 (Affirmative), PTC23 AFR–TC3 0180 dated 18 October 2002, Africa-South Asian Subcontinent Resolutions r38–r50, PTC23 AFR–TC3 0181 dated 18 October 2002, Africa-South West Pacific r51–r64, PTC23 AFR–TC3 0189 dated 19 November 2002 Technical Correction, Minutes—PTC23 AFR–TC3 0186 dated 5 November 2002, Tables—PTC23 AFR–TC3 Fares 0081 dated 15 November 2002, PTC23 AFR–TC3 Fares 0082 dated 22 November 2002, PTC23 AFR–TC3 Fares 0078 dated 18 October 2002, PTC23 AFR–TC3 Fares 0079 dated 18 October 2002, *Intended effective date:* 1 April 2003.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 02–31045 Filed 12–6–02; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 29, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2002–13937.

*Date Filed:* November 25, 2002.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 16, 2002.

*Description:* Application of Cool Tours, Inc. d/b/a San Juan Aviation, pursuant to 49 U.S.C. Section 41738 and Subpart B, requesting authority to conduct scheduled passenger operations as a commuter air carrier.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 02–31044 Filed 12–6–02; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Sanders and Flathead Counties, MT

**AGENCY:** Federal Highway Administration (FHWA); Department of Transportation.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway improvement project on the Thompson River Road (Forest Highway 56), which is a county road near Thompson Falls, Montana.

**FOR FURTHER INFORMATION CONTACT:** Joel Petersen, Project Manager or Terri Thomas, Environmental Specialist, Federal Highway Administration, 610

Fifth Street, Vancouver, Washington 98661. Telephone: (360) 619–7700 E-mail: *Terri, Thomas@fhwa.dot.gov.*

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the U.S. Forest Service (FS) and the Montana Department of Transportation (MDT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve the Thompson River Road on the Lolo National Forest from the junction with Montana State Road (SR) 200, four miles east of the town of Thompson Falls, to the junction with US Highway 2, approximately 40 miles west of Kalispell, MT. The project would provide safe, convenient, and efficient travel to and through national forest lands for current and future users. Besides improving access to national forest resources and recreational opportunities and to the Thompson River corridor within private timber lands, the improved road would correct current water quality problems caused by existing gravel roads. The project includes upgrading approximately 43 miles of road and eliminating many miles of nearby private and public gravel roads within the corridor.

Alternatives for improving travel on this road corridor are being developed. Besides the ''no build'' alternative, two or more build alternatives are being considered. These are more concepts than specifics, but they consist of:

1. Minor widening, straightening, and rehabilitation of the existing Thompson River Road to achieve a consistent, but minimal two-lane gravel road. Bridges would be widened or replaced to accommodate double lanes. Moderate sediment reduction to the nearby river would be achieved, but some maintenance and instability issues would remain.

2. The road would be widened, straightened, reconstructed and paved to meet national ''collector'' road standards. Major segments of the road would be realigned to follow the already improved private roads in the area. Miles of existing gravel road would be obliterated and substantial water quality improvements would be realized.

3. Other combinations of upgrading segments of the Thompson River Road and connecting them to improved portions of nearby private roads will be considered.

The Thompson River Road corridor passes through important forested areas that are habitat to various wildlife and fish species including Federally listed threatened and endangered species such as the gray wolf, grizzly bear, Canada lynx and Bull Trout. In addition, the area is of cultural importance for Native Americans. Special studies will be conducted to ensure any impacts to these resources are kept to a minimum.

Announcements describing the proposed action and soliciting comments will be sent to the appropriate Federal, state and local agencies. Announcements will also be sent to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings will be held in the spring of 2003 in the communities of Thompson Falls and Libby, Montana. Public notices will be issued to provide the times and places of these meetings.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. Therefore, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: Issued on: November 4, 2002.

**Ronald Carmichael,**

*Division Engineer, Western Federal Lands Highway Division, Vancouver, Washington.*

[FR Doc. 02–30978 Filed 12–6–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–3512]**

## Reports, Forms, and Recordkeeping Requirements

**ACTION:** Request for public comment on proposed collections of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before February 7, 2003.

**ADDRESSES:** Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to the Docket Section, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Mr. Glenn Karr, NHTSA, 400 Seventh Street, SW., Room 6124, Washington, DC 20590. Mr. Karr's telephone number is (202) 366–4800. Please identify the relevant collection of information by referring to its OMB Clearance Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

**National Driver Register Reporting and Inquiry Requirement for 23 CFR Part 1327**

*Type of Request*—Extension of Clearance.

*OMB Clearance Number*—2127–0001.

*Form Number*—This collection of information uses no standard form.

*Summary of the Collection of Information*—Chapter 303 of Title 49, U.S.C. requires the Secretary of Transportation to establish and maintain a National Driver Register to assist chief driver licensing officials of participating states in exchanging information about the motor vehicle driving records of individuals. The chapter requires the chief driver licensing official of each participating state to submit a report to the Secretary of each individual who is denied a motor vehicle operator's license by that State for cause; whose motor vehicle operator's license is revoked, suspended, or cancelled by that State for cause; or who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses: (a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (b) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways; (c) failing to give aid or provide identification when involved in an accident resulting in death or personal injury; (d) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle. It also requires the chief driver licensing official of each participating state to submit an inquiry to the NDR on all applicants for a motor vehicle operator's license, or for renewal of a license, before issuing a motor vehicle operator's license to the applicant. In addition, the Commercial Motor Vehicle Safety Act of 1986 requires the states to submit an inquiry to the NDR for each applicant for commercial driver's license. Respondents may submit the transactions interactively, which creates no burden for the respondent, or in batches which require some manual preparations.

*Description of the need for the information and proposed use of the information*—The purpose of the NDR, and thus this information collection activity, is to improve traffic safety by serving as a clearinghouse for State driver licensing officials to obtain driver record information about individuals applying for driver's licenses. It assists the driver licensing officials in making the decision about whether to license an individual to operate a motor vehicle. Through amendments to the NDR statute, the activity also serves to prevent the certification of airline pilots, merchant mariners, and locomotive operators, and individuals from being employed as motor vehicle operators and pilots, if they are problem drivers.

The information will be used by NHTSA in exercising its statutory authority to operate the NDR. Without this information, states could issue licenses to individuals who are suspended or revoked in other states.

*Description of Likely Respondents (including estimated number and proposed frequency of response to the collection of information)*—The respondents are the 51 State driver licensing agencies, including the District of Columbia. Typically, information systems personnel process the reports and inquiries that are submitted to the NDR. The frequency of response for reports varies from daily to monthly. The frequency of response for inquiries is daily.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information*—The agency estimates the annual reporting burden for this year will be 1979 hours at a cost of $29,225 for the 51 jurisdictions. The cost estimate is based on typical information systems employees' salaries and related expenses.

**Authority:** 49 U.S.C. 30304; delegation of authority at 49 CFR 1.50

Dated: November 19, 2002.

**Raymond P. Owings,**

*Associate Administrator for Advanced Research and Analysis.*

[FR Doc. 02–31043 Filed 12–6–02; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–33 (Sub–No. 197X)]**

### Union Pacific Railroad Company—Abandonment Exemption—in Santa Clara County, CA

On November 19, 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of the San Jose Industrial Lead from milepost 19.60 near Valbrick to milepost 22.45 near Cahill, a distance of 2.85 miles in Santa Clara County, CA. The line traverses U.S. Postal Service Zip Codes 95110, 95112, and 95125, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 7, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 30, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 197X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the petition are due on or before December 30, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings

normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*''

Decided: December 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–30906 Filed 12–6–02; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund; Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund), a bureau of the Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit (NMTC) Program—Allocation Application.

**DATES:** Written comments should be received on or before February 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all comments to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–8911.

**FOR FURTHER INFORMATION CONTACT:** The NMTC Allocation Application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–7373.

**SUPPLEMENTARY INFORMATION:**

*Title:* New Markets Tax Credit Program—Allocation Application.

*OMB Number:* 1559–0016.

*Abstract:* Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the Fund, administers the NMTC Program, which will provide an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations.

*Current Actions:* Currently reviewing allocation applications.

*Type of review:* Extension.

*Affected Public:* Business or other for-profit institutions, not-for-profit institutions and State, local and Tribal entities.

*Estimated Number of Respondents:* 350.

*Estimated Annual Time Per Respondent:* 100 hours.

*Estimated Total Annual Burden Hours:* 35,000 hours.

*Requests for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

**Authority:** Consolidated Appropriations Act of 2001, Pub. L. 106–554; 31 U.S.C. 321.

Dated: November 25, 2002.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 02–30994 Filed 12–6–02; 8:45 am]

**BILLING CODE 4810–70–P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund; Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund), a bureau of the Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application.

**DATES:** Written comments should be received on or before February 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all comments to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–8911.

**FOR FURTHER INFORMATION CONTACT:** The CDE Certification Application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–7373.

**SUPPLEMENTARY INFORMATION:**

*Title:* New Markets Tax Credit Program—Community Development Entity (CDE) Certification Application.

*OMB Number:* 1559–0014.

*Abstract:* Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the

Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the Fund, administers the NMTC Program, which will provide an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities.

In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity (CDE) and submit an allocation application to the CDFI Fund. Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Both for-profit and non-profit entities may apply to the Fund for an allocation of NMTCs, but only CDEs that are for-profit entities are eligible to issue qualified equity investments with respect to which investors will be entitled to claim NMTCs. In order to be certified as a CDE, an entity must be a domestic corporation or partnership, that: (1) Has a primary mission of serving or providing investment capital for low-income communities or low-income persons; and (2) maintains accountability to residents of low-income communities through their representation or any governing board of the entity or on any advisory board to the entity.

*Current Actions:* Currently receiving and processing CDE Certification Applications.

*Type of review:* Extension.

*Affected Public:* Business or other for-profit institutions, not-for-profit institutions and State, local and Tribal entities.

*Estimated Number of Respondents:* 500.

*Estimated Annual Time Per Respondent:* 5 hours.

*Estimated Total Annual Burden Hours:* 2,500 hours.

*Requests for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

**Authority:** Consolidated Appropriations Act of 2001, Pub. L. 106–554; 31 U.S.C. 321.

Dated: November 25, 2002.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 02–30995 Filed 12–6–02; 8:45 am]

BILLING CODE 4810–70–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8023

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

**DATES:** Written comments should be received on or before February 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet *(Allan.M.Hopkins@irs.gov),* Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

*OMB Number:* 1545–1428.

*Form Number:* 8023.

*Abstract:* Form 8023 is used by a corporation that acquires the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. This election allows the acquiring corporation to depreciate these assets and claim a deduction on its income tax return. IRS uses form 8023 to determine if the election is properly made and as a check against the acquiring corporation's deduction for depreciation. The form is also used to determine if the selling corporation reports the amount of sale in its income.

*Current Actions:* There are no changes being made to form 8023 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 201.

*Estimated Time Per Respondent:* 12 hr., 44 min.

*Estimated Total Annual Burden Hours:* 2,559.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 27, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–31054 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Tuesday, January 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227, or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, January 28, 2003, from 1 p.m. e.s.t. to 3 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the website: www.improveirs.org. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 22, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31052 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Tuesday, January 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, January 7, 2003, from 3 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 4, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31051 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

**DATES:** The meeting will be held Wednesday, March 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227, or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, March 19, 2003, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31047 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

**DATES:** The meeting will be held Wednesday, February 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227, or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, February 19, 2003, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31048 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

**DATES:** The meeting will be held Wednesday, January 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227, or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, January 15, 2003, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31049 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

**DATES:** The meeting will be held Friday, January 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, January 10, 2003, from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 4, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31050 Filed 12–6–02; 8:45 am]

**BILLING CODE 4830–01–P**

# Corrections

**Federal Register**

Vol. 67, No. 236

Monday, December 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141 and 142

**[FRL–7413–9]**

**RIN 2040–AD06**

### National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule

*Correction*

In rule document 02–30117 beginning on page 70850 in the issue of Wednesday, November 27, 2002, make the following correction:

**Appendix A to Subpart O of Part 141 [Corrected]**

On page 70857, in the table, in the first column, in the second entry, in the second line, ''andipate'' should read, ''adipate.''

[FR Doc. C2–30117 Filed 12–6–02; 8:45 am]

BILLING CODE 1505–01–D

# Reader Aids

**Federal Register**

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT DECEMBER 9, 2002

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Livestock and poultry disease control:

Low pathogenic avian influenza; indemnification; published 11-4-02

**ENVIRONMENTAL PROTECTION AGENCY**

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

Alabama; published 11-19-02

Tennessee; published 11-19-02

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**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

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**INTERNATIONAL TRADE COMMISSION**

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**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

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Mediterranean fruit fly; cold treatment of fruits; comments due by 12-16-02; published 10-15-02 [FR 02-26063]

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**Economic Analysis Bureau**

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BE-605, etc.; transactions of U.S. affiliate, except U.S. banking affiliate, with foreign parent, and transactions of U.S. affiliate with foreign parent; comments due by 12-16-02; published 10-16-02 [FR 02-26220]

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**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Energy-efficient standby power devices; comments due by 12-16-02; published 10-16-02 [FR 02-26243]

**EDUCATION DEPARTMENT**

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**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution; standards of performance for new stationary sources:

Electric arc furnaces and argon-oxygen decarburization vessels; comments due by 12-16-02; published 10-16-02 [FR 02-26303]

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California; comments due by 12-20-02; published 11-20-02 [FR 02-29477]

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

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California tiger salamander (Sonoma County distinct

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

**H.R. 727/P.L. 107–319**
To amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act. (Dec. 4, 2002; 116 Stat. 2776)

**H.R. 2595/P.L. 107–320**
To direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia. (Dec. 4, 2002; 116 Stat. 2778)

**H.R. 5469/P.L. 107–321**
Small Webcaster Settlement Act of 2002 (Dec. 4, 2002; 116 Stat. 2780)

**S. 1010/P.L. 107–322**
To extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina. (Dec. 4, 2002; 116 Stat. 2786)

**S. 1226/P.L. 107–323**
POW/MIA Memorial Flag Act of 2002 (Dec. 4, 2002; 116 Stat. 2787)

**S. 1907/P.L. 107–324**
To direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon. (Dec. 4, 2002; 116 Stat. 2789)

**S. 1946/P.L. 107–325**
Old Spanish Trail Recognition Act of 2002 (Dec. 4, 2002; 116 Stat. 2790)

**S. 2239/P.L. 107–326**
FHA Downpayment Simplification Act of 2002 (Dec. 4, 2002; 116 Stat. 2792)

**S. 2712/P.L. 107–327**
Afghanistan Freedom Support Act of 2002 (Dec. 4, 2002; 116 Stat. 2797)

**S.J. Res. 53/P.L. 107–328**
Relative to the convening of the first session of the One Hundred Eighth Congress. (Dec. 4, 2002; 116 Stat. 2814)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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| **3** (1997 Compilation and Parts 100 and 101) | (869–048–00002–0) | 59.00 | [1] Jan. 1, 2002 |
| **4** | (869–048–00003–8) | 9.00 | [4] Jan. 1, 2002 |
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| 200–499 | (869–048–00027–5) | 44.00 | Jan. 1, 2002 |
| 500–End | (869–048–00028–3) | 58.00 | Jan. 1, 2002 |
| **11** | (869–048–00029–1) | 34.00 | Jan. 1, 2002 |
| **12 Parts:** | | | |
| 1–199 | (869–048–00030–5) | 30.00 | Jan. 1, 2002 |
| 200–219 | (869–048–00031–3) | 36.00 | Jan. 1, 2002 |
| 220–299 | (869–048–00032–1) | 58.00 | Jan. 1, 2002 |
| 300–499 | (869–048–00033–0) | 45.00 | Jan. 1, 2002 |
| 500–599 | (869–048–00034–8) | 42.00 | Jan. 1, 2002 |
| 600–End | (869–048–00035–6) | 61.00 | Jan. 1, 2002 |
| **13** | (869–048–00036–4) | 47.00 | Jan. 1, 2002 |
| **14 Parts:** | | | |
| 1–59 | (869–048–00037–2) | 60.00 | Jan. 1, 2002 |
| 60–139 | (869–048–00038–1) | 58.00 | Jan. 1, 2002 |
| 140–199 | (869–048–00039–9) | 29.00 | Jan. 1, 2002 |
| 200–1199 | (869–048–00040–2) | 47.00 | Jan. 1, 2002 |
| 1200–End | (869–048–00041–1) | 41.00 | Jan. 1, 2002 |
| **15 Parts:** | | | |
| 0–299 | (869–048–00042–9) | 37.00 | Jan. 1, 2002 |
| 300–799 | (869–048–00043–7) | 58.00 | Jan. 1, 2002 |
| 800–End | (869–048–00044–5) | 40.00 | Jan. 1, 2002 |
| **16 Parts:** | | | |
| 0–999 | (869–048–00045–3) | 47.00 | Jan. 1, 2002 |
| 1000–End | (869–048–00046–1) | 57.00 | Jan. 1, 2002 |
| **17 Parts:** | | | |
| 1–199 | (869–048–00048–8) | 47.00 | Apr. 1, 2002 |
| 200–239 | (869–048–00049–6) | 55.00 | Apr. 1, 2002 |
| 240–End | (869–048–00050–0) | 59.00 | Apr. 1, 2002 |
| **18 Parts:** | | | |
| 1–399 | (869–048–00051–8) | 59.00 | Apr. 1, 2002 |
| 400–End | (869–048–00052–6) | 24.00 | Apr. 1, 2002 |
| **19 Parts:** | | | |
| 1–140 | (869–048–00053–4) | 57.00 | Apr. 1, 2002 |
| 141–199 | (869–048–00054–2) | 56.00 | Apr. 1, 2002 |
| 200–End | (869–048–00055–1) | 29.00 | Apr. 1, 2002 |
| **20 Parts:** | | | |
| 1–399 | (869–048–00056–9) | 47.00 | Apr. 1, 2002 |
| 400–499 | (869–048–00057–7) | 60.00 | Apr. 1, 2002 |
| 500–End | (869–048–00058–5) | 60.00 | Apr. 1, 2002 |
| **21 Parts:** | | | |
| 1–99 | (869–048–00059–3) | 39.00 | Apr. 1, 2002 |
| 100–169 | (869–048–00060–7) | 46.00 | Apr. 1, 2002 |
| 170–199 | (869–048–00061–5) | 47.00 | Apr. 1, 2002 |
| 200–299 | (869–048–00062–3) | 16.00 | Apr. 1, 2002 |
| 300–499 | (869–048–00063–1) | 29.00 | Apr. 1, 2002 |
| 500–599 | (869–048–00064–0) | 46.00 | Apr. 1, 2002 |
| 600–799 | (869–048–00065–8) | 16.00 | Apr. 1, 2002 |
| 800–1299 | (869–048–00066–6) | 56.00 | Apr. 1, 2002 |
| 1300–End | (869–048–00067–4) | 22.00 | Apr. 1, 2002 |
| **22 Parts:** | | | |
| 1–299 | (869–048–00068–2) | 59.00 | Apr. 1, 2002 |
| 300–End | (869–048–00069–1) | 43.00 | Apr. 1, 2002 |
| **23** | (869–048–00070–4) | 40.00 | Apr. 1, 2002 |
| **24 Parts:** | | | |
| 0–199 | (869–048–00071–2) | 57.00 | Apr. 1, 2002 |
| 200–499 | (869–048–00072–1) | 47.00 | Apr. 1, 2002 |
| 500–699 | (869–048–00073–9) | 29.00 | Apr. 1, 2002 |
| 700–1699 | (869–048–00074–7) | 58.00 | Apr. 1, 2002 |
| 1700–End | (869–048–00075–5) | 29.00 | Apr. 1, 2002 |
| **25** | (869–048–00076–3) | 68.00 | Apr. 1, 2002 |
| **26 Parts:** | | | |
| §§ 1.0-1–1.60 | (869–048–00077–1) | 45.00 | Apr. 1, 2002 |
| §§ 1.61–1.169 | (869–048–00078–0) | 58.00 | Apr. 1, 2002 |
| §§ 1.170–1.300 | (869–048–00079–8) | 55.00 | Apr. 1, 2002 |
| §§ 1.301–1.400 | (869–048–00080–1) | 44.00 | Apr. 1, 2002 |
| §§ 1.401–1.440 | (869–048–00081–0) | 60.00 | Apr. 1, 2002 |
| §§ 1.441-1.500 | (869-048-00082-8) | 47.00 | Apr. 1, 2002 |
| §§ 1.501–1.640 | (869–048–00083–6) | 44.00 | [6] Apr. 1, 2002 |
| §§ 1.641–1.850 | (869–048–00084–4) | 57.00 | Apr. 1, 2002 |
| §§ 1.851–1.907 | (869–048–00085–2) | 57.00 | Apr. 1, 2002 |
| §§ 1.908–1.1000 | (869–048–00086–1) | 56.00 | Apr. 1, 2002 |
| §§ 1.1001–1.1400 | (869–048–00087–9) | 58.00 | Apr. 1, 2002 |
| §§ 1.1401–End | (869–048–00088–7) | 61.00 | Apr. 1, 2002 |
| 2–29 | (869–048–00089–5) | 57.00 | Apr. 1, 2002 |
| 30–39 | (869–048–00090–9) | 39.00 | Apr. 1, 2002 |
| 40–49 | (869–048–00091–7) | 26.00 | Apr. 1, 2002 |
| 50–299 | (869–048–00092–5) | 38.00 | Apr. 1, 2002 |
| 300–499 | (869–048–00093–3) | 57.00 | Apr. 1, 2002 |
| 500–599 | (869–048–00094–1) | 12.00 | [5] Apr. 1, 2002 |
| 600–End | (869–048–00095–0) | 16.00 | Apr. 1, 2002 |
| **27 Parts:** | | | |
| 1–199 | (869–048–00096–8) | 61.00 | Apr. 1, 2002 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 200–End | (869–048–00097–6) | 13.00 | Apr. 1, 2002 |
| **28 Parts:** | | | |
| 0-42 | (869–048–00098–4) | 58.00 | July 1, 2002 |
| 43-end | (869-048-00099-2) | 55.00 | July 1, 2002 |
| **29 Parts:** | | | |
| 0–99 | (869–048–00100–0) | 45.00 | [8]July 1, 2002 |
| 100–499 | (869–048–00101–8) | 21.00 | July 1, 2002 |
| 500–899 | (869–048–00102–6) | 58.00 | July 1, 2002 |
| 900–1899 | (869–048–00103–4) | 35.00 | July 1, 2002 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–048–00104–2) | 58.00 | July 1, 2002 |
| 1910 (§§ 1910.1000 to end) | (869–048–00105–1) | 42.00 | [8]July 1, 2002 |
| 1911–1925 | (869–048–00106–9) | 29.00 | July 1, 2002 |
| 1926 | (869–048–00107–7) | 47.00 | July 1, 2002 |
| 1927–End | (869–048–00108–5) | 59.00 | July 1, 2002 |
| **30 Parts:** | | | |
| 1–199 | (869–048–00109–3) | 56.00 | July 1, 2002 |
| 200–699 | (869–048–00110–7) | 47.00 | July 1, 2002 |
| 700–End | (869–048–00111–5) | 56.00 | July 1, 2002 |
| **31 Parts:** | | | |
| 0–199 | (869–048–00112–3) | 35.00 | July 1, 2002 |
| 200–End | (869–048–00113–1) | 60.00 | July 1, 2002 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2]July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2]July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2]July 1, 1984 |
| 1–190 | (869–048–00114–0) | 56.00 | July 1, 2002 |
| 191–399 | (869–048–00115–8) | 60.00 | July 1, 2002 |
| 400–629 | (869–048–00116–6) | 47.00 | July 1, 2002 |
| 630–699 | (869–048–00117–4) | 37.00 | July 1, 2002 |
| 700–799 | (869–048–00118–2) | 44.00 | July 1, 2002 |
| 800–End | (869–048–00119–1) | 46.00 | July 1, 2002 |
| **33 Parts:** | | | |
| 1–124 | (869–048–00120–4) | 47.00 | July 1, 2002 |
| 125–199 | (869–048–00121–2) | 60.00 | July 1, 2002 |
| 200–End | (869–048–00122–1) | 47.00 | July 1, 2002 |
| **34 Parts:** | | | |
| 1–299 | (869–048–00123–9) | 45.00 | July 1, 2002 |
| 300–399 | (869–048–00124–7) | 43.00 | July 1, 2002 |
| 400–End | (869–048–00125–5) | 59.00 | July 1, 2002 |
| **35** | (869–048–00126–3) | 10.00 | [7]July 1, 2002 |
| **36 Parts** | | | |
| 1–199 | (869–048–00127–1) | 36.00 | July 1, 2002 |
| 200–299 | (869–048–00128–0) | 35.00 | July 1, 2002 |
| 300–End | (869–048–00129–8) | 58.00 | July 1, 2002 |
| **37** | (869–048–00130–1) | 47.00 | July 1, 2002 |
| **38 Parts:** | | | |
| 0–17 | (869–048–00131–0) | 57.00 | July 1, 2002 |
| 18–End | (869–048–00132–8) | 58.00 | July 1, 2002 |
| **39** | (869–048–00133–6) | 40.00 | July 1, 2002 |
| **40 Parts:** | | | |
| 1–49 | (869–048–00134–4) | 57.00 | July 1, 2002 |
| 50–51 | (869–048–00135–2) | 40.00 | July 1, 2002 |
| 52 (52.01–52.1018) | (869–048–00136–1) | 55.00 | July 1, 2002 |
| 52 (52.1019–End) | (869–048–00137–9) | 58.00 | July 1, 2002 |
| 53–59 | (869–048–00138–7) | 29.00 | July 1, 2002 |
| 60 (60.1–End) | (869–048–00139–5) | 56.00 | July 1, 2002 |
| 60 (Apps) | (869–048–00140–9) | 51.00 | [8]July 1, 2002 |
| 61–62 | (869–048–00141–7) | 38.00 | July 1, 2002 |
| 63 (63.1–63.599) | (869–048–00142–5) | 56.00 | July 1, 2002 |
| 63 (63.600–63.1199) | (869–048–00143–3) | 46.00 | July 1, 2002 |
| 63 (63.1200-End) | (869–048–00144–1) | 61.00 | July 1, 2002 |
| 64–71 | (869–048–00145–0) | 29.00 | July 1, 2002 |
| 72–80 | (869–048–00146–8) | 59.00 | July 1, 2002 |
| 81–85 | (869–048–00147–6) | 47.00 | July 1, 2002 |
| 86 (86.1–86.599–99) | (869–048–00148–4) | 52.00 | [8]July 1, 2002 |
| 86 (86.600–1–End) | (869–048–00149–2) | 47.00 | July 1, 2002 |
| 87–99 | (869–048–00150–6) | 57.00 | July 1, 2002 |
| 100–135 | (869–048–00151–4) | 42.00 | July 1, 2002 |
| 136–149 | (869–048–00152–2) | 58.00 | July 1, 2002 |
| 150–189 | (869–048–00153–1) | 47.00 | July 1, 2002 |
| 190–259 | (869–048–00154–9) | 37.00 | July 1, 2002 |
| 260–265 | (869–048–00155–7) | 47.00 | July 1, 2002 |
| 266–299 | (869–048–00156–5) | 47.00 | July 1, 2002 |
| 300–399 | (869–048–00157–3) | 43.00 | July 1, 2002 |
| 400–424 | (869–048–00158–1) | 54.00 | July 1, 2002 |
| 425–699 | (869–048–00159–0) | 59.00 | July 1, 2002 |
| 700–789 | (869–048–00160–3) | 58.00 | July 1, 2002 |
| 790–End | (869–048–00161–1) | 45.00 | July 1, 2002 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3]July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3]July 1, 1984 |
| 3–6 | | 14.00 | [3]July 1, 1984 |
| 7 | | 6.00 | [3]July 1, 1984 |
| 8 | | 4.50 | [3]July 1, 1984 |
| 9 | | 13.00 | [3]July 1, 1984 |
| 10–17 | | 9.50 | [3]July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3]July 1, 1984 |
| 19–100 | | 13.00 | [3]July 1, 1984 |
| 1–100 | (869–048–00162–0) | 23.00 | July 1, 2002 |
| 101 | (869–048–00163–8) | 43.00 | July 1, 2002 |
| 102–200 | (869–048–00164–6) | 41.00 | July 1, 2002 |
| 201–End | (869–048–00165–4) | 24.00 | July 1, 2002 |
| **42 Parts:** | | | |
| 1–399 | (869–044–00166–7) | 51.00 | Oct. 1, 2001 |
| 400–429 | (869–044–00167–5) | 59.00 | Oct. 1, 2001 |
| 430–End | (869–048–00168–9) | 61.00 | Oct. 1, 2002 |
| **43 Parts:** | | | |
| 1–999 | (869–044–00169–1) | 45.00 | Oct. 1, 2001 |
| 1000–end | (869–044–00170–5) | 56.00 | Oct. 1, 2001 |
| **44** | (869–044–00171–3) | 45.00 | Oct. 1, 2001 |
| **45 Parts:** | | | |
| 1–199 | (869–048–00172–7) | 57.00 | Oct. 1, 2002 |
| 200–499 | (869–044–00173–0) | 31.00 | Oct. 1, 2001 |
| 500–1199 | (869–044–00174–8) | 45.00 | Oct. 1, 2001 |
| 1200–End | (869–044–00175–6) | 55.00 | Oct. 1, 2001 |
| **46 Parts:** | | | |
| 1–40 | (869–048–00176–0) | 44.00 | Oct. 1, 2002 |
| 41–69 | (869–048–00177–8) | 37.00 | Oct. 1, 2002 |
| 70–89 | (869–044–00178–1) | 13.00 | Oct. 1, 2001 |
| 90–139 | (869–044–00179–9) | 41.00 | Oct. 1, 2001 |
| 140–155 | (869–044–00180–2) | 24.00 | Oct. 1, 2001 |
| 156–165 | (869–044–00181–1) | 31.00 | Oct. 1, 2001 |
| 166–199 | (869–044–00182–9) | 42.00 | Oct. 1, 2001 |
| 200–499 | (869–044–00183–7) | 36.00 | Oct. 1, 2001 |
| 500–End | (869–048–00184–1) | 24.00 | Oct. 1, 2002 |
| **47 Parts:** | | | |
| 0–19 | (869–044–00185–3) | 55.00 | Oct. 1, 2001 |
| 20–39 | (869–044–00186–1) | 43.00 | Oct. 1, 2001 |
| 40–69 | (869–044–00187–0) | 36.00 | Oct. 1, 2001 |
| 70–79 | (869–044–00188–8) | 58.00 | Oct. 1, 2001 |
| 80–End | (869–044–00189–6) | 55.00 | Oct. 1, 2001 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–044–00190–0) | 60.00 | Oct. 1, 2001 |
| 1 (Parts 52–99) | (869–044–00191–8) | 45.00 | Oct. 1, 2001 |
| 2 (Parts 201–299) | (869–044–00192–6) | 53.00 | Oct. 1, 2001 |
| 3–6 | (869–044–00193–4) | 31.00 | Oct. 1, 2001 |
| 7–14 | (869–044–00194–2) | 51.00 | Oct. 1, 2001 |
| 15–28 | (869–044–00195–1) | 53.00 | Oct. 1, 2001 |
| 29–End | (869–044–00196–9) | 38.00 | Oct. 1, 2001 |
| **49 Parts:** | | | |
| 1–99 | (869–044–00197–7) | 55.00 | Oct. 1, 2001 |
| 100–185 | (869–044–00198–5) | 60.00 | Oct. 1, 2001 |
| 186–199 | (869–044–00199–3) | 18.00 | Oct. 1, 2001 |
| 200–399 | (869–044–00200–1) | 60.00 | Oct. 1, 2001 |
| 400–999 | (869–044–00201–9) | 58.00 | Oct. 1, 2001 |
| 1000–1199 | (869–044–00202–7) | 26.00 | Oct. 1, 2001 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 1200–End | (869–044–00203–5) | 21.00 | Oct. 1, 2001 |
| **50 Parts:** | | | |
| 1–199 | (869–044–00204–3) | 63.00 | Oct. 1, 2001 |
| 200–599 | (869–044–00205–1) | 36.00 | Oct. 1, 2001 |
| 600–End | (869–044–00206–0) | 55.00 | Oct. 1, 2001 |
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| Complete set (one-time mailing) | | 290.00 | 2000 |
| Complete set (one-time mailing) | | 247.00 | 1999 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.