AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# Federal Register

11–24–03 Monday
Vol. 68 No. 226 Nov. 24, 2003

Pages 65829–66000

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg.*

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 68 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

| | |
|---|---|
| **PUBLIC** | |
| **Subscriptions:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |
| **Single copies/back copies:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |
| **FEDERAL AGENCIES** | |
| **Subscriptions:** | |
| Paper or fiche | **202–741–6005** |
| Assistance with Federal agency subscriptions | **202–741–6005** |

**What's NEW!**

**Federal Register** Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

*Online mailing list archives*
*FEDREGTOC-L*
*Join or leave the list*

Then follow the instructions.

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 68, No. 226

Monday, November 24, 2003

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Farm Service Agency
*See* Forest Service
*See* Rural Business-Cooperative Service
*See* Rural Housing Service
*See* Rural Utilities Service

**Animal and Plant Health Inspection Service**
RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications, 65831–65833
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65868–65869
Reports and guidance documents; availability, etc.:
Swine and swine products importation from France and Spain; classical swine fever risk analysis, 65869–65871

**Centers for Disease Control and Prevention**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65932–65935
Organization, functions, and authority delegations:
Office of Security and Emergency Preparedness et al., 65935–65937

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
*See* National Telecommunications and Information Administration

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Indonesia, 65893–65894

**Education Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65894–65895

**Employment and Training Administration**
NOTICES
Adjustment assistance:
Agilent Technologies, Inc., 65948–65949
Alstom T&D Industries, 65949
Arland Tool & Manufacturing, Inc., 65949
Chicago Cold Rolling, 65949
Delta International Machinery, 65949
Dupont Teijin Fils, 65950
F/V CAPE LOOKOUT, et al., 65950–65951
Fishing vessels—
TRI-K, 65951
FMC Measurement Solutions, 65951
Gary Works, 65951–65952
Jan-Sew Manufacturing, 65952
Jolly Tundra, et al., 65952–65953
Lesportac Manufacturing and Distribution Division, 65953–65954
Majestic Mold & Tool, Inc., 65954
Metso Paper USA, Inc., 65954–65955
Modern Packaging Products, 65955
Pall Corp., 65955
Pearl Baths, Inc., 65955–65956
Plastene Supply Co., 65956
Progress Casting Group, Inc., 65956
R&S Cutting, 65956
Republic Technologies International, 65957
Robert Bosch Fuel Systems Corp., 65957–65958
Robert Bosch Fuel Systems Corp., et al., 65957
Sanmina-SCI Corp., 65958
Snap-on Tools Manufacturing Co., 65958
Sony Seminconductor Co., 65958–65959
SPX Dock Products, 65959
Stimson Lumber Co., 65959
Timber Resource Management, Inc., 65959
Vesuvius USA, 65959
Viasystems Portland, Inc., 65959–65960
Agency information collection activities; proposals, submissions, and approvals, 65960–65961

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Enhanced geothermal systems, 65895
Meetings:
Environmental Management Site-Specific Advisory Board—
Fernald Site, OH, 65895–65896

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 65845–65846
Pennsylvania, 65846–65849
Texas; correction, 66000
PROPOSED RULES
Air programs:
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 65866–65867
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65928
Air pollution control:
Citizen suits; proposed settlements—
Louisiana Environmental Action Network, 65928–65929
Reports and guidance documents; availability, etc.:
Hazardous waste management system: spent hydrofining catalyst from petroleum refining operations; polyaromatic hydrocarbon content; analytical data, 65929–65930
Superfund; response and remedial actions, proposed settlements, etc.:
Richmond Townhouse Apartments Site, 65930–65931

Superfund program:
Prospective purchaser agreements—
Richmond Townhouse Apartments Site, 65930

**Export-Import Bank**
NOTICES
Meetings; Sunshine Act, 65931

**Farm Service Agency**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65871

**Federal Accounting Standards Advisory Board**
NOTICES
Meetings:
2004 schedule, 65931

**Federal Aviation Administration**
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Area navigation and miscellaneous amendments; meeting, 65854
Airworthiness directives:
Eurocopter France, 65854–65857
Sikorsky, 65857–65859
Class B airspace, 65859–65863

**Federal Communications Commission**
NOTICES
Meetings:
Network Reliability and Interoperability Council, 65931–65932

**Federal Deposit Insurance Corporation**
PROPOSED RULES
Disabled persons' access to programs, activities, facilities, and electronic and information technology, 65850–65854

**Federal Emergency Management Agency**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65941–65942

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Caledonia Generating, LLC, et al., 65899–65901
FirstEnergy Corp, et al., 65901–65902
Electric utilities (Federal Power Act):
Market behavior rules; regulation of market-based rate tariffs, 65902–65925
Hydroelectric applications, 65925–65927
*Applications, hearings, determinations, etc.:*
CenterPoint Energy - Mississippi River Transmission Corp., 65896
El Paso Natural Gas Co., 65896
Gulf South Pipeline Company, LP, 65896–65897
Iroquois Gas Transmission System, L.P., 65897
Kern River Gas Transmission Co., 65897
Maritimes & Northeast Pipeline, L.L.C., 65897–65898
Peoples Gas Light and Coke Co., 65898
Texas Eastern Transmission, LP, 65898
Williston Basin Interstate Pipeline Co., 65898–65899

**Federal Highway Administration**
NOTICES
Environmental statements; notice of intent:
Fond du Lac and Sheboygan Counties, WI, 65981–65982

**Federal Railroad Administration**
NOTICES
Safety advisories, bulletins, and directives:
100-ton truck bolsters; potential catastrophic failure, 65982–65983

**Federal Reserve System**
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers; correction, 65932

**Federal Trade Commission**
RULES
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Comparability ranges—
Compact clothes washers, 65833–65835

**Federal Transit Administration**
NOTICES
Grants and cooperative agreements; availability, etc.:
Over-the-Road Bus Accessibility Program, 65983–65991

**Fish and Wildlife Service**
NOTICES
Natural resource damage assessment plans; availability, etc.:
Humboldt County, CA; MV Stuyvesant oil spill, 65944–65946

**Food and Drug Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65937–65939
Reports and guidance documents; availability, etc.:
Premarket approval applications user fees and refunds, 65940–65941

**Foreign Assets Control Office**
RULES
Iraqi sanctions regulations:
Claims against the government of Iraq; U. S. financial institutions transfer authorization, 65844–65845

**Foreign-Trade Zones Board**
NOTICES
Indiana
Clark County, Louisville Customs port of entry; expansion, 65872–65873

**Forest Service**
NOTICES
Meetings:
Resource Advisory Committees—
Glenn/Colusa County, 65872
Tehama County, 65872

**Geological Survey**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65946–65947

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention

*See* Food and Drug Administration
NOTICES
Meetings:
Human Research Protections Secretary's Advisory Committee, 65932

**Homeland Security Department**
*See* Federal Emergency Management Agency

**Housing and Urban Development Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65942–65943

**Interior Department**
*See* Fish and Wildlife Service
*See* Geological Survey
*See* Land Management Bureau
*See* Surface Mining Reclamation and Enforcement Office
NOTICES
Environmental statements; availability, etc.:
Central Utah Project—
Duchesne and Uintah Counties, UT; Lower Duchesne River Wetlands Mitigation Project, 65943–65944

**Internal Revenue Service**
PROPOSED RULES
Income taxes:
Installment obligations and contributed contracts, 65864–65866
NOTICES
Privacy Act:
Systems of records, 65996–65998

**International Trade Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65873
Antidumping:
Malleable iron pipe fittings from—
China, 65873–65875
Wooden bedroom furniture from—
China, 65875–65879
Countervailing duties:
Softwood lumber products from—
Canada, 65879–65886
Meetings:
U.S. Automotive Parts Advisory Committee, 65886–65887
North American Free Trade Agreement (NAFTA); binational panel reviews:
Apples from—
United States, 65887
*Applications, hearings, determinations, etc.:*
San Diego State University, 65879

**International Trade Commission**
NOTICES
Meetings; Sunshine Act, 65947

**Labor Department**
*See* Employment and Training Administration
NOTICES
Meetings:
Veterans' Employment and Training Advisory Committee, 65948

**Land Management Bureau**
NOTICES
Realty actions; sales, leases, etc.:
New Mexico, 65947

**National Highway Traffic Safety Administration**
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Freightliner LLC, 65991–65992
General Motors North America, 65992

**National Oceanic and Atmospheric Administration**
NOTICES
Meetings:
Caribbean Fishery Management Council, 65887–65888
Gulf of Mexico Fishery Management Council, 65888
New England Fishery Management Council, 65888–65889
North Pacific Fishery Management Council, 65889–65891
Pacific Fishery Management Council, 65891
South Atlantic Fishery Management Council, 65891–65892

**National Telecommunications and Information Administration**
NOTICES
Meetings:
Spectrum efficiency and new technology forum, 65893

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Bristol-Myers Squibb Pharma Co., 65965–65966
BWX Technologies, Inc., 65966–65968
Reports and guidance documents; availability, etc.:
Draft Strategic Plan FY 2004-2009, 65968–65969
*Applications, hearings, determinations, etc.:*
Dominion Nuclear North Anna, LLC, 65961–65962
Entergy Operations, Inc, 65963–65964
Mid-American Inspection Services, Inc., 65964–65965
Omaha Public Power District, 65965

**Rural Business-Cooperative Service**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65871

**Rural Housing Service**
RULES
Program regulations:
Fire, rescue, and other community facilities projects, 65829–65831
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65871

**Rural Utilities Service**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65871

**Securities and Exchange Commission**
NOTICES
Investment Company Act of 1940:
Exemption applications—
AIG SunAmerica Life Assurance Co., et al., 65969–65974
Meetings; Sunshine Act, 65974
Public Utility Holding Company Act of 1935 filings, 65974–65975

Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 65975–65977
Depository Trust Co., 65977–65978
National Association of Securities Dealers, Inc., 65978–65980

**Small Business Administration**
**NOTICES**
Senior Executive Service:
Performance Review Board; membership, 65980

**State Department**
**NOTICES**
Organization, functions, and authority delegations:
Under Secretary of State for Management, 65980–65981
Passport travel restrictions, U.S.
Libya, 65981

**Surface Mining Reclamation and Enforcement Office**
**RULES**
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 65835–65843

**Surface Transportation Board**
**NOTICES**
Railroad services abandonment:
Orange County Transportation Authority et al., 65993

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Thrift Supervision Office**
**NOTICES**
*Applications, hearings, determinations, etc.:*
Provident Bank et al, 65998
Synergy Financial Group, Inc, 65998

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Railroad Administration
*See* Federal Transit Administration
*See* National Highway Traffic Safety Administration
*See* Surface Transportation Board

**Treasury Department**
*See* Foreign Assets Control Office
*See* Internal Revenue Service
*See* Thrift Supervision Office
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 65993–65996

**United States Institute of Peace**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Solicited grants—
Spring competition program, 65998
Unsolicited grants—
Spring competition program, 65998–65999

**Utah Reclamation Mitigation and Conservation Commission**
**NOTICES**
Environmental statements; availability, etc.:
Central Utah Project—
Duchesne and Uintah Counties, UT; Lower Duchesne River Wetlands Mitigation Project, 65943–65944

---

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
1942.....65829

**9 CFR**
77 (2 documents) .....65831

**12 CFR**

**Proposed Rules:**
352.....65850

**14 CFR**

**Proposed Rules:**
1.....65854
39 (3 documents) .....65854, 65856, 65857
71.....65859
91.....65854
97.....65854
121.....65854
125.....65854
129.....65854
135.....65854

**16 CFR**
305.....65833

**26 CFR**

**Proposed Rules:**
1.....65864

**30 CFR**
917.....65835

**31 CFR**
575.....65844

**40 CFR**
52 (3 documents) .....65845, 65846, 66000

**Proposed Rules:**
52.....65866

# Rules and Regulations

Federal Register
Vol. 68, No. 226
Monday, November 24, 2003

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

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

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### 7 CFR Part 1942

**RIN 0575–AC53**

## Fire and Rescue and Other Community Facilities Projects

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Housing Service (RHS) is amending its regulations to include all essential community facility projects $300,000 and under to utilize the authority granted for fire and rescue loans. Fire and rescue loans are handled with a streamlined procedure for application handling. All other Community Facilities loans costing $300,000 and under will be administered under this streamlined application process. The intended effect is to streamline and make available a cost-effective way to administer all Community Facilities loans $300,000 and under.

**DATES:** This rule is effective February 9, 2004, unless we receive written adverse comments or written notices of intent to submit adverse comments on or before January 23, 2004. If we receive such comments or notices, we will publish a timely document in the **Federal Register** withdrawing the direct final rule.

**ADDRESSES:** Submit adverse comments, or notice of intent to submit adverse comments, to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Housing Service, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. Comments may be submitted via the Internet by addressing them to *comments@rus.usda.gov* and must contain the word ''Community'' in the subject. All written comments will be available for public inspection at 300 7th Street SW., Washington, DC 20024, during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Chad Parker, Community Programs, Rural Housing Service, Direct Loan and Grant Processing Division, U.S. Department of Agriculture, Rural Housing Service, STOP 0787, 1400 Independence Avenue SW., Washington, DC 20250–0787; Telephone: 202–720–1490; FAX: 202–690–0471; E-mail: *Chad.Parker@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Classification

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

### Civil Justice Reform

In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

### Regulatory Flexibility Act

The Administrator of the Rural Housing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

### Paperwork Reduction Act

There are no new reporting and recordkeeping requirements associated with this rule.

### Unfunded Mandates Reform Act

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

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RHS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

### Programs Affected

The program affected is listed in the Catalog of Federal Domestic Assistance under Number 10.766, Community Facilities Loans and Grants.

### Intergovernmental Review

The Community Facilities loan and grant program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RHS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' and in 7 CFR part 3015, subpart V.

### Background

RHS administers the Community Facilities loan program pursuant to 7 CFR part 1942, subpart A, designed to develop essential community facilities for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, medical clinics, assisted-living facilities, fire and rescue stations, police stations, community centers, public buildings, and transportation. Loans are available to public entities such as municipalities, counties, and special-purpose districts, as well as to nonprofit corporations and tribal governments. Loan funds may be used to construct, enlarge, or improve community facilities for health care, public safety, and public services.

Regulations pursuant to 7 CFR part 1942, subpart C, entitled Fire and Rescue Loans, administered by RHS have allowed a streamlined process for application development of essential community facility projects meeting the definition of fire and rescue projects. RHS is amending its regulations to

establish rules and regulations to include all essential community facility projects under $300,000 currently defined under 7 CFR part 1942.17(d) to utilize the authority granted for Fire and Rescue loans pursuant to 7 CFR part 1942, subpart C. This will allow all essential community facility applicants to utilize the streamlined process for projects of $300,000 and under.

**List of Subjects in 7 CFR Part 1942**

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Waste treatment and disposal—Domestic, Watersupply—Domestic.

■ For the reasons set forth in the preamble, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

## PART 1942—ASSOCIATIONS

■ 1. The authority citation for part 1942 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

## Subpart A—Community Facilities Loans

■ 2. Section 1942.1 is amended by revising the first two sentences of paragraph (a) to read as follows:

### § 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for Community Facilities except fire and rescue and other small essential community facility loans and water and waste disposal facilities. This subpart applies to Community Facilities loans for fire and rescue and other small essential community facility loans only as specifically provided for in subpart C of this part. * * *

* * * * *

■ 3. Subpart C is amended by revising the heading to read as follows:

## Subpart C—Fire and Rescue and Other Small Community Facilities Projects

■ 4. Section 1942.101 is revised to read as follows:

### § 1942.101 General.

This subpart provides the policies and procedures for making and processing insured Community Facilities (CF) loans for facilities that will primarily provide fire or rescue services and other small essential community facility projects and applies to fire and rescue and other Community Facilities loans for projects costing $300,000 and under. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with a Rural Development employee. Community Facilities loans for other types of facilities, and those costing in excess of $300,000, are defined in subpart A of this part.

■ 5. Section 1942.103 is revised to read as follows:

### § 1942.103 Definitions.

*Agency.* The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture.

*Approval official.* An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

*Construction.* The act of building or putting together a facility that is a part of, or physically attached to, real estate. This does not include procurement of major equipment even though the equipment may be custom built to meet the owner's requirements.

*Owner.* An applicant or borrower.

*Processing office.* The office designated by the State program official to accept and process applications for Community Facilities projects.

*Regional Attorney or OGC.* The head of a Regional Office of the General Counsel (OGC).

*Small Community Facilities projects.* Community Facilities loans costing $300,000 and under.

■ 6. In § 1942.104, paragraph (a) is revised, paragraphs (b) and (c) are removed, and paragraph (d) is redesignated as paragraph (b). (The undesignated text following newly designated paragraph (b) remains unchanged).

### § 1942.104 Application processing.

(a) *General.* Prospective applicants should request assistance by filing SF 424.2, ''Application for Federal Assistance (For Construction),'' with the Local or Area Rural Development Office. When practical, approval officials should meet with prospective applicants before an application is filed to discuss eligibility and Rural Development requirements and processing procedures. Throughout loan processing, Rural Development should confer with applicant officials as needed to ensure that applicant officials understand the current status of the processing of their application, what steps and determinations are necessary, and what is required from them. Rural Development should assist the applicant as needed and generally try to develop and maintain a cooperative working relationship with the applicant.

(b) *Unfavorable decision.* If, at any time prior to loan approval, it is decided that favorable action will not be taken on an application, the approval official will notify the applicant, in writing, of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by Rural Development may be requested by the applicant in accordance with subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action:

* * * * *

■ 7. Section 1942.108 is amended by revising paragraphs (e) and (g) to read as follows:

### § 1942.108 Application docket preparation and review.

* * * * *

(e) *Organizational review.* As early in the application process as practical, the approval official should obtain copies of organization documents from each applicant and forward them through the State Office to the Regional Attorney for review and comments. The Regional Attorney's comments should be received and considered before obligation of funds.

* * * * *

(g) *State Office review.* The State Office must monitor fire and rescue and other small community facility project loanmaking and servicing and provide guidance, assistance, and training as necessary to ensure the activities are accomplished in an orderly manner consistent with the Agency's regulations. The processing office should request advice and assistance from the State Office as needed. The State Director may require all or part of a specific application docket to be submitted to the State Office for review at any time. The State Director may determine that one or more of the processing office staffs do not have adequate training and expertise to routinely complete application dockets without State Office review. In such cases, the State Director should establish guidelines by memorandum or by State supplement to the subpart for the necessary State Office reviews.

* * * * *

■ 8. Section 1942.111 is amended by revising paragraph (b) to read as follows:

### § 1942.111 Applicant eligibility.

* * * * *

(b) *Credit elsewhere determinations.* The approval official must determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the approval official should inform the applicant and recommend the applicant apply to commercial sources for financing. To provide a basis for referral of only those applicants who may be able to finance projects through commercial sources, approval officials should maintain liaison with representatives of lenders in the area. The State Director should keep approval officials informed regarding lenders outside the area who might make loans in the area. Approval officials should maintain criteria for determining applications that should be referred to commercial lenders and maintain a list of lender representatives interested in receiving such referrals.

* * * * *

■ 9. Section 1942.112 is amended by adding paragraph (a)(1)(iii) to read as follows:

**§ 1942.112 Eligible loan purposes.**

(a) * * *

(1) * * *

(iii) The construction or development of an essential community facility requisite to the beneficial and orderly development of a community operated on a nonprofit basis in accordance with § 1942.17(d) of this subpart. This subpart includes those projects meeting the definition of a small community facility project.

* * * * *

Dated: November 14, 2003.

**Arthur A. Garcia,**

*Administrator, Rural Housing Service.*

[FR Doc. 03–29212 Filed 11–21–03; 8:45 am]

BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 77

**[Docket No. 03–044–2]**

### Tuberculosis in Cattle and Bison; State Designations; New Mexico

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations regarding State and zone classifications by removing New Mexico from the list of accredited-free States and adding it to the list of modified accredited advanced States. The interim rule was necessary to help prevent the spread of tuberculosis because New Mexico no longer meets the requirements for accredited-free State status.

**EFFECTIVE DATE:** The interim rule became effective on July 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terry Beals, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule effective and published in the **Federal Register** on July 24, 2003 (68 FR 43618–43621, Docket No. 03–044–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing New Mexico from the list of accredited-free States in § 77.7 and adding it to the list of modified accredited advanced States in § 77.9.

Comments on the interim rule were required to be received on or before September 22, 2003. We received one comment by that date, from a supplier of roping animals.

The commenter suggested that, given the size of the State of New Mexico and the variety of the cattle industries contained therein, a more beneficial course of action would be to split the State and designate each portion separately.

While the regulations do provide for the establishment of zones of classification within a State, such split State status must be requested by a State animal health official in accordance with § 77.4 and approved by the Administrator in accordance with § 77.3. We have not thus far received such a request from the State of New Mexico.

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

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

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

### List of Subjects in 9 CFR Part 77

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

### PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 68 FR 43618–43621 on July 24, 2003.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 18th day of November, 2003.

**Kevin Shea,**

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

[FR Doc. 03–29233 Filed 11–21–03; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 77

**[Docket No. 03–005–2]**

### Tuberculosis in Cattle and Bison; State Designations; California

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations regarding State and zone classifications by removing California from the list of accredited-free States and adding it to the list of modified accredited advanced States. The interim rule was necessary to help prevent the spread of tuberculosis because California no longer meets the requirements for accredited-free State status.

**EFFECTIVE DATE:** The interim rule became effective on April 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terry Beals, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule effective and published in the **Federal Register** on April 25, 2003 (68 FR 20333–20336, Docket No. 03–005–1), we amended the tuberculosis regulations in 9 CFR part 77 (referred to below as the regulations) by removing California from the list of

accredited-free States in § 77.7 and adding it to the list of modified accredited advanced States in § 77.9.

Comments on the interim rule were required to be received on or before June 24, 2003. We received three comments by that date. They were from a State agricultural agency and two cattle industry groups. The comments are discussed below by topic.

**Tuberculosis Classification**

Under the regulations in § 77.7(c), if two or more tuberculosis-affected herds are detected in an accredited-free State or zone within a 48-month period, that State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced. All three commenters stated that a classification system based solely on an absolute number of affected herds does not sufficiently take into consideration State tuberculosis mitigation and eradication efforts. We recognize this issue and are currently preparing a proposed rule that will address this and other aspects of the regulations.

**Delay in Compliance**

In our interim rule, we delayed California's compliance date for certain identification requirements of the regulations for sexually intact heifers, steers, and spayed heifers moving interstate from California. We provided for this delay in recognition of the size and complexity of the cattle industry in California as well as in the interests of equitable treatment for producers in California since we had previously delayed the State of Texas's date of compliance with those requirements when we changed the classification of Texas from accredited-free to modified accredited advanced (*see* 67 FR 38841–38844, Docket No. 02–021–1, published June 6, 2002). The compliance date set in our April 2003 interim rule was September 30, 2003, the same compliance date given to the State of Texas. All three commenters stated that the time allotted for delay in compliance was too short. On August 8, 2003, we published a notice in the **Federal Register** (68 FR 47201–47202, Docket No. 03–072–1) further delaying the compliance date for both States until March 30, 2004.

Additionally, one commenter stated that, although the delay in compliance means that there are no Federally imposed identification requirements for certain animals moving interstate, many States have ignored the delay in compliance granted by the USDA. We are sensitive to this issue and have sought to avoid such situations by holding meetings among State veterinarians and other officials in an effort to urge States to accept the Federal movement requirements.

**Definitions**

Among the requirements that we deferred as part of the delay in compliance discussed previously are the identification and certification requirements for sexually intact heifers found in § 77.10(d). In our April 2003 interim rule, we described the certification requirements as applying to ''sexually intact heifers moving to unapproved feedlots.'' One commenter stated that since the term ''unapproved feedlot'' is utilized but not defined in the regulations, this creates ambiguity and makes it more difficult to understand and uphold the delay in compliance. We apologize for any confusion our use of the term ''unapproved feedlot,'' which does not appear in the regulations, may have caused. In using the term, we were simply attempting to draw a distinction between the requirements at § 77.10(b), which covers, in part, the movement of sexually intact heifers to approved feedlots, and the requirements at § 77.10(d), which covers the movement of those and other animals to other destinations, which could include feedlots that are not approved feedlots.

**Testing Costs**

All three commenters expressed concern with the tuberculin testing cost estimates provided in the interim rule's economic analysis. One commenter stated that our determination that the identification requirements described would not have a significant impact on a substantial number of small entities was inaccurate. We are in the process of gathering data related to testing and testing costs in order to reevaluate our current information on those subjects. With regard to the determination of no significant impact on a substantial number of small entities, we consider ''significant impact'' to mean that the cost of a given action is equal to or greater than the small business's profit margin (5 to 10 percent of annual sales). By these standards, given the size and profitability of the cattle industry in California, this action does not represent a significant impact on a substantial number of small entities. A more detailed analysis of this issue can be found later in this document under the heading ''Regulatory Flexibility Act.''

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

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

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**Regulatory Flexibility Act**

This rule affirms an interim rule that amended the regulations by removing California from the list of accredited-free States and adding it to the list of modified accredited advanced States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

On January 1, 2002, there were approximately 22,000 cattle and bison operations in California, totaling 5.2 million head. According to the National Agricultural Statistics Service, the total cash value of cattle in California was over $4.8 billion as of that year. Over 90 percent of California's cattle operations yield less than $750,000 annually and are, therefore, considered small entities under criteria established by the Small Business Administration.

The interim rule changed the tuberculosis status of California from accredited-free to modified accredited advanced, resulting in interstate movement restrictions where none existed previously. Specifically, the regulations in § 77.10 require that, for movement to certain destinations, animals must test negative to an official tuberculin test and/or be officially identified by premises of origin identification before interstate movement is permitted.

The interim rule will prove beneficial by preventing the spread of tuberculosis to other areas of the United States. However, the stricter requirements for interstate movement will have an economic effect on those producers involved in the interstate movement of cattle and bison from California. As such, this analysis will focus on the expenses incurred by those producers engaged in interstate movement and in determining whether those negative impacts are significant.

The economic analysis prepared for the interim rule estimated the costs of tuberculin testing to be approximately $3.76 per animal. However, according to the California Department of Food and Agriculture (CDFA), in conjunction with the California Cattleman's Association, the estimated costs of tuberculosis testing are actually between $7.50 and $10 per animal. Also, it is to be noted that the cost of the official identification and applicator is borne by the USDA,

and the only costs incurred by producers are the labor costs of the veterinarian associated with applying the eartag. As official identification is customarily applied at the same time tuberculin tests are performed and read, it is safe to assume that the estimated cost between $7.50 and $10 would include the labor costs related to the application of official identification.

On January 1, 2002, the average value per animal in California was estimated to be $930, which translates to an average value per 101-head herd of about $94,000. Using high-end cost estimates of $10 per animal for tuberculosis testing and the cost of official identification, the cost of the additional tuberculin testing necessitated by the interim rule represents 1.1 percent of the per-head value of cattle. In general practice, we assume a regulation that has compliance costs equal to or greater than a small business' profit margin, or 5 to 10 percent of annual sales, to pose an impact that can be considered ''significant.'' [1] For the purposes of illustration and analysis of the small entity impact, if we assume a cattle producer owns only 1 average sized-herd of about 101 animals, with annual sales of approximately $94,000, compliance costs totaling between $4,700 and $9,400 would qualify as posing a ''significant'' economic impact on this entity. In this example, the cost of compliance for this producer, using high-end estimates and assuming all 101 animals are engaged in interstate movement, would total only $1,010, which would not be considered a ''significant'' economic impact. Of course, in reality, the majority of cattle and bison producers in California own more than one-average sized herd. However, by presenting an extreme case of a small cattle or bison operation, we may address and illustrate that compliance costs will not cause a significant economic impact on small entities.

Thus, we believe that the added cost of the required tuberculin testing and identification is small relative to the average value of cattle and bison, representing less than 1 percent of the per-head value. In addition, the costs of compliance associated with the interim rule will only affect those operations engaged in the interstate movement of cattle or bison. Further, since APHIS has delayed the date of compliance with the identification requirements in § 77.10(b) and (d), the identification costs for sexually intact heifers, steers, and spayed heifers moving interstate from the State of California will be deferred until at least March 30, 2004.

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.

**List of Subjects in 9 CFR Part 77**

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

## PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 68 FR 20333–20336 on April 25, 2003.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 18th day of November, 2003.

**Kevin Shea,**

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

[FR Doc. 03–29232 Filed 11–21–03; 8:45 am]

BILLING CODE 3410–34–P

[1] Verkuil, Paul R. ''A Critical Guide to the Regulatory Flexibility Act,'' *Duke Law Journal*, Apr. 1982: 928.

## FEDERAL TRADE COMMISSION

## 16 CFR Part 305

## Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (''Commission'') amends its Appliance Labeling Rule (''Rule'') by publishing new ranges of comparability to be used on required labels for compact clothes washers. The Commission also announces that the current ranges of comparability for standard-sized clothes washers will remain in effect until further notice.

**EFFECTIVE DATE:** The amendments announced in this document will become effective February 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202) 326–2889.

**SUPPLEMENTARY INFORMATION:** The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 (''EPCA''),[1] The Rule covers several categories of major household appliances including dishwashers.

### I. Background

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels consistent with these changes, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

### II. 2003 Clothes Washer Ranges

The Commission has analyzed the 2003 annual data submissions for

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (''DOE'') to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due October 1.

clothes washers. The data submissions show a significant change in the range of comparability scale for compact clothes washers.[3] Accordingly, the Commission is publishing new ranges of comparability for compact clothes washers in appendix F of the rule. To effect this amendment, the Commission has divided appendix F into two parts, appendix F1 for standard clothes washers and appendix F2 for compact clothes washers. Because the range of comparability for standard clothes washers has not changed significantly, the Commission is not amending the range in the rule for those products.[4]

Manufacturers of compact clothes washers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels for standard-sized dishwashers on the 2003 Representative Average Unit Costs of Energy for electricity (8.41 cents per kilowatt-hour) and natural gas (81.6 cents per therm) that were published by DOE on April 9, 2003 (68 FR 17361) and by the Commission on May 5, 2003 (68 FR 23584).The new range for compact models will become effective February 23, 2004. Manufacturers may begin using the new range before that date.[5]

[3] The Commission's classification of ''Standard'' and ''Compact'' dishwashers is based on internal load capacity. Appendix C of the Commission's Rule defines ''Compact'' as including countertop dishwasher models with a capacity of fewer than eight (8) place settings and ''Standard'' as including portable or built-in dishwasher models with a capacity of eight (8) or more place settings. The Rule requires that place settings be determined in accordance with appendix C to 10 CFR part 430, subpart B, of DOE's energy conservation standards program.

[4] In a February 21, 2003 notice (68 FR 8448), the Commission discussed the possibility of publishing clothes washer ranges this year based on data derived from a new DOE test procedure that will become effective on January 1, 2004 (10 CFR part 430, subpart B, appendix J1). On October 1, 2003, the Commission received data for some models that had been tested under the new procedure as well as data submissions reflecting results based on the current (existing) test procedure for all models (10 CFR part 430, subpart B, appendix J). The submitted data indicates that the number of models tested under the new procedure as of October 1 was relatively small compared to the total number of models reported. In addition, the submitted information did not contain any data for compact models tested under the new procedure. Given this limited data and the possibility that many more models have yet to be tested under the new procedure, it is not appropriate to amend the ranges based on this limited new test data at this time. Accordingly, this notice reflects the review of data for models tested under the current (existing) DOE test procedure.

[5] The Commission notes that recent amendments to the clothes washer label require advisory language related to the new test procedure on labels for all models produced beginning January 1, 2004 (*see* 68 FR 36458 (June 18, 2003)).

## III. Administrative Procedure Act

The amendments published in this notice involve routine, technical and minor, or conforming changes to the labeling requirements in the Rule. These technical amendments merely provide a routine change to the range and cost information required on EnergyGuide labels. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

## IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

## V. Paperwork Reduction Act

In a June 13, 1998 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[6] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (''OMB'') and assigned OMB Control No. 3084–0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

## List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

[6] 44 U.S.C. 3501–3520.

■ Accordingly, 16 CFR part 305 is amended as follows:

## PART 305—[AMENDED]

■ 1. The authority citation for part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

## Appendix F—[Removed]

■ 2. Appendix F to part 305 is removed.

■ 3. Appendices F1 and F2 to part 305 are added to read as follows:

## Appendix F1 to Part 305—Standard Clothes Washers

### Range Information

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft or 13 gallons of water or more.

| Capacity | Range of estimated annual energy consumption (kWh/yr.) | |
|---|---|---|
| | Low | High |
| Standard | 177 | 1298 |

### Cost Information

When the above range of comparability is used on EnergyGuide labels for standard clothes washers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2000 Representative Average Unit Costs for electricity (8.03¢ per kiloWatt-hour) and natural gas (68.8.6¢ per therm), and the text below the box must identify the costs as such.

## Appendix F2 to Part 305—Compact Clothes Washers

### Range Information

''Compact'' includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

| Capacity | Range of estimated annual energy consumption (kWh/yr.) | |
|---|---|---|
| | Low | High |
| Compact | 350 | 653 |

### Cost Information

When the above range of comparability is used on EnergyGuide labels for compact clothes washers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2003 Representative Average Unit Costs for electricity (8.41¢ per kiloWatt-hour) and natural gas (81.6¢ per therm), and the text below the box must identify the costs as such.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–29102 Filed 11–21–03; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 917

**[KY–239–FOR]**

## Kentucky Abandoned Mine Land (AML) Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the Kentucky abandoned mine land reclamation plan (the ''Kentucky plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

**EFFECTIVE DATE:** November 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Telephone: (859) 260–8400, Internet address: *bkovacic@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Kentucky Program

The Abandoned Mine Land (AML) Reclamation Program was established by Title IV of SMCRA (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior (Secretary) for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Kentucky plan on May 18, 1982. You can find background information on the Kentucky plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 18, 1982, **Federal Register** (47 FR 21435). You can find later actions concerning the Kentucky plan and amendments to the plan at 30 CFR 917.20 and 917.21.

### II. Submission of the Proposed Amendment

By letter dated April 29, 2002 (Administrative Record No. KY–70), Kentucky sent us a proposed amendment to its plan under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted the amendment to propose comprehensive changes to the plan. The formal amendment was preceded by two informal submissions in September 1997, and March 16, 2000 (Administrative Record No. KY–67). OSM reviewed the informal submissions and reported findings to Kentucky on March 30, 2001 (Administrative Record No. KY–69).

It should be noted that Kentucky's formal submission on April 29, 2002, did not identify the specific changes being proposed. We subsequently reviewed the 635-page amendment to determine what revisions were made from the original plan. We completed our review on December 19, 2002. The proposed rule was published in the February 11, 2003, **Federal Register** (68 FR 6838). Due to the voluminous nature of the submission, only major changes or those that may otherwise be of interest to the public were identified in the proposed rule notice. Any revisions not identified in the proposed rule concern nonsubstantive wording, organizational changes, or editorial changes. A complete description of the changes addressed in this rule notice can be found in the corresponding proposed rule, published in the February 11, 2003, **Federal Register** (68 FR 6838). However, we note that in some instances, the proposed rule described certain changes as ''added sections'' when, in fact, they consisted of language that had been moved from the OSM-approved Errata Sheet of the original 1981 Plan into the main text of the Plan.

### III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes. Except where otherwise indicated below, we find that these amendments do not change the objectives, scope or major policies followed by Kentucky in the conduct of its reclamation program.

*Acquisition, Management, and Disposal of Lands (p. 6–9)*

The subtitle ''Management of Acquired Lands'' has been added. This subtitle provides that land acquired ''may be used for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.'' It also establishes that users of acquired lands will be charged a use fee and that all fees collected ''which are not used for the specific purpose of operating and maintaining improvement of the land will be deposited in the Abandoned Mine Reclamation Fund.''

These proposed changes meet the criteria of the counterpart Federal regulations found at 30 CFR 879.14, which provide that ''[l] and acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities.'' The State's proposed changes has this same requirement as well as the additional caveat that acquired land may be used for any lawful purpose not inconsistent with the post-reclamation uses for which it was acquired. Additionally, Kentucky's proposed change meets the Federal requirement, also at 30 CFR 879.14, that procedures for the collection of user fees provide that all user fees collected be deposited in the appropriate Abandoned Mine Reclamation Fund. Therefore, we are approving the proposed changes.

*Organization (p. 10–17)*

The subtitle ''Environmental Scientist Principal'' has been added. Chapter 10 of Kentucky's AML plan describes the title, class, duties, and minimum requirements of various employment positions within the organization. These provisions were previously approved by OSM because they meet the requirements of the counterpart Federal regulation found at 30 CFR 884.13(d). The addition of the description of the Environmental Scientist Principal position further clarifies the organization of the Plan and the responsibilities of individual employees. Therefore, we find that the proposed addition also meets the requirements of the counterpart Federal regulations, and we are approving it.

*Coordination With Ramp, Indian, and Other Reclamation Plans (p. xvi)*

The Natural Resources Conservation Service is an agency of the U.S. Department of Agriculture and was formerly known as the Soil Conservation Service. Kentucky proposes to add ''Natural Resources Conservation Service'' throughout its plan to reflect this name change. These non-substantive changes are hereby approved.

*Maps of Eligible Lands and Waters' (p. xix)*

Kentucky proposes to change the citation in the sub-heading for this subject from ''884.13(f)(1)'' to ''884.13(e)(1).'' This change was recommended by our Lexington Field Office because 30 CFR 884.13(e)(1), rather than 884.13(f)(1), requires a map showing the general location of known or suspected eligible lands and waters. Therefore, we are approving this change.

*''Problems Occurring on A.M.L. Sites'' (p. xx), ''Relationship to Existing and Planned Land Uses'' (p. xx), and ''Social, Economic, and Environmental Conditions'' (pp. xx, xxi)*

Kentucky's Plan contains an ''Introduction'' that explains that the Plan is divided into sections designed to facilitate review by the public, and State and Federal agencies. The introduction lists these sections along with citations to the Federal regulations that require the Plan to contain each respective section. Kentucky proposed to change the listed Federal counterpart for the sections entitled ''Problems Occurring on A.M.L. Sites,'' ''Relationship to Existing and Planned Land Uses,'' and ''Social Economic and Environmental Conditions.'' The proposed changes are from 30 CFR 884.13(f)(2) to 30 CFR 884.13(e)(2); 30 CFR 884.13(f)(3) to 30 CFR 884.13(e)(3); and 30 CFR 884.13(f)(5) to 30 CFR 884.13(f)(1), (2), and (3), respectively. We are approving the proposed changes since they refer to the appropriate Federal references and were made in accordance with OSM recommendations. Finally, Kentucky proposes to add, at page xxi, a reference to Section 19 of the Plan after the requirement of a general description of endangered and threatened plants, fish and wildlife, and their habitats. The reference to Section 19 is appropriate and is hereby approved, since that Section contains a socio-economic and cultural profile of the Kentucky coalfields, which are the lands for which the general descriptions of reclamation activities must be provided, as set forth on pages xx and xxi of the Plan.

*Objectives (pp. 3–1, 3–2)*

Kentucky has deleted subsections (g), (h), (i), pertaining to noncoal mining, and (j), pertaining to construction of public facilities in communities impacted by coal development. Each of these subsections denotes an objective of the non-coal reclamation program that comes into existence only after the Governor of a State certifies to the Secretary that all reclamation priorities for eligible land and water adversely affected by past coal mining have been completed. See SMCRA section 411(a) and (b); 30 U.S.C. 1240(a) and (b). Because Kentucky has not yet reached the certification stage with its AML program, there is no need for the Plan to contain these post-certification prioritizing criteria for non-coal reclamation. Therefore, we are approving the deletions of subsections (g), (h) and (i).

In addition, the State has revised subsection (f) to meet the requirements of the Federal regulations at 30 CFR 875.12, pertaining to eligible lands affected by noncoal mining. Specifically, subsection (f), as amended, will allow the use of AML funds to reclaim noncoal sites with adverse effects that cause extreme danger to the public health, safety and general welfare. These funds may be used, upon request by the Governor and authorization by the Secretary, prior to certification by Kentucky that all coal mining reclamation problems have been addressed. We are approving this change because it meets the requirement of the Federal regulations at 30 CFR 875.12. We note that subsection (f) refers to ''pre-August 3, 1977'' noncoal mining, the term used in the Federal regulation, as ''past'' noncoal mining. This variation from the Federal language is acceptable because it is sufficiently similar to its Federal counterpart. Also, Kentucky has revised the last paragraph to address lower priority coal mining sites. This change was moved from the errata sheet of the approved 1981 Plan into the text. Therefore, its transfer to the text is approved without further discussion. Finally, subsection (f) has been revised to prohibit the use of AML monies for reclamation of sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 and the Comprehensive Environmental Response Compensation and Liability Act of 1980. We are approving this change because it meets the requirements of the Federal regulations at 30 CFR 875.16.

*Goals and Objectives: Priority I and II Sites (p. 3–2)*

As previously approved by OSM, Kentucky's Plan contains a description of the Plan's goals. The Plan states that the principal goal of the AML program is to identify and correct adverse conditions caused by past mining practices on sites classified as Priority I. Following this statement is a paragraph explaining what Priority I and Priority II sites are. Under the previously-approved Plan, the heading to this paragraph was ''Priority I Sites.'' Kentucky proposed to revise the heading to include Priority II sites, because this section actually discusses both Priority I and Priority II sites. No other changes to the previously approved paragraph are proposed. Since the proposed change has no substantive effect on the program, we are approving the change.

*Goals and Objectives: Priority III Sites (p. 3–4)*

This section, contained in the approved Errata Sheet for the original 1981 Plan, but now moved to the text of Chapter 3 of the Plan, explains which areas are classified as Priority III sites and lists reasons why work will be considered for priority III sites prior to reclamation of all Priority I and II sites. Kentucky's original plan listed four reasons, one being if ''the project will be used for research and demonstration purposes.'' Kentucky proposed to remove this justification for considering early work for priority III sites, presumably because Congress eliminated ''research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques'' from the list of priorities for AML Fund expenditures contained in section 403(a) of SMCRA in its passage of the Energy Policy Act of 1992. This deletion changes the objectives followed by Kentucky in the conduct of its reclamation projects and, therefore, can only be approved in accordance with 30 CFR 884.14. *See* 30 CFR 884.15(a) (pertaining to State reclamation plan amendments). In reviewing this portion of the amendment, we have: Provided adequate notice and opportunity for comment on the amendment; solicited and considered the views of other Federal agencies having an interest in the amendment; found that the State continues to have the legal authority, policies and administrative structure necessary to carry out the proposed plan, as amended; found that the State continues to have an approved State regulatory program; and, determined

that the amendment is in accordance with all applicable State and Federal laws and regulations. Accordingly, we are approving the elimination of the research and demonstration project justification for early Priority III site reclamation.

*Environmental Goals (p. 3–5)*

This section was added to the text of chapter 3 of the Plan, but was previously contained in the Errata Sheet for the 1981 Plan. It states that Kentucky's resources are to be protected or enhanced through AML reclamation including, but not limited to, important wildlife habitats, endangered or threatened plants and animals or their critical habitats, natural areas, wild and scenic rivers, wetlands, floodplains, soil and water, recreational resources, and agricultural productivity. Because this section has been retained exactly as it appeared in the Errata sheet, it remains approved.

*Phase II Inventory (p. 3–6)*

The State proposes to comply with the requirements of the Federal regulations at 30 CFR 886.23(b) by using OSM procedures concerning the Abandoned Mine Land Inventory System, required by SMCRA section 403(c). We are approving this change because it explicitly requires compliance with a provision of the Federal regulations.

*Small Operator Goals (pp. 3–6 to 3–8)*

This section has been revised to reference the authorizing statute at Kentucky Revised Statutes (KRS) 350.450. In addition, the State has amended its definition of small operators to include all those anticipated to mine less than 300,000 tons of coal per year. This change mirrors the Federal regulations at 30 CFR 795.6(a)(2), which also define small operators as those mining less than 300,000 tons per year. We are therefore approving this change.

*Marketable Mineral Recovery (pp. 3–8, 3–9)*

This section has been revised to allow all contractors, rather than just small operators, to participate in the bidding for AML projects that involve incidental coal removal, although small operators will still receive preference. The change is intended to address the situation where small operators may occasionally lack the expertise, equipment, access, etc., to perform the needed work. Kentucky's practice of allowing only small operators to bid for AML contracts that involve the incidental removal of coal is set forth in the original Plan that we approved in 1982. *See* 47 FR 21435. However, because SMCRA neither mandates nor prohibits this practice, its elimination by Kentucky can likewise be approved.

*Bond Forfeiture Projects (p. 3–9)*

This section has been amended to change the heading from ''Supplementation of Eligible Bond Forfeiture Sites'' to ''Bond Forfeiture Projects.'' This change, already contained in the Errata Sheet that we approved in 1982, is now moved to the text of the Plan. It is non-substantive in nature and is hereby approved.

The section was further revised by deleting all but the first paragraph, and by adding a paragraph that states that it is the policy of the Kentucky Division of Abandoned Mine Lands (DAML) that only eligible bond forfeiture sites are covered by the AML plan and that bond forfeiture sites must meet all priority and grant submission requirements that all other AML problem sites meet. This change in effect eliminated the previous specific requirements for bond forfeiture sites. This change is approved because it does not conflict with section 402(g)(4)(B)(ii) of SMCRA and 30 U.S.C. 1232(g)(4)(B)(ii), which created AML Fund eligibility for certain bond forfeiture sites.

*Water Supply Projects (p. 3–10)*

Kentucky proposed this new section to comply with SMCRA section 403(b)(1) and 30 U.S.C. 1233(b)(1), which authorizes States and Tribes to use up to 30 percent of their annual AML grants to fund projects for water supply facilities in areas that have suffered coal mining related impacts to drinking water supplies. Kentucky's new section states that:

> Title IV of SMCRA was amended in 1990 to allow a state to use up to 30% of its annual AML grant to fund projects for '* * * the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by past coal mining practices.' Kentucky will use, at its discretion, up to 30% of its annual AML grant to provide drinking water to areas of the Commonwealth where water supplies have been adversely affected by AML.
>
> Eligibility of water supply projects and funding of the projects will be made based on guidelines developed and administered by the Division of Abandoned Mine Lands. Eligibility requirements will be developed jointly with the OSM.

Kentucky's proposal to use up to 30% of its AML grant for drinking water replacement meets the requirements of Federal law since SMCRA section 403(b)(1) allows such amount to be used for water replacement purposes. Therefore, we are approving the change.

*Project Selection (pp. 4–8 to 4–11)*

Kentucky's plan includes a section providing the specific criteria used to identify and rank projects to be funded through the program. As previously approved, this subsection, designated as subsection V, discusses the development of AML construction grant applications. Under this subsection, projects to be included in a year's construction grant application are selected from a grant development action list. Those projects included in the action list are ''the known Priority I and II projects where the degree and imminency of impacts are most severe, plus those supplemental bond forfeiture reclamation areas yet unaddressed.''

Kentucky proposed to amend subsection V by removing the phrase, ''plus those supplemental bond forfeiture reclamation areas yet unaddressed.'' Thus, projects included in the action list would consist only of Priority I and II projects. The State also proposed to change references to the Assistant Director of the Division of Abandoned Mine Lands to references to the Director. Finally, Kentucky proposed to change the title of subsection V from ''Annual Construction Grant Application'' to ''Project Selection.'' This section has also been revised to reflect the current policy of including input from all professional staff in the project selection process and the process by which grant application elements are prepared for each project. We are approving the proposed changes because they meet the requirements of the Federal regulations at 30 CFR 884.13(c)(1), which require the State to describe its criteria for ranking and identifying projects to be funded by the AML program.

*Coordination With RAMP, Indian, and Other Reclamation Programs (p. 5–1)*

In the second paragraph of page 5–1, the phrase ''30 CFR 884.13(f)(5)(v), Flora and Fauna of the Coalfields,'' was deleted and replaced with the phrase ''30 CFR 884.13(f)(3), Endangered and threatened plant, fish and wildlife and their habitat.'' This change was made because the Federal regulation at 30 CFR 884.13(f)(5)(v) has been repealed, and because the correct reference is 30 CFR 884.13(f)(3). This is not a substantial concern.

*Lands for Permanent Facilities (p. 6–1)*

This section has been revised to incorporate the language at KRS 350.570(3), which authorizes the Commonwealth of Kentucky to acquire

any land adversely affected by past coal mining practices, if acquisition is necessary for successful reclamation and if such acquisition is approved in advance by OSM. Federal regulations at 30 CFR 879.11 authorize State acquisition of land adversely affected by past coal mining upon approval by OSM, if the land, after restoration, abatement, control or prevention of adverse effects of past coal mining practices, will serve recreational, historic conservation or provide open space benefits, and permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices. By contrast, the Kentucky AML Plan proposal would allow the State to acquire the lands if the lands will serve the enumerated (*i.e.*, recreational, *etc.*) purposes or if permanent facilities will be constructed. As such, this revision does not comply with the Federal regulations or with section 407(c) of SMCRA. We are approving the proposed change to the extent that Kentucky will meet both criteria in their acquisition of lands. We are not approving the word ''or,'' which appears at the end of paragraph 1 of the section entitled ''Lands for Permanent Facilities.'' We note, however, that OSM approval is always required prior to acquisition of these lands and acquisition must be carried out in accordance with Federal law and regulations.

*Acquisition of Real Property by Donation (p.6–3)*

This section has been revised to eliminate subdivision 2(e), which requires itemizations of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered, and subdivision 2(f), which states that a deed of conveyance shall be executed, acknowledged and recorded in the name of the Commonwealth of Kentucky after acceptance of an offer.

The Federal regulations at 30 CFR 879.13(b) allow States to use applicable State law when accepting donations of land. Therefore, we are approving the deletion of the above provisions with the understanding that Kentucky will continue to follow all applicable State laws when accepting donations of real property.

*Step-by-Step Procedure for Land Acquisition (pp. 6–4 through 6–9)*

Kentucky has revised this section by updating the names of departments and titles of certain departmental officials. As these revisions do not have a substantive effect on the State's AML program, we are approving them.

*Management of Acquired Lands (p. 6–9)*

Kentucky has proposed to move this section from the approved Errata Sheet for the original 1981 Plan into the text of Chapter 6 of the plan. It is intended to comply with the requirements at 30 CFR 884.13(c)(4), which requires a description of policies and procedures regarding land acquisition, management and disposal. Specifically, this section corresponds to the Federal regulations at 30 CFR 879.14, ''Management of acquired land.'' Because the provision is identical in substance to the one approved by OSM in 1982 and contained in the Errata Sheet, it remains approved in its new location.

*Disposition of Reclaimed Lands (p. 6–10)*

Kentucky has proposed to revise this section by adding a requirement that the appraised value of a property be stated in a land disposition notice. This change is based on recommendations made by OSM in the 1981 OSM Review (Administrative Record No. KY–57). With this change, the Plan remains in compliance with the Federal regulations at 30 CFR 879.15, pertaining to disposition of reclaimed land. Therefore, the change is approved. Also, the State elected to allow land sales to be conducted by either public auction or sealed bid, whereas the approved Errata Sheet for the 1981 Plan allowed sealed bids to be accepted prior to the sale date, followed by a public auction. This change likewise leaves the Plan in compliance with the Federal regulations at 30 CFR 879.15, and it is therefore approved.

*Reclamation on Private Lands (pp. 7–4 to 7–6)*

Kentucky has proposed to revise these sections as follows:

(1) *Levy of Lien:* Addition of a requirement that the landowner be provided a statement of the increase in market value, an itemized statement of reclamation expenses, and notice that a lien will or will not be filed in accordance with 30 CFR 882.13.

In this case, the Kentucky revisions are more stringent than the Federal requirements at 30 CFR 884.13. The Federal program requires that within 60 days of filing a lien the property owners may petition under local law to determine the increase in market value to their land and may appeal any decisions under local law. Under the new section of State law, within 60 days of the reclamation work, the land owner shall be notified of the above. Landowners are given an opportunity to appeal any increases in market value within 60 days of the lien being filed. Although the Kentucky law, as proposed, does not allow for the specific appeal of the lien itself, any liens are only possible where there is an increase in property value. Thus, here the landowner's rights are still protected. We are therefore approving this change.

(2) *Satisfaction Of Liens:* The reference to ''State Abandoned Mine Reclamation Fund'' is changed to ''Abandoned Mine Reclamation Fund,'' and Appendix 7-A and Attachment 7–1 have been deleted.

This change was recommended by OSM since there is not a State Abandoned Mine Reclamation Fund in Kentucky. Kentucky works under grants of State and Secretary share monies from the Abandoned Mine Reclamation Fund defined under SMCRA. If Kentucky someday does decide to have a State Abandoned Mine Reclamation Fund it will have to be legislated and could be used to account/administer set aside funds given them from the AML Fund, since these monies cease to be ''AML Funds'' once given to the State. Furthermore, Appendix 7–A and its Attachment 7–1 pertain only to contracting for reclamation of pre and post law coal mining permits for which the performance bond has been forfeited. The DAML administers forfeited bond money to accomplish reclamation as a collateral duty. DAML has a separate section within their Construction Branch that handles bond forfeiture planning and reclamation, which is accounted separately from AML work to reflect Title V costs for Kentucky I&E (Title V) Grant debiting. Therefore, these procedures are best documented by DAML as standard operating procedures rather than being in the AML Plan. As such, we find that these amendments are approvable, as they do not render the State program less effective than the Federal requirements.

*Rights of Entry (pp. 8–7 and 8–18)*

Kentucky has revised their program so that the reference to ''Division of Abandoned Lands (DAL)'' has been changed here, and throughout the document, to ''Division of Abandoned Mine Lands (DAML).'' As this change is not substantive, and therefore will not render the State program less effective than the Federal program, we are approving it.

*Personnel Staffing Policies (pp. 11–1 and 11–3)*

Kentucky has revised their program in accordance with Federal requirements

to require that all personnel assignments will comply with ''Title VII of the Civil Rights Act of 1964 (PL 88–352).'' This change complies with 30 CFR 884.13(d)(2), which requires a description of the personnel staffing policies which will govern the assignment of personnel to the State reclamation program. It also assures that the Kentucky program is in compliance with applicable Federal law governing personnel assignments. We are approving this change.

*Purchasing and Procurement Systems (pp. 12–1, 12–4, and 12–6)*

Kentucky has proposed a revision to its program on page 12–1, paragraph 6, that would delete the reference to Public Law 95–87 (SMCRA) and add references to Chapter 3 of the AML Plan, pertaining to Small Operator Goals, and to 30 CFR 884.13(c)(1). These changes were contained in the 1981 Errata Sheet for the original Plan, both of which we approved in 1982, and are now incorporated into the text of the Plan in identical form. Therefore, the changes are approved.

The subsection pertaining to purchase requisitions is being revised to reflect the current procedure for reviewing and approving requisitions. Specifically, three new paragraphs are added to the beginning of the Purchase Requisition section on page 12–4. These new paragraphs state that project plans are selectively reviewed and revised, if necessary, by the staff of the Commissioner of the Department for Surface Mining Reclamation and Enforcement (DSMRE) and, if approved are then returned to the DAML, where a purchase requisition is prepared for the Director to review and sign. After they are signed, the plans are sent to the Division of Administrative Services, which reviews the purchase requisition for accuracy and form, and to insure that sufficient funds are available.

This section, in effect, re-delegates the function and responsibility of purchase requisition review, approval, and processing. The changes comply with the Federal regulations at 30 CFR 884.13(d)(3), which require a description of the purchasing and procurement systems to be used by the agency that administers the AML Plan. Therefore, the additional paragraphs are approved.

Kentucky has proposed a revision to the first paragraph on page 12–6 to read: ''When an apparent low bidder is identified for any AML reclamation contract, the Division of Abandoned Lands forwards the low bidder's name, Federal tax number, social security numbers and other information as required to the Ownership and Control Review section of the Division of Permits of the Kentucky Department of Surface Mining for an Applicant Violator System (AVS) check for permit eligibility, in accordance with 30 CFR 874.16. Before the contract is awarded to the apparent low bidder an AVS confirmation of permit eligibility will be received from the AVS check.''

This revision effectively updates the Kentucky program to be in compliance with the Federal regulations at 30 CFR 874.16, pertaining to AML contractor eligibility, and with the standard for AVS reviews. This proposed change is approved.

Also on page 12–6, the fourth sentence of the first paragraph is revised by deleting the statement that the Commonwealth has the right to ''waive all informalities and technicalities of a bid when, in their judgment, the best interest of the Commonwealth of Kentucky may be served.'' A sentence is then added immediately after the revised fourth sentence. The new sentence states that ''[a]ll rejections of bids or waivers will be in accordance with requirements of Office of Management and Budget (OMB) Circular A–102, and applicable State or local law.'' We previously approved these revisions in the Errata Sheet for the original 1981 Plan. This proposal merely transfers the revisions to the text of the Plan, and is therefore approved without further discussion.

*Construction (pp. 12–7 and 12–8)*

Kentucky has deleted the subsections, ''Monthly Reports for Office of Surface Mining'', ''Final Report for the Office of Surface Mining'' and ''Change Orders,'' in their entirety. In addition, the phrase, ''and change orders,'' at the end of the first paragraph on page 12–7 has been deleted.

Kentucky has also inserted the sentence ''guidelines pertaining to change orders will be developed by the Division Director as needed'' as the last sentence of the ''Project Inspection'' subsection.

OSM currently analyzes reports under oversight. The monthly reports to OSM noted in the previously-approved Plan were designed to keep OSM informed of Kentucky's progress during the startup of the Kentucky program in the early 1980's and were sent to the Knoxville Regional Office, which no longer exists. All monitoring and oversight of the Kentucky AML program has been moved to the Lexington Field Office, thereby rendering the reporting required by the deleted subsections unnecessary. In addition, the State has produced and follows internal standard operating procedures for change orders, which we review under normal oversight, and notifies us of significant change orders under a provision of our Directive AML–22 Performance Agreement for oversight purposes of their construction management process. Because there is no Federal requirement that States file monthly reports, final reports, with OSM, or that change orders or major revisions be approved by OSM, we are approving these changes.

*AML Enhancement Rule (p. 12–9)*

Kentucky has added the subsection ''AML Enhancement Rule.'' This additional section incorporates OSM's AML Enhancement Rule at 30 CFR 874.17 by reference. The rule provides guidance and procedures for AML programs when considering an AML project as government-financed construction under 30 CFR Part 707 where the level of funding will be less than 50 percent of the total cost of planned coal extraction. Because this change will add to the universe of projects that are eligible for AML funding (*i.e.*, projects that involve the incidental removal of coal and that are less than 50% government financed), it changes the scope of Kentucky's AML program. Therefore, the change can only be approved in accordance with 30 CFR 884.14. *See* 30 CFR 884.15(a) (pertaining to State reclamation plan amendments). In reviewing this portion of the amendment, we have: provided adequate notice and opportunity for comment on the amendment; solicited and considered the views of other Federal agencies having an interest in the amendment; found that the State continues to have the legal authority, policies and administrative structure necessary to carry out the proposed plan, as amended; found that the State continues to have an approved State regulatory program; and, determined that the amendment is in accordance with all applicable State and Federal laws and regulations. The incorporation, by reference, of OSM's AML Enhancement Rule is therefore approved. However, we note that the United States Court of Appeals for the District of Columbia Circuit has, in part, remanded the Federal AML Enhancement Rule for further consideration. Specifically, the court ordered OSM to explain how it can reasonably construe the term ''government-financed'' to include ''expenses incurred directly or indirectly by [an] AML agency,'' even where the ''AML contractor receives no funds at all from the government.'' *Kentucky Resources Council* v. *Norton*, 2002 U.S. App. Lexis 11365, Slip. Op.

at 5. (D.C. Cir. May 30, 2002). Therefore, our approval of the Kentucky AML Plan provision incorporating the Federal AML Enhancement Rule by reference is subject to the restrictions placed upon the Federal regulation by the court. Moreover, Kentucky may be required to further amend its AML Plan to conform with future revisions to the AML Enhancement Rule that will be carried out in an effort to comply with the court's remand order.

*Reclamation Agreements (p. 10–12)*

In this subsection, Kentucky proposes to allow operators to enter into reclamation agreements with the Division of Abandoned Mine Lands for the purpose of removal of excess spoil from adjacent or nearby active permitted operations and subsequent placement on AML sites. Placement of excess spoil on adjacent abandoned mine land has been addressed previously in other rulemaking. Specifically, in a July 9, 1991, letter to Ohio (Administrative Record No. OH–1546), the Director of OSM clarified OSM's position concerning the standards and requirements which apply to the usage of excess spoil for reclamation of abandoned mine land sites. OSM focused on the parameters for excess spoil disposal outside the permit area as established, in part, in several final rules approving such a provision in the West Virginia program (45 FR 69254–69255, October 20, 1980; 46 FR 5919, January 21, 1981; and 55 FR 21328–21329, May 23, 1990).

In the January 21, 1981, **Federal Register** announcing approval of the West Virginia program (46 FR 5919), the Secretary found that, for purposes of excess spoil disposal, a reclamation contract governing work to be performed on a Federal AML reclamation grant project is the equivalent of permit and bond under Title V of SMCRA. In the May 23, 1990, **Federal Register** (55 FR 21329), OSM found that West Virginia's proposed disposal of excess spoil on a Federally funded AML reclamation project is approvable provided the spoil is not necessary to restore approximate original contour (AOC) on or otherwise reclaim the active mine. In addition, as stated in the May 23, 1990, **Federal Register**, fills are not to be created on AML reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. OSM restricted eligibility for such spoil deposition to AML reclamation projects funded through the Federal AML grant process. The Director finds that Kentucky's proposal regarding placement of excess spoil meets these requirements for AML reclamation projects authorized through the Federal AML grant process, for the reasons set forth below.

First, Kentucky's proposal requires that the excess spoil placed on an abandoned site will be ''for use as cover material and a growth medium for vegetation.'' As such, the amount of excess spoil placed thereon will not exceed that required to restore that site to AOC. Therefore, valley, head-of-hollow and durable rock fills will not be constructed on these AML sites, because the amount of material deposited to form a fill would far exceed that necessary for use as cover material and as a growth medium for revegetation.

Second, the proposal requires that the ''site must be designated as an active AML project during all reclamation activity and will be subject to oversight by (Kentucky) inspection personnel.'' This is interpreted to mean the project is to be administered as a Federally-funded AML project authorized through the Federal AML grant process, which must comply with requirements of the Federal Assistance Manual (OSM Directive AML–10) and the National Environmental Policy Act of 1969 (NEPA). The environmental safeguards that therefore will apply should ensure that the excess spoil is placed in an environmentally-sound fashion, and that placement will not destroy or degrade features of environmental value.

Third, and finally, the Director finds that the proposal contains sufficient performance incentives to require compliance with all applicable requirements, since the proposal states that the ''AML site will be maintained, as determined by (Kentucky), by the contractor through the entire bond liability period of the permitted site from which the excess spoil originated'' and should the contractor ''fail to honor or satisfy the agreement, (Kentucky) may require the company to obtain a permanent program permit under Title V for the affected area. In addition, Kentucky always has AML grant funds available to reclaim these sites in the event that the operator defaults on the terms of its contract, all Title V enforcement options are exhausted, and the AML reclamation contract performance bond is insufficient to complete reclamation.

*Accounting Systems (p. 13–1)*

Kentucky has revised this subsection to update organizational title and office changes. As this change is not substantive, and therefore will not render the State program less effective than the Federal program, we are approving it. This determination is based on recommendations made by OSM in the 1981 OSM Review (Administrative Record No. KY–57).

*Maps of Eligible Lands and Waters (p. 15–1)*

Kentucky has reworded the first paragraph to better clarify AML eligibility by referencing ''Section 404 ''Eligible Lands and Water'' and/or 402(g)(4) of Title IV of Public Law 95–87 and/or KRS 350.560''. This change provides additional clarification of which sites are eligible for reclamation with Kentucky AML grant funds. Because this amendment refers to the appropriate Federal and State laws governing AML site eligibility, we are hereby approving it. This determination is based on recommendations made by OSM in the 1981 OSM Review (Administrative Record No. KY–57).

*Problems Occurring on Abandoned Mine Land Sites (pp. 16–3, 16–5, 16–9 and 16–12)*

On page 16–3, first paragraph (Environmental Damage), line 3, Kentucky has added the phrase ''including adverse impacts on endangered and threatened species'' directly after the phrase ''loss of fish and wildlife habitat.'' Also on page 16–3, in the paragraph entitled ''Surface/Groundwater Contamination,'' the phrase ''including adverse impacts on endangered and threatened species'' is added after the phrase ''aquatic vegetation.''

On page 16–5, at the end of the paragraph entitled ''Erosion,'' the following sentence is added: ''On-site erosion and sediment control techniques will be used wherever practicable and feasible to minimize erosion and retain sediment within the disturbed area or limit the volume of sediment leaving the project site.'' Also on page 16–5, at the end of the paragraph entitled ''Reduced Fish and Wildlife Habitat,'' the following sentence was added: ''Unvegetated areas may also cause adverse impacts on endangered and threatened species.''

On pages 16–6 and 16–7, a new section, entitled ''Abandoned Highwalls,'' was added. This section enumerates and discusses problems generally associated with abandoned highwalls on AML sites. These problems include, but are not limited to, threats to life, health and safety, reduced wildlife habitat, attractive nuisances for children or hikers, and adverse impact on aesthetic, historical, cultural, or recreational resources. The new section also discussed certain

reclamation techniques to correct or abate these problems, including highwall reduction by bench reconstruction, re-establishment of wildlife routes by pulling down highwall sections, or screening or covering the highwall with appropriate species to enhance wildlife values and reduce aesthetic degradation.

On page 16–9, in the paragraph entitled ''Limitation of loss of habitat,'' the sentence has been changed by adding at the end the phrase ''and runoff from burned areas may impede or prevent utilization of water resources by aquatic life.'' Also, a second sentence is added, which states that ''[s]uch [forest] fires can have adverse impacts on endangered or threatened species.''

On page 16–12, at the end of the paragraph entitled ''Limitation or loss of fish and wildlife habitat,'' the following sentence was added: ''This [limitation or loss of fish and wildlife habitat] problem is especially serious for those endangered or threatened species, such as Federally listed bats, which inhabit caves or mine shafts subject to subsidence.''

All of these changes to section 16 were previously contained in the Errata Sheet for the 1981 Plan, both of which we approved in 1982, and are merely being transferred to the text of the Plan. Therefore, we are approving the transfers without further discussion.

*Relationship to Existing and Planned Land Use (pp. 17 B1, 17–6, and 17–7)*

Kentucky has revised this section to recognize the presence of endangered or threatened species during reclamation and land use planning. A sentence has been added on page 17–6, stating that the Big South Fork National River and Recreation Area has been adversely affected by erosion, sedimentation and acid mine drainage from AML sites. On pages 17–6 and 17–7, it is noted that commercial forest land in the Eastern Kentucky Coalfield includes 670,000 acres of the Daniel Boone National Forest. These revisions to section 17 were previously contained in the Errata Sheet for the 1981 Plan, both of which we approved in 1982, and are merely being transferred to the text of the Plan. Therefore, we are approving the transfers without further discussion.

*Quantities of Land and Water Affected by A.M.L. (p. 18–1)*

Kentucky has added the following two sentences on page 18–1, at the end of the first paragraph: ''Not all of the acres listed are priority I or II sites. The acreages represent an approximation of the total mined acres in each coalfield, some of which may be determined to be acceptable in their current state or may require limited efforts to correct remaining problems.'' This revision to section 18 was previously contained in the Errata Sheet for the 1981 Plan, both of which we approved in 1982, and is merely being transferred to the text of the Plan. Therefore, we are approving the transfer without further discussion.

*Socio-Economic and Cultural Profile of the Coalfields (p. 19–23)*

Kentucky has changed the first sentence of ''The Redbird Purchase Unit'' paragraph to make it clear that the unit is not purely a recreational area. This revision to section 19 was previously contained in the Errata Sheet for the 1981 Plan, both of which we approved in 1982, and is merely being transferred to the text of the Plan. Therefore, we are approving the transfer without further discussion.

*Flora and Fauna of the Coalfields (Chapter 21)*

Kentucky has revised its program to include references to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C., 4321 *et seq.*), and Executive Orders 11988 and 11990 on page 21–77. This change is approved as a non-substantive change because it merely notes that NEPA and the aforementioned Executive Orders, along with other statutes already listed, require that fish and wildlife be considered in the initial reclamation planning for a project.

Kentucky has added a requirement for DSMRE to consult with the Kentucky Department of Fish and Wildlife Resources regarding the existence of Federally endangered or threatened species during the NEPA review process on page 21–79. We are approving this change because the Kentucky Department of Fish and Wildlife Resources is the appropriate state agency for purposes of consultation with respect to endangered or threatened species.

Kentucky has added the current title of the ''Natural Resources and Environmental Protection Cabinet'' to its AML plan. As this change does not substantively affect the Kentucky AML program, it is approved.

Kentucky has also revised its program to incorporate NEPA compliance measures into the AML plan rather than the previous requirement to do an ''environmental assessment.'' We are approving this change because it more accurately accounts for the varying levels of review that may be required pursuant to NEPA.

Kentucky has added numerous changes to the text of its AML Plan that are composed mostly of additional references to various species of flora and fauna. These changes were previously contained in the Errata Sheet for the 1981 Plan, both of which we approved in 1982, and are merely being transferred to the text of the Plan. Therefore, we are approving the transfers without further discussion.

*Commercially Minable Coal Seams and Projects, Methods of Extraction (pp. 22–5, 22–14, 22–24, and 22–26)*

The Figure 22–2, ''Preliminary Correlation Chart of Coal Beds and Key Beds of the Pennsylvanian Rocks of Eastern Kentucky,'' has been added and the section has been revised to present options in determining remining feasibility, and to eliminate references to Site Score Sheets and matrices to rank AML sites. The references to be deleted are found on page 22–22 of the currently approved AML plan, and are discussed further below.

The State has eliminated the use of Site Score Sheets and matrices to rank AML sites, and approved a new system that is found in Chapter 4 of the current plan, ''Project Ranking and Selection Procedures'' which was approved on July 14, 1987 (52 FR 26299). Based on that change, we recommended that the references in Chapter 22 to these previously removed features be removed from Chapter 22 of the current plan amendment as well. Kentucky has complied with this suggestion and we thus find that these deletions render the State AML program internally consistent with respect to AML site ranking and hereby approve them.

The sentences inserted to provide options in determining remining feasibility are found on page 22–14 of this amendment, and state that ''Kentucky may use different systems to analyze the consideration for probability for remining. In 1980, the Kentucky Geological Survey developed a system of moderate complexity for ranking probability of remining.'' We are approving this change because it accords with the elimination of the references to Site Score Sheets.

On page 22–26, pertaining to non-coal minerals, Kentucky has deleted the reference to the Site Score Sheet, but the potential for non-coal mineral recovery remains a factor to be considered when ranking AML sites. This deletion is approved for the reasons stated above in this same finding. In that same paragraph, the following four sentences are being added: ''Extraction of these non-coal minerals in the Commonwealth may take place by any of several methods. Petroleum and natural gas are extracted through the

sinking of wells. Clay, rock asphalt, sand and gravel are commonly extracted through methods of surface mining. Limestone, flourspar, and oil shale, in addition to methods of surface mining, are also commonly extracted through deep mining.'' This addition was previously contained in the Errata Sheet for the 1981 Plan, both of which we approved in 1982, and is merely being transferred to the text of the Plan. Therefore, we are approving the transfer without further discussion.

## IV. Summary and Disposition of Comments

*Public Comments*

We asked for public comments on the amendment (Administrative Record No. KY–72). We did not receive any comments from the public.

*Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record No. KY–72). We received one comment from the U.S. Fish and Wildlife Service (USFWS), one from the U.S. Department of Labor's Mine Safety and Health Administration (MSHA), and one from the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS).

We received a letter from the USFWS dated March 14, 2003 (Administrative Record No. KY–72). The letter indicated that the USFWS was interested in four sections of the AML plan changes. First, it indicated that it concurs with the changes to the AML Enhancement Rule (p. 12–9), as it may reduce the impacts to fish and wildlife resources on active mining permit areas, increase the number of AML projects that can be completed each year, and enhance additional habitat for fish and wildlife through AML reclamation projects. Second, the USFWS indicated support for the addition of the new subsection Reclamation Agreements (p. 12–10) because the site-specific removal of excess spoil will enhance reclamation on AML sites. Third, it supports the additions of sections relating to threatened and endangered species at Problems Occurring on Abandoned Mine Land Sites (pp. 16–3, 16–5, 16–9, and 16–12). In addition, to the extent that soils will not be compacted and the site's ability to reforest be jeopardized, it supports the addition of the erosion minimization and sediment retention techniques. We agree with the USFWS on this matter and recognize concerns associated with soil compaction. Finally, the USFWS indicated that it has a concern with the section Flora and Fauna of the Coalfields (Chapter 21, p. 21–79), such that it suggests that Kentucky should consult with it, in addition to the Kentucky Fish and Wildlife Service, regarding the existence of Federally listed species when implementing the Endangered Species Act. We acknowledge this concern and recognize that the USFWS has jurisdiction over both Federally listed species and the Federal Endangered Species Act. The USFWS concern in this case is handled by OSM policy set in OSM Directive GMT–10 ''Federal Assistance Manual''. In accordance with this policy, OSM has the responsibility for environmental compliance with NEPA. However, policy provides that initial preparation of the environmental review document and initial consultations may be completed by the State. Final review, consultation, and authorization of the environmental review document rests with OSM. By agreement with Kentucky, OSM performs the consultation responsibility with the USFWS. The USFWS concerns in this case are therefore satisfied by OSM policy, rather than the Kentucky AML Plan.

We received a letter from the MSHA dated March 13, 2003 (Administrative Record No. KY–72). MSHA indicated that the changes to the AML plan would not have an impact concerning its office or jurisdiction.

We received a letter from the NRCS dated March 10, 2003 (Administrative Record No. KY–72). NRCS indicated that it concurs with Kentucky's proposals to update its AML plan, thereby bringing it up to date with current Federal regulations. The NRCS also stated that while it concurs with the changes made concerning coordination with the Rural Abandoned Mine Program formerly administered by NRCS, there are concerns about the funding longevity of the program as it has been taken ''off budget.'' We also share this concern, however it falls outside of the scope of our jurisdiction and as such we are unable to respond to this comment in our approval of Kentucky's AML plan amendment.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). There are no such provisions in this amendment, so we did not seek EPA concurrence. Furthermore, the EPA did not comment on the proposed changes to the Kentucky AML Plan.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 12, 2002, we requested comments on Kentucky's amendment (Administrative Record No. KY–72), but neither the SHPO nor the ACHP responded to our request.

## V. OSM's Decision

Based on the above findings, we are approving Kentucky's proposed amendment, except as follows. We are not approving the word ''or,'' which appears at the end of paragraph 1 of the section entitled ''Lands for Permanent Facilities.'' We are approving the incorporation by reference of the Federal AML Enhancement Rule subject to the restrictions placed upon the Federal regulation by the court in *Kentucky Resources Council* v. *Norton*, *supra.* Finally, the ''Reclamation Agreements'' provision at the end of Chapter 12 is approved only to the extent that it applies to AML reclamation projects authorized through the Federal AML grant process. The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky AML Plan are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans

and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based soley on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884 of the Federal Regulations.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine land reclamation programs. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 405(d) of SMCRA requires State abandoned mine reclamation programs be in compliance with procedures, guidelines, and requirements established by SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not 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. This final rule applies only to the Kentucky program and therefore does not affect tribal programs.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 27, 2003.

**Brent Walquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

## PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

### § 917.21 [Amended]

■ 2. Section 917.21 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The Kentucky Abandoned Mine Land Reclamation Plan amendment, submitted to OSM on April 29, 2002, is approved with the following exceptions. The word ''or,'' which appears at the end of paragraph 1 of the section entitled ''Lands for Permanent Facilities,'' is not approved. We are approving the State of Kentucky's incorporation by reference of the Federal AML Enhancement Rule into their regulations. This approval is subject to the restrictions placed upon the Federal regulation by the court in *Kentucky Resources Council* v. *Norton,* 2002 U.S. App. Lexis 11365, Slip. Op. at 5. (D.C. Cir. May 30, 2002) The ''Reclamation Agreements'' provision at the end of Chapter 12 only applies to AML reclamation projects authorized through the Federal AML grant process. Copies may be obtained at the address listed in (a)(2) of this section for OSM or the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Abandoned Mine Lands, 2521 Old Lawrenceburg Road, Frankfort, Kentucky 40601.

[FR Doc. 03–28995 Filed 11–21–03; 8:45 am]

BILLING CODE 4310–05–P

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Part 575**

## Authorization for U.S. Financial Institutions To Transfer Certain Claims Against the Government of Iraq

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** The Office of Foreign Assets Control (''OFAC'') of the Department of the Treasury is amending the Iraqi Sanctions Regulations to incorporate a general license authorizing U.S. financial institutions to transfer certain claims against the Government of Iraq for unpaid loans and other debts to their home offices or to other foreign offices of the same institution.

**DATES:** Effective September 30, 2003. Written comments must be received no later than January 23, 2004.

**ADDRESSES:** Comments may be submitted to the Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Alternatively, comments may be submitted via facsimile to the Chief of Records at 202/622–1657 or via OFAC's Web site <*http://www.treas.gov/offices/eotffc/ofac/comment.html*>.

**FOR FURTHER INFORMATION CONTACT:** OFAC's Chief of Licensing, tel. 202/622–2480, Chief of Policy Planning and Program Management, tel. 202/622–2500, or Chief Counsel, tel. 202/622–2410.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 2, 1990, the President issued Executive Order 12722, declaring a national emergency with respect to Iraq. This order was issued under the authority of, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the U.S. Code and imposed economic sanctions, including a complete trade embargo, with respect to Iraq. In keeping with United Nations Security Council Resolution 661 of August 6, 1990, and under the United Nations Participation Act (22 U.S.C. 287c), the President also issued Executive Order 12724 of August 9, 1990, which imposed additional restrictions. The Iraqi Sanctions Regulations, 31 CFR part 575 (the ''Regulations''), implement Executive Orders 12722 and 12724 and are administered by the Treasury Department's Office of Foreign Assets Control (''OFAC'').

On May 22, 2003, the United Nations Security Council adopted Resolution 1483, which substantially lifted the multilateral economic sanctions with respect to Iraq. On May 23, 2003, OFAC issued a general license that reflected Resolution 1483 by authorizing most transactions that had been prohibited by the Regulations. This general license was published in the **Federal Register** on June 27, 2003, as section 575.533 of the Regulations (68 FR 38188–38190). Section 575.533 of the Regulations contained four exceptions to the broad lifting of sanctions, including a provision that ''[a]ll property and interests in property that were blocked * * * as of the effective date of this section [*i.e.,* May 23, 2003] remain blocked * * *.''

On September 30, 2003, OFAC issued another general license that is being published today as new section 575.534 of the Regulations. New section 575.534 provides a limited authorization for U.S. financial institutions to transfer a category of blocked property and interests in property—*i.e.,* their ''claims that were booked in the United States as of May 23, 2003, against the Government of Iraq for unpaid loans and other debts''—to their home offices or to other foreign offices of the same institution. This new section authorizes only the transfer of claims under the circumstances described and does not authorize the debiting of any blocked account.

### Request for Comments

Because these regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues addressed in these regulations, they are being issued in interim form and comments will be considered in the development of a final rule. Accordingly, OFAC encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the regulations.

The period for submission of comments will close January 23, 2004. The address for submitting comments appears near the beginning of this document. OFAC will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. OFAC will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. OFAC will return such a submission to the originator without considering the comments in the development of final regulations. In the interest of accuracy and completeness, OFAC requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available not sooner than February 23, 2004 and will be obtainable from OFAC's Web site <*http://www.treas.gov/ofac*>. If that service is unavailable, written requests for copies may be sent to Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Chief, Records Division.

### Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web, Telnet, or FTP protocol is <*fedbbs.access.gpo.gov*>. This document and additional information concerning OFAC are available from OFAC's Web site <*http://www.treas.gov/ofac*>.

### Paperwork Reduction Act

The collections of information related to these regulations can be found in 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164.

### List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade,

Humanitarian aid, Imports, Iran, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Terrorism, Travel restrictions.

■ For the reasons stated in the preamble, 31 CFR part 575 is amended as set forth below:

## PART 575—IRAQI SANCTIONS REGULATIONS

■ 1. The authority citation for 31 CFR part 575 continues to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317; E.O. 13290, 68 FR 14307, March 20, 2003.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Add a new § 575.534 to subpart E to read as follows:

**§ 575.534 Transfers of certain blocked claims by U.S. financial institutions.**

U.S. financial institutions are authorized to transfer claims that were booked in the United States as of May 23, 2003, against the Government of Iraq for unpaid loans and other debts to their home offices or to other foreign offices of the same institution. This section authorizes only the transfer of claims and does not authorize the debiting of any blocked account.

Dated: September 30, 2003.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: October 15, 2003.

**Juan C. Zarate,**

*Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.*

[FR Doc. 03–29237 Filed 11–19–03; 2:59 pm]

BILLING CODE 4810–25–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 259–0421; FRL–7588–7]**

## Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on July 23 and September 16, 2003 and concern oxides of nitrogen ($NO_X$) emissions from marine vessels and truck stops. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**EFFECTIVE DATE:** This rule is effective on December 24, 2003.

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

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

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.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

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 Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

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

### I. Proposed Action

On July 23 (68 FR 43481) and September 16 (68 FR 54181) 2003, EPA proposed to approve the following rules into the California SIP.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SCAQMD | 1631 | Pilot Credit Generation Program for Marine Vessels | 10/04/02 | 12/12/02 |
| SCAQMD | 1634 | Pilot Credit Generation Program for Truck Stops | 11/09/01 | 01/22/02 |

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

### II. Public Comments and EPA Responses

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

### III. EPA Action

Our assessment that the submitted rules comply with the relevant CAA requirements has not changed since our proposals. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

### IV. Statutory and Executive Order Reviews

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 January 23, 2004. 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.

Dated: November 4, 2003.

**Keith Takata,**

*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)(293) (i)(A)(*3*) and (c)(308)(i)(D) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(293) * * *

(i) * * *

(A) * * *

(*3*) Rule 1634, adopted on November 9, 2001.

* * * * *

(c) * * *

(308) * * *

(i) * * *

(D) South Coast Air Quality Management District.

(*1*) Rule 1631, amended on October 4, 2002.

* * * * *

[FR Doc. 03–29176 Filed 11–21–03; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA203–4217a; FRL–7588–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; $NO_X$ RACT Determinations for Hercules Cement Company

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Hercules Cement Company. Hercules Cement Company is a major source of nitrogen oxides ($NO_X$) located in Northampton County, Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on January 23, 2004 without further notice, unless EPA receives adverse written comment by December 24, 2003. If EPA receives such comments, it 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.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part IV of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington,

DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and $NO_X$ sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

## II. Summary of SIP Revision

On August 15, 2003, the Pennsylvania Department of Environmental Protection (PADEP) submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and $NO_X$. This rulemaking pertains to one of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements in this SIP revision are included in an operating permit (OP) issued by PADEP.

Hercules Cement Company owns and operates a Portland Cement producing facility located in Stokertown Borough, Northampton County, Pennsylvania and is considered a major source of $NO_X$. In this instance, RACT has been established and imposed by PADEP in an operating permit. On August 15, 2003, PADEP submitted operating permit No. 48–0005A to EPA as a SIP revision. This operating permit addresses three Raw Mills, two HB Smith Boilers, and Cement Kilns 1 and 3.

$NO_X$ RACT for the three Raw Mills and the two HB Smith Boilers shall be the installation, maintenance and operation of these sources according to the manufacturer's specifications also in accordance with the emission limitations in 25 Pa. Code Chapter 129.93(c)(1). The facility will maintain records of these sources in accordance with the recordkeeping requirements of 25 Pa. Code Chapter 129.95.

The allowable $NO_X$ emissions limit established for both the operation of Cement Kilns 1 and 3, including the No. 1 preheater Cement Kiln, is 492.0 pounds per hour on a 30-day rolling average. Continuous emission monitors (CEM) shall be installed, operated and maintained to monitor $NO_X$ emissions for Cement Kilns 1 and 3. Continuous monitoring shall be conducted in accordance with 25 Pa. Code Chapter 139 and 40 CFR part 60, subpart F. The recordkeeping and reporting requirements for the facility is to maintain a file containing all records and other data to be collected pursuant to the various provisions of the operating permit for Cement Kilns 1 and 3. This file shall include, but is not limited to, all air pollution control system performance evaluations and records of calibration checks, adjustments and maintenance performed on all equipment which is subject to this operating permit. All measurements, records and other data required to be maintained by the facility shall be retained for at least two years following the date on which such measurements, records or data are recorded. In addition, all CEM reports shall be submitted to PADEP within 30 days after each quarter but not later than the time frame established in PADEP's latest Continuous Source Manual.

## III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

## IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for Hercules Cement Company (48–0005A) located in Northampton County, Pennsylvania. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on January 23, 2004 without further notice unless we receive adverse comment by December 24, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA203–4217 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.

1. *Electronically.* 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. 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.

*i. E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention: PA203–4217. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

*ii. Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed.

Please follow the online instructions for submitting comments. 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.

*iii. Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

*2. By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

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 at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

*Submittal of CBI Comments*

Do not submit information that you consider to be CBI electronically to EPA. 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 comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. 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 file and available for public inspection 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.

*Considerations When Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## IV. Statutory and Executive Order Reviews

*A. General 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 (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.*).

*B. 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. 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 today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Hercules Cement Company.

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2004. 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, approving Pennsylvania's $NO_X$ RACT determinations for Hercules Cement Company, 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, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: November 10, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(217) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(217) Revisions to the Pennsylvania Regulations pertaining to $NO_X$ RACT for a major source submitted on August 15, 2003 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Letter of August 15, 2003 from the Pennsylvania Department of Environmental Protection transmitting source-specific $NO_X$ RACT determinations.

(B) Operating Permit (OP) for Hercules Cement Company, Northampton County, 48–0005A, effective April 16, 1999.

(ii) Additional Material—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(217)(i)(B) of this section.

[FR Doc. 03–29174 Filed 11–21–03; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 68, No. 226
Monday, November 24, 2003

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.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 352

**RIN 3064–AC58**

### Access of Persons With Disabilities to FDIC Programs, Activities, Facilities, and Electronic and Information Technology

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking with request for comments.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) proposes to revise its regulations to implement section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires each Federal agency or department to ensure that the electronic and information technology (EIT) they develop or procure allows individuals with disabilities access to EIT comparable to the access of those who are not disabled, unless the agency would incur an undue burden.

**DATES:** Written comments must be received on or before January 23, 2004.

**ADDRESSES:** You may submit comments, identified by RIN number 3064–AC58, by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- E-mail: *comments@FDIC.gov.* Include RIN number 3064–AC58 in the subject line of the message.
- Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

*Instructions:* Submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Earl F. McJett, Information Management Analyst, Office of Diversity and Economic Opportunity, (202) 416–4320, or Joan S. Bunning, Counsel, Legal Division, (202) 898–8834, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 20, 1986, the FDIC promulgated 12 CFR part 352 to implement the spirit of section 504 of the Rehabilitation Act of 1973 (the Rehabilitation Act) (29 U.S.C. 794), as amended. Section 504 prohibits discrimination on the basis of disability as it applies to programs and activities conducted by various agencies. Although the FDIC did and still does not believe that Congress contemplated that section 504 should cover non-appropriated, independent regulatory agencies such as the FDIC, it voluntarily chose to promulgate this regulation pursuant to section 504. *See* 51 FR 9638.

The Workforce Investment Act of 1998 (the WIA) (Pub. L. 105–220, 112 Stat. 936) amending section 508 of the Rehabilitation Act (29 U.S.C. 794d), was signed into law on August 7, 1998. As amended, section 508 requires each Federal agency or department to ensure that the EIT it develops or procures allows individuals with disabilities access comparable to those who are not disabled, unless the agency would incur an undue burden. In addition, the amended section 508 requires the Architectural and Transportation Barriers Compliance Board (Access Board) to publish standards defining EIT and setting forth the technical and functional performance criteria necessary to accessibility for such technology. The WIA was effective as of August 7, 2000. The statute required the Access Board to publish its final standards by February 7, 2000.

On July 13, 2000, the Military Construction Appropriations Act for Fiscal Year 2001 (Pub. L. 106–246, 114 Stat. 511) was signed into law. Section 2405 of that statute amended section 508 to delay the section's effective date for enforcement to 6 months from the publication of the Access Board's final standards. The Access Board's final standards were published on December 21, 2000. *See* 65 FR 80500–80528. The effective date for enforcement of section 508 became June 21, 2001. The FDIC proposes to amend its regulations to reflect these legal requirements and to update regulations to reflect current terminology, practice, and procedures.[1]

## II. Section-by-Section Analysis

*Section 352.1 Purpose*

This section would be amended to state that the purpose of the regulation is to implement the requirements of section 508 of the Rehabilitation Act of 1973, as amended by the WIA, in addition to section 504 of the Rehabilitation Act.

*Section 352.2 Application*

This section would be amended to state that Part 352 applies to EIT access in addition to the agency's programs and activities. It also updates references to certain components of the FDIC such as the Office of Legislative Affairs and lists the FDIC's Internet website as one of the agency programs or activities to which Part 352 applies.

*Section 352.3 Definitions*

This section would be amended to include definitions specifically pertaining to EIT, to update terminology by substituting the term ''individual with a disability'' for ''handicapped person,'' and to define references in the regulation to section 508 and pertinent statutes.

[1] In addition to the proposed revisions to Part 352, the FDIC issued a directive on September 28, 2001, number 2710.11, that sets forth complaint procedures for individuals with disabilities, both Federal employees and members of the public, who have been denied access to EIT. FDIC issued a directive on July 18, 2003, number 2711.1, that contains the corporate policy on section 508 of the Rehabilitation Act.

*Section 352.4 Nondiscrimination in any program or activity conducted by FDIC*

This section is currently designated 352.5. Current section 352.4 would be deleted by the proposed rule. This section pertained to a self-imposed requirement that the FDIC must evaluate its program to implement section 504 of the Rehabilitation Act within one year of the regulation's effective date. This self-evaluation has been conducted by the FDIC. The current section 352.4 is therefore unnecessary.

The new section 352.4 would state that no qualified individual with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination on the basis of that disability in FDIC programs or activities.

*Section 352.5 Accessibility to electronic and information technology*

With respect to technology access, this new section states that the FDIC will ensure that employees and the public with disabilities will have access to EIT comparable to those without disabilities, unless an undue burden would be imposed on the FDIC.

*Section 352.6 Employment*

This section would be amended to provide that no qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment in any program or activity conducted by the FDIC. The section would further provide that the definitions, requirements, and procedures of the Rehabilitation Act that pertain to employment discrimination, as reflected in the Rehabilitation Act's implementing regulations, will apply to FDIC employment.

*Section 352.7 Accessibility of Programs and Activities: Existing Facilities*

This section would be amended to make plain that the FDIC shall operate its programs and activities to be readily accessible to and usable by persons with disabilities.

*Section 352.8 Program Accessibility: New construction and alterations*

This section would be amended to provide that each building or part of a building where FDIC programs or activities will occur which is either new or substantially altered for the FDIC shall be fashioned for ready access and use by individuals with disabilities.

*Section 352.9 Communications*

This section would be amended to provide that the FDIC shall take appropriate steps to effectively communicate with participants in FDIC programs and activities. The section would also be amended to refer to individuals with disabilities rather than handicapped persons and to the Office of Diversity and Economic Opportunity (ODEO) rather than the superseded Office of Equal Employment. The section would also be amended to provide the current address and telephone numbers of ODEO for those who wish to contact that FDIC component. Finally, the section would be amended to state that information as to where FDIC programs or activities are conducted shall be provided at the primary entrance to each FDIC facility.

*Section 352.10 Compliance procedures*

This section would be amended to provide that the section applies to claims of discrimination on the basis of disability in FDIC programs and activities or the denial of access to EIT. The section would also be amended to update and correct references to the Office of Diversity and Economic Opportunity (ODEO), the procedures for filing and processing complaints alleging disability discrimination in FDIC programs or activities and denial of access to EIT. Moreover, the section would be amended to shorten the time period during which the FDIC must reach a finding with respect to a complaint alleging discrimination on the basis of disability in FDIC programs and activities and denial of access to EIT from 180 to 120 days.

*Section 352.11 Notice*

This section would be amended to include a reference to EIT and section 508.

**III. Request for Comments**

The Board of Directors of the FDIC (the Board) is seeking comment on whether the measures outlined in this notice of proposed rulemaking will fulfill the objectives set for the agency by section 508 of the Rehabilitation Act. The Board welcomes any suggestions that commenters might have for ways to improve upon the suggested measures or additional steps that the FDIC might take to promote access by individuals with disabilities to EIT and to prevent discrimination on the basis of disability.

**IV. Paperwork Reduction Act**

The proposed rule would not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

**V. Regulatory Flexibility Act**

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The proposed rule describes how the FDIC will implement section 508 of the Rehabilitation Act to ensure that the EIT the agency develops and procures will allow individuals with disabilities access to EIT comparable to the access of those who are not disabled, unless the agency would incur an undue burden. It requires no specific or general action from any state nonmember bank nor does it impose any new reporting, recordkeeping or other compliance requirements. Accordingly, the requirements relating to an initial and final regulatory flexibility analysis are not applicable.

**VI. Impact on Families**

The proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

**List of Subjects in 12 CFR Part 352**

Access, Civil rights, Electronic and information technology, Equal employment opportunity, Federal building and facilities, Individuals with disabilities.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to revise Part 352 of Title 12 of the Code of Federal Regulations to read as follows:

## PART 352—NONDISCRIMINATION ON THE BASIS OF DISABILITY

Sec.
352.1 Purpose.
352.2 Application.
352.3 Definitions.
352.4 Nondiscrimination in any program or activity conducted by the FDIC.
352.5 Accessibility to electronic and information technology.
352.6 Employment.
352.7 Accessibility of programs and activities: Existing facilities.
352.8 Program accessibility: New construction and alterations.
352.9 Communications.
352.10 Compliance procedures.
352.11 Notice.

**Authority:** 12 U.S.C. 1819(a); 29 U.S.C. 794d.

**§ 352.1 Purpose.**

(a) One purpose of this part is to implement the spirit of section 504 of the Rehabilitation Act of 1973 (the Rehabilitation Act) as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 and the Workforce Investment Act of 1998. Section 504 prohibits discrimination on the basis of disability in programs and activities conducted by a federal executive agency. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, the FDIC has chosen to promulgate this part to ensure that, to the extent practicable, persons with disabilities are provided with equal access to FDIC programs and activities.

(b) This part is also intended to implement section 508 of the Rehabilitation Act as amended. Section 508 requires each federal agency or department to ensure that the electronic and information technology they procure allows individuals with disabilities access to that technology comparable to the access of those who are not disabled, unless the agency would incur an undue burden.

**§ 352.2 Application.**

(a) This part applies to all programs, activities, and electronic and information technology developed, procured, maintained, used or conducted by the FDIC. The following programs and activities involve the direct provision of benefits and services to, or participation by, members of the public:

(1) Attending Board of Directors meetings open to the public and all other public meetings;

(2) Making inquiries or filing complaints at the FDIC Office of Legislative Affairs and Office of Public Affairs;

(3) Using the FDIC library in Washington, DC;

(4) Using the FDIC Web site on the Internet;

(5) Visiting an insured bank at which they conducted business (or an alternative liquidation site selected by the FDIC) and which has become insolvent, or been purchased by another bank under FDIC supervision, for the purpose of:

(i) Collecting FDIC checks for the insured amount of their deposits previously held in such bank; and/or

(ii) Discussing with FDIC representatives matters related to the repayment of debts which they previously owed to such bank, prior to its failure or purchase by another bank under FDIC supervision;

(6) Seeking employment with the FDIC;

(b) This part governs the conduct of FDIC personnel in their interaction with employees of insured banks and employees of other state or federal agencies while discharging the FDIC's statutory obligations as insurer and/or receiver of financial institutions. It does not apply to financial institutions insured by the FDIC.

(c) Although application for employment and employment with the FDIC are programs and activities of the FDIC for purposes of this part, they shall be governed only by the standards set forth in § 352.6 of this part.

**§ 352.3 Definitions.**

For purposes of this part, the term—

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities, and Electronic and Information Technology set forth in § 352.2.

*Electronic and Information Technology (EIT)* has the same meaning as ''information technology'' except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide web sites, multimedia, and office equipment (such as copiers and fax machines).

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots and other real or personal property. As used in this definition, ''personal property'' means only furniture, carpeting and similar features not considered to be real property.

*Individual with a disability* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

*Qualified individual with a disability* means—

(1) With respect to any FDIC program or activity in which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and can achieve the purpose of the program or activity without modifications in the program or activity that the FDIC can determine on the basis of a written record would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity;

(3) With respect to employment, an individual with a disability as defined in 29 CFR 1630.2(g), which is made applicable to this part by § 352.6.

*Sections 504 and 508* mean sections 504 and 508 of the Rehabilitation Act of 1973 (Public Law 93–112, 87 Stat. 394 (29 U.S.C. 794 and 794d)), as amended by the Rehabilitation Act Amendments of 1974 (Public Law No. 93–516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Public Law 95–602, 92 Stat. 2955), and the Workforce Investment Act of 1998 (Public Law 105–220, 112 Stat. 936). As used in this part, sections 504 and 508 shall be applied only to the programs, activities, and EIT conducted by the FDIC as set forth in §§ 352.2 and 352.3(b) of this part.

**§ 352.4 Nondiscrimination in any program or activity conducted by the FDIC.**

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program or activity conducted by the FDIC.

**§ 352.5 Accessibility to electronic and information technology.**

(a) In accordance with section 508 of the Rehabilitation Act, the FDIC shall ensure, absent an undue burden, that the electronic and information technology the agency develops, procures, maintains or allows:

(1) Individuals with disabilities who are FDIC employees or applicants to have access to and use of information and data that is comparable to the access to and use of information and data by FDIC employees or applicants who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the FDIC to have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

(b) When development or procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board, 36 CFR part 1194, would pose an undue burden, the FDIC shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

**§ 352.6 Employment.**

No qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment in any program or activity conducted by the FDIC. The definitions, requirements, and procedures (including those pertaining to employment discrimination complaints) of sections 501 of the Rehabilitation Act of 1973, as established in 29 CFR parts 1614 and 1630, shall apply to employment in the FDIC.

**§ 352.7 Accessibility of programs and activities: Existing facilities.**

The FDIC shall operate each of the programs or activities set forth in § 352.2 of this part so that when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

**§ 352.8 Program accessibility: New construction and alterations.**

Each building or part of a building, whether newly constructed, or substantially altered, in which FDIC programs or activities will be conducted, shall be designed, constructed or altered so as to be readily accessible to, and usable by, individuals with disabilities.

**§ 352.9 Communications.**

(a) The FDIC shall take appropriate steps to ensure effective communication with participants in FDIC programs, activities and EIT.

(1) The FDIC shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities.

(i) In determining what type of auxiliary aid is necessary, the FDIC shall give primary consideration to any reasonable requests of the individual with a disability.

(ii) The FDIC need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the FDIC communicates by telephone, it shall use telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems with hearing impaired participants and beneficiaries.

(b) The FDIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, facilities and EIT. Interested persons may obtain such information by calling, writing or visiting the FDIC Office of Diversity and Economic Opportunity (ODEO), located at 801 17th Street, NW., Washington, DC 20434. The ODEO telephone number is (202) 416–4000 and (202) 416–2487 (TDD).

(c) The FDIC shall provide information at a primary entrance to each of its facilities where programs or activities are conducted, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

**§ 352.10 Compliance procedures.**

(a) *Applicability.* Paragraph (b) of this section applies to employment complaints. The remaining paragraphs in this section concern complaints alleging disability discrimination in FDIC programs or activities and denial of technology access.

(b) *Employment complaints.* The FDIC shall process complaints alleging employment discrimination on the basis of disability according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Informal process.* A complainant shall first exhaust informal administrative procedures before filing a formal complaint alleging disability discrimination in FDIC programs or activities, or a denial of technology access. The FDIC's Office of Diversity and Economic Opportunity shall be responsible for coordinating implementation of this section. An aggrieved individual initiates the process by filing an informal complaint with ODEO within 180 calendar days from the date of the alleged disability discrimination or denial of access to electronic information technology. An informal complaint with respect to any FDIC program or activity must include a written statement containing the individual's name and address which describes the FDIC's action in sufficient detail to inform the FDIC of the nature and date of the alleged violation of these regulations. An informal complaint for denial of technology access must clearly identify the individual and the manner in which the EIT was inaccessible. All informal complaints shall be signed by the complainant or one authorized to do so on his or her behalf. Informal complaints filed on behalf of third parties shall describe or identify (by name if possible) the alleged victim of discrimination or denial of technology access. During the informal resolution process, ODEO has 30 days to attempt a resolution of the matter. If the aggrieved individual elects to participate in mediation, the period for attempting informal resolution will be extended for an additional 60 calendar days. If the matter is not resolved informally, the individual will be provided written notice of the right to file a formal complaint. All complaints should be sent to the FDIC's Office of Diversity and Economic Opportunity, 801 17th Street, NW., Washington, DC 20434.

(d) If the FDIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complainant to the appropriate government entity.

(e) *Formal complaints.* The individual must file a written formal complaint within 15 calendar days after receiving the notice of a right to file a formal complaint. Formal complaints must be filed with the FDIC Chairman or the ODEO Director. Within 120 days of the receipt of such a complaint for which it has jurisdiction, the FDIC shall notify the complainant of the results of the investigation in a letter containing—

(1) A finding regarding the alleged violations;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(f) Appeals of the findings or remedies must be filed by the complainant within 30 days of receipt from the FDIC of the letter required by § 352.10(e). The FDIC may extend this time for good cause.

(g) Timely appeals shall be accepted and processed by the FDIC Chairman or ODEO Director.

(h) The FDIC Chairman or ODEO Director shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the FDIC Chairman or ODEO Director determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make a determination on the appeal.

(i) The time limits set forth in paragraphs (e) and (h) of this section may be extended for an individual case when the FDIC Chairman or ODEO Director determines that there is good cause, based on the particular circumstances of that case.

(j) The FDIC may delegate its authority for conducting complaint investigations to other federal agencies or independent contractors, except that the authority for making the final determination may not be delegated.

**§ 352.11 Notice.**

The FDIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the FDIC, and make such information available to them in such manner as the Chairman or designee finds necessary to apprise such persons of the protections against discrimination under section 504 or technology access provided under section 508 and this part.

Dated: November 4, 2003.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 03–29090 Filed 11–21–03; 8:45 am]

BILLING CODE 6714–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 1, 91, 97, 121, 125, 129, and 135

**[Docket No. FAA–2002–14002; Notice No. 02–20]**

**RIN 2120–AH77**

## Area Navigation (RNAV) and Miscellaneous Amendments; Aviation Rulemaking Committee Meeting

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rulemaking; notice of public meeting.

**SUMMARY:** This document announces a public meeting of the Terminal Area Operations Aviation Rulemaking Committee (TAOARC) to discuss its recommended dispositions to public comments received in response to the proposed rule ''Area Navigation (RNAV) and Miscellaneous Amendments.''

**DATES:** The public meeting will be held on December 9, 2003, at 9 a.m. Registration will begin at 8:30 a.m.

**ADDRESSES:** The public meeting will be held at the Hyatt Regency Crystal City at Washington National Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202; telephone (703) 418–1234, facsimile (703) 418–1289.

An electronic copy of the proposed dispositions to the comments may be found at the FAA's web page at *http://www.faa.gov/avr/arm/taoarc_index.cfm* beginning November 24, 2003. You can also get a copy by calling the Federal Aviation Administration, Office of Rulemaking, at (202) 267–9680.

If you are unable to attend the meeting and wish to submit written comments, you may send your comments to Dr. Kathy Abbott at *kathy.abbott@faa.gov* by December 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** For information on meeting administration matters, contact Heather McLaughlin at (202) 385–4590.

For technical or agenda item questions, contact Dr. Kathy Abbott, Regulation and Certification, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7192, facsimile (503) 213–6495.

**SUPPLEMENTARY INFORMATION:** On December 17, 2002, the FAA published a Notice of Proposed Rulemaking (NPRM) concerning ''Area Navigation (RNAV) and Miscellaneous Amendments'' (67 FR 77326). The comment period closed on July 7, 2003. Some commenters requested that the FAA work with the Terminal Area Operations Aviation Rulemaking Committee (TAOARC) to respond to the questions and comments to the NPRM raised by industry. This committee was established under 49 U.S.C. 106(p)(5) to provide a forum for the FAA, other government entities, and affected members of the aviation community to discuss issues and to develop resolutions and processes to facilitate the evolution of safe and efficient terminal area operations. The FAA agreed with the commenters that it would be helpful to seek the advice of TAOARC and asked TAOARC to review the public comments on the RNAV NPRM and prepare a recommendation on how the FAA should address them. TAOARC's involvement was limited to reviewing the issues raised by the commenters and not to raise new issues.

The purpose of this meeting is to share TAOARC's draft disposition of comments with the general public and to solicit public comment on the draft disposition before it is presented to the FAA as a formal recommendation.

The agenda for the meeting includes:

- Review of the RNAV NPRM history.
- Review the comments received on the NPRM and the proposed dispositions to those comments.
- Respond to questions and conduct open discussion of identified issues.

Attendance is open to the interested public but may be limited to space available. To make arrangements to present oral statements at the meeting, contact Dr. Kathy Abbott (*see* **FOR FURTHER INFORMATION CONTACT**) by December 5, 2003.

Sign or oral interpretation or an assistive listening device will be available at the meeting if requested 10 calendar days before the meeting. If you need to make arrangements for these services, contact Heather McLaughlin (*see* **FOR FURTHER INFORMATION CONTACT**).

Issued in Washington, DC, on November 18, 2003.

**Ida Klepper,**

*Acting Director, Office of Rulemaking.*

[FR Doc. 03–29149 Filed 11–21–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–SW–11–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS 365 N3 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. This proposal would require installing a tail rotor blade (blade)-to-torsion bar attachment tuning weight assembly on each blade of the Quiet Fenestron tail rotor and replacing each blade attachment bushing. This proposal is prompted by the discovery of tail rotor induced vibrations during flight tests. The actions specified by this proposed AD are intended to prevent vibration in the tail rotor and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before January 23, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation

Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–11–AD.'' The postcard will be date stamped and returned to the commenter.

## Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 365 N3 helicopters. The DGAC advises of a report of the discovery of an increased level of vibration felt by the crew in the pedal units.

Eurocopter has issued Alert Service Bulletin (ASB) No. 64.00.23, dated October 30, 2002, which specifies installing a tuning weight assembly, part number (P/N) 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor. Compliance with this ASB requires prior compliance with Eurocopter Service Bulletin 64.00.21, dated November 8, 2000 (modification 0761B23, 0765B35, and 0764B39, 40, 41), which specifies installing a Quiet Fenestron tail rotor, and with Eurocopter Service Bulletin 65.00.14, dated January 7, 2002 (modification 0765B41), which specifies installing a reinforced control shaft on the tail rotor hub control shaft assembly. The DGAC classified these service bulletins as mandatory and issued AD No. 2002–622(A), dated December 11, 2002, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require removing each tail rotor attachment bushing, P/N 365A33–3530–20, and then installing a blade-to-torsion bar attachment tuning weight assembly, P/N 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor at the same time. Mixing the existing blade attachment bushings, P/N 365A33–3530–20, and the new tuning weight assembly, P/N 365A33–3546–00, on the same tail rotor hub would be prohibited. The actions would be required to be accomplished in accordance with the service bulletin described previously.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this proposed AD would affect 6 helicopters of U.S. registry and the proposed actions would take approximately 8 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts would cost approximately $3,290, and attaching hardware would cost $40. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $3,850 per helicopter, or $23,100 for the entire fleet.

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Eurocopter France:** Docket No. 2003–SW–11–AD.

*Applicability*: Model AS 365 N3 helicopters, with a Quiet Fenestron tail rotor (tail rotor gearbox, part number (P/N) 365A33–6005–06, and tail rotor hub, P/N

365A33–3500–02), tail rotor hub attachment bushings, part number (P/N) 365A33–3530–20, and a reinforced control shaft, P/N 365A33–6214–20, on the tail rotor hub control shaft assembly, installed, certificated in any category.

*Compliance:* Within 3 months, unless accomplished previously.

To prevent vibration in the tail rotor attachments and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a tail rotor blade (blade)-to-torsion bar attachment tuning weight assembly, P/N 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor in accordance with paragraph 2, Accomplishment Instructions, of Eurocopter France Alert Service Bulletin 64.00.23, dated October 30, 2002. Replace each of the 10 blade attachment bushings, P/N 365A33–3530–20, at the same time. Do not mix the existing blade attachment bushings, P/N 365A33–3530–20, and the new tuning weight assemblies, P/N 365A33–3546–00, on the same tail rotor hub.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directortate, FAA, for information about previously approved alternative methods of compliance.

**Note:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–622(A), dated December 11, 2002.

Issued in Fort Worth, Texas, on November 17, 2003.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03–29221 Filed 11–21–03; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–SW–12–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model EC 155B Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. This proposal would require installing a tail rotor blade (blade)-to-torsion bar attachment bushing (bushing) with a tuning weight assembly on each blade of the Quiet Fenestron tail rotor, and replacing each blade attachment bushing. This proposal is prompted by a discovery of tail rotor induced vibration during flight tests. The actions specified by this proposed AD are intended to prevent vibrations in the tail rotor and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before January 23, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–12–AD.'' The postcard will be date stamped and returned to the commenter.

### Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155B helicopters. The DGAC advises of a report of the discovery of an increased level of vibration felt by the crew in the pedal units.

Eurocopter has issued Alert Service Bulletin (ASB) No. 64A001, dated October 30, 2002, which specifies installing a tuning weight assembly, part number (P/N) 365A33–3546–00, on each blade of the Fenestron tail rotor. Compliance with this ASB requires prior compliance with Eurocopter Service Bulletin 64–002, dated December 19, 2002 (modifications 0765B35 and 0764B39), which specifies upgrading the Quiet Fenestron tail rotor hub and tail rotor gearbox for embodiment of the tuning weight modification, or Eurocopter Service Bulletin 65–003, dated December 10, 2001 (modification 0765B41), which specifies installing a reinforced control shaft on the tail rotor hub control shaft assembly or both The DGAC classified service bulletin ASB 64A001, dated October 30, 2002, as mandatory and issued AD No. 2002–621(A), dated December 11, 2002, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require removing each tail rotor attachment bushing, P/N 365A33–3530–20, and then installing a blade-to-torsion bar attachment tuning weight assembly, P/N 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor at the same time. Mixing the existing blade attachment bushings, P/N 365A33–

3530–20, and the new tuning weight assembly, P/N 365A33–3546–00, on the same tail rotor hub would be prohibited. The actions would be required to be accomplished in accordance with the service bulletin described previously.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this proposed AD would affect 3 helicopters of U.S. registry and the proposed actions would take approximately 8 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts would cost approximately $3,290 and $40 for attaching hardware. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $3,850 for each helicopter, or $11,550 for the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Eurocopter France:** Docket No. 2003–SW–12–AD.

*Applicability*: Model EC 155B helicopters with an upgraded Quiet Fenestron tail rotor hub, part number (P/N) 365A33–3501–02, with tail rotor attachment bushing, PN 365A33–3530–20, and tail rotor gearbox, P/N 365A33–6005–04 (without the reinforced control shaft, P/N 365A33–6161–21) or tail rotor gearbox, P/N 365A33–6005–06 (with reinforced control shaft, P/N 365A33–6214–20), installed, certificated in any category.

*Compliance:* Within 3 months, unless accomplished previously.

To prevent vibration in the tail rotor attachments and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a tail rotor blade (blade)-to-torsion bar attachment tuning weight assembly, P/N 356A33–3546–00, on each blade of the Quiet Fenestron tail rotor in accordance with paragraph 2, Accomplishment Instructions, of Eurocopter France Alert Service Bulletin 64A001, dated October 30, 2002. Replace each of the 10 blade attachment bushings, P/N 365A33–3530–20, at the same time. Do not mix the existing blade attachment bushings, P/N 365A33–3530–20, and the new tuning weight assemblies, P/N 365A33–3546–00, on the same tail rotor hub.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directortate, FAA, for information about previously approved alternative methods of compliance.

**Note:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–621(A), dated December 11, 2002.

Issued in Fort Worth, Texas, on November 4, 2003.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03–29220 Filed 11–21–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–SW–35–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation Model S–61L, S–61N, S–61–NM, and S–61R Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters. The AD would require installing a Number 5 bearing chip detector in each engine, installing an on-board chip detector annunciation system, and revising the Rotorcraft Flight Manual (RFM) to add procedures for crew response to an on-board chip detector annunciation. This proposal is prompted by reports of the failure of the engine's Number 5 bearing that resulted in erratic movement of the high-speed engine-to-transmission shaft (shaft), oil leakage, an in-flight fire and an emergency landing. The actions specified by the proposed AD are intended to detect an impending engine bearing (bearing) failure and prevent a bearing failure, oil leakage, severing of the shaft housing, an uncontained in-flight fire, and a subsequent immediate emergency landing.

**DATES:** Comments must be received on or before January 23, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–35–AD.'' The postcard will be date stamped and returned to the commenter.

**Discussion**

This document proposes adopting a new AD for Sikorsky Model S–61L, S–61N, S–61–NM, and S–61R helicopters. The AD would require, within 60 days, installing a chip detector for the Number 5 engine bearing, installing an on-board chip detector annunciation system, and providing in the Emergency Procedures section of the RFM the emergency procedures for the flight crew to follow in the event that the engine chip detector warning light comes on during flight operations. This proposal is prompted by at least five similar events that varied in severity, in which the Number 5 bearing on the high-speed shaft connecting the engine to the transmission failed. Failure of this engine bearing resulted in uneven rotation of the shaft, leakage of engine oil that may be ignited by friction-induced heat, failure of the shaft housing, which is part of the fire containment system, and an uncontained fire. In the most severe incident, the fire consumed the aircraft after a successful emergency landing. The actions specified by the proposed AD are intended to detect an impending bearing failure and to prevent a bearing failure, oil leakage, severing of the shaft housing, an uncontained in-flight fire, and a subsequent immediate emergency landing.

The FAA has reviewed General Electric Aircraft Engine CT58 Service Bulletin Number 72–0195, dated May 1, 2003, which describes procedures for installing an electrical chip detector (either part number 3018T72P01 or 3049T42P01) in the CT58 engine power turbine accessory drive assembly. The FAA has also reviewed Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–15, dated June 9, 2003, which describes procedures for installing an on-board cockpit annunciation system that interfaces with these engine chip detectors, as a means to detect metallic chips in the event of deterioration of the Number 5 bearing in either engine.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require, within 60 days, installing a chip detector for the No. 5 bearing, installing an on-board chip detector annunication system, and revising the RFM to add procedures for crew response to an on-board chip detector annunciation. The actions would be required to be accomplished in accordance with the two service bulletins described previously.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this proposed AD would affect 21 helicopters of U.S. registry, and the proposed actions would take approximately 81.5 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts would cost approximately $1,940 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $7,238 per helicopter, or $151,998 for the entire fleet.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Sikorsky Aircraft Corporation:** Docket No. 2003–SW–35–AD.

*Applicability:* Model S–61L, S–61N, S–61–NM, and S–61R helicopters.

*Compliance:* Required within 60 days, unless accomplished previously.

To detect impending engine bearing (bearing) failure and prevent a bearing failure, oil leakage, severing of the shaft housing, an uncontained in-flight fire, and a subsequent immediate emergency landing, accomplish the following:

(a) Install an engine chip detector, part number 3049T42P01 or 3018T72P01, in the engine power turbine accessory drive assembly in accordance with the Accomplishment Instructions, paragraphs 3.A. and 3.B., in General Electric Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003.

(b) Install an on-board engine chip detector annunciation system in accordance with Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–15, dated June 9, 2003 (ASB). For helicopters with a master warning caution panel (MWCP) manufactured by United Controls or Sundstrand Data, install in accordance with paragraph 3.B. of the ASB. For helicopters with aN MWCP manufactured by Grimes Mfg., install in accordance with paragraph 3.C. of the ASB.

(c) After accomplishing paragraph (b) of this AD, before further flight, perform a functional test of the engine chip detector system and repeat the functional test at intervals not to exceed 150 hours TIS in accordance with the Accomplishment Instructions, paragraph 3.D., of the ASB.

(d) Insert the emergency procedures for an on-board engine chip detector warning light illumination into the Emergency Procedures section of the applicable Rotorcraft Flight Manual in accordance with the Accomplishment Instructions, paragraph 3.E., of the ASB.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on November 17, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03–29219 Filed 11–21–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15471; Airspace Docket No. 03–AWA–6]**

**RIN 2120–AA66**

## Proposed Modification of the Minneapolis Class B Airspace Area; MN

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify the current Minneapolis, MN, Class B airspace area. Specifically, this action proposes airspace changes to contain large turbine-powered aircraft during operations to the new Runway 17/35 and to address an increase in aircraft operations to and from the Minneapolis-St. Paul International (Wold-Chamberlain) Airport (MSP). The FAA is proposing this action to enhance safety and improve the management of aircraft operations in the Minneapolis terminal area. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

**DATES:** Comments must be received on or before January 23, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers, FAA–2003–15471/Airspace Docket No. 03–AWA–6, at the beginning of your comments.

You may also submit comments through the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

**FOR FURTHER INFORMATION CONTACT:** Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA–2003–15471/Airspace Docket No. 03–AWA–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may also obtain a copy of this notice by submitting a request to the FAA, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's, Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

In August 1979, the FAA issued a final rule establishing the Minneapolis, MN Terminal Control Area (TCA). This area was later re-classified as a Class B airspace area as a result of the Airspace Reclassification Final Rule (56 FR 65638); however, this final rule did not alter the dimensions of the original TCA.

Since its establishment, the Minneapolis terminal area has experienced a significant growth in aircraft operations from 233,000 in 1979 to over 518,000 in 2002. An analysis of MSP aircraft operations indicates that this increase has resulted in aircraft (arriving and departing MSP) frequently flying outside the horizontal and vertical limits of the current MSP Class B airspace area.

Further, in the first half of 2002, there were 17 traffic alert and collision avoidance system (TCAS) events reported in the area. These TCAS events occurred in the airspace areas proposed in this notice as a modification to the current MSP Class B airspace area. A TCAS event is defined as a situation where a pilot receives an alert on an aircraft in close proximity and is provided climb or descend instructions to avoid that aircraft. The TCAS sounds an alarm when it determines that another aircraft will pass too closely to the subject aircraft. The referenced

TCAS events were reported by air carrier aircraft and reflected possible conflicts with non-ATC controlled visual flight rules (VFR) aircraft.

Other action taken outside of this proposal in an effort to better accommodate the increase in aircraft operations was the installation of a precision runway monitor (PRM). The PRM allows for simultaneous ILS approaches. In 1998, the PRM was installed to facilitate simultaneous ILS approaches to closely spaced parallel runways (Runway 12L/30R and 30L/12R) using minimum separation between arriving aircraft. Although this has increased airport capacity, during peak operations, high performance aircraft must frequently intercept the localizers for ILS approaches to the above runways more than 20 nautical miles (NM) from MSP at 4,000 feet above mean sea level (MSL) and 5,000 feet MSL. This results in aircraft initiating approach procedures outside of the confines of the current MSP Class B airspace area. Also, a new runway, scheduled to be opened in November 2004, is under construction. The new runway (17/35) will provide increased airport capacity. However, aircraft conducting instrument operations to this new runway would also frequently need to intercept the instrument approaches outside the Class B airspace area if the current Class B airspace area is not expanded. The proposed Class B airspace modification will address this matter.

**Public Input**

As announced in Letter to Airmen No. 00–02 and in the **Federal Register** (65 FR 64642), informal airspace meetings were held on January 9, 2001, at the Army Aviation Support Facility, St. Paul, MN, and on January 13, 2001, at the Flying Cloud Hennepin Technical College, Eden Prairie, MN.

These meetings allowed interested airspace users an opportunity to present their views and offer suggestions regarding planned modifications to the MSP Class B airspace area. All comments received during the informal airspace meetings and the subsequent comment periods were considered in developing this proposal.

**Analysis of Comments Received**

Seven commenters ask questions or volunteered to participate in the aeronautical study process.

Four commenters, three general aviation pilots and Northwest Airlines, concurred with the proposal.

Three commenters, the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), and the Airline Pilot's Association suggested raising the base altitude between 20 NM and 30 NM from the Minneapolis-St. Paul International (Wold-Chamberlain) Airport Distance Measuring Equipment (DME) Antenna (I–MSP) and developing extensions at lower altitudes to the east and west of MSP to accommodate aircraft conducting simultaneous operations to the parallel runways. The FAA agrees with these comments and has changed the planned modifications to reflect these suggestions.

Sixty-five commenters stated that the planned modifications would require pilots to fly farther to conduct training and would compress VFR aircraft operations into a smaller area. One of these commenters also stated an opposition to raising the ceiling from 8,000 feet MSL to 10,000 feet MSL. The FAA has determined that some aircraft would have to fly farther or at lower (or higher) altitudes to remain clear of the planned MSP Class B airspace area; however, this is necessary to separate them from large turbine-powered aircraft arriving and departing MSP.

One hundred and sixty-four commenters (including 130 signed form letters from glider pilots who operate out of Benson Municipal Airport or Stanton Airfield) opposed the planned base altitude of 4,000 feet over Benson Municipal Airport and Stanton Airfield. The Benson Municipal Airport (located 17 miles to the north of I–MSP) is within the lateral limits of the current MSP Class B airspace area and the planned expansion of the 4,000-foot base altitude to 30 NM from I–MSP would require aircraft departing the Benson Municipal Airport to fly 13 miles farther to depart the lateral limits of the MSP Class B airspace area and may also interfere with glider operations at that airport. Glider operations may also be impacted at Stanton Airfield, which is located approximately 30 NM to the south of MSP on the edge of the planned MSP Class B airspace area. To address these concerns, the FAA has changed the planned modifications by raising the base altitude between 20 NM and 30 NM from I–MSP from 4,000 feet MSL to 7,000 feet MSL (with the exception of extensions to the east and west of MSP that must remain at 4,000 feet MSL to contain aircraft conducting simultaneous approaches. The planned modifications were also changed to include ''cut-outs'' 20 NM to the north and 25 NM to the south of I–MSP. These changes mitigate the impact on glider operations at the Benson Municipal Airport and Stanton Airfield, respectively.

**Ad Hoc Committee**

The Ad Hoc Committee was sponsored by Minnesota Department of Transportation, Office of Aeronautics and was comprised of representatives from the AOPA, EAA, Minnesota Soaring Clubs, International Aerobatics, Ultralight Association, Air National Guard, Life Flight, flight instructors, and skydivers. On May 14, 2002, the Ad Hoc Committee held the first of two meetings. During this meeting, representatives from the Minneapolis Airport Traffic Control Tower presented details of planned MSP Class B airspace area modifications, which reflected comments received as a result of informal airspace meetings. In general, the Ad Hoc Committee's comments on the planned modifications were favorable. However, several invited members of the Ad hoc Committee were not present and the committee decided that an additional meeting was necessary to ensure that input was obtained from all members/organizations who had agreed to participate on the Ad Hoc Committee.

On June 25, 2002, the Ad Hoc Committee held their second and final meeting. During this meeting, participants presented comments and recommendations regarding the planned modifications presented at the first Ad Hoc Committee meeting. The Ad Hoc Committee then reached a consensus and drafted a consolidated recommendation that was submitted to the FAA. The consolidated recommendation contained the following two suggestions and one comment pertaining to aerobatic waivers:

1. Reduce the proposed expansion of Area E around the Stanton Airfield from the I–MSP 30–NM arc to the I–MSP 25–NM arc and raise the proposed floor in this area from 6,000 feet MSL to 7,000 feet MSL. The FAA has adopted this recommendation.

2. Provide a cutout in Area D over Benson Municipal Airport, bounded by the Farmington (FGT) Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 006° radial, the FGT VORTAC 015° radial, and the Gopher (GEP) VORTAC 095° radial. The FAA did not adopt this recommendation because the area is within the existing Class B airspace area and the published missed approach holding pattern used for the majority of MSP instrument approach procedures utilizes the Whisk intersection, which is located within the area that the recommendation suggests eliminating. Altitudes utilized by aircraft holding at

the Whisk intersection are 3,000 feet MSL to 10,000 feet MSL.

Members of the Ad Hoc User Committee representing the aerobatic community also requested that currently held waivers for aerobatic activities remain in place. The FAA has determined that the planned Class B airspace area modifications would not require the cancellation of any existing waivers, nor would it interfere with the normal procedures required for authorizing future waivers.

**The Proposal**

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the MSP Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to expand the upper limits of Area A, Area B, Area C, and Area D from 8,000 feet MSL to and including 10,000 feet MSL; expand the lateral limits of Area D to the northwest and southeast of MSP; and add an Area E within 30 NM of I–MSP (excluding areas to the north and south of MSP) to improve the containment of turbo-jet aircraft operating within the MSP Class B airspace area.

*Area A.* The FAA proposes to expand the upper limit of Area A from 8,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

*Area B.* The FAA proposes to expand the upper limit of Area B from 8,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

*Area C.* The FAA proposes to expand the upper limit of Area C from 8,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

*Area D.* The FAA proposes to modify Area D by expanding the upper limit of Area D from 8,000 feet MSL to 10,000 feet MSL and by expanding the boundaries of Area D to the northwest and southeast of MSP incorporating airspace that lies on the extended ILS localizer course and downwind legs for Runways 12L/30R and 30L/12R, between the I–MSP 20–NM and 30–NM arcs. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for the ILS approaches to the above runways remain within the MSP Class B airspace area.

*Area E.* The FAA is proposing to add an Area E between the I–MSP 20–NM and 30–NM arcs, extending from 7,000 feet MSL to 10,000 feet MSL, excluding certain areas to the north and southeast of MSP. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

These modifications would improve the management of aircraft operations in the MSP terminal area and enhance safety by expanding the dimensions of the Class B airspace area to protect the aircraft conducting instrument approaches to MSP. Additionally, this proposed action supports various efforts to enhance the efficiency and capacity of the National Airspace System.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

**Regulatory Evaluation Summary**

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its circumnavigation costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This NPRM would modify the Minneapolis-St. Paul, MN, Class B airspace area. The proposed rule would reconfigure the sub-area lateral boundaries, and raise the altitude ceiling in certain segments of the airspace.

The NPRM would generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the MSP terminal area. These modifications would impose some circumnavigation costs on operators of non-compliant aircraft operating in the area around MSP. However, the cost of circumnavigation is considered to be small. Thus, the FAA has determined this proposed rule would be cost-beneficial.

**Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 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 business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a widerange 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 determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if 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 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some circumnavigation costs on individuals operating in the Minneapolis-St. Paul terminal area; but the proposed rule would not impose any costs on small business entities. Operators of general aviation aircraft are considered individuals, not small business entities and are not included when performing a regulatory flexibility analysis. Flight

schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the Minneapolis-St. Paul terminal area. Air taxis are also considered small business entities, but are assumed to be properly equipped to navigate Class B airspace because it is part of their current practice. Therefore, these small entities should not incur any additional costs as a result of the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

## International 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 proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

## Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

## Conclusion

In view of the minimal or zero cost of compliance of the proposed rule and the enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

1. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

*Paragraph 3000 Subpart B-Class B Airspace*

* * * * *

**AGL MN B Minneapolis-St. Paul, MN (Revised)**

Minneapolis-St. Paul International (Wold-Chamberlain) Airport (MSP)(Primary Airport)
(Lat. 44°52′83″ N., long. 93°13′02″ W.)
Gopher VORTAC (GEP)
(Lat. 45°08′45″ N., long. 93°22′24″ W.)
Flying Cloud VOR/DME (FCM)
(Lat. 44°49′33″ N., long. 93°27′24″ W.)
Point of Origin: Minneapolis-St. Paul International (Wold-Chamberlain) Airport DME Antenna (I–MSP)
(Lat. 44°52′26.25″ N., long. 93°12′19.5″ W.)

**Boundaries**

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 6-mile radius of I–MSP.

Area B. That airspace extending from 2,300 feet MSL to and including 10,000 feet MSL within an 8.5-mile radius of I–MSP, excluding Area A previously described.

Area C. That airspace extending from 3,000 feet MSL to and including 10,000 feet MSL within a 12-mile radius of I–MSP, excluding Area A and Area B previously described.

Area D. That airspace extending from 4,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of I–MSP and including that airspace within a 30-mile radius from the Flying Cloud 295° radial clockwise to the Gopher 295° radial and from the Gopher 115° radial clockwise to the Flying Cloud 115° radial, excluding Area A, Area B, and Area C previously described.

Area E. That airspace extending from 7,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of I–MSP from the Gopher 295° radial clockwise to the Gopher 352° radial, and from the Gopher 085° radial clockwise to the Gopher 115° radial, and from the Flying Cloud 115° radial clockwise to the Flying Cloud 295° radial excluding that airspace between a 25-mile radius and a 30-mile radius between the Flying Cloud 115° radial clockwise to the Gopher 170° radial and excluding Area A, Area B, Area C, and Area D previously described.

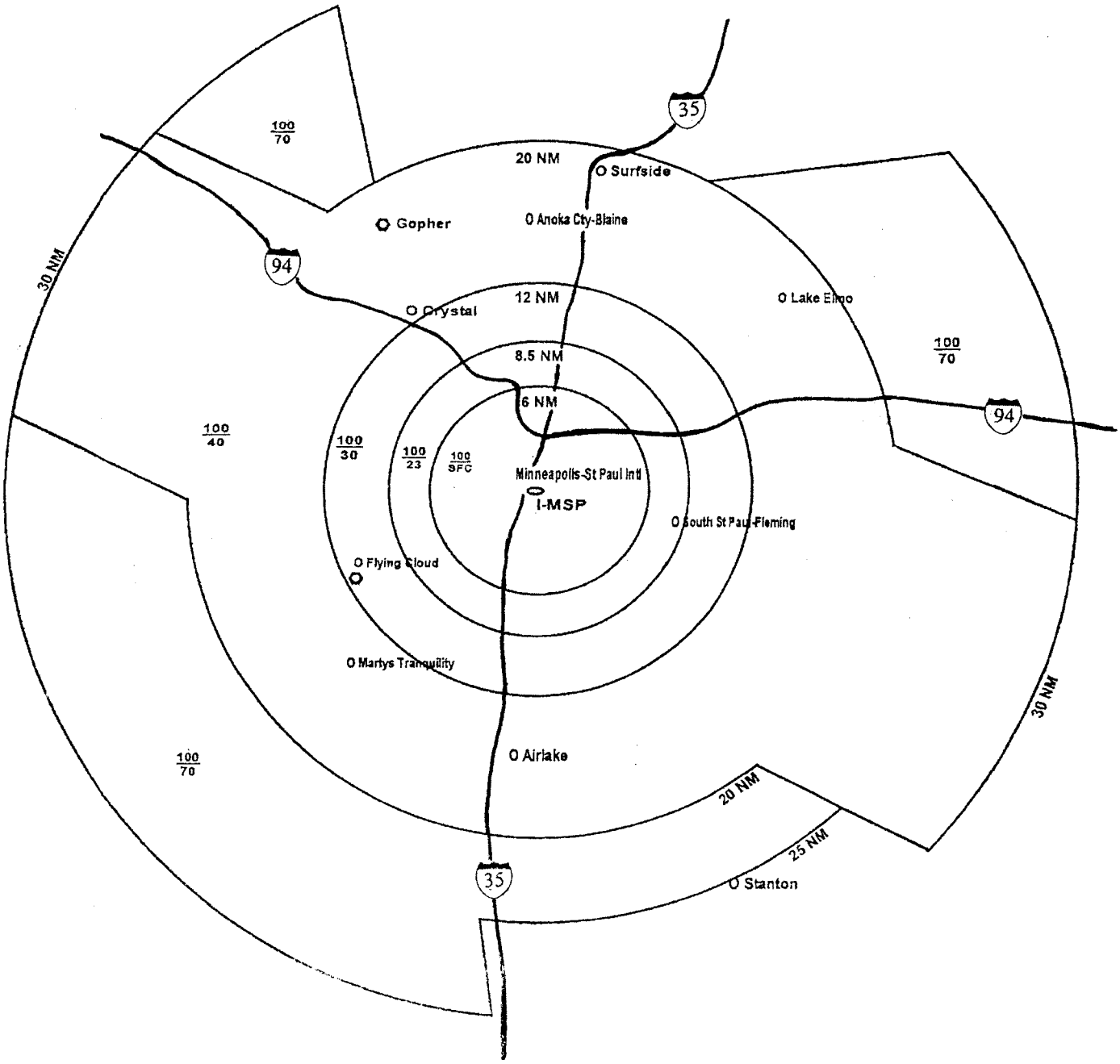
* * * * *

Issued in Washington, DC, on November 17, 2003.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

# MINNEAPOLIS, MN
# CLASS B AIRSPACE AREA
## (NOT TO BE USED FOR NAVIGATION)




ASD 01-AWA-2

[FR Doc. 03–29202 Filed 11–21–03; 8:45 am]
***<FNP>***

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–160330–02]**

**RIN 1545–BB65**

## Section 704(c), Installment Obligations and Contributed Contracts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the tax treatment of installment obligations and property acquired pursuant to a contract under sections 704(c) and 737. The proposed regulations affect partners and partnerships and provide guidance necessary to comply with the law.

**DATES:** Written and electronic comments and requests for a public hearing must be received no later than February 23, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–160330–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–160330–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: *www.irs.gov/regs.*

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Christopher L. Trump, 202–622–3070; concerning submissions and the hearing, Robin Jones, 202–622–3521 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 704(c)(1)(A) provides that income, gain, loss or deduction with respect to property contributed to a partnership by a partner shall be shared among the partners so as to take into account the variation between the basis of the property to the partnership and its fair market value at the time of the contribution.

Under section 704(c)(1)(B) and the regulations thereunder, any partner that contributes section 704(c) property to a partnership must recognize gain or loss on the distribution of such property to another partner within 7 years of its contribution. The amount of gain or loss recognized is the amount of gain or loss that would have been allocated to such partner under section 704(c)(1)(A) if the property had been sold by the partnership to the distributee partner for its fair market value at the time of the distribution.

Under section 737(a) and the regulations thereunder, any partner that contributes section 704(c) property to a partnership may recognize gain on a distribution of property (other than money) by the partnership to that partner. The amount of gain recognized is the lesser of: (1) The amount by which the fair market value of the distributed property exceeds the distributee partner's adjusted tax basis in the partner's partnership interest, or (2) the net precontribution gain of the partner. Section 737(b) defines the net precontribution gain of the partner as the net gain (if any) that would have been recognized by the distributee partner under section 704(c)(1)(B) if all property that (1) had been contributed to the partnership by the distributee partner within 7 years of the distribution and (2) is held by such partnership immediately before the distribution, had been distributed by such partnership to another partner.

For purposes of section 704(c)(1)(A) and (B) and section 737, if a partnership disposes of section 704(c) property in a nonrecognition transaction in which no gain or loss is recognized, the substituted basis property (within the meaning of section 7701(a)(42)) is treated as section 704(c) property with the same amount of built-in gain or loss as the section 704(c) property disposed of by the partnership. See §§ 1.704–3(a)(8), 1.704–4(d)(1), and 1.737–2(d)(3).

If a partnership disposes of property in an installment sale, income is taken into account under the installment method unless the partnership elects otherwise. See section 453. Upon the satisfaction of an installment obligation at other than its face value or the distribution, transmission, sale, or other disposition of an installment obligation, a taxpayer is generally required, under section 453B, to recognize gain or loss. Section 453B does not apply, however, on the disposition of an installment obligation in certain situations where the Internal Revenue Code (Code) otherwise provides for nonrecognition of gain or loss. For example, § 1.453–9(c)(2) provides that no gain or loss results under section 453(d) (now section 453B) in the case of a contribution to or distribution from a partnership under sections 721 or 731.

In addition, if a partnership acquires property pursuant to a contract such as an option, a forward contract, or a futures contract, the partnership may recognize no gain or loss on the acquisition of the property.

### Explanation of Provisions

The proposed regulations amend § 1.704–3(a)(8) to clarify that, if a partnership disposes of section 704(c) property in exchange for an installment obligation, the installment obligation is treated as the section 704(c) property. The proposed regulations also clarify that, if a partner contributes a contract that is section 704(c) property to a partnership, and the partnership subsequently acquires property pursuant to that contract in a transaction in which less than all of the gain or loss is recognized, the acquired property is treated as the section 704(c) property for purposes of sections 704(c) and 737. For this purpose the term contract includes, but is not limited to, options, forward contracts, and futures contracts.

The proposed regulations amend § 1.704–4(d)(1) to provide that an installment obligation received by a partnership and property acquired pursuant to a contributed contract are treated as section 704(c) property for purposes of section 704(c)(1)(B) to the extent that the installment obligation or the acquired property is section 704(c) property under § 1.704–3(a)(8). As a result, if the installment obligation or property acquired pursuant to a contributed contract is distributed by a partnership to a partner other than the contributing partner within 7 years of the contribution, the contributing partner may recognize gain or loss under section 704(c)(1)(B). The proposed regulations include a similar rule under § 1.737–2(d)(3).

No inference is intended as to the treatment of these transactions under prior law.

### Proposed Effective Date

These regulations are proposed to apply to installment obligations received by a partnership on or after November 24, 2003 in exchange for section 704(c) property and to property acquired on or after November 24, 2003 by a partnership pursuant to a contract that is section 704(c) property.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Christopher L. Trump of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from Treasury and the IRS participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, reporting and recordkeeping requirements.

*Proposed Amendments to the Regulations*

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.704–3 is amended as follows:

1. The paragraph heading for (a)(8) is revised.
2. The text of paragraph (a)(8) is redesignated as paragraph (a)(8)(i).
3. A paragraph heading for newly designated paragraph (a)(8)(i) is added.
4. The first sentence of newly designated paragraph (a)(8)(i) is amended by removing the language ''in which no gain or loss is recognized''.
5. Paragraphs (a)(8)(ii) and (a)(8)(iii) are added.
6. Paragraph (f) is amended by:

a. Amending the first sentence of paragraph (f) by removing the language ''of paragraph (a)(11)'' and adding ''of paragraphs (a)(8)(ii), (a)(8)(ii) and (a)(11)'' in its place.

b. Adding two sentences at the end of paragraph (f).

The revisions and additions read as follows:

**§ 1.704–3 Contributed property.**

(a) * * *

(8) *Special rules*—(i) *Disposition in a nonrecognition transaction.* * * *

(ii) *Disposition in an installment sale.* If a partnership disposes of section 704(c) property in an installment sale as defined in section 453(b), the installment obligation received by the partnership is treated as the section 704(c) property with the same amount of built-in gain as the section 704(c) property disposed of by the partnership (with appropriate adjustments for any gain recognized on the installment sale). The allocation method for the installment obligation must be consistent with the allocation method chosen for the original property.

(iii) *Contributed contracts.* If a partner contributes to a partnership a contract that is section 704(c) property, and the partnership subsequently acquires property pursuant to that contract in a transaction in which less than all of the gain or loss is recognized, then the acquired property is treated as the section 704(c) property with the same amount of built-in gain or loss as the contract (with appropriate adjustments for any gain or loss recognized on the acquisition). For this purpose, the term contract includes, but is not limited to, options, forward contracts, and futures contracts. The allocation method for the acquired property must be consistent with the allocation method chosen for the contributed contract.

* * * * *

(f) *Effective date.* * * * Paragraph (a)(8)(ii) applies to installment obligations received by a partnership in exchange for section 704(c) property on or after November 24, 2003. Paragraph (a)(8)(iii) is effective for property acquired on or after November 24, 2003 by a partnership pursuant to a contract that is section 704(c) property.

**Par. 3.** Section 1.704–4 is amended as follows:

1. The paragraph heading for (d)(1) is revised.
2. The text of paragraph (d)(1) is redesignated as paragraph (d)(1)(i).
3. A paragraph heading for newly designated paragraph (d)(1)(i) is added.
4. Paragraphs (d)(1)(ii) and (d)(1)(iii) are added.
5. Revising paragraph (g).

The revisions and additions read as follows:

**§ 1.704–4 Distribution of contributed property.**

* * * * *

(d) *Special rules*—(1) *Nonrecognition transactions, installment obligations and contributed contracts*— (i) *Nonrecognition transactions.* * * *

(ii) *Installment obligations.* An installment obligation received by the partnership in an installment sale (as defined in section 453(b)) of section 704(c) property is treated as the section 704(c) property for purposes of section 704(c)(1)(B) and this section to the extent that the installment obligation received is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.737–2(d)(3) for a similar rule in the context of section 737.

(iii) *Contributed contracts.* Property acquired by the partnership pursuant to a contract that is section 704(c) property is treated as the section 704(c) property for purposes of section 704(c)(1)(B) and this section, to the extent that the acquired property is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.737–2(d)(3) for a similar rule in the context of section 737.

* * * * *

(g) *Effective date.* This section applies to distributions by a partnership to a partner on or after January 9, 1995, except that paragraphs (d)(1)(i) and (ii) apply to distributions by a partnership to a partner on or after November 24, 2003.

**Par. 4.** Section 1.737–2 is amended as follows:

1. The paragraph heading for (d)(3) is revised.
2. The text of paragraph (d)(3) is redesignated (d)(3)(i).
3. A paragraph heading for newly designated (d)(3)(i) is added.
4. Paragraphs (d)(3)(ii) and (d)(3)(iii) are added.

**§ 1.737–2 Exceptions and special rules.**

* * * * *

(d) * * *

(3) *Nonrecognition transactions, installment sales and contributed contracts*—(i) *Nonrecognition transactions.* * * *

(ii) *Installment sales.* An installment obligation received by the partnership in an installment sale (as defined in section 453(b)) of section 704(c)

property is treated as the contributed property with regard to the contributing partner for purposes of section 737 to the extent that the installment obligation received is treated as section 704(c) property under § 1.704–3(a)(8). *See* § 1.704–4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

(iii) *Contributed contracts.* Property acquired by a partnership pursuant to a contract that is section 704(c) property is treated as the contributed property with regard to the contributing partner for purposes of section 737 to the extent that the acquired property is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.704–4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

* * * * *

**Par. 5.** Section 1.737–5 is revised to read as follows:

**§ 1.737–5 Effective dates.**

Sections 1.737–1, 1.737–2, 1.737–3, and 1.737–4 apply to distributions by a partnership to a partner on or after January 9, 1995, except that § 1.737–2(d)(3)(ii) and (ii) apply to distributions by a partnership to a partner on or after November 24, 2003.

**Mark E. Matthews,**

*Deputy Commissioner of Services and Enforcement.*

[FR Doc. 03–29323 Filed 11–21–03; 8:45 am]

**BILLING CODE 4830–01–P**

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA203–4217b; FRL–7588–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; $NO_X$ RACT Determinations for Hercules Cement Company

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for Hercules Cement Company, a major source of nitrogen oxides ($NO_X$) located in Northampton County, Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Pennsylvania's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by December 24, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto at (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, Pennsylvania's Approval of $NO_X$ RACT Determinations for Hercules Cement Company, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA203–4217 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.

1. *Electronically.* 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. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention: PA203–4217. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov,* 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.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

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 at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

**Submittal of CBI Comments**

Do not submit information that you consider to be CBI electronically to EPA. 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 comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. 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 file and available for public inspection 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.

*Considerations When Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Dated: November 10, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 03–29175 Filed 11–21–03; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 68, No. 226

Monday, November 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 03–088–1]**

### Notice of Request for Extension of Approval of an Information Collection

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

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of citrus canker regulations for payments for recovery of lost production income.

**DATES:** We will consider all comments that we receive on or before January 23, 2004.

**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. 03–088–1, 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. 03–088–1. 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. 03–088–1'' 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:** For information regarding the citrus canker regulations, contact Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Citrus Canker; Payments for Recovery of Lost Production Income.

*OMB Number:* 0579–0168.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture, either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as citrus canker, new to or not widely distributed within the United States.

Citrus canker is a plant disease that affects plant and plant parts, including fresh fruit of citrus and citrus relatives (*Family Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants that render the fruit unmarketable and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (*Asiatic*) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

Under regulations in 7 CFR 301.75–16, eligible owners of commercial citrus groves in Florida can receive payments to recover production income lost as a result of the removal of their commercial citrus trees to control citrus canker. These payments are intended to reduce the economic effect of our citrus canker quarantine on affected commercial citrus growers in Florida.

The regulations require applicants for payments to complete a form.

We are asking the Office of Management and Budget (OMB) to approve our use of this form for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.15 hours per response.

*Respondents:* Eligible commercial citrus growers in Florida.

*Estimated annual number of respondents:* 20.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 20

*Estimated total annual burden on respondents:* 3 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC this 18th day of November, 2003.

**Kevin Shea,**

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

[FR Doc. 03–29234 Filed 11–21–03; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 03–103–1]**

### Notice of Request for Extension of Approval of an Information Collection

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

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations for the importation of pork and pork products and live swine from the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa.

**DATES:** We will consider all comments we receive on or before January 23, 2004.

**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. 03–103–1, 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. 03–103–1. 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. 03–103–1'' 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:** For information on the regulations regarding the importation of pork and pork products and live swine from the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa, contact Dr. Hatim Gubara, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale MD 20737–1231; (301) 734–4356. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Classical Swine Fever; Importation of Pork and Pork Products and Live Swine from the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa.

*OMB Number:* 0579–0230.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301–8317), the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, regulates the importation of animals and animals products into the United States to prevent the introduction of animal diseases, such as classical swine fever (CSF), into the United States.

The regulations in 9 CFR part 94 allow the importation of pork and products and live swine from the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa under conditions designed to ensure that the pork and pork products and live swine will not transmit CSF. This disease is not present in those States but exists in other parts of Mexico. The conditions for importation require, among other things, certification from a full-time salaried veterinary officer of the Government of Mexico that the pork or pork products or live swine originated in a CSF-free region and have not been commingled with swine or pork or pork products from CSF-affected regions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

*Estimate of burden*: The public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Federal animal health authorities in Mexico.

*Estimated annual number of respondents:* 5.

*Estimated annual number of responses per respondent:* 10.

*Estimated annual number of responses:* 50.

*Estimated total annual burden on respondents:* 50 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of November, 2003.

**Kevin Shea,**

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

[FR Doc. 03–29235 Filed 11–21–03; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 98–090–6]**

**RIN 0579–AB03**

### Classical Swine Fever; Availability of Risk Analysis Related to the Importation of Swine and Swine Products From France and Spain

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

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that a risk analysis has been prepared by the Animal Plant Health Inspection Service (APHIS) relative to the risk of introducing classical swine fever virus in swine and swine products imported from France and Spain. This risk analysis is a supplement to a risk analysis prepared by APHIS titled ''Risk Analysis for Importation of Classical Swine Fever Virus in Swine and Swine Products from the European Union—December 2000.'' The supplemental risk analysis also identifies the administrative units in France and Spain that we would consider the smallest administrative units that could be considered ''regions'' in each of those countries. We are making this supplemental risk analysis available to the public for review and comment.

**DATES:** We will consider all comments we receive on or before January 23, 2004.

**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. 98–090–6, 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. 98–090–6. 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. 98–090–6'' on the subject line.

You may read the supplemental risk analysis and any comments that we receive on that document 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.

You may request a copy of the supplemental risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. The supplemental risk analysis is also available on the Internet. Instructions for accessing the supplemental risk analysis on the Internet are provided below under **SUPPLEMENTARY INFORMATION.**

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. Chip Wells, Senior Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

**SUPPLEMENTARY INFORMATION:**

## Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (the Department) regulates the importation of animals and animal products to guard against the introduction of animal diseases into this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

On June 25, 1999, we published in the **Federal Register** (64 FR 34155–34168, Docket No. 98–090–1) a proposal to, among other things, amend the regulations regarding the importation of swine and swine products from a region in the European Union (EU) consisting of Austria, Belgium, France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and parts of Germany and Italy.

Before developing our proposed rule, we prepared a risk analysis to estimate the likelihood of introducing classical swine fever (CSF, which we referred to in the proposed rule as hog cholera) from the region, and to determine what, if any, mitigation measures we considered necessary. We assessed the likelihood of introducing CSF through the importation of live breeding swine, swine semen, and pork and pork products. We made the risk analysis available to the public during the comment period for the proposed rule.

We solicited comments concerning our proposed rule for 60 days ending August 24, 1999. One of the comments we received expressed concerns with several aspects of our risk analysis. Based on that comment, and as recommended by the Department's Office of Risk Assessment and Cost Benefit Analysis, we revised our risk analysis and included a supplement that presented in more detail specific information about CSF outbreaks in the EU. The revised risk analysis is titled ''Risk Analysis for Importation of Classical Swine Fever Virus in Swine and Swine Products from the European Union—December 2000.''

On April 7, 2003, we published in the **Federal Register** (68 FR 16922–16940, Docket No. 98–090–5) a final rule amending the regulations to recognize a region in the EU consisting of Austria, Belgium, Greece, the Netherlands, Portugal, and parts of Germany and Italy as free of CSF. In that final rule, APHIS did not recognize France or Spain as free of CSF because CSF outbreaks had occurred in each of those countries after the publication of our June 1999 proposed rule.

In our April 2003 final rule, we continued to consider all of France and Spain affected with CSF, even though outbreaks had occurred only in limited areas of those countries, because we had not yet defined the administrative units in those countries we would use to consider less than the entire country affected with CSF. Since the outbreaks, each of the affected countries took action to eradicate CSF. The last affected herds were depopulated in Spain on April 30, 2002, and in France on April 29, 2002.

Following the elimination of CSF in domestic swine in France and Spain, we prepared a supplemental risk analysis to examine the risk of introducing CSF from the importation of swine and swine products from those countries. For the supplemental risk analysis, we used the applicable information from the risk analyses we conducted for the June 1999 proposed rule and the April 2003 final rule, as well as information made available following the outbreak and elimination of CSF in those countries.

We are giving notice that the supplemental risk analysis is available for public review and are requesting comments on the supplemental risk analysis for 60 days. The supplemental risk analysis addresses the current CSF situation in France and Spain and identifies the administrative units we would use to regionalize France and Spain in the event of future disease outbreaks in those counties. The supplemental risk analysis and any comments received will be the basis for determining whether to publish a final rule to: (1) Include France and Spain as part of the EU region recognized in our April 2003 final rule as one in which CSF is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions in the absence of restrictions associated with other

foreign animal diseases of swine; and (2) identify the smallest administrative units in France and Spain we will use to regionalize those countries in the event of a disease outbreak. We will address any comments we receive on the supplemental risk analysis in a future document in the **Federal Register**.

**Accessing the Supplemental Risk Analysis on the Internet**

The supplemental risk analysis is available on the Internet at *http://www.aphis.usda.gov/vs/ncie/reg-request.html.* At the bottom of that Web site page, click on ''Information previously submitted by Regions requesting export approval and their supporting documentation.'' At the next screen, click on the triangle beside ''European Union/ Not Specified/ Classical Swine Fever,'' then click on the triangle beside ''Response by APHIS,'' which will reveal a link for ''APHIS Supplemental Risk Analysis for Importation of the Classical Swine Fever Virus in Swine and Swine Products from France and Spain.'' Following that link will allow you to view the supplemental risk analysis.

**Authority:** 7 U.S.C. 450, 1622, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 18th day of November, 2003.

**Kevin Shea,**

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

[FR Doc. 03–29231 Filed 11–21–03; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCIES:** Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies intention to request an extension for a currently approved information collection in support of the Real Estate Title Clearance and Loan Closing regulation.

**DATES:** Comments on this notice must be received by January 23, 2004, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Gale Richardson, Loan Specialist, Single Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Mail STOP 0783, 1400 Independence Ave. SW., Washington, DC 20250–0783, Telephone: (202) 720–1459. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR 1927–B, Real Estate Title Clearance and Loan Closing.

*OMB Number:* 0575–0147.

*Expiration Date of Approval:* May 31, 2004.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Sections 302, 311, and 321 of the Consolidated Farm and Rural Development Act, as amended, authorize the Secretary to extend agricultural credit to farmers and ranchers. Title clearance is required to assure the Agency(s) that the loan is legally secured and has the required lien priority.

The Agencies will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans made with Federal funds are legally secured. The respondents are individuals or households, farms, businesses, and nonprofit institutions. The information required is used by USDA personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to insure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secured.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .28 hours per response.

*Respondents:* Individuals or households, farms, businesses, non-profit institutions.

*Estimated Number of Respondents:* 100,074.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 100,074.

*Estimated Total Annual Burden on Respondents:* 27,922 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information 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 to be 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 Renita Bolden, Regulation and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 12, 2003.

**Arthur A. Garcia,**

*Administrator, Rural Housing Service.*

Dated: November 6, 2003.

**John Rosso,**

*Administrator, Rural Business-Cooperative Service.*

Dated: November 5, 2003.

**Curtis M. Anderson,**

*Acting Administrator, Rural Utilites Service.*

Dated: November 7, 2003.

**James Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 03–29211 Filed 11–21–03; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Glenn/Colusa County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introduction, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Ski-High Project/ Possible Action, (6) How to Solicit Projects, (7) Bear Wallow Trail, (8) Status of Members, (9) General Discussion, (10) Next Agenda.

**DATES:** The meeting will be held on November 24, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; E-mail *ggaddini@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 20, 2003 will have the opportunity to address the committee at those sessions.

Dated: November 18, 2003.

**Robert McCabe,**

*Acting Designated Federal Official.*

[FR Doc. 03–29312 Filed 11–21–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tehama County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report/ Maintenance, (5) How to Leverage Funds, (6) Report from Members Meeting, (7) How to Get Stewardship Projects, (8) General Discussion, (9) Next Agenda.

**DATES:** The meeting will be held on December 11, 2003 from 9 a.m. and end at approximately 12 p.m.

**ADDRESSES:** The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; E-mail *ggaddini@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by December 9, 2003 will have the opportunity to address the committee at those sessions.

Dated: November 18, 2003.

**Robert McCabe,**

*Acting Designated Federal Official.*

[FR Doc. 03–29313 Filed 11–21–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 62–2003]**

### Foreign-Trade Zone 170—Clark County, IN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of Foreign-Trade Zone 170, requesting authority to expand its zone in the Clark County, Indiana, area, within the Louisville Customs port of entry. 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 10, 2003.

FTZ 170 was approved on December 27, 1990 (Board Order 495, 56 FR 673, 1/8/91), and expanded on July 23, 1997 (Board Order 907, 62 FR 40796, 7/30/ 97). The zone currently consists of three sites in Clark County: *Site 1* (35 acres)—within the 993-acre Clark Maritime Center Complex on Utica Pike at Port Road, Jeffersonville; *Site 2* (22 acres)—at the Clark County Airport between State Route 31 and the airport terminal, Sellersburg; and, *Site 3* (2,000 acres)—within the 10,000-acre former Indiana Army Ammunition Plant, 11452 State Road 62, Charlestown.

The applicant is now requesting authority to expand Site 1 to include an additional 958 acres. The change would cover the entire 993-acre Clark Maritime Center. The port is an active facility with companies involved in warehousing and distribution of steel, plastics, chemicals, metals, as well as general merchandise. The majority of the site is owned by the Indiana Port Commission. No specific manufacturing requests are being made at this time. Such 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.

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 January 23, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 9, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 601 W. Broadway,

Room 634B, Louisville, Kentucky 40202.

Dated: November 12, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–29305 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Submission for OMB Review; Comment Request

DOC has submitted to the Office for Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

*Title:* SABIT Alumni Questionnaire.

*OMB Number:* None.

*Type of Request:* Regular Submission.

*Burden:* 1048 hours.

*Number of Respondents:* 1048.

*Avg. Hours Per Response:* 1 hour per participant.

*Needs and Uses:* The Department of Commerce, International Trade Administration, SABIT Office supports technical assistance and training for professionals from Eurasia, while promoting information exchange and U.S.-Eurasian partnerships. Since inception SABIT has trained over 3000 professionals from Eurasia.

The purpose of this questionnaire is to assess the effect the SABIT Program has had on its alumni, in order to make improvements to the program and report results.

*Affected Public:* SABIT Alumni.

*Frequency:* At least once per alumnus.

*Respondent's Obligation:* Voluntary. Participation is encouraged in order to perpetuate the program for future participants.

*OMB Desk Officer:* David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–0266; E-mail: *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: November 18, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–29229 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–HE–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–881]**

### Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Malleable Iron Pipe Fittings From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amended Final Determination of Sales at Less Than Fair Value.

**EFFECTIVE DATE:** November 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Helen Kramer or Ann Barnett-Dahl, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0405, or 482–3833, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Scope of Investigation

For purposes of this investigation, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS). Excluded from the scope of this investigation are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from 1/2 inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and Bureau of Customs and Border Protection (CBP) purposes, the Department's written description of the scope of this proceeding is dispositive.

#### Background

On October 20, 2003, the Department of Commerce (''the Department'') determined that certain malleable iron pipe fittings from the People's Republic of China (''MPF'') are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Act. *See Final Determination of Sales at Less Than Fair Value: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003). The Department released disclosure materials to respondents on October 22, 2003, and to the petitioners on October 23, 2003.

On October 27, 2003, we received ministerial error allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from mandatory respondents Jinan Meide Casting Co., Ltd. (''JMC'') and Beijing Sai Lin Ke Hardware Co., Ltd. (''SLK''). On October 28, 2003, the petitioners also submitted a timely letter to the Department alleging ministerial errors . On October 30, 2003, the petitioners submitted a response to SLK's comments.

Section 351.224(f) of the Department's regulations defines a ministerial error as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

#### Ministerial Error Allegations From the Mandatory Respondents

#### Comment 1: Surrogate Values for Adhesive Tape and Steel Shavings

JMC alleges that the Department utilized the incorrect values for the adhesive tape and steel shavings factors of production. JMC notes that the Department's Factors Valuation Memorandum calculates a surrogate value of $4.9585 per kg for adhesive tape, excluding aberrantly high-priced imports from Sweden, and a surrogate value of $0.1300 per kg for steel shavings, excluding aberrantly high-priced imports from the United Kingdom However, JMC notes that the Department used values of $4.9587 and $0.1329, respectively, in the calculation of the final margin and that the Department apparently failed to exclude the aberrant imports from the Excel spreadsheets. JMC requests that the Department correct these clerical errors.

The petitioners did not comment on this issue.

#### Department's Position:

We agree with JMC that we made clerical errors with respect to the surrogate values of adhesive tape and steel shavings as a result of inaccurate copying. Accordingly, we have corrected the Excel worksheets for adhesive tape and steel shavings used to

calculate surrogate values for JMC's factors of production (FOP). In addition, we corrected the surrogate value for adhesive tape in the worksheet used for SLK's packing, and the surrogate value for steel shavings in the worksheet used for one of SLK's suppliers.

**Comment 2: Indirect Labor Calculation for an SLK Supplier**

SLK argues that the Department incorrectly recalculated indirect labor hours in the galvanizing workshop of one of its suppliers by allocating them to the total weight of galvanized fittings produced in the galvanizing workshop. SLK states that both black and galvanized fittings are cleaned in the galvanizing workshop, and argues that the indirect labor hours should be divided by the weight of both types of fittings.

The petitioners argue that the selection of the basis over which to allocate indirect labor is not ministerial, but instead methodological, and urge the Department to deny SLK's request to revise the calculation.

**Department's Position:**

We agree with SLK that the omission of the weight of the black fittings cleaned in the galvanizing workshop was a ministerial error. The error resulted from SLK's formatting of a worksheet, in which only the galvanized fittings are shown under the heading ''Galvanizing and Cleaning.'' As it was not an intentional choice of methodology, but resulted from an error in copying, we have made the requested correction. For a more detailed discussion, see the memorandum to Richard O. Weible from Helen M. Kramer entitled ''Allegations of Ministerial Errors; Final Determination in the Antidumping Duty Investigation of Certain Malleable Iron Pipe Fittings from the People's Republic of China (A-570–881),'' dated November xx, 2003 (''Ministerial Errors Memorandum'').

**Comment 3: Application of Surrogate Freight in Facts Available Scrap Input Valuation**

SLK claims that the Department applied a freight factor to recycled scrap in the final determination, contrary to its stated position, because it applied the surrogate value for freight in its facts available steel scrap calculation. SLK argues that the Department applied a factor of 56.83% for recycled scrap as facts available, and applied the surrogate value for freight equally to scrap and recycled scrap.

The petitioners rebut SLK, arguing that the alleged error involves a methodological decision regarding the application of facts available, and is not a ministerial error. The petitioners also argue that SLK's claim is not factually correct, because the Department applied the 56.83 percent facts available factor to **purchased** scrap and pig iron, and not to recycled inputs, as noted in the final determination analysis memorandum for SLK. *See* Memorandum to the File from Helen Kramer, Case Analyst, entitled ''Antidumping Duty Investigation of Certain Malleable Iron Pipe Fittings from the People's Republic of China; Final Determination Analysis for LDR/SLK,'' (October 20, 2003) at 3. The petitioners conclude that the Department therefore properly applied the freight factor to the full cost of metallic inputs, which includes the cost of freight.

**Department's Position:**

We agree with the petitioners that the Department's methodology of applying facts available is not a ministerial error within the meaning of 19 CFR 351.224(f) because the Department's decision to apply a surrogate freight value was intentional. We also agree with the petitioners that SLK's claim is not factually correct. We used a combination of petitioners' and two respondents' data to calculate the percentage by which purchased steel scrap and pig iron inputs should be increased to account for all metallic inputs. This calculation did not include freight. Inasmuch as we are applying facts available to purchased scrap steel which incurs freight expenses, and we did not use the respondents' data on recycled scrap, we do not agree with SLK that we applied surrogate freight to recycled scrap contrary to our stated intention.

**Ministerial Error Allegations from the Petitioners**

**Comments 1 and 2: Deductions from U.S. Price**

The petitioners argue that the Department made ministerial errors in the calculation of SLK's net U.S. price by not deducting the variable ''OTHDIS1'' added after the preliminary determination for an additional discount, and the variable ''INLFPWU,'' representing the cost of trucking the subject merchandise from the Chicago rail station to LDR's warehouse for certain sales.

SLK did not comment on this issue.

**Department's Position:**

We agree with the petitioners that these were ministerial errors. The omission of these variables from the adjustments to U.S. price was not a methodological decision, but rather errors in copying. For this amended final determination, we have therefore recalculated net U.S. price by deducting these variables from the gross price. See Ministerial Errors Memorandum at 4.

**Amended Final Determination**

In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of MPF from the PRC to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

| Exporter/manufacturer | Original weighted-average margin (Percent) | Revised weighted-average margin (Percent) |
|---|---|---|
| Jinan Meide Casting Co., Ltd | 11.35 | 11.31 |
| Beijing Sai Lin Ke Hardware Co. Ltd. | 14.32 | 15.92 |
| Langfang Pannext Pipe Fitting Co., Ltd. | 7.35 | 7.35 |
| Chengde Malleable Iron General Factory | 10.96 | 11.18 |
| SCE Co., Ltd. | 10.96 | 11.18 |
| PRC-Wide | 111.36 | 111.36 |

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Bureau of Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of MPF from the PRC. CBP shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

## ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission of our amended final determination.This determination is issued and published in accordance with sections 735(d), 735(e) and 777(i)(1) of the Act.

Dated: November 17, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–29306 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

### Notice of Request for Information and Extension of Time: Wooden Bedroom Furniture From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of request for information and extension of time.

**EFFECTIVE DATE:** November 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Inquiries regarding any information on this notice may be addressed by calling Import Administration at 202–482–3902, via fax at 202–482–9089, and via email to the following address: *bedroomfurniture@ita.doc.gov.*

## The Petition

On October 31, 2003, the Department of Commerce (''Department'') received an antidumping duty petition (''Petition'') filed by the American Furniture Manufacturers Committee for Legal Trade and its individual members (''the Committee'') and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721 (''Local 721'') (''collectively, Petitioners''). The Petitioners are domestic producers of wooden bedroom furniture.

## Scope of the Petition

The following language describes the imported merchandise from the People's Republic of China (''PRC'') that Petitioners intend to be included in the scope of the investigation:

The merchandise subject to this investigation is wooden bedroom furniture (*i.e.*, subject merchandise). Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise are made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particleboard, and fiberboard; with or without wood veneers, wood overlays, or laminates; with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins; and whether or not assembled, completed, or finished.

The subject merchandise includes (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests [1], highboys [2], lowboys [3], chests of drawers [4], chests [5], door chests [6], chiffoniers [7], hutches [8], and armoires [9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the petition excludes (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktails tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; and (8) bedroom furniture in which bentwood parts predominate.[10]

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden * * * beds'' and under statistical category 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

## Domestic Like Product

Pursuant to Section 771(10) of the Tariff Act of 1930, as amended (''the

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency, and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated may 17, 1976.

Act'') and the Petitioners, the product that is, ''like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation'' is wooden bedroom furniture.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method to poll the industry.

**Request for Information**

Because the Petition has not established that domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product support the petition, we must ''poll or otherwise determine industry support for the petition by the industry.''

In accordance with section 732(c)(4)(D) of the Act and in order to determine whether the petition establishes support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, we are hereby requesting that all domestic producer/manufacturers of the wooden bedroom furniture submit to the Department a response to the questions in Appendix I of this notice.

**Filing Requirements**

Given the very short period in which we must determine industry support, the number of potential responses, and the fact that industry support may not be re-examined after initiation, we are waiving the filing requirements set forth in 19 CFR 351.303 for certain parties submitting information on industry support. This waiver of the filing requirements will not apply to: 1) the submission of documents that are not in response to the information requested in this notice or 2) parties that are familiar with the conduct of antidumping and countervailing proceedings through prior involvement in such proceedings (*e.g.*, parties represented by law firms that are involved in other AD/CVD cases).

This limited waiver is applicable only until November 26, 2003, the deadline for submitting the information requested in this notice. This waiver is intended to expedite the receipt of information that is essential to our analysis of industry support by providing information on the production of the domestic like product by petitioning and non-petitioning companies. By avoiding delays in the receipt of such information, we will have more time to analyze whether the statutory requirements concerning industry support for the above-referenced petitions have been met.

All parties submitting any information must include the following statement in their response: ''I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.'' All information received by the Department will be treated as business proprietary information as outlined in our regulations (19 CFR 351.304–306), unless otherwise noted. Please note that all company names will be treated as public information. In addition, note that all business proprietary documents received by the Department in response to this notice will be served to those individuals with access to business proprietary information under the Administrative Protective Order (''APO''). All public documents may be made available to those parties on the public service list. The APO service lists and the public service lists are available on Import Administration's Web site: *http://ia.ita.doc.gov.*

Information submitted to the Department in response to this notice should be faxed to the following number: 202–482–9089. Furthermore, all such information will be placed on the official record of the proceeding. Responses to this notice are due no later than November 26, 2003. Responses after this date may not be reviewed by the Department and therefore, not included in the analysis.

**Extension of Time**

Section 732(c)(1)(A)(ii) of the Act provides that within 20 days of the filing of an antidumping duty petition, the Department will determine, *inter alia,* whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) provides that the deadline for the initiation determination can be extended by 20 days in any case in which the Department must ''poll or otherwise determine support for the petition by the industry * * *.''

We will require additional information from the petitioners and the domestic producers of wooden bedroom furniture in order to make our determination regarding industry support and/or time to analyze the petitioners' responses to our requests for information. *See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III from Edward C. Yang, Office Director, AD/CVD Enforcement III, Office IX, regarding Antidumping Duty Petition on Wooden Bedroom Furniture from the People's Republic of China: Extension of Deadline for Determining Industry Support,* dated November 13, 2003. Therefore, it is necessary to extend the deadline for decision on initiation for a period not to exceed 40 days from the filing of the petition. As a result, the initiation determination is due no later than December 10, 2003.

**International Trade Commission Notification**

Because the Department has extended the deadline of the initiation determination, the Department will contact the Commission and will make this extension notice available to the Commission.

Dated: November 19, 2003.

**Edward C. Yang,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

BILLING CODE 3510–DS–C

## APPENDIX I
## PETITION ON WOODEN BEDROOM FURNITURE FROM THE PEOPLE'S REPUBLIC OF CHINA

ALL OF THE INFORMATION YOU PROVIDE ON THIS SHEET WILL BE ENTERED ON THE RECORD OF THIS INVESTIGATION AS BUSINESS PROPRIETARY INFORMATION WITH THE EXCEPTION OF THE COMPANY NAME

1. Please provide the following information about your company:

| | |
|---|---|
| Company Name | |
| Name and Title of the Company President, Director or Manager | |
| Your Name and Title | |
| Business Address | |
| Phone Number | |
| Facsimile Number | |
| E-Mail Address | |

2. Please check all that apply to describe the business activities of your company:

| | |
|---|---|
| U.S. Manufacturer/Producer of Wooden Bedroom Furniture[11] | |
| U.S. Importer of Chinese Wooden Bedroom Furniture | |
| U.S. Distributor or U.S. Reseller of Wooden Bedroom Furniture | |
| Other Wooden Bedroom Furniture activities in the United States (Please Explain) | |

3. If you **ARE NOT** a U.S. manufacturer/producer (i.e., you are an importer, distributor, or reseller only) of wooden bedroom furniture based on your response to question 2 above, please STOP HERE and SEND this response to Import Administration. If you **ARE** a U.S. manufacturer/producer of wooden bedroom furniture, please continue to question #4.

[11] A U.S. manufacturer/producer is a manufacturer/producer with production facilities in the United States during January 2002-December 2002.

4. Please provide the following information:

| Company | U.S. Dollar Sales Value of Wooden Bedroom Furniture Produced in the United States and Sold during Jan 2002-Dec 2002[12] | U.S. Dollar Sales Value of Wooden Bedroom Furniture Imported from China and Sold during Jan 2002-Dec 2002[13] |
|---|---|---|
| Your company (name): | | |
| Related Company 1 (name): | | |
| Related Company 2 (name): | | |

5. Does your company or your related companies have any relationships, ownerships (including partial ownerships), joint-venture agreements, etc., with Chinese producers, manufacturers or exporters of wooden bedroom furniture. If so, please list the companies with whom you are related and the nature of that relationship.

Yes _____

Chinese Company Name(s)_____

Nature of Relationship _____

No _____

6. Does your company (please note that if you do not select one of the following options, we will presume that you have no opinion):

A. Support this petition? _____
B. Oppose this petition? _____
C. Have no opinion? _____

---

[12] Please report the total U.S. dollar sales value of your sales of all wooden bedroom furniture produced in the United States as sold out the door to all your customers during January 2002-December 2002.

[13] Please report the total U.S. dollar sales value of your sales of all imported wooden bedroom furniture from China as sold out the door from your U.S. location and as sold by direct shipment from China (inclusive of all freight expenses to the United States) to all your customers during January 2002-December 2002.

[FR Doc. 03–29419 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–DS–C

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

*Docket Number:* 03–050.

*Applicant:* San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–4614.

*Instrument:* Electron Microscope, Model Tecnai $G^2$ 12 TWIN.

*Manufacturer:* FEI Company, The Netherlands.

*Intended Use:* The instrument is intended to be used for research purposes in the following areas:

(1) Phytoflagellates of the Salton Sea.

(2) Structure and function of mitochondria.

(3) Analysis of contractile protein function through ultrastructural analysis.

(4) Environmental adaptions in fish.

(5) Stress-induced coral mortality.

(6) Visualization of recombinant intermediates by Cryo-TEM.

Minor research uses by students include:

(1) New thermoacidophilic organisms from hot springs.

(2) Signal transduction of the stress response in the heart.

(3) Molecular genetic analysis of neuromuscular system function in *Drosophila melangoaste.*

(4) Physiology of fish gill and their response to parasatism;

(5) Analysis and subcellular localization of putative sphingolipid signaling molecules in skeletal and cardiac muscle.

*Application accepted by Commissioner of Customs:* October 20, 2003.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 03–29307 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–122–839]**

### Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty expedited reviews.

**SUMMARY:** The Department of Commerce (the Department) is conducting expedited reviews of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2000 through March 31, 2001. This notice includes the preliminary results for 16 companies. For all 16 companies we applied the Group 2 methodology. *See* the ''Methodology'' section below for details. For information on estimated net subsidies, *see* the ''Preliminary Results of Reviews'' section of this notice. If the final results remain the same as these preliminary results of reviews, we will instruct the U.S. Customs and Border Protection (CBP) to amend the cash deposit rate for each reviewed company as detailed in the ''Preliminary Results of Reviews'' section of this notice. Interested parties are invited to comment on these preliminary results.

The Department is also rescinding expedited reviews of five companies. *See* the ''Partial Rescission'' section below for details.

**EFFECTIVE DATE:** November 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore or Cindy Lai Robinson, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–3797.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 22, 2002, the Department published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order on certain softwood lumber products (subject merchandise) from Canada (67 FR 36070), as corrected, 67 FR 37775 (May 30, 2002) (*Amended Final Determination*). On July 17, 2002, the Department published the *Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 46955 (July 17, 2002) (*Notice of Initiation/Round 1*), which covered 73 companies that filed complete and timely review applications. On September 20, 2002, the Department published the *Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 59252 (September 20, 2002) (*Notice of Initiation/Round 2*), which covered 31 additional companies. This notice included 23 companies that had corrected their applications as well as eight companies whose requests were received after the initial application deadline for reasons outside the requesters' control.

As explained in the *Notice of Initiation/Round 1,* we segregated the 73 Round 1 applicants into two groups. Group 1 consists of 45 companies which obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and Canadian companies excluded from the order, and companies that source less than a majority of their wood from these sources and do not have tenure. Group 2 includes 28 companies that have tenure contracts and source less than a majority of their wood from these sources. Of the 31 companies in Round 2, we similarly segregated 23 companies into Group 1 and eight companies into Group 2.

With respect to the Group 1 companies, on August 14, 2002, the Department issued a notice of preliminary results covering 18 companies. *See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada,* 67 FR 52945 (August 14, 2002) (*August Preliminary Results*). On November 5, 2002, the Department issued a notice of final results for 13 of the 18 companies covered in the *August Preliminary results.* Of the five remaining companies, two companies requested an analysis of whether they benefitted from subsidies bestowed on their inputs and we deferred a notice of final results for the other three companies to allow interested parties to comment on the verification reports. *See*

*Final Results and Partial Rescission of Countervailing duty Expedited Reviews: Certain Softwood Lumber Products from Canada,* 67 FR 67388 (November 5, 2002) (*November Final Results*). A notice of final results for these three companies was issued on May 7, 2003. *See Final Results of Countervailing duty Expedited Reviews: Certain Softwood Lumber Products from Canada,* 68 FR 24436 (May 7, 2003) (*May Final Results*).

In addition, on May 8, 2003, the Department published another notice of preliminary results for 28 Group 1 companies (14 in Round 1 and 14 in Round 2). *See Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada,* 68 FR 24717 (May 8, 2003) (*May Preliminary Results*). Companies that requested an analysis of whether they benefitted from subsidies bestowed on their inputs, acquired in arm's length transactions, were not included in the preliminary results notice. The Department also addressed outstanding methodological issues related to Group 1 companies. *See May Preliminary results.*

This notice includes the preliminary results for 16 Group 2 companies (13 in Round 1 and three in Round 2). We are not including in this notice any of the following 15 Group 2 companies that requested an analysis of whether they benefitted from subsidies bestowed on their inputs. They are: Apollo Forest Products Ltd., Aspen Planers Ltd., Downie Timber Ltd., Dunkley Lumber Ltd., Gorman Bros. Lumber Ltd., Liskeard Lumber Ltd., Mill & Timber Products Ltd., North Enderby Timber Ltd., Riverside Forest Products Ltd., Selkirk Specialty Wood Ltd., Slocan Forest Products Ltd., Tembec Inc., Tolko Industries Ltd., and Uphill Wood Supply Inc. (the above companies are in Round 1), and Bridgeside Hilga Forest Industries Ltd. (which is in Round 2).

Furthermore, this preliminary results do not include the following three Group 2 companies: Jackpine Engineered Wood Products Inc. and Jackpine Forest Products Ltd. (in Round 1), and 9027–7971 Quebec Inc. (in Round 2), because the reviews of these three companies have been rescinded in an earlier notice (*See May Preliminary results*).

We received various comments from interested parties subsequent to the Department's *Initiation/Round 1, August Preliminary Results, Initiation/Round 2,* and the *November Final Result.* All general methodological issues related to both Group 1 and Group 2, and company-specific issues pertaining to Group 1 companies have been addressed in the notices of Group 1's preliminary results and final results. *See August Preliminary Results, November Final Result,* ''Issues and Decision Memorandum'' dated concurrently with the *November Final Results* notice, *May Preliminary Results, May Final Results,* and the ''Issues and Decision Memorandum'' dated concurrently with the *May Final Results* notice. In this preliminary results notice, we are addressing only petitioners' and respondents' comments concerning the Group 2 companies covered in these results.

**Partial Rescission**

We did not receive any responses from South East Forest Products Ltd. (South East Forest), a respondent in Round 2. We contacted a South East Forest company official who confirmed that the company will no longer participate in these expedited reviews. *See* Department's March 31, 2003, memorandum to the file regarding *Expedited Reviews in the Countervailing Duty Order on Softwood Lumber from Canada* (C–122–839), which is on file in room B–099 of the Central Records Unit of the Main Commerce Building (CRU). Because South East Forest did not provide the necessary information, we are not able to proceed with an expedited review of this company. Therefore, we are rescinding the expedited review for South East Forest.

On April 14, 2003, Teal Cedar Products Ltd., another respondent in Round 2, withdrew its request for review. West Fraser Mills Ltd., a respondent in Round 1, also withdrew its request for an expedited review on June 12, 2003. Therefore, we are rescinding the expedited review for Teal Cedar Products Ltd. and West Fraser Mills Ltd.

In addition, Lukwa Mills Ltd. (Lukwa), another Round 2 company, did not respond to our supplemental questionnaire. We contacted the general manager of the company who told us that Lukwa is shutting down and there is no staff to work on the response. Because Lukwa did not provide the necessary information, we are also unable to proceed with an expedited review of this company. Therefore, we are rescinding the expedited review for Lukwa. *See* Department's May 6, 2003, memorandum to the file regarding *Expedited Reviews in the Countervailing Duty Order on Softwood Lumber from Canada* (C–122–839), which is on file in CRU.

Finally, the Department is also rescinding a Group 1 company, Kootenay Innovate Wood Inc. (Kootenay), which initially indicated a possible cross-ownership with a Group 2 company, Kalesnikoff Lumber Co. Ltd. (Kalesnikoff). The Department did not include Kootenay in the *May Preliminary Results.* Rather, it postponed the analysis of Kootenay until these preliminary results for Group 2 companies so a consolidated subsidy rate for Kootenay and Kalesnikoff could be calculated. *See May Preliminary Results.*

However, during the Group 2 expedited review, Kalesnikoff stated that it is not cross-owned with Kootenay. After further analysis we have determined that cross-ownership between Kootenay and Kalesnikoff does not exist. Additionally, Kootenay stated in its application and later confirmed in a supplemental questionnaire response that it did not have any sales of subject merchandise to the United States during the POR. In accordance with the Department's practice, companies that did not ship subject merchandise during the period covered by the investigation or administrative review are not eligible to participate in that segment of the proceeding. See, *e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea* (68 FR 13267; March 19, 2002). Moreover, the application to request an expedited review specifically listed exports of subject merchandise to the United States during the POR as one of the eligibility requirements. Because there is no information on the record indicating that Kootenay exported subject merchandise to the United States during the POR, we are rescinding the expedited review with respect to Kootenay.

**Companies Reporting Cross-Ownership**

The following companies reported that they are cross-owned with other companies that produce and/or manufacture subject merchandise: Canadian Forest Products Ltd. (Canfor) reported that it is cross-owned with Lakeland Mills Ltd. (Lakeland), and the Pas Lumber Company Ltd. (The Pas); Greenwood Forest Products Ltd. (Greenwood) reported that it is cross-owned with GFP Enterprise Ltd. (GFP); Commonwealth Plywood Co. Ltd. (Commonwealth) reported that it is cross-owned with three companies that produce and/or manufacture subject merchandise: Les Entreprises Atlas (1985) Inc., Bois Clo-Val Inc., and the W.C. Edwards Company Ltd.; Shawood Lumber Inc. (Shawood) and Lukwa reported that the two companies jointly cross-own a logging company; R. Fryer Forest Products Ltd. (Fryer) reported

that it is cross-owned with a holding company; C. Cambie Cedar Products (Cambie) reported that it is cross-owned with an inactive shell company; Kootenay reported that it was cross-owned with Kalesnikoff; and Selkirk Specialty Wood Ltd. (Selkirk) reported that it is cross-owned with one of its suppliers.

Regarding Canfor's reporting of cross-ownership with Lakeland and The Pas. Canfor [1] states that in the preliminary and final determinations for the antidumping investigation of softwood lumber, the Department collapsed Lakeland, and The Pas with Canfor. Further, in two subsequent supplemental responses [2] Canfor reported that its investment level, board of directors representation, and management involvement with respect to Lakeland and The Pas is absolutely equal to that of the two additional investors who are also equal shareholders, with Canfor, of Lakeland and The Pas. Thus, Canfor owns and controls one-third of the voting shares in Lakeland and The Pas.

Specifically, under 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations (*see* 19 CFR 351.525(b)(6)(vi)). In the instant case, Canfor is not able to use Lakeland and The Pas as it would its own assets, nor does Canfor control a majority voting ownership interest in either company. Broad corporate business decisions regarding Lakeland and The Pas are made by three equal ''corporate'' investment entities of which Canfor is one. Finally, as Canfor has reported in its May and June supplementals, neither Canfor nor any of the one-third investment partners are involved in the day-to-day operations of Lakeland and The Pas. Therefore, we preliminarily determine that the level of Canfor's investment and management control of Lakeland and The Pas is not sufficient to consider the three companies cross-owned under 19 CFR 351.525(b)(6)(vi). Thus, with respect to Canfor, Lakeland and The Pas, because we determine that cross-ownership does not exist, we have applied the Group 2 methodology to these companies separately. *See* company-specific analysis memorandum for further details.

Greenwood reported that it was affiliated and cross-owned with GFP in its March 28, 2003 questionnaire response. It stated that the two companies shared a senior management position, but that each company had its own asset base, which is not shared. In its April 29, 2003 and May 16, 2003 supplemental questionnaire responses, Greenwood confirmed that there was no controlling interest between the two companies. Therefore, we preliminarily determine that Greenwood and GFP are not crossed-owned under 19 CFR 351.525(b)(6)(vi).

Kootenay reported that it was affiliated and shared cross-ownership with Kalesnikoff in its February 18, 2003 questionnaire response. Kalesnikoff, however, reported that it was not crossed-owned with any other company during the POR in its March 20, 2003 questionnaire response. We sent supplemental questionnaires to both companies with regard to the cross-ownership between the two companies. Both Kootenay and Kalesnikoff responded that, while the owners of the two companies are affiliated, neither company held any shares of the other company, nor did they share members of a board of directors or management staff.[3] Accordingly, we preliminarily determine that Kalesnikoff and Kootenay are not crossed-owned under 19 CFR 351.525(b)(6)(vi). Therefore, in these preliminary results we are rescinding the expedited review with respect to Kootenay (*see* ''Partial Rescission'' section above for further discussion). Further, we have applied the Group 2 calculation methodology to Kalesnikoff for determining its level of subsidy benefit.

Selkirk reported that it is cross-owned with another lumber producer. That producer requested the Department to calculate a separate CVD rate for its company using the arm's length methodology. On this basis, we determine that it is necessary to postpone the calculation of an individual, separate rate for Selkirk until the analysis has been completed for Selkirk's cross-owned company. Accordingly, we will combine the results of Selkirk and its cross-owned company in the results calculated subsequent to these preliminary results.

Finally, for these preliminary results, in those instances in which we determined that cross-ownership existed between companies during the POR, such as in the case of Commonwealth, we calculated the consolidated benefit for cross-owned companies in accordance with 19 CFR 351.525(b)(6). Specifically, for cross-owned companies that are all in Group 2 and had harvesting operations during the POR, we calculated the consolidated benefit using the Group 2 methodology as described below in the ''Methodology'' section. We then divided the total consolidated benefit by the entity's consolidated sales (scope and non-scope softwood lumber products, net of resales, and softwood lumber by-products) to obtain the consolidated net subsidy rate.

Shawood indicated that it did not harvest timber during the POR. Instead, it purchased its log inputs from a joint-owned logging company it created with Lukwa. Shawood and Lukwa each own fifty percent of the logging company. As stated above, under 19 CFR 351.525(b)(6)(iv), the cross-ownership standard is normally met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. Because Shawood does not have a majority interest in the logging company, we preliminary find that the two companies are not cross-owned within the meaning of 19 CFR 351.525(b)(6)(iv). Accordingly, to calculate the countervailable benefit, we multiplied the volume of the logs and lumber that Shawood purchased by the amount of the provincial unit benefit calculated in the underlying investigation.

With respect to Fryer, which is cross-owned with a holding company, and Cambie, whose cross-owned company is an inactive shell company, we applied the Group 2 methodology to the companies themselves, but not to their cross-owned companies. *See* company-specific analysis memorandum for further details.

**Companies Addressed in These Preliminary Results**

This notice includes the preliminary results of review for the following 13 Group 2, Round 1 companies:

Cambie Cedar Products Ltd
Canadian Forest Products Ltd
Commonwealth Plywood Co. Ltd.
E. Tremblay et fils ltee
Federated Co-operatives Ltd
Greenwood Forest Products Ltd.
Kalesnikoff Lumber Co. Ltd.

[1] *See* Canfor's March 31, 2003 expedited review questionnaire response at page 4.

[2] *See* Canfor's May 27, 2003 expedited review supplemental response (May supplemental) at page 1 and Canfor's June 16, 2003 expedited review supplemental response (June supplemental) at pages 1 through 4.

[3] *See* Kalesnikoff's May 12, 2003 supplemental questionnaire response at pages 1 through 2, Kootenay's May 16, 2003 supplemental questionnaire response at pages 1 through 2, and Kootenay's May 22, 2003 supplemental questionnaire response at page 2.

Kenora Forest Products Ltd.
Lakeland Mills Ltd.
Lulumco Inc.
R. Fryer Forest Products Ltd.
Terminal Forest Products Ltd.
The Pas Lumber Company Ltd.

These preliminary results also include the preliminary results of review for the following three Group 2, Round 2 companies:

Shawood Lumber Inc.
St. Jean Lumber (1984) Ltd.
Wynndel Box & Lumber Co. Ltd.

In addition, these preliminary results include the recision for one company in Group 2, Round 1, three companies in Group 2, Round 2, and one company in Group 1, Round 1.

Kootenay Innovate Wood Inc.
Lukwa Mills Ltd.
South East Forest Products Ltd.
Teal Cedar Products Ltd.
West Fraser Mills Ltd.

**Scope of the Reviews**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada* (67 FR 15539; April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *http://www.ia.ita.doc.gov,* drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): If they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* If they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components,* not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to CBP's satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits,*[4] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are

[4] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: Upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[5] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

## Methodology

### *A. Stumpage Programs*

These preliminary results include companies that source less than a majority of their wood (less than 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order, and have acquired Crown timber through their own tenure contracts. We have included in our subsidy calculations only harvested softwood sawlogs processed by the firm's sawmills. We calculated company-specific rates as follows: To obtain the company-specific stumpage benefit for logs harvested under a company's own tenure, we first calculated, on a species-specific basis, an average unit benefit from ''Crown land harvesting'' by dividing the stumpage fees each company paid by the total quantity harvested from Crown land to obtain the stumpage price. The resulting unit stumpage price was adjusted by the company-specific unit tenure costs to derive an adjusted stumpage price for each species.[6] The adjusted species-specific stumpage price then was compared to the appropriate benchmark for that province to determine the species-specific benefit per-unit, which was multiplied by the harvest volume[7] for each species to obtain the total species-specific benefit. Species-specific benefits were summed up to derive the total benefit from Crown land harvesting. For all wood inputs (logs and lumber) from other subsidized sources, we applied the same methodology used in Group 1: We calculated the benefit by multiplying the quantity purchased by the province-specific stumpage benefit amount calculated in the underlying investigation (*i.e.*, the average per-unit differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province). Also *see Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada (Final Determination),* 67 FR 15545 (April 2, 2002), and Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada (*Investigation Decision Memo*).

We then divided the combined stumpage benefit resulting from harvesting under a company's own tenure and from purchases of logs and lumber through other subsidized sources by the appropriate value of the company's sales (scope and non-scope softwood lumber products, net of resales, and softwood lumber by-products) to determine the company's estimated subsidy rate from stumpage and then added any benefit from other programs to obtain the net subsidy rate for the company.

As indicated in the *Notice of Initiation/Round 1,* we have not attributed a benefit to (1) logs or lumber acquired from the Maritime Provinces, (2) logs or lumber of U.S. origin, (3) lumber produced by companies excluded in the investigation, and (4) logs from Canadian private land. *See* 67 FR 46955, 46957. Furthermore, we are not including logs which the companies claim to have acquired and resold without any processing in our subsidy rate calculations. In addition, we are also not including in our subsidy calculations lumber purchased and resold without any further manufacturing.

## Other Programs

In the underlying investigation, the Department determined that the province of British Columbia provided countervailable benefits under the Forest Renewal program and the Job Protection program, while the province of Quebec provided countervailable benefits under the Private Forest Development Program (PFDP), loans issued by Investment Quebec, lending under Article 28 of the Society for the Industrial Development of Quebec (SDI), and loans issues by the Society for the Recuperation and Development of Quebec Forests (Rexfor). Based upon our decision in the underlying investigation, the Department requested information from companies regarding the use of these programs.

Kalesnikoff was the only one that reported using one of such program, the Forest Renewal program. However, Kalesnikoff reported that it did not receive any grants or loans under this program during the POR; rather it acted as a delivery agent for silviculture and resource inventory activities. Kalesnikoff was reimbursed for non-profit activities on behalf of the Forest Renewal Program for the administration and overhead costs incurred in delivering this program to the Province. On this basis, we preliminarily find that Kalesnikoff did not receive countervailable benefits under this program. No other company reported using any of the British Columbia or Quebec programs during the POR.

## Analysis of Comments Received

### *Comment 1: Whether Timber Sale Licenses Should Be Considered as Tenure Agreements and Cambie Cedar Products Ltd. Should Be in Group 2*

Cambie Cedar Products Ltd. (Cambie) asserts that there are several kinds of tenure arrangements in British Columbia which are considered both short-term agreements and long-term agreements. Cambie argues that Timber Sale Licenses cannot be described as

[5] *See* the scope clarification message (# 3034202), dated February 3, 2003, to the CBP, regarding treatment of U.S. origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

[6] These cost adjustments were limited to those granted in the underlying investigation.

[7] Certain companies reported that certain harvested softwood sawlogs were not used in lumber production. These were excluded from our calculations.

tenure agreements because they are awarded to the sealed tender bidder with the highest bonus bid through a Market Pricing System. Moreover, Cambie argues that the small companies that hold only Section 20 Timber Sale Licenses conduct their business in a way that closely approximates a free market system in the acquisition of timber. Therefore, they are the least likely to benefit from the set stumpage rates which are favorably applied to large tenure holders under Tree Farm Licenses and Forest Licenses. As a result of these differences between Timber Sale Licenses and tenure agreements, Cambie argues that Timber Sale Licenses should not be considered ''tenure'' for purposes of categorizing applicants into Group 1 or Group 2 for purposes of these expedited reviews.

Cambie also argues that a distinction should be made between companies that had harvesting contracts during the POR, and those that actually harvested crown timber pursuant to harvesting rights that existed during the POR. In the instant case, Cambie reported that it obtained a one year Timber Sale License with respect to certain crown timber in British Columbia during the POR. However, Cambie also reported that it did not harvest any Crown timber during the POR and provided certifications from the province of British Columbia to support this claim. Therefore, Cambie concludes that its company should be classified under Group 1(b), ''companies that source less than a majority of their wood from the United States, Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order and have not acquired Crown timber through their own tenure contracts during the POR.'' Thus, Cambie argues that the actual harvesting of Crown timber, rather than the existence of harvesting rights should govern whether a company is categorized within Group 1 or Group 2. Based on these arguments, Cambie contends that it should be considered a Group 1(b) company or alternatively, classified within Group 2. Cambie argues that if the Department determines that Cambie should be classified as a Group 2 company, it should be considered and analyzed first among that group because its data is not very complex.

Petitioners contest Cambie's request that companies with Section 20 Timber Sale Licenses should be reviewed using the Group 1 methodology for several reasons. According to petitioners, Section 20 sales are far below market value as recognized by the Department in the *Final Determination.* Petitioners assert that to the extent that these licenses exceed British Columbia administered stumpage rates generally paid, they would be reflected within the Department's subsidy calculations. Moreover, petitioners argue that as a tenure holder, Cambie should be subject to the calculation methodology of Group 2, irrespective as to whether or not it harvested crown timber during the POR.

Department's Position

Record evidence indicates that Cambie did not harvest Crown timber during the POR. Therefore, questions surrounding how the Department should calculate benefits stemming from Crown harvest operations are moot. Accordingly, since Cambie has indicated that it has no countervailable log harvests, we derived the benefit attributable to Cambie's purchases of countervailable log and lumber inputs using the approach, effectively the Group I methodology, described in the ''Methodology'' section of this notice.

*Comment 2: Whether Harvested Crown Logs Not Entering the Respondent's Mill Should Be Excluded*

Canfor argues that harvested Crown logs that do not enter Canfor's mill should not be included in the calculation. Additionally, Canfor states that the cash deposit rate should reflect the actual subsidy benefit it received on the logs it harvested for its lumber production.

According to petitioners, Canfor has suggested changes to the investigation methodology and the exclusion methodology. Petitioners assert that Canfor's contention that a stumpage benefit should be calculated only on the volume of crown logs that were manufactured into lumber is not consistent with the statute. Petitioners argue that a benefit has been conferred when a company pays less for goods than it would have paid absent the government subsidy program. Thus, petitioners assert that Canfor receives a countervailable subsidy benefit when it harvests timber at below-market prices.

Department's Position

With respect to harvested Crown logs that do not enter a lumber producer's mill, we agree with Canfor. We note that to do otherwise would be inconsistent with our approach in the underlying investigation. *See*, the ''Numerator Issues'' section of the *Investigation Decision Memo* in which we stated that we were not deviating from the approach used in Lumber III, ''* * * because the stumpage benefit that we are calculating is that which is received by lumber producers which purchase the subsidized stumpage * * * the subsidy is properly attributed to the value of the lumber products produced from that input * * *'' *See* also the ''Denominator Issues'' section of the *Investigation Decision Memo* in which the Department stated that it was only including in the denominators those sales which were the result of the lumber manufacturing process.

*Comment 3: Whether a Single, Provincial Unit-Benefit Should Be Applied to Purchased Logs and Lumber*

Canfor argues that the Department should calculate a benefit for countervailable log and lumber purchases using a species/regional specific benefit rate (as opposed to the single province specific unit benefit rate used in our prior expedited review notices—*e.g.*, *Notice of Initiation/Round 1.* Canfor argues that, while the calculation methodology for purchases of logs and lumber was used in the exclusion process in the investigation as well as prior expedited review determinations, the methodology is distortive in provinces, such as British Columbia, where there are a variety of species groups and a wide disparity in stumpage fees among the species. For example, Canfor points out that the majority of logs and lumber harvested and acquired in Manitoba, Ontario, and Quebec fell into the spruce, pine, fir (SPF) category and, thus, the single, unit-benefit rate applied to purchased logs and lumber during the exclusion and expedited review process was almost identical to the SPF-specific stumpage rate for those provinces. However, they contend that in the case of British Columbia, the application of a single, unit-benefit to the purchases of logs and lumber overstates the benefit for certain, less expensive, species of logs and lumber acquired by the company. They further argue that the application of a single, unit-benefit to the purchases of logs and lumber fails to account for the real price differences that exist between logs and lumber acquired in the coastal and interior regions of the Province.

According to Canfor, companies can easily identify and quantify the volumes of logs and lumber purchased by source, province, geographic area in British Columbia, and species purchased, because they maintain the records for this information. Thus, Canfor argues that the Department should apply its suggested methodology for purchased logs and lumber and calculate the subsidy based on species-specific and region-specific benefit rate.

With respect to Canfor's argument that the Department's approach to

purchases of countervailable logs and lumber is distortive in the case of companies with operations in British Columbia, petitioners object to Canfor's suggestion, that the company provide data on the volume of lumber and logs purchased by province and species. Petitioners are opposed to this argument, because the information has not been verified. Moreover, Canfor's proposed methodology would result in special treatment that would not be applicable to other companies in the expedited review. Petitioners assert that the Department's methodology should be consistent for all companies. Therefore, petitioners contend if the Department accepts Canfor's proposed methodology, it must require the same information from all companies and apply the methodology consistently.

Department's Position

We disagree with Canfor on these points. As explained above, these expedited reviews are predicated on the consistent application to all companies of a streamlined methodology which adheres, as closely as possible, to the methodology utilized in the underlying investigation.

*Comment 4: Whether Benefit From Resold Lumber Should Be Included in Reseller's Company-Specific Calculation*

Canfor contends that resold lumber transactions should be excluded from the numerator and the denominator in the Department's company-specific rate calculations. According to Canfor, a company may purchase lumber and resell it without ever taking possession of it. They contend that, for CBP purposes, the cash deposit rate applied to these entries would be that applicable to the manufacturer (*i.e.*, either the manufacturer's company-specific rate or the country-wide rate found in the investigation). Canfor argues that including a benefit from such resales in the reseller's company-specific calculation is inappropriate as the reseller's rate will not be applied to such lumber. Likewise, the sales value of such lumber resales should not be included in the denominator for the reseller. Canfor concludes that only in cases where a company purchases and remanufacturers it, is it appropriate to calculate a stumpage benefit on the remanufactured lumber sold by that company and to include the sales value of the remanufactured lumber in the denominator of its subsidy rate calculation.

Department's Position

With respect to resold lumber, we agree with Canfor that these transactions should not be included in the numerator or the denominator of the company's calculations. As explained in the ''Preliminary Results of Review'' section of the *May Preliminary Results*, in instances involving resales activity, we required information from all of the reseller's suppliers in order to calculate an individual net subsidy rate for those resales activities. In the case of Canfor, it did not provide any information regarding the suppliers of the merchandise that it resold. Therefore, consistent with the *May Preliminary Results*, we will calculate net subsidy rates for only lumber that Canfor has produced and exported to the United States. *See id.* at the ''Preliminary Results of Review'' section. Further, with respect to lumber that Canfor resold without any further processing or manufacturing, we will instruct the CBP to apply the company-specific rate applicable to the manufacturer of the resold lumber. If no company-specific rate was calculated for the manufacturer of the resold lumber, then we will instruct the CBP to apply the country-wide rate.

*Comment 5: Whether Shawood Lumber Inc.'s Reporting on Affiliation Is Consistent*

Petitioners contend that Shawood Lumber Inc. (Shawood) has inconsistent reporting between its exclusion request and the expedited review. Specifically, petitioners state that Shawood reported an affiliated company in its exclusion request. However, in the expedited review, it did not report any affiliated companies. Moreover, in the company exclusion process, Shawood reported that it had received government assistance during the POI, but did not report government assistance in the expedited review process.

Department's Position

We disagree with petitioners. With respect to whether Shawood reported affiliates in its expedited review application, the reporting methodologies used by participating companies differed between the exclusion process and the expedited review process. In the exclusion process, companies signed certifications regarding their affiliation and cross-ownership status that were based on questionnaires and guidelines compiled and issued by the Government of Canada (GOC). *See* the GOC's October 29, 2001 submission. In contrast, in the expedited reviews, the Department has sent questionnaires directly to the participating companies that contain specific definitions and instructions regarding the issue of affiliation, and cross-ownership, as well as on other Federal and Provincial programs. Therefore, it is entirely possible, since different authorities issued separate and different questionnaires, that some discrepancies would exist. In addition, Shawood has provided detailed information on its affiliated logging company in its original and supplemental questionnaire responses in the current proceeding.

**Verification**

In accordance with 782(i)(3) of the Tariff Act of 1930, as amended (the Act), we may verify information submitted by respondents who receive a *de minimis* subsidy rate, prior to making our final determination.

**Preliminary Results of Reviews**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these expedited reviews. For the period April 1, 2000 to March 31, 2001, we preliminarily determine the net subsidy to be as follows:

| Net subsidies—Producer/exporter | Net subsidy rate % for stumpage programs | Net subsidy rate % for other programs | Total net subsidy rate |
|---|---|---|---|
| Group 2, Round 1 Companies: | | | |
| Cambie Cedar Products Ltd | 14.59 | | |
| Canadian Forest Products Ltd | 12.24 | | |
| Commonwealth Plywood Co. Ltd | 2.89 | | |
| E. Tremblay et fils ltee | 6.36 | | |
| Federated Co-operatives Ltd | 28.55 | | |
| Greenwood Forest Products Ltd | 7.95 | | |
| Kalesnikoff Lumber Co. Ltd | 12.10 | | |

| Net subsidies—Producer/exporter | Net subsidy rate % for stumpage programs | Net subsidy rate % for other programs | Total net subsidy rate |
|---|---|---|---|
| Kenora Forest Products Ltd | 20.29 | | |
| Lakeland Mills Ltd | 8.85 | | |
| Lulumco Inc | 13.74 | | |
| R. Fryer Forest Products Ltd | 20.53 | | |
| Terminal Forest Products Ltd | 10.00 | | |
| The Pas Lumber Company Ltd | 7.45 | | |
| Group 2, Round 2 Companies: | | | |
| Shawood Lumber Inc | 5.46 | | |
| St. Jean Lumber (1984) Ltd | 33.27 | | |
| Wynndel Box & Lumber Co. Ltd | 12.89 | | |

To the extent practicable, the Department will issue the final results of these reviews 30 days after the closing of the public comments. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above of the f.o.b. invoice price on all shipments of the subject merchandise produced and exported by the reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews. These rates will not apply to merchandise purchased by the reviewed companies and exported without further processing.

If, in the final results, there are producers/exporters whose final estimated net subsidy rates are zero or *de minimis,* they will be excluded from the order. Because, in the Department's view, there is no relevant difference for purposes of the *de minimis* rule between expedited reviews of orders resulting from investigations conducted on an aggregate basis and expedited reviews of orders resulting from investigations conducted on a company-specific basis, we believe it is appropriate in these reviews to treat *de minimis* rates, one percent *ad valorem* in this case, in accordance with section 19 CFR 351.214(k)(3)(iv). Therefore, after the issuance of its final results, the Department intends to instruct CBP to liquidate, without regard to countervailing duties, all outstanding shipments of the subject merchandise produced and exported by excluded companies.

These expedited reviews cover only those companies that we have specifically identified as qualifying for expedited reviews. We will instruct the CBP to continue to collect cash deposits for all non-reviewed companies at the country-wide0 cash deposit rate established in the investigation.

**Public Comment**

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). The due dates for the case briefs will be announced at a later date.

Individuals who wish to request a hearing must submit a written request within 14 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The time, date, and place of the hearing will be announced after the Department has released the dates of the briefing schedule. However, any party that wants to participate in a hearing must submit a written request within the time period specified above.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, ten copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will include the results of its analysis of issues raised in any case or rebuttal briefs in the final results of these expedited reviews. The Department will ensure that interested parties are informed of the briefing schedule.

In the interests of giving each respondent an informed opportunity to request rescission of their expedited review, we have amended the timeline announced in the application form to request rescission of an expedited review. Requests for rescission must be received by the Department no later than 30 days after the date of publication of the preliminary results of the relevant expedited review.

These expedited reviews and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(1).

Dated: November 17, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–29308 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Announcement of meeting.

**SUMMARY:** The APAC will have a closed meeting on December 10, 2003 at the U.S. Department of Commerce to discuss U.S.-made automotive part sales in Japanese and other Asian markets.

**DATES:** December 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Henry Misisco, U.S. Department of

Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–0554.

**SUPPLEMENTARY INFORMATION:** The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislaiton. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on November 18, 2003, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the December 10th meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in Room 5317, Main Commerce.

Dated: November 19, 2003.

**Henry Misisco,**

*Director, Office of Automotive Affairs.*

[FR Doc. 03–29228 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review.

**SUMMARY:** On November 12, 2003, Domex Marketing, Inc (Domex), L&M Companies, Inc. (L&M), Nuchief Sales, Inc. (Nuchief), Oneonta Trading Corporation (Oneonta), PAC Marketing International, LLC. (PAC), Rainier Fruit Company (Rainier Fruit) and Sage Marketing LLC (Sage) filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final countervailing duty determination made by the Secretaria de Economia, respecting Apples, Table Apples and Their Varieties of Red Delicious and Its Mutations and Golden Delicious Apples from the United States of America. This determination was published in the *Diario Oficial de la Federacion del*, on October 21, 2003. The NAFTA Secretariat has assigned Case Number MEX–USA–2003–1904–02 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 12, 2003, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 12, 2003);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 29, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 18, 2003.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 03–29309 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–GT–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111803F]**

### Caribbean Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

**DATES:** The meetings will be held on December 17–18, 2003. The Council will convene on Wednesday, December 17, 2003, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6:15 p.m. The Council will reconvene on Thursday, December

18, 2003, from 9 a.m. to 5 p.m., approximately.

**ADDRESSES:** The meetings will be held at the Marriott Frenchman's Reef Morning Star Beach Resort, #5 Estate Bakkeroe, St. Thomas, USVI 00802.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Council will hold its 114th regular public meeting to discuss the items contained in the following agenda:

**December 17th, 2003**

*9 a.m.–5 p.m.*

Call to Order

Adoption of Agenda

Consideration of 113th Council Meeting Verbatim Minutes

Executive Director's Report

USA/UK Virgin Islands Fishery Issues

Sustainable Fisheries Act (SFA) Draft Document

*5:15 p.m.–6:15 p.m.*

Administrative Committee Meeting

Advisory Panel (AP)/Scientific and Statistical Committee (SSC)/Habitat Advisory Panel (HAP) Membership

Budget: 2002, 2003, 2004–5

Pending Travel and Contracts

Other Business

**December 18, 2003**

*9 a.m.–5 p.m.*

Continuation of Discussion SFA Draft Document

Administrative Committee Recommendations

**December 17th, 2003**

Meetings Attended by Council Members and Staff

Other Business

Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues. Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council (*see* **FOR FURTHER INFORMATION CONTACT**), at least 5 days prior to the meeting date.

Dated: November 20, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00390 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111803C]**

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Texas Habitat Protection Advisory Panel (AP).

**DATES:** The AP meeting is scheduled to begin at 9 a.m. on December 9, 2003 and will conclude by 4 p.m.

**ADDRESSES:** The meeting will be held at the Hobby Airport Hilton, 8181 Airport Boulevard, Houston, TX 77061; telephone: 713–645–3000.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:** At this meeting, the Texas Habitat Protection AP will tentatively discuss the U.S. Fish and Wildlife Service (USFWS) Bahia Grande restoration project, the Sabine-Neches waterway deepening project, the mouth of the Colorado River project, the possible reopening of Parker's Cut, current freshwater inflow issues in Texas, beneficial uses of dredged material in Galveston Bay, and information on the Harte Research Institute.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

The AP is composed of persons from recreational and commercial fishing groups, conservation organizations, academia, and state and federal resource agencies.

The Texas Habitat Protection AP's principal role is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. The Texas Habitat Protection AP serves as a first alert system to call to the Council's attention proposed projects being developed and other activities that may adversely impact the Gulf marine fisheries and their supporting ecosystems. The AP may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Copies of the agenda can be obtained by calling 813–228–2815.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 2, 2003.

Dated: November 19, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00368 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111803E]**

### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in December, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Thursday, December 11, 2003 at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Peabody Marriott, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977–9700.

*Council address:* New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The committee will discuss and continue work on a process to review and integrate the results of cooperative research into the management process. It will also work on developing research priorities for 2004 for consideration by the Council and the NMFS Regional Administrator.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 19, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00369 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111703F]**

## New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee in December, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on December 8, 2003, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Village Inn, One Beach Street, Narragansett, RI 02882; telephone: (401) 783–6767. Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Habitat Oversight Committee will discuss the upcoming Omnibus Habitat Amendment including, but not limited to, the review of the Draft Timeline, Draft Notice of Intent, Draft Request for Proposals for Habitat Areas of Particular Concern and Dedicated Habitat Research Areas, and inclusion of the Draft Habitat Advisory Panel Process.

The meeting will also include a recap of Council decisions in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Amendment 13 to the Multispecies FMP. In addition, the Committee will be updated on the status of the American Oceans Campaign v. Daley lawsuit settlement agreement requirements and any NMFS Essential Fish Habitat Consultations of particular interest to the Council. The Committee will also be updated on recent Marine Protected Area (MPA) work by the formerly separate MPA Committee. The timeline for development of a Council policy on MPAs will be developed. Possible closed session for the discussion and selection of habitat advisory panel.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 18, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00385 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111703J]**

## North Pacific Fishery Management Council; Notice of Public Meeting

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

**ACTION:** Meetings of the North Pacific Fishery Management Council Fur Sea Committee.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Fur Seal Committee will meet December 11, 2003 at the Anchorage Hilton Hotel.

**DATES:** The meeting is scheduled December 11, 2003 at 6:30 p.m. King Salmon Room.

**ADDRESSES:** The meeting will be held at the Hilton Hotel, 500 W3rd Avenue, Anchorage, Alaska.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Bill Wilson, Council staff, Phone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

(1) Review Committee's Charge.

(2) Committee's working protocol.

(3) NMFS approach and schedule for the draft Environmental Impact Statement on renewing Fur Seal Subsistence Harvest Regulations.

(4) Presentation of Data on Status of the Bering Sea Fur Seal population.

(5) Presentation on groundfish fishery harvest in the Bering Sea Aleutian Islands relative to fur seal foraging areas.

(6) Other items as necessary.

Although non-emergency issues not contained in this agenda may come before this Committee for discussion, those issues may not be the subject of formal Council action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 18, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00386 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111703I]**

### North Pacific Fishery Management Council; Notice of Public Meeting

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

**ACTION:** Meetings of the North Pacific Fishery Management Council Joint Protocol Committee.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Joint Protocol Committee of the Alaska Board of Fisheries and Council will meet in December 2003, in Anchorage, AK.

**DATES:** The meeting will be held on December 8, 2003, 1–5 p.m.

**ADDRESSES:** Hilton Hotel, 500 W. 3rd Avenue, Aspen/Spruce Room, Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Jane DiCosimo, Council staff, Phone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

(1) Steering Committee recommendations for managing State groundfish fisheries if Federal groundfish fisheries are rationalized.

(2) Review groundfish proposals submitted to the Board of Fisheries.

(3) Update on Congressional action on pending Council action (if available).

(4) Other business as necessary.

Although non-emergency issues not contained in this agenda may come before this Committee for discussion, those issues may not be the subject of formal Council action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 18, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00387 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111703H]**

### North Pacific Fishery Management Council; Notice of Public Meetings

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

**ACTION:** Meetings of the North Pacific Fishery Management Council and its advisory committees.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings. December 8 through December 16, 2003.

**DATES:** The Council's Advisory Panel will begin at 8 a.m., Monday, December 8, 2003, and continue through Saturday, December 13, 2003.

The Scientific and Statistical Committee will begin at 8 a.m. on Monday, December 8, 2003, and continue through Wednesday, December 10, 2003.

The Council will begin its plenary session at 8 a.m. on Wednesday, December 10, 2003 and continue through Tuesday December 16, 2003.

The Enforcement Committee will meet Tuesday, October 7, at 6:30 p.m.

All meetings are open to the public except executive sessions.

**ADDRESSES:** The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, Phone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:**

*Council Plenary Session*

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

*1. Reports*

(a) Executive Director's Report

(b) National Marine Fisheries Service Management Report

(c) United States Coast Guard Report/NMFS Enforcement Report

(d) Alaska Department Fish & Game Reports

(e) United States Fish & Wildlife Report

*2. Gulf of Alaska Rationalization*

(a) Receive report from Joint Protocol Committee

(b) Receive Groundfish Development Authority (Council only)

(c) Review and refine alternatives and options

*3. Observer Program*

(a) Program overview (Alaska Fishery Science Center)

(b) Preliminary review of Program Restructuring Analysis

*4. Improved Retention/Improved Utilization*

(a) Receive report from NMFS on Amendment 79
(b) Review Committee report
(c) Finalize alternatives and options for Amendments 80a and 80b

*5. Halibut and Sablefish Individual Fishing Quotas (IFQ)*

(a) Receive report from IFQ Implementation and Cost Recovery Committee, and review IFQ proposals.

*6. Groundfish Management*

(a) Final action to adopt final Gulf of Alaska groundfish specifications for 2004
(b) Final action to adopt final Bering Sea Aleutian Islands groundfish specifications for 2004
(c) Discuss alternatives and schedule for repealing the Vessel Incentive Program.

*7. Staff Tasking*

(a) Review tasking and provide direction to staff
(b) Discuss direction to Committees

*8. Other Business*

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:
(a) D–1 Groundfish Management
(b) C–2 Observer Program
*Advisory Panel:* The Advisory Panel will address the same agenda issues as the Council.
*Enforcement Committee:* The Enforcement Committee will meet during each meeting of the Council to discuss enforcement issues or concerns related to any subject on the Council agenda.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 18, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00389 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111803D]**

## Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Model Evaluation Workgroup (MEW) will hold a work session, which is open to the public, to discuss documentation of the Chinook and Coho Fishery Regulation Assessment Model (FRAM).

**DATES:** The work session will be held Wednesday, December 10, 2003 from 9:30 a.m. to 4 p.m.

**ADDRESSES:** The work session will be held at the Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, (503) 820–2280.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the work session is to review progress on development of a programmers guide and a users manual for the Chinook and Coho FRAM, and to prioritize and schedule upcoming tasks.

Although non-emergency issues not contained in the meeting agenda may come before the MEW for discussion, those issues may not be the subject of formal MEW action during this meeting. MEW action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MEW's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: November 19, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00370 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111703G]**

## South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Snapper Grouper Advisory Panel, a joint meeting of its Snapper Grouper Committee and Advisory Panel, Highly Migratory Species Committee, Mackerel Committee, Shrimp Committee, Information and Education Committee, and a joint meeting of its Executive Committee and Finance Committee. In addition, there will be a meeting of the full Council.

**DATES:** The meeting will be held in December 2003. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meeting will be held at the Blockade Runner Beach Resort, 275 Waynick Blvd. Wrightsville Beach, NC 28480. Telephone: 1–800–541–1161 or 910–256–2251. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council at 843–571–4366.

*Council address:* South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866–SAFMC–10; fax: 843–769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:**

## Meeting Dates and Times

1. *Snapper Grouper Advisory Panel Meeting*: December 8, 2003, 8:30–12 noon

The Snapper Grouper Advisory Panel (AP) will receive an update on the Southeastern Data, Assessment and Review (SEDAR) process. The AP will receive an overview of Amendment 13B to the Snapper Grouper Fishery Management Plan (FMP) and discuss options.

2. *Joint Snapper Grouper Committee and Advisory Panel Meeting:* December 8, 2003, 1:30–5:30 p.m. and December 9, 2003, 8:30 a.m.–5:30 p.m.

The Snapper Grouper Committee and AP will receive a status report on the economic work on the Snapper Grouper Cost/Earnings Study, the black sea bass capacity report, a report on a North Carolina socioeconomic project, the North Carolina State observer study, a report on the latest bycatch log book results, and a presentation on the expanded electronic log book project. In addition, AP members will comment on the status of the snapper/grouper fishery in their area. The Committee and AP will also receive an overview of Amendment 13B to the Snapper Grouper Fishery Management Plan (FMP) and develop recommendations for the Council to consider. The Committee and AP will receive an overview of the public hearing document for Amendment 14 to the Snapper Grouper FMP and develop recommendations for the Council to consider. The Committee and AP will also develop comments on the Management Plan for Gray's Reef National Marine Sanctuary.

3. *Highly Migratory Species Committee Meeting:* December 10, 2003, 8:30–9:30 a.m.

The Highly Migratory Species Committee will receive a report on the November meeting of the International Commission for the Conservation of Atlantic Tuna (ICCAT) and the status of the bluefin tuna quota and harvest in North Carolina.

4. *Mackerel Committee Meeting:* December 10, 2003, 9:30–12 noon

The Mackerel Committee will receive an update on the SEDAR for mackerel, review the options paper for Amendment 15 to the Coastal Migratory Pelagics FMP, and develop alternatives for the Council to consider regarding the options paper.

5. *Shrimp Committee Meeting:* December 10, 2003, 1:30–5:30 p.m.

The Shrimp Committee will receive status reports from NOAA fisheries on the shrimp vessel observer program, the bycatch data collection plan and the shrimp business plan. In addition, the Committee will review the options paper for Amendment 6 to the Shrimp FMP and develop alternatives for the Council to consider.

6. *Information and Education Committee,* December 11, 2003, 8:30–10:30 a.m.

The Information and Education Committee will review the consensus recommendations from the joint Committee and AP meeting earlier this year. The Committee will review and develop recommendations regarding options for the Council's web site hosting and design. The Committee will also discuss outreach/education plans for the Oculina Experimental Closed Area and Habitat Area of Particular Concern off the coast of Florida.

7. *Joint Executive Committee and Finance Committee Meeting:* December 11, 2003, 10:30–12 noon and 1:30–2:30 p.m.

The Executive Committee will meet jointly with the Finance Committee and receive an update on the Calendar Year (CY) 2003 budget and the status of the Fiscal Year 2004 Congressional budget. The Committees will develop recommendations for CY 2004 Fishery Management Plan, Plan Amendment and Framework timelines and Activities Schedule. The Committees will also approve the CY 2004 budget and Operations Plan.

8. *Council Session:* December 11, 2003, 3–6 p.m.

3–3:15 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the October 2003 meeting minutes.

3:15–3:30 p.m., the Council will hear a report from the Highly Migratory Species Committee.

3:30–3:45 p.m., the Council will hear a report from the Mackerel Committee.

3:45–4 p.m., the Council will hear a report from the Joint Executive Committee and Finance Committee and approve the 2004 FMP/Amendment/Framework timelines and the 2004 administrative budget.

4–6 p.m., the Council will hear a report from the Snapper Grouper Committee. The Council will consider Committee recommendations and approve alternatives for Amendment 13B to the Snapper Grouper FMP. The Council will also consider Committee recommendations on the public hearing draft for the marine protected area (MPA) component of Amendment 14 to the Snapper Grouper FMP and approve the MPA component for the first round of public hearings in 2004.

9. *Council Session:* December 12, 2003, 8:30–12 noon

8:30–9:30 a.m., the Council will receive a briefing on litigation and other legal issues affecting the Council (CLOSED SESSION).

9:30–9:45 a.m., the Council will hear a report from the Information and Education Committee.

9:45–10:15 a.m., the Council will hear a report from the Shrimp Committee and approve options for inclusion in Amendment 6 to the Shrimp FMP.

10:15–10:30 a.m., the Council will hear a report on the Federal Fisheries Managers Conference held in Washington, DC in November 2003.

10:30–11 a.m., the Council will hear status reports from NOAA Fisheries (NMFS) regarding Snapper Grouper Amendment 13A and the proposed rule for the Amendment, the Dolphin/Wahoo FMP and final rule, implementation of the Atlantic Coast Cooperative Statistics Program in the Southeast Region, and hear landings reports regarding Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, greater amberjack, and south Atlantic ocotocorals.

11 a.m.–12 noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) by December 5, 2003.

Dated: November 18, 2003.

**Richard W. Surdi,**

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

[FR Doc. E3–00388 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Notice, One-Day Spectrum Efficiency and New Technology Forum

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) will host a one-day spectrum efficiency and new technology forum. The first panel will discuss incentives for more efficient and beneficial spectrum use and cover such topics as defining efficiency, comparing efficiency to effectiveness, measuring methods of efficiency, and identifying policies to achieve efficient spectrum use. The second panel will discuss the development of new and expanded services and technologies that improve efficiency and streamline technology deployment. Both panels will feature participation from representatives of key industries and organizations that use spectrum, economists and analysts, technologists and futurists, equipment manufacturers, and experts from government and academia.

**DATES:** The forum will be held from 9 a.m. to 4:30 p.m. on Tuesday, December 9, 2003.

**ADDRESSES:** The Spectrum Efficiency and New Technology Forum will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC (the entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania Avenues). All events are open to the public. To facilitate entry into the Department of Commerce, please have a photo identification and/or U.S. Government building pass, if applicable.

**FOR FURTHER INFORMATION CONTACT:** Joe Gattuso, NTIA Office of Policy Analysis and Development, at (202) 482–1880, or electronic mail: *jgattuso@ntia.doc.gov.* Please direct media inquiries to the Office of Public Affairs, NTIA, at (202) 482–7002.

**SUPPLEMENTARY INFORMATION:** This forum is one in a series of discussions to implement the President's Spectrum Policy Initiative, which will result in recommendations to the Administration for improving spectrum management policies and procedures. On May 29, 2003, the President signed a Presidential Memorandum outlining the Administration's initiative for spectrum management reform. The President established the ''Spectrum Policy Initiative'' to promote the development and implementation of a U.S. spectrum policy for the 21st century. He directed the Secretary of Commerce to chair the initiative, which includes two courses of spectrum-related activity, one based on an interagency task force and the other on a series of public meetings. The Department of Commerce will develop recommendations for revising policies and procedures to promote more efficient and beneficial use of spectrum without harmful interference to incumbent users.

NTIA will provide additional information about the forum in the near future on its home page at *www.ntia.doc.gov.*

*Public Participation:* The panel discussions will be open to the public and press on a first-come, first-served basis. Space is limited. Due to security requirements and to facilitate entry to the Department of Commerce building, attendees must present photo identification and/or a U.S. Government building pass, if applicable, and should arrive at least one-half hour ahead of the panel sessions. The public meeting is physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Joe Gattuso at (202) 482–1880 or at *jgattuso@ntia.doc.gov,* at least three (3) days prior to the meeting.

Dated: November 18, 2003.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 03–29208 Filed 11–21–03; 8:45 am]

BILLING CODE 3510–60–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 18, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** November 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, 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 Bureau of Customs and Border Protection 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 limit for Categories 338/339 is being decreased for the cancellation of special shift from Categories 638/639, which increases the limit for Categories 638/639.

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 68 FR 1599, published on January 13, 2003). Also see 67 FR 63627, published on October 15, 2002.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 18, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, 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 Indonesia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on November 25, 2003, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Twelve-month restraint limit [1] |
|---|---|
| Levels in Group I | |
| 338/339 | 2,159,763 dozen. |
| 638/639 | 2,504,580 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

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. 03–29207 Filed 11–21–03; 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 Information 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 December 24, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, 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 *Melanie_Kadlic@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 Information 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: November 18, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Federal Student Aid

*Type of Review:* Extension.

*Title:* Student Right-to-Know Regulations (SRK).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 10,300.

*Burden Hours:* 228,150.

*Abstract:* The SRK requires institutions that participate in any program under Title IV of the Higher Education Act (HEA) to make available to students and prospective student-athletes and their parents, high school coaches and high school counselors the aforementioned graduation rates as well as enrollment data and the graduation rates of student athletes, by race, gender, and sport.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2346. When you access the information collection, click on ''Download Attachments ''to view. 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 to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or 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 Joseph Schubart at his e-mail address *Joe.Schubart@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. 03–29206 Filed 11–21–03; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 23, 2004.

**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 Information 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 19, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Special Education Rehabilitative Services

*Type of Review:* Revision.

*Title:* Annual Progress Reporting Form for Assistive Technology (AT) Grantees.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 56.

Burden Hours: 2,240.

*Abstract:* This data collection will be conducted annually to obtain program and performance information from National Institute on Disability and Rehabilitation Research (NIDRR) state assistive technology grantees on their project activities. The information collected will assist federal NIDRR staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an Internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2412. When you access the information collection, click on ''Download Attachments'' to view. 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 to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or 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. 03–29250 Filed 11–21–03; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Enhanced (Engineered) Geothermal Systems (EGS) Research and Development (R&D)

**AGENCY:** Golden Field Office, U.S. Department of Energy.

**ACTION:** Notice of issuance of funding announcement number DE–PS36–04GO94001.

**SUMMARY:** The U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is seeking applications for research projects to expand the Enhanced (Engineered) Geothermal Systems (EGS) knowledge base. Through financial assistance awards, DOE intends to provide financial support for research directed to improving the technology to recover heat from rock with low permeability and at greater depth than presently feasible. This program is authorized under provisions of the ''Geothermal Energy Research, Development, and Demonstration Act of 1976,'' Pub. L. 93–410.

**DATES:** Issuance of the announcement is planned for November 12, 2003.

**ADDRESSES:** To obtain a copy of the announcement, interested parties should access the DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html*, click on ''Solicitations,'' and then access the announcement number identified above. The Golden Home Page will provide a link to the announcement number in the Industry Interactive Procurement System (IIPS) Web site and provide instructions on using IIPS. The announcement can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those announcements issued by the Golden Field Office. DOE will not issue paper copies of the announcement.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this announcement should be submitted electronically through IIPS by ''submitting a question'' on the IIPS ''Finanicial Assistance Form'' specific to this announcement. Response to questions will be posted on IIPS and available through ''View Questions.''

IIPS provides the medium for disseminating announcements, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application may be submitted by the applicant or a designated representative that receives authorization from the applicant; however, the application documentation must reflect the name and title of the representative authorized to enter the applicant into a legally binding agreement. The applicant or the designated representative must first register in IIPS, entering their first name and last name, then entering the company name/address of the applicant.

For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

Issued in Golden, Colorado, on November 12, 2003.

**Jerry L. Zimmer,**

*Director, Office of Acquisition and Financial Assistance.*

[FR Doc. 03–29252 Filed 11–21–03; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Fernald

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, December 2, 2003, 7 p.m.–9 p.m.

**ADDRESSES:** Fernald Closure Project Site, 7400 Willey Road, Trailer 214, Hamilton, OH 45013–9402.

**FOR FURTHER INFORMATION CONTACT:** Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com*.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

7 p.m.—Call to Order

7–7:15 p.m.—Chair's Remarks, Ex Officio Announcements and Updates

7:15–8:15 p.m—Discuss Alternatives in Comprehensive Groundwater Strategy Report

8:15–8:30 p.m.—Follow-up Risk-Based End States Meeting

8:30–8:45 p.m.—Winter/Spring 2004 Meeting Schedule

8:45–9 p.m.—Public Comment

9 p.m.—Adjourn

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy

Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on November 19, 2003.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 03–29253 Filed 11–21–03; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–305–011]**

## CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate Filing

November 12, 2003.

Take notice that on October 31, 2003, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing and approval a negotiated rate agreement between MRT and Laclede Energy Resources, Inc. MRT requests that the Commission accept and approve the transaction to be effective November 1, 2003.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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 ''eLibrary'' (FERRIS). 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. 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 ''eFiling'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00358 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP04–34–000]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 17, 2003.

Take notice that on October 29, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Third Revised Sheet No. 113D, with a September 1, 2003 effective date.

EPNG states that this tariff sheet is filed to permit partial reservation charge crediting under Rate Schedule FT–1 for non-delivery of gas due to pipeline maintenance.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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 ''eLibrary''. 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. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00362 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–320–062]**

## Gulf South Pipeline Company, LP; Notice of Compliance Filing

November 17, 2003.

Take notice that on November 10, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective September 29, 2003.

Substitute Third Revised Sheet No. 605
Fifth Revised Sheet No. 1415
Third Revised Sheet No. 2901

On October 24, 2003 the Commission issued an Order addressing Gulf South's August 27, 2003 compliance filing in this docket. Gulf South states that this brings PAL service into compliance with the Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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. 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 eLibrary 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. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00365 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–18–009]**

### Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

November 17, 2003.

Take notice that on November 12, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 8, proposed to become effective November 1, 2003.

Pursuant to the Commission's October 28, 2003 Order, Iroquois has opted not to file a revised tariff sheet to provide all shippers with the same contract term extension it was originally proposing to offer Amerada Hess Corporation (Amerada). Iroquois therefore submits Substitute First Revised Sheet No. 8 to replace First Revised Sheet No. 8 in order to delete the reference to the Amerada contract and retain this section in its tariff to list any future Commission approved non-conforming contracts.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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. 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 eLibrary 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. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00355 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–411–002]**

### Kern River Gas Transmission Company; Notice of Compliance Filing

November 17, 2003.

Take notice that on November 12, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute Second Revised Sheet No. 205
Substitute First Revised Sheet No. 206
Substitute Original Sheet No. 207–A

Kern River states that the purpose of this filing is to comply with the October 24, 2003 Order issued in this proceeding by submitting revised tariff sheets that modify the conditions under which available capacity may be reserved for use in a future expansion project.

Kern River states that it has served a copy of this filing on all parties designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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. 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 eLibrary (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. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00359 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–14–001]**

### Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

November 17, 2003.

Take notice that on November 10, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) made a compliance filing, in accordance with the Commission Order dated October 29, 2003, in the captioned proceeding.

Maritimes states that copies of its filing have been mailed to all parties listed on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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. 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 eLibrary 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. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00360 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR04–2–000]**

### The Peoples Gas Light and Coke Company; Notice of Informational Filing

November 17, 2003.

Take notice that on November 7, 2003, The Peoples Gas Light and Coke Company (Peoples) tendered for filing cost and throughput data in compliance with the Commission Order issued on March 31, 2001 in Docket No. PR01–2–000 (94 FERC 91 ¶ 61,402 (2001)). Peoples states that it requests no change in its existing rates or terms and conditions of service.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. 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 petition for rate approval 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or for TTY, (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(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* December 5, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00361 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP91–119–010 and RP91–119–021]**

### Texas Eastern Transmission, LP; Notice of Filing

November 17, 2003.

Take notice that on July 16, 2003, Texas Eastern Transmission, LP (Texas Eastern) made a filing regarding its Interruptible Storage Service program in the above-docketed proceedings. Texas Eastern also included a request for waivers, to the extent necessary, to cease quarterly reporting except for those periods when forced withdrawals occurred.

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 eLibrary (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.

*Comment Date:* November 28, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00364 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–53–000]**

### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 17, 2003.

Take notice that on November 10, 2003, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 10, 2003:

Thirteenth Revised Sheet No. 5
Original Sheet No. 11
Sheet Nos. 12–14
Seventh Revised Sheet No. 376

Williston Basin states that it has revised the above-referenced tariff sheets of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, to add a new sub-system, pool, and receipt point, Point ID No. 01011 (Northern Border-Manning) as a result of the construction of Williston Basin's Grasslands Pipeline.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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 ''eLibrary''. 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. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00363 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC04–11–000, et al.]**

## Caledonia Generating, LLC, et al.; Electric Rate and Corporate Filings

November 13, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Caledonia Generating, LLC, Cogentrix Energy Power Marketing, Inc., Cogentrix Lawrence County, LLC, Green Country Energy, LLC, Logan Generating Company, L.P., Pittsfield Generating Company, L.P., Quachita Power, LLC, Rathdrum Power, LLC, Southaven Power, LLC, Cogentrix Energy, Inc., and GS Power Holdings, LLC

[Docket Nos. ER01–1383–002, ER95–1739–020, ER01–1819–002, ER99–2984–003, ER95–1007–016, ER98–4400–005, ER02–2026–001, ER99–3320–001, and ER03–922–001]

Take notice that on October 30, 2003, Caledonia Generating, LLC (Caledonia), Cogentrix Energy Power Marketing, Inc. (CEPM), Cogentrix Lawrence County, LLC (Cogentrix Lawrence), Green Country Energy, LLC (Green Country), Logan Generating Company, L.P. (Logan), Pittsfield Generating Company, L.P. (Pittsfield), Quachita Power, LLC (Quachita), Rathdrum Power, LLC (Rathdrum), and Southaven Power, LLC (Southaven) (together, Project Companies), Cogentrix Energy, Inc. (Cogentrix), and GS Power Holdings, LLC 9GS Power Holdings) (collectively, Applicants) filed with the Federal Energy Regulatory Commission a joint application pursuant to section 203 of the Federal Power Act and notice of change in status with respect to the transfer of indirect upstream membership interests in Project Companies from Cogentrix to GS Power Holdings.

*Comment Date:* November 20, 2003.

### 2. Kentucky Utilities Company and Louisville Gas and Electric Company

[Docket No. EC04–13–000]

Take notice that on November 3, 2003, Louisville Gas and Electric Company and Kentucky Utilities Company (the Applicants) filed an Application under Section 203 of the Federal Power Act. The Applicants state that the proposed transaction that is the subject of the Application is intended solely to effect by year end a tax efficient reorganization and does not involve any acquisition or external disposition of public utilities, energy companies, or facilities subject to the jurisdiction of the Commission, and therefore will have no effect on competition, the Applicants' rates, or regulation. Consequently, the Applicants respectfully request the Commission to authorize the proposed transaction as soon as possible but in no event, later than the Commission's last business day of 2003.

*Comment Date:* November 20, 2003.

### 3. Panda-Rosemary, L.P.

[Docket No. EG04–11–000]

On November 3, 2003, Panda-Rosemary, L.P. (Panda-Rosemary), filed an application with the Commission for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Panda-Rosemary states that it is a limited partnership organized and existing under the laws of the State of Delaware, and that it owns and operates an electric facility located in Roanoke Rapids, North Carolina. Panda-Rosemary further states that the electric facility consists of a nominal 180–MW, topping cycle cogeneration facility that burns natural gas as its primary fuel and No. 2 distillate oil as a back-up fuel, and certain related electric interconnection facilities necessary to effect the sale of electricity at wholesale.

*Comment Date:* November 24, 2003.

### 4. Panda Global Services, Inc.

[Docket No. EG04–12–000]

On November 3, 2003, Panda Global Services, Inc (PGS) filed an application with the Federal Energy Regulatory Commission for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

PGS states that it is a corporation organized and existing under the laws of the State of Delaware, and that it will be engaged directly and exclusively in the business of operating several eligible facilities. PGS further states that it will satisfy the requirement to sell electric energy at wholesale through its contractual relationship with the owner or lessee of such eligible facilities, which sell electric energy from such eligible facilities exclusively at wholesale.

*Comment Date:* November 24, 2003.

### 5. Detroit Edison Company; DTE Energy Trading, Inc.

[Docket Nos. ER97–324–005 and ER97–3834–011]

Take notice that on November 3, 2003, Detroit Edison Company and DTE Energy Trading, Inc., hereby submitted for filing a status report in compliance with Commission's Order issued May 17, 2001, 95 FERC ¶ 61,240 (2001).

*Comment Date:* November 24, 2003.

### 6. Praxair, Inc.

[Docket No. ER00–3767–002]

Take notice that on November 3, 2003, Praxair, Inc. tendered for filing a triennial market power update in compliance with Praxair, Inc., Letter Order, issued November 2, 2000 in Docket No. ER00–3767–000.

*Comment Date:* November 24, 2003.

### 7. Delta Energy Center, LLC

[Docket No. ER03–510–002]

Take notice that on November 3, 2003, Delta Energy Center, LLC filed revised rate sheets to Delta's Rate Schedule FERC No. 2, consisting of a Must-Run Service Agreement and accompanying schedules.

*Comment Date:* November 24, 2003.

### 8. Connecticut Jet Power LLC

[Docket No. ER03–563–024]

Take notice that on November 3, 2003, ISO New England Inc. (ISO) submitted a Compliance Filing in above-captioned proceeding as directed by the Commission in its October 23, 2003 Order Accepting Initial Bid Cost Input Information for Filing, 105 FERC ¶ 61,096.

The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

*Comment Date:* November 24, 2003.

### 9. Pacific Gas and Electric Company

[Docket No. ER03–1115–001]

Take notice that on November 3, 2003, Pacific Gas and Electric Company (PG&E) submitted a revised Generator Special Facilities Agreement, Supplemental Letter Agreement, and Generator Interconnection Agreement between PG&E and Elk Hills Power, LLC (Elk Hills) in compliance with the Commission's ''Order Accepting Interconnection Agreements and Revised Generator Special Facilities Agreement, As Modified'', dated October 3, 2003.

PG&E states that copies of this filing have been served upon Elk Hills, GWF Energy Company, LLC, the California Independent System Operator Corporation and the California Public Utilities Commission.

*Comment Date*: November 24, 2003.

**10. Montana Megawatts I, LLC, NorthWestern Energy Division of NorthWestern Corporation**

[Docket No. ER03–1223–001]

Take notice that on November 3, 2003, Montana Megawatts I, LLC (Montana Megawatts) tendered for filing a First Revised Rate Schedule FERC No. 1, consistent with Order No. 614, in compliance with the Commission's Order dated October 17, 2003. Montana Megawatts also states that it filed Rate Schedule FERC No. 1 on August 18, 2003, and First Revised Rate Schedule FERC No. 1 incorporates changes from recent amendments to the original contract.

*Comment Date:* November 24, 2003.

**11. Hartford Steam Company**

[Docket No. ER03–1394–000]

Take notice that on October 24, 2003, Hartford Steam Company (Hartford Steam) submitted for filing a Notice of Withdrawal of an Energy Purchase Agreement dated September 26, 2003, by and between Hartford Steam and The Connecticut Light and Power Company.

*Comment Date:* November 21, 2003.

**12. Deseret Generation & Transmission Co-operative, Inc.**

[Docket No. ER04–107–001]

Take notice that on November 3, 2003, Deseret tendered for filing an Errata to its October 30, 2003 filing, indicating that the proposed sheets to be included in Deseret's First Revised Service Agreement No. 2 to FERC Electric Tariff, Original Volume No. 1 were incorrectly designated. Deseret states that the proper designations are Original Sheet Nos. 87 through 101. Deseret further states that they have attached a complete copy of the revised sheets to the Errata filing and requests that these pages be substituted for those originally submitted on October 30, 2003.

*Comment Date:* November 24, 2003.

**13. Xcel Energy Services Inc.; Northern States Power Company**

[Docket No. ER04–146–000]

Take notice that on November 3, 2003, Xcel Energy Services Inc. (XES), on behalf of Northern States Power Company (NSP), submitted for filing with the Commission a Generation Interconnection Agreement between NSP and K-Brink Windfarm, LLC, a 1.9 MW wind generator.

NSP requests the agreement to be accepted for filing effective January 9, 2003, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

*Comment Date:* November 24, 2003.

**14. NorthWestern Energy**

[Docket No. ER04–147–000]

Take notice that on November 3, NorthWestern Energy (NWE), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Firm and Non-Firm Point-To-Point Transmission Service Agreements with Basin Electric Power Cooperative and Calpine Energy Services. Also on the same date, NEW filed an unexecuted Firm and Non-Firm Transmission Service Agreement with Rainbow Energy Marketing Corp., under NWE's FERC Electric Tariff, Fifth Revised Volume No. 5 (Open Access Transmission Tariff).

NWE states that a copy of the filing was served upon Basin Electric, Rainbow Energy and Calpine Electric.

*Comment Date:* November 24, 2003.

**15. Columbus Southern Power Company**

[Docket No. ER04–148–000]

Take notice that on November 3, 2003, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Notice of Cancellation for Service Agreement No. 4 under FERC Electric Tariff, Fifth Revised Volume No. 1, which became effective on February 22, 1982.

CSP states that the current version of Service Agreement No. 4 contains a ninety day notice of cancellation provision and that CSP gave the Village of Glouster, Ohio (Glouster), (the only customer that was served by CSP and Service Agreement No. 4), timely written notification of CSP's election to terminate Service Agreement No. 4 and service to Glouster under CSP's cost-based rates. CSP requests that its Notice of Cancellation be made effective as of February 28, 2003.

CSP states that copies of its filing have been served upon the Public Utilities Commission of Ohio and Glouster.

*Comment Date:* November 24, 2003.

**16. Appalachian Power Company**

[Docket No. ER04–149–000]

Take notice that on November 3, 2003, Appalachian Power Company (APCo), tendered for filing with the Commission a Notice of Cancellation for Rate Schedule FERC Nos. 126, 127, and 136, which became effective on November 17, 1991, August 1, 1991, and March 15, 1996, respectively.

APCo states that the current versions of Rate Schedules 126, 127 and 136 on file with the Commission contain a three (3) year notice of cancellation provision and that APCo gave Old Dominion Electric Cooperative (ODEC), the only customer served by APCo under Rate Schedules 126, 127 and 136, timely written notification of its election to terminate these Rate Schedules and service to CVEC under APCo's cost-based rates. APCo also states that, at ODEC's request, APCo and ODEC agreed to modify the effective dates of termination from the earliest dates permitted by Rate Schedules 126, 127 and 136, as provided in the termination letters sent by APCo, to December 31, 2003. APCo requests that its Notice of Cancellation be made effective as of January 1, 2004.

APCo further states that copies of its filing have been served upon the Virginia State Corporation Commission and ODEC.

*Comment Date:* November 24, 2003.

**17. Columbus Southern Power Company**

[Docket No. ER04–150–000]

Take notice that on November 3, 2003, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Notice of Cancellation for Service Agreement No. 3 under FERC Electric Tariff, Fifth Revised Volume No. 1 (Service Agreement No. 3), which became effective on September 30, 1982.

CSP states that the current version of Service Agreement No. 3 contains a two year notice of cancellation provision and that CSP gave the City of Westerville, Ohio (Westerville), the only customer served by CSP under Service Agreement No. 3, timely written notification of CSP's election to terminate Service Agreement No. 3, and service to Westerville under CSP's cost-based rates. CSP requests that its Notice of Cancellation be made effective as of January 1, 2004.

CSP further states that copies of its filing have been served upon the Public Utilities Commission of Ohio and Westerville.

*Comment Date:* November 24, 2003.

**18. Nevada Power Company**

[Docket No. ER04–152–000]

Take notice that on November 3, 2003, Nevada Power Company (Nevada Power) tendered for filing five unexecuted Regional Required System

Upgrades Western Memorandums of Understanding between Nevada Power and the following generators: (1) Mirant Las Vegas, LLC; (2) GenWest, LLC; (3) Duke Energy Moapa, LLC; (4) Las Vegas Cogeneration II, LLC; and (5) Reliant Energy Bighorn, LLC. The Western Memorandums of Understanding are submitted as Service Agreement Nos. 03–01171, 03–01172, 03–01174, 03–01175 and 03–01176, respectively, to Nevada Power's Open Access Transmission Tariff. Nevada Power requests that the Western Memorandums of Understanding be made effective as of November 4, 2003.

*Comment Date:* November 24, 2003.

**19. Green Power Partners I LLC**

[Docket No. ER04–153–000]

Take notice that on November 3, 2003, Green Power Partners I LLC (Green Power) submitted for filing with the Federal Energy Regulatory Commission an Automated Power Exchange Master Service and Participation Agreement and corresponding schedules (APX Master Agreement) between itself and the Automated Power Exchange, Inc.

*Comment Date:* November 24, 2003.

**20. ISG Hennepin Inc.**

[Docket No. ER04–154–000]

Take notice that on November 3, 2003 ISG Hennepin Inc. (ISG Hennepin) petitioned the Commission for acceptance of ISG Hennepin FERC Electric Tariff, Original Volume Number 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. ISG Hennepin requests an effective date for the rate schedule of December 1, 2003.

*Comment Date:* November 24, 2003.

**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, call (202) 502–8222 or TTY, (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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00367 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC04–23–000, et al.]**

## FirstEnergy Corp, et al.; Electric Rate and Corporate Filings

November 17, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. FirstEnergy Corp and its Public Utility Subsidiaries; NRG Energy, Inc. and its Public Utility Subsidiaries**

[Docket No. EC04–23–000]

Take notice that on November 14, 2003, FirstEnergy Corp, and its public utility subsidiaries (FirstEnergy) and NRG Energy, Inc. and its public utility subsidiaries (NRG) (collectively, Applicants) filed with the Commission an application pursuant to Section 203 of the Federal Power Act for authorization for FirstEnergy to acquire certain debt and common equity securities of NRG as a means of settling outstanding claims against NRG, and for authorization for FirstEnergy to dispose of such securities as soon as possible thereafter in light of market conditions. Applicants state that if a Settlement Agreement is approved, FirstEnergy will be entitled to receive approximately 6.5% of the common stock of NRG and approximately $30 million of NRG Senior Notes. Applicants are requesting expeditious approval.

*Comment Date:* December 5, 2003.

**2. New England Power Pool and ISO New England Inc.**

[Docket Nos. ER03–1141–002 and EL03–222–002]

Take notice that on November 6, 2003, the New England Power Pool Participants Committee (NEPOOL) submitted for filing two corrections to the attachments to the Response to Commission's Questions Regarding Transmission Cost Allocation Proposal for New England, which was filed on October 29, 2003 (October 29 Filing). NEPOOL states that copies of these materials were sent to all entities who received the October 29 Filing.

*Comment Date:* November 26, 2003.

**3. Midwest Generation, LLC**

[Docket No. ER03–1187–000 and ER03–1187–001]

Take notice that on November 4, 2003, as amended on November 7, 2003, Midwest Generation, LLC and Commonwealth Edison Company filed a Settlement Agreement establishing revised rates for black start service.

*Comment Date:* November 28, 2003.

**4. New York State Electric & Gas Corporation**

[Docket Nos. ER04–9–001]

Take notice that on November 7, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission an executed Substitute Original Interconnection Agreement between NYSEG and Seneca Energy II, LLC (Seneca) that sets forth the terms and conditions governing the interconnection between Seneca's Ontario County Landfill generating facility in Ontario County, New York and NYSEG's transmission system.

NYSEG states that copies of this filing have been served upon Seneca, the New York State Public Service Commission, and the New York Independent System Operator, Inc.

*Comment Date:* November 28, 2003.

**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, call (202) 502–8222 or TTY, (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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00354 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. EL01–118–000 and EL01–118–001]**

## Before Commissioners: Pat Wood III, Chairman; William L. Massey, and Nora Mead Brownell, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Order Amending Market-Based Rate Tariffs and Authorizations

Issued November 17, 2003.

1. In an order dated June 26, 2003, the Commission, acting pursuant to section 206 of the Federal Power Act (FPA),[1] proposed to condition all new and existing market-based rate tariffs and authorizations on sellers' compliance with six proposed Market Behavior Rules.[2] The need for these Market Behavior Rules, we stated, was informed by the types of behavior that had been observed in the Western markets during 2000 and 2001; by Commission Staff's Final Report concerning these markets (Western Markets Report);[3] by our experience in other markets, including the organized spot markets in the East; and by the comments filed in response to our initial proposal in this proceeding.[4]

2. In the June 26 Order, we also stated that in formulating our proposed Market Behavior Rules, we were required to strike a careful balance among a number of competing interests. We noted, for example, that while market participants must be given an effective remedy in the event anticompetitive behavior or other market abuses occur, sellers should be provided ''rules of the road'' that are clearly-delineated. We noted that while regulatory certainty was important for individual market participants and the marketplace in general, the Commission must not be impaired in its ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today. We sought comments on whether our proposed rules achieved the appropriate balance among these competing interests.[5]

3.The vast majority of the comments we received in response supported the Commission's overall objectives in this proceeding, *i.e.*, the need to establish clear guidelines applicable to market-based rate sellers' conduct in the wholesale markets. In addition, we received a number of constructive suggestions for fine-tuning the specific language embodied in our proposed rules. Based on these comments and based on our further consideration of the issues discussed below, we find that sellers' existing tariffs and authorizations, without clearly-delineated rules of the road to govern market participant conduct, are unjust and unreasonable. Without such behavioral prohibitions, the Commission will not be able to ensure that rates are the product of competitive forces and thus will remain within a zone of reasonableness. We further find that our Market Behavior Rules, as modified in Appendix A to this order, are just and reasonable and will help ensure that rates are the product of competitive forces and thus remain just and reasonable.

### Background

4. In the June 26 Order, we noted that as part of our ongoing responsibility to provide regulatory safeguards to ensure that customers are protected from market abuses, we were required to balance the following three goals: first, the need to provide for effective remedies on behalf of customers in the event anticompetitive behavior or other market abuses occur; second, the need to provide clearly-delineated ''rules of the road'' to market-based rate sellers while, at the same time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today; and third, the need to provide reasonable bounds within which conditions on market conduct will be implemented so as not to create unlimited regulatory uncertainty for individual market participants or harm to the marketplace in general. We also noted that a stable marketplace with clearly defined rules would benefit both customers and market participants and would create an environment that will attract much-needed capital.[6]

5. Based on these objectives, we proposed six specific Market Behavior Rules to govern sellers' conduct in the wholesale market:

- *Unit Operation:* We proposed that sellers be required to operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the rules and regulations of the applicable power market;
- *Market Manipulation:* We proposed to prohibit all forms of market manipulation;
- *Communications:* We proposed to require that sellers provide complete, accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, market monitors, regional transmission organizations (RTOs), independent system operators (ISOs), or similar entities;
- *Reporting:* We proposed to apply this same standard with respect to reports made by sellers to publishers of electricity or natural gas price indices;
- *Record Retention:* We proposed to require sellers to retain for a period of three years all data and information

[1] 16 U.S.C. 824e (2000).

[2] *See* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 103 FERC ¶ 61,349 (2003) (June 26 Order). These Market Behavior Rules address: (i) Unit operations; (ii) market manipulation; (iii) communications; (iv) reporting; (v) record retention; and (vi) related tariff matters.

[3] Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000 (March 2003).

[4] In an order issued in this proceeding on November 20, 2001, we proposed to condition all new and existing market-based rate tariffs and authorizations to include a broad prohibition against ''anticompetitive behavior'' and the ''exercise of market power.'' *See* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 (2001) (Initial Order). Numerous responsive pleadings were filed in which it was asserted, among other things, that the Commission's proposed tariff provision was vague and over-broad, and that without greater specificity and guidance, our proposed tariff provision would create uncertainty in the marketplace. In the June 26 Order, we noted that our revised proposal was designed to identify more precisely and comprehensively than we had in our Initial Order the transactions and practices that would be prohibited under sellers' market-based rate tariffs and authorizations. *See* June 26 Order, 103 FERC ¶ 61,349 at P6.

[5] June 26 Order, 103 FERC ¶ 61,349 at P7.

[6] June 26 Order, 103 FERC ¶ 61,349 at P5.

necessary for the reconstruction of the prices they charge, and the prices they report for use in published price indices;

• *Related Tariffs:* Finally, we proposed to clarify that sellers would not be permitted to violate or collude with another party in actions that violate seller's code of conduct or Order No. 889 standards of conduct.

6. We also stated that any seller found to have engaged in the behavior prohibited by our rules would be subject to a disgorgement remedy and any other appropriate non-monetary remedies such as revocation of seller's market-based rate authority. We sought comments from interested entities concerning a number of issues, including the specific language embodied in the rules themselves, the overall balance of interests reflected in these rules, and the remedies and procedures that would be available to market participants with respect to their enforcement.[7]

**Notice and Responsive Pleadings**

7. The June 26 Order was published in the **Federal Register**.[8] Interested entities were invited to file comments within 30 days of this date, with reply comments permitted within 30 days of the comment submission date. In response, numerous comments and reply comments were received from entities representing Federal and State agencies, consumer advocates, trade organizations, and all segments of the industry. These entities are listed in Appendix C to this order.

8. Comments generally supportive of the Commission's proposed rules were submitted by a broad majority of the entities who filed comments. Specifically, commenters generally concurred that establishing a clear set of market behavior standards governing sellers' conduct in the wholesale markets is necessary. There were disagreements voiced over the means to meet these objectives. For example, some argued that our proposed rules were a necessary but not a sufficient step forward in addressing the concerns outlined in the June 26 Order. These commenters submitted that in addition to our proposed rules, we should also consider a number of market design changes to bolster the overall competitiveness of the wholesale markets. Others (most notably sellers or entities representing their interests) asserted that our proposed rules would, if implemented, impose a heavy-handed, open-ended burden on sellers that would, without fine-tuning and clarification, chill investment in the industry. A number of revisions were proposed addressing these issues.

9. On July 28, 2003, Southern Company Services, Inc. (Southern) filed a request for rehearing of the June 26 Order concerning the Commission's asserted statutory authority to adopt its proposed rules.

**Discussion**

*Procedural Matters*

10. We will grant intervention status to each of the entities listed in Appendix C to this order. In addition, we will dismiss Southern's request for rehearing. As we held in the June 26 Order and reiterate here, rehearing may not be sought in this case until such time as the Commission issues a final order, *i.e.*, within 30 days of the issuance of this order.[9] However, we will treat Southern's rehearing request as a comment, the substance of which is addressed in section N, below.

*Analysis*

11. The task before us in this proceeding is to determine how and to what extent market-based rate seller conduct in the wholesale markets should be monitored by the Commission and, when necessary, how and to what extent this conduct should be remedied. To this end, we concur with the consensus view conveyed in the comments we have received in response to our proposed rules, namely, that sellers, while accountable for their actions, need and deserve clearly-delineated rules governing their conduct so that both sellers, buyers, and other interested entities will know what is and what is not acceptable market behavior. We find market-based rate tariffs and authorizations that do not include such standards are unjust and unreasonable.

12. Our behavioral rules are designed to provide market participants adequate opportunity to detect, and the Commission to remedy, market abuses. Our behavioral rules are also clearly defined so that they do not create uncertainty, disrupt competitive commodity markets or simply prove ineffective. However, since competive markets are dynamic, it is important that we periodically evaluate the impact these rules have on the energy markets. We direct our office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these behavioral rules on an annual basis and include this analysis in the State of the Markets Report.

A. Market Behavior Rule 1 (Unit Operation)

1. Commission Proposal

13. In the June 26 Order, we noted that the integrity of an organized market and other markets as well require sellers to comply with the rules and regulations of the applicable power market. In Market Behavior Rule 1, therefore, we proposed to require that sellers operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with these rules and regulations. We stated that while market participants may become subject to additional requirements through tariff service agreements or other market participation agreements, a specific requirement in each seller's market-based rate tariff addressing unit operation issues would be necessary in order to give the Commission and interested parties direct remedial authority for violations that may not exist without such a condition.

2. Comments

14.Commenters argue that Market Behavior Rule 1, unless it is revised, could be relied upon by market operators to impose operating and maintenance standards that would require generators to violate permit restrictions or operate in an unsafe manner.[10] EPSA, *et al.* request that the rule be modified by adding that the unit operation requirement contemplated by the rule be ''consistent with the operational, legal and economic constraints on such generating facilities.''[11] The New York Independent System Operator, Inc. (New York ISO) characterizes this issue as a reliability concern, and proposes that the rule require sellers to inform the

[7] In a companion issuance, we also proposed to modify natural gas market blanket certificates under subpart G of part 284 of the Commission's regulations to contain many of the standards proposed herein, where applicable. *See* Notice of Proposed Rulemaking, Docket No. RM03–10–000, Amendments to Blanket Sales Certificates, 103 FERC ¶ 61,350 (2003). A Final Rule in that proceeding is being issued contemporaneously with this order.

[8] 68 FR 40924 (2003).

[9] *See* Rule 713 of the Commission's Rules of Practice and Procedure, 18 CFR 385.713 (2003).

[10] Comments of Electric Power Supply Association, Colorado Independent Energy Association, Independent Energy Producers of California, Independent Power Producers of New York, Inc. and the Western Power Trading Forum (EPSA, *et al.*) at 2. *See also* Comments of Exelon Corporation (Exelon) at 6; Comments of Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (Reliant) (''Generators should not be penalized for failure to operate a plant in a physically impossible manner or in a way that is inconsistent with economic and environmental restrictions'').

[11] *See also* Comments of Reliant at 4; Comments of Edison Electric Institute (EEI) at 8.

system operator if they are unable to follow the dispatch instructions they receive. The New York ISO also proposes that Market Behavior Rule 1 be modified to require sellers to use their ''best efforts to comply with the operating instructions of the applicable power system operator.''

15. Commenters also assert that the ''rules and regulations'' to which the proposed rule refers should be limited to ''Commission-approved'' rules and regulations.[12] FirstEnergy asserts that absent this limitation, the rules of the applicable power market, as referenced by the proposed rule, may be unknowable and uncertain and thus, among other things, lack the procedural safeguards triggered by a Section 205 filing. Dynegy explains that ISOs, RTOs and transmission providers occasionally adopt rules, protocols, or guidelines (or interpretations of tariff provisions) without vetting them through the stakeholder process and without Commission authorization.

16. Pacific Gas and Electric Company (PG&E) submits that the term ''applicable power market'' also requires clarification, where there is more than one market and more than one set of rules which may apply. In addition, commenters take varying positions on the issue of whether the Commission's proposed prohibitions should apply to bilateral and forward markets.[13] APPA and TAPS argue that they should, while EPSA, *et al.*, EEI, Southern, and others assert that Market Behavior Rule 1 is inapplicable as it relates to these markets.[14] Southern, for example, asserts that the market abuse concerns of the type contemplated by the proposed rule do not arise in the context of arm's-length negotiations. On this same basis, EPSA, *et al.* request clarification that Market Behavior Rule 1 (and indeed each of the Commission's proposed rules) will not be a basis for modifying rates otherwise agreed to by such parties.

17. Merrill Lynch Capital Services, Inc. and Morgan Stanley Capital Group Inc. (Merrrill Lynch, *et al.*) request clarification that Market Behavior Rule 1 will not apply to marketers that do not own generation. Merrill Lynch, *et al.* also argue that scheduling services should not, by itself, be considered sufficient to constitute ''control'' of generation. Finally, the Colorado Office of Consumer Counsel[15] (Colorado Consumer Counsel, *et al.*) interprets Market Behavior Rule 1 as a prohibition against capacity withholding and seeks clarification regarding the application of such a rule to hydroelectric generation in those parts of the country where hydro power is used primarily for peak shaving.

3. Commission Ruling

18. We will approve Market Behavior Rule 1, subject to two revisions, as requested. First, we will revise the rule to clarify that the ''rules and regulations'' to which the rule refers apply only to ''Commission-approved'' rules and regulations. Second, we will revise the rule to clarify that the operation of this rule will not impose a must-offer requirement on sellers (although sellers may have such an obligation independent of this rule). As revised, Market Behavior Rule 1 will require market-based rates sellers to:

> Operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Compliance with this Market Behavior Rule 1 does not require Seller to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or requirement applicable to Seller.

19. As we noted in the June 26 Order, Market Behavior Rule 1 will aid the Commission in ensuring that the rates, terms and conditions charged by market-based rate sellers remain just and reasonable by tying sellers' conduct with respect to their unit operations to the rules and regulations of the power markets in which they do business. Our rule will thus give the Commission direct remedial authority for violations that may not exist in certain cases absent such a rule.

20. Commenters assert and we agree, however, that the rules and regulations to which this rule refers should be limited to ''Commission-approved'' rules and regulations of the applicable power market. We agree that it would not be appropriate to require that a market-based rate seller be made subject to potential sanction for rules or regulations (*e.g.*, technical guidelines set forth in protocols) that have not been filed with the Commission. We also clarify that Market Behavior Rule 1, while requiring compliance with any Commission-approved rule or regulation of the applicable power market, will not otherwise apply to any bilateral power sales arrangement or other transactions to which the seller may be a party.

21. We will also revise Market Behavior Rule 1 to make clear that no ''must offer'' requirement will be imposed under this rule. As revised, the rule makes clear that ''[c]ompliance with this Market Behavior Rule 1 does not require Seller to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or requirement applicable to Seller.'' Unless the seller is subject to a must-offer requirement pursuant to the applicability of a Commission-approved tariff, or other specific Commission-approved obligation, then, the seller will not be subject to such a requirement under our rule.[16] We also clarify that our rule is not intended to supersede market-specific rules such as those for outage scheduling/reporting and bidding that we have approved in our acceptance of ISO/RTO tariffs. In sum, we clarify that this rule is not intended to serve as an independent basis to impose any new obligations on sellers, or to further regulate bilateral markets.[17]

22. We will reject commenters' proposed clarification that our rule apply only to market-based rate sellers who own physical generation assets. Sellers, whether they do or do not own generation, participate in markets, bid supply, and, in many cases, control generation resources through contract rights. We also clarify that to the degree physical withholding or economic withholding issues are the subject of an applicable power market's rules and regulations, sellers' compliance with such rules and regulations will satisfy the seller's obligations. Thus, unless concepts of physical or economic withholding are a component of a broader manipulative behavior, as addressed in Market Behavior Rule 2, discussed below, actions taken in accord with the Commission-approved

[12] *See e.g.*, Comments of EEI at 8; Comments of FirstEnergy Service Company (FirstEnergy) at 6; Comments of Duke Energy Corporation (Duke) at 36; Comments of Dynegy Power Marketing, Inc., *et al.* (Dynegy) at 5; Comments of Edison Mission Energy at 5–6; Comments of Pinnacle West Companies (Pinnacle) at 5.

[13] Commenters make similar arguments as they relate to proposed Market Behavior Rule 2, discussed below.

[14] *See e.g.*, Comments of Exelon at 5; Reply Comments of Central Maine, *et al.* at 3.

[15] Joined by the New Mexico Attorney General, the Rhode Island Attorney General, the Utah Committee of Consumer Service, the Public Utility Law Project of New York, Inc., the National Consumer Law Center, and Public Citizen, Inc.

[16] To make this same point, as discussed in Section G, below, we are also rejecting our proposed Market Behavior Rule 2(e). That proposed rule, which addressed market manipulation in a specific context (*i.e.*, with respect to ''bidding the output of or misrepresenting the operational capabilities of generation facilities in a manner which raises market prices by withholding available supply from the market'') was incorrectly interpreted by commenters as a must-offer requirement.

[17] Additional issues relating to RTO/ISO coordination matters are discussed in Section O, below.

rules of an applicable power market will not be considered actionable physical or economic withholding.

23. Finally, commenters raise concerns that Market Behavior Rule 1 could require unit operation in an unsafe manner or in a way that could violate environmental permit restrictions. However, we are not aware of any Commission-approved rule or regulation (and commenters cite to no rule or regulation) which would require sellers to operate their units in an unsafe manner or in violation of any environmental permit restrictions. Issues of this nature should be raised and addressed in the applicable power markets when and to the extent they may arise.

B. Market Behavior Rule 2 (Market Manipulation)

1. Commission Proposal

24. In the June 26 Order, we stated that our reliance on competitive markets to establish just and reasonable rates requires that we have the tools necessary to ensure that prices created in these markets continue to fall within a just and reasonable zone. We stated that the tools we have relied upon include non-discriminatory transmission access, an efficient and pro-competitive wholesale market platform, and effective market monitoring and enforcement. Accordingly, we proposed to prohibit activities that adversely affect competitive outcomes, by stating that ''[a]ctions or transactions without a legitimate business purpose which manipulate or attempt to manipulate market prices for electric energy and/or electric energy products which do not reflect the legitimate forces of supply and demand, are prohibited.'' [18]

2. Comments

25. The Electricity Consumers Resource Council [19] (ELCON, *et al.*) support Market Behavior Rule 2, as proposed. ELCON, *et al.* assert that the Commission's proposed anti-manipulation prohibition is necessary due to the absence of and/or weakness of such provisions in the markets operated by the Cal ISO, PJM, ISO New England, Inc., the New York ISO and the Midwest Independent System Operator, Inc. (Midwest ISO). ELCON, *et al.* characterize the anti-gaming provisions currently in effect in these markets as vague and conflicting, while in other regions of the country there are no standards at all. ELCON, *et al.* conclude that the Commission's proposal to apply a single anti-gaming prohibition applicable to all markets is appropriate and urgently needed.

26. Other commenters take issue with the market manipulation prohibition set forth in proposed Market Behavior Rule 2. First, commenters assert that a market manipulation prohibition should not be applied to bilateral markets. Mirant and TransAlta, for example, argue that there is no economic rationale for applying market manipulation rules outside the short-term spot markets for power, given the difficulty of exercising market power in forward markets directly or leveraging market power from short-term markets into the forward markets. APPA and TAPS take the opposite position, noting market power and manipulation risks arise not only in the spot markets, but in the bilateral markets as well.

27. Commenters also challenge the sufficiency of the term ''legitimate business purpose'' in distinguishing between prohibited and non-prohibited conduct and question whether and to what extent the Commission can fairly (and with adequate notice to sellers) identify such motives. InterGen North America, L.P. (InterGen) argues, therefore, that the term ''legitimate business purpose'' is fatally vague and that there are no recognized principles or accepted rules or standards in the industry that would assist market participants in understanding what is and what is not ''legitimate.'' InterGen notes, in this regard, that Webster's Disctionary defines the word ''legitimate'' as conforming to recognized principles or accepted rules and standards.[20] Dynegy Power Marketing, Inc. (Dynegy) asserts that in the organized markets in the East, any bid with respect to the marginal unit could be accused of attempting to manipulate prices, even if the market is covered by mitigation procedures that limit the unit's bidding parameters.

28. For others, the term ''legitimate business purpose'' is insufficient because it will allow sellers who should be sanctioned to justify their bad conduct. The National Association of State Utility Consumer Advocates (NASUCA) points out that this term, if approved, will invite market participants to try to excuse actions that are manipulative but that were undertaken to promote some imaginable business purpose.

29. Other commenters focus their concerns on the term ''legitimate forces of supply and demand.'' EPSA, *et al.* suggest that there is little consensus as to what price might result from the unfettered interplay among these market forces because there is little consensus as to how to value scarcity, how supply and demand interact to set prices, when to allow reserves and/or demand response to set the market clearing prices, what the proper components of marginal cost are, and when mitigation is appropriate. EPSA, *et al.* assert that without a clearer consensus on the proper approach to price formation, the proposed term will result in a great deal of controversy and expensive litigation to address issues that would be better resolved in other forums. In addition, EPSA, *et al.* submit that any attempt to reconstruct the legitimate forces of supply and demand in a complex market in which the interaction of the parties affects the outcome is virtually impossible.

30. Numerous commenters also argue that as a means of limiting the proposed rule and better defining it, an intent standard must be adopted (a recommendation also made with respect to certain other Market Behavior Rules, as discussed below).[21] EME argues that without intent to manipulate the proposed rule, it would be unfair to punish market participants for actions that are economically justifiable and within the bounds of these rules are properly undertaken to maximize returns in a competitive market. Southern adds that to address these concerns, Market Behavior Rule 2 should be modified to prohibit sellers from ''knowingly'' engaging in the conduct prohibited by the rule ''with the intent'' to manipulate market prices, with a ''showing that the seller actually succeeded in its efforts to manipulate the market.''[22]

31. Reliant also argues that the term ''electric energy products,'' as used in the proposed rule, is undefined and

[18] June 26 Order, 103 FERC ¶ 61,349 at P22.

[19] Joined by the American Iron and Steel Institute, the American Chemistry Counsel, the American Forest & Paper Association, the Association of Business Advocating Tariff Equity, California Large Energy Consumers Association, Connecticut Industrial Energy Consumers, Industrial Energy Consumers of Pennsylvania, Southeast Electricity Consumers Association, and Multiple Intervenors.

[20] *See also* Comments of EEI at 10 (asserting that the term ''legitimate business purpose'' is vague and would, if adopted, create market uncertainty); Reply Comments of Mirant and TransAlta at 16.

[21] *See e.g.*, Comments of EEI at 10; Comments of EPSA, *et al.* at 8–12; Comments of Exelon at 6; Comments of Southern at 12; Comments of Edison Mission Energy (EME) at 6; Comments of Pinnacle West at 6; and Comments of Reliant at 6.

[22] Other commenters propose similar language incorporating this element of intent. *See e.g.*, Comments of EPSA, *et al.* (prohibiting actions or transactions without a legitimate purpose ''and which are intended to'' manipulate or attempt to manipulate market prices); Comments of Reliant at 6 (prohibiting actions or transactions ''undertaken'' without a legitimate business purpose ''and intentionally to'' manipulate market prices).

otherwise unnecessary. Reliant notes the proposed rule already prohibits manipulation of market prices and that this prohibition covers prices associated with any jurisdictional product, whether energy, ancillary services, transmission, or any other.

32. The New York State Public Service Commission (New York Commission) requests that the Commission clarify that sellers are bound by the actions or transactions of their affiliates, as they relate to this rule. The New York Commission states that absent this clarification, sellers would be permitted to sidestep this rule by way of affiliate gaming practices. The New York Commission concludes that if a seller's affiliate violates a Market Behavior Rule in a way that improperly raises market prices and the seller enters into long-term contracts that benefit from that price, the seller's contract should be governed by this rule just as if the contracts had been signed by the affiliate.

33. Commenters also express concerns regarding the general impact of the proposed rule on the marketplace as a whole. EPSA, *et al.* claim that without greater specificity and clarity, the proposed rule will lead to excessive litigation. EEI speculates that sellers engaging in proscribed transactions will rely on the ambiguity in the proposed rule to defend their bad conduct. East Texas Cooperatives and First Energy suggest that the over-breadth of the proposed rule will prohibit or at least chill legitimate business behavior. The New York ISO submits that with the uncertainty engendered by the proposed rule, higher market prices may be necessary to induce construction of new generation in New York and in other regions.

34. Finally, the Federal Trade Commission (FTC) argues that structurally competitive markets that foster ease of entry are critical to efficient pricing, output, and investment, and are more likely to protect consumers than would the proposed rule. The FTC also suggests that because there may be conflicts between antitrust law and the meaning of the terms used by the Commission in the proposed rule (*e.g.*, the term ''without a legitimate business purpose''), the Commission should limit and better focus its rule such that it would only prohibit sellers from engaging in conduct that violates the antitrust laws.

3. Commission Ruling

35. We will adopt the prohibition against market manipulation, as set forth in Market Behavior Rule 2, as revised. As revised, the rule provides:

> Actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for electric energy or electricity products are prohibited. Actions or transactions undertaken by Seller that are explicitly contemplated in Commission-approved rules and regulations of an applicable power market (such as virtual supply or load bidding) or taken at the direction of an ISO or RTO are not in violation of this Market Behavior Rule.

36. Our rule, as revised, balances the need to provide sellers clearly-defined rules of the road while, at the same time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today. This objective is satisfied, here, by our reliance on a prohibition that is broad enough in its reach and yet clear enough in its focus to capture manipulative conduct in all its forms. Our rule, in essence, is designed to prohibit market-based rate sellers from taking actions which interfere with the prices that would otherwise be set by competitive forces, or from manipulating market conditions or market rules.[23] This standard, which recognizes that manipulative actions engaged in by sellers are not undertaken for a legitimate business purpose, has been applied by the Commission in the past.[24] For the reasons discussed herein, we apply it now to all market-based rate sellers.

37. In doing so, we clarify that transactions with economic substance, in which a seller offers or provides service to a willing buyer and where value is exchanged for value, are not prohibited by our rule. While commenters question the usefulness of the term ''legitimate business purpose,'' in this context, we note that our reliance on this measure will ensure that sellers acting in a pro-competitive manner will have the opportunity to show that their actions were not designed to distort prices or otherwise manipulate the market. Behaviors and transactions with economic substance will thus be recognized as reflecting a legitimate business purpose consistent with just and reasonable rates.

38. However, an action or transaction which is anticompetitive (even though it may be undertaken to maximize seller's profits), could not have a legitimate business purpose attributed to it under our rule. If, for example, a seller is shown to have caused, or attempts to cause, an artificial shortage by physically withholding sufficient and otherwise available power from the market for the purpose of raising the sales price obtainable by other units participating in the market—the seller may be found to have engaged in market manipulation, as prescribed by Market Behavior Rule 2, *i.e.*, under these circumstances, there can be no legitimate business purpose attributable to such behavior.[25]

39. Our prohibition against market manipulation is not the only tool we intend to rely upon to ensure competitive markets.[26] It is, however, a necessary tool, because it reflects the reality that we oversee a dynamic and evolving market where addressing yesterday's concerns may not address tomorrow's. As we apply Market Behavior Rule 2, moreover, we will be mindful of the fact that we are not only taking steps to assure just and reasonable rates for a specific transaction but are also providing guidance to sellers in general. As such, in determining the appropriate remedy for violations of this rule, we will take into account factors such as how self evident the violation is and whether such violation is part of a pattern of manipulative behavior.

40. As recommended by commenters, we will strike from our prohibition the proposed term that would have characterized, as manipulative behavior, an act resulting in ''market prices which do not reflect the legitimate forces of supply and demand.'' While we do not believe that our use of this term was inappropriate or unjustified (as we intended it), many commenters appear to have misunderstood its purpose, suggesting that other causes (*e.g.*, the

[23] An example of sellers' ability to manipulate market conditions is discussed in Section C, below, relating to wash trades. An example of sellers' ability to manipulate market rules is discussed in Section D (submission of false information) and Section E (creation of artificial congestion). An example of seller's ability to manipulate market prices is discussed in Section F (collusive acts).

[24] *See* Enron Power Marketing, Inc., 103 FERC ¶ 61,343 (2003) (*Enron*) (revoking Enron's blanket marketing certificate authorization based on Enron's participation in wash trades having ''no legitimate business purpose'').

[25] The available supply, in this instance, would have been withheld from the market without a legitimate business purpose with the objective of distorting the price of the remaining supply. Conversely, if the power was withheld due to a forced or planned outage, environmental restrictions, labor disruption, or similar business purpose, the resulting transaction would be reflective of a competitively derived price and would not be found to be manipulative. In this regard, we reject NASUCA's concern, *i.e.*, that sellers can fabricate legitimate business purposes where there are none. In fact, the Commission is well equipped, on a case-by-case basis, to determine whether the motives ascribed to transactions by sellers are legitimate or not legitimate.

[26] *See infra* Section L.

lack of elasticity of demand in an organized market) may explain a given dysfunction in the interplay between supply and demand. To avoid confusion on this point, then, and because our objectives with respect to this rule can be satisfied under the surviving clause, discussed above, we have eliminated this term from our rule. We clarify, then, that our rule is not meant to say that we will identify prices that properly reflect supply and demand and then take action against sellers whose prices (however they may be established) differ. Rather, our rule is designed to prohibit market-based rate sellers from taking actions without a legitimate business purpose which intend to or foreseeably could interfere with the prices that would be set by competitive forces.[27]

41. We will reject commenters' argument that Market Behavior Rule 2 should identify and prohibit only expressly-defined acts of manipulation. For all the reasons discussed above, it is essential and appropriate that we have a prohibition designed to prohibit all forms of manipulative conduct. In approving such a prohibition, moreover, we take the necessary safeguards, both procedural and substantive. Thus, in the event the Commission receives a complaint about a particular behavior or identifies such behavior on its own, we will inquire into all of the surrounding facts and circumstances to understand the purpose for which the behavior was undertaken and the intended or foreseeable outcome of the behavior.

42. As a threshold matter, the Commission will evaluate if the facts presented appear to warrant further inquiry into whether the transaction appears to be of a questionable purpose. For example, actions or transactions undertaken at the direction of an ISO or an RTO are not, by definition, market manipulation in violation of our rule. In determining whether an activity is in violation of our rule, we will evaluate whether the activity was designed to lead to (or could foreseeably lead to) a distorted price not reflective of a competitive market.[28] If, thereafter, the market-based rate seller can establish that the behavior at issue was undertaken to provide service to a buyer with rates, terms, and conditions disciplined by the competitive forces of the market, we would find the transaction to have a legitimate business purpose and its rates to reflect a just and reasonable competitive level.

43. Our approach to the enforcement of our rules, then, will be based on a consideration of the facts and circumstances of the conduct at issue to determine its purpose and intended or foreseeable result. We recognize that manipulation of energy markets does not happen by accident. However, we also recognize that intent often must be inferred from the facts and circumstances presented. Therefore, a violation of Market Behavior Rule 2 must involve conduct which is intended to, or could foreseeably result in, distorted prices.

44. While we believe that this approach to identifying and remedying market manipulation is necessary, we also believe it is fair. We believe, for example, that sellers can recognize the difference between actions and strategies that are in furtherance of legitimate profit opportunities, or which serve important market functions, and those that result in prices that would not have been bid or paid in the absence of manipulation. We expect our enforcement and complaint procedures, as approved herein, will allow us to timely examine and fairly determine, on a case-by-case basis, when, and if, a strategy employed by a seller lacks a legitimate business purpose.

45. Moreover, while our rules will apply to all jurisdictional markets, we note these rules will not supersede or replace parties' rights under section 206 of the FPA to file a complaint contending that a contract should be revised by the Commission (pursuant to either the ''just and reasonable'' or ''public interest'' tests as required by the contract). Rather, any party seeking contract reformation or abrogation based on a violation of one or more of the Market Behavior Rules adopted herein would be required to demonstrate that such a violation had a direct nexus to contract formation and tainted contract formation itself. If a jurisdictional seller enters into a contract without engaging in behavior that violates its tariff with respect to the formation of such contract, we do not intend to entertain contract abrogation complaints predicated on our Market Behavior Rules.

C. Market Behavior Rule 2(a) (Prohibition Against Wash Trades)

1. Commission Proposal

46. In addition to the prohibition against market manipulation set forth in proposed Market Behavior Rule 2, we also proposed to prohibit wash trades as a specific transaction that would be prohibited under our proposed rule, *i.e.*, ''pre-arranged offsetting trades of the same product among the same parties, which trades involve no economic risk, and no net change in beneficial ownership.''

2. Comments

47. The New York ISO suggests that as an alternative to this express prohibition, the Commission should rely on the ISO (or RTO) market monitoring unit to craft and implement rules specifically tailored to address improper conduct if and as it arises.[29] The New York ISO also states that even if this express prohibition is adopted, the relevant aspects of the proposed rule should be incorporated into the reporting requirement embodied in Market Behavior Rule 4 (discussed below).

48. NASUCA asserts that the proposed definition of ''wash trade'' is too narrow, allowing sellers to evade regulation by slightly altering their transactions as they relate to price or quantity. The California Electricity Oversight Board (Cal Oversight Board) agrees, noting that by contrast, the Commodity Exchange Act defines wash trades as transactions producing ''a *virtual* financial nullity because the resulting net financial position is *near or equal to* zero.'' [30] The Cal Oversight Board further asserts that if the Commission's wash trade prohibition is limited to the ''same parties,'' as proposed, the Commission would be unable to sanction transactions entered into between independent or affiliated third parties.

49. Northeast Utilities argues that the proposed rule is too broad, prohibiting sellers from engaging in legitimate ''sleeve'' transactions and other legitimate transactions. EEI also asserts that the proposed rule could be applied to legitimate transactions in an unfair and unjustified way. EEI states, for example, that market participants sometimes engage in product swaps between different locations to avoid the need to use physical transmission and that these transactions are both useful and legitimate.[31] To exempt such transactions from the prohibitions contemplated by Market Behavior Rule 2(a), therefore, EEI suggests that the qualifying language ''at the same location'' be added after the phrase

[27] The rule, then, covers actions that are intended to manipulate prices regardless of whether these actions actually accomplish their purpose. We note, however, that in most such cases, there will be no unjust profits to disgorge.

[28] When deciding how best to allocate our enforcement resources, we intend to focus our efforts primarily on those actions or transactions that have, in fact, caused distorted market prices.

[29] As discussed below, the New York ISO makes the same suggestion as it relates to Market Behavior Rules 2(b) and 2(c).

[30] Comments of the Cal Oversight Board at 10–11, *citing* 7 U.S.C. 6c (2000) (emphasis added).

[31] *See also* Comments of Dynegy at 8.

''pre-arranged, simultaneous, offsetting trades of the same service or product among the same parties.'' In addition, Duke Energy requests clarification that ''bookout'' transactions, in which companies with offsetting delivery obligations resulting from heavy trading activity agree not to deliver to one another the offsetting amounts of energy, not be regarded as a prohibited wash trade.[32]

50. The New York ISO also identifies a transaction which it claims should not fall within the Market Behavior Rule 2(a) prohibition. The New York ISO states that when a market participant mistakenly buys instead of sells, or accidentally buys more energy or capacity than it needs, it may be required to close out of this erroneous position as quickly as possible. The New York ISO states that to do so, the market participant may wish to enter into an offsetting transaction, possibly with the same party or on the same trading platform. Such a transaction, the New York ISO contends, is legitimate and should not be prohibited.

51. To clarify what would and what would not constitute a prohibited wash trade, Merrill Lynch, *et al.* propose that the rule specify what they claim are the three necessary elements of a ''wash trade:'' (i) A deliberately pre-arranged ''pair'' of trades; (ii) made at the same time, for the identical price, and at the same delivery point; (iii) between the same legal entities. Reliant proposes that Market Behavior Rule 2(a) be modified to encompass ''trades of the same product among the same parties, which trades are pre-arranged to be offsetting and involve no economic risk and no net change in beneficial ownership.'' Finally, for the same reason as noted above, commenters propose that an intent standard be adopted as it relates to Marker Behavior Rule 2(a).[33]

3. Commission Ruling

52. We will adopt Market Behavior Rule 2(a), as proposed, to address, as a prohibited action or transaction:

Pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called ''wash trades'').

53. As described in the Western Markets Report, market participants engaged in wash trading during the period 2000–01 and, as a result, distorted market liquidity as well as other indicators of market performance.[34] As we have noted before and reiterate here, such activity should be considered a serious violation of the authority to sell power at market-based rates. Market Behavior Rule 2(a), therefore, expressly prohibits this activity by identifying the two key elements of a wash trade, *i.e.*, transactions which are (i) prearranged to cancel each other out; and (ii) involve no economic risk.

54. EEI requests clarification that an exchange of power undertaken to avoid the procurement of a transmission service would not be considered a wash trade under our rule. We will grant EEI's request for clarification. As we understand the issue raised by EEI, the subject transactions would either be at different prices, transfer beneficial ownership, or both. As such, the exchange could not be characterized as a wash trade as we define it.

55. Commenters identify additional transactions which would not meet our definition of a wash trade and therefore would not be prohibited under Market Behavior Rule 2(a). The New York ISO's identification of trades engaged in to correct a prior error, for example, would not constitute a prohibited wash trade under our rule, because trades such as these would not be ''prearranged'' to cancel each other out. In addition, each of the transactions described by the New York ISO *would* involve economic risk because the entity attempting to correct its mistake would be at risk for any price change which could occur over the time interval between the two trades. In fact, the purpose of the off-setting trade, in this instance, would be to address the economic risk imposed by the first trade.

56. Other commenters concerns are also misplaced. We do not agree, for example, that a legitimate ''sleeve'' or ''bookout'' transaction could be characterized as a prohibited wash trade under our definition. Specifically, a sleeve is not an off-setting trade but rather a mechanism to accomplish a power sale among parties that have not established a credit relationship (involving in the transaction chain a third party seller that possesses the required creditworthiness).[35] Similarly, a ''bookout'' is not a pre-arranged trade but rather a subsequent arrangement to financially close out a trade that was not prearranged and was undertaken (and, in fact, closed out) *with* economic risk.

57. In addition, while we agree with EEI, that it may be easier to undertake a wash trade that occurs at the same location, it may also be possible to engage in wash trades that involve more than one location. As such, we decline to revise our proposed rule as EEI requests.

58. Commenters also argue that Market Behavior Rule 2(a) should be revised to include an intent standard, suggesting in effect that a wash trade could be executed without intent (or without an understanding as to its consequence) and should be excused, in this instance. We disagree. Wash trades, by their very nature, are manipulative and purposely so. By definition, parties to a wash trade intend to create prearranged off-setting trades with no economic risk. Thus, we know of no legitimate business purpose attributable to such behavior and no commenter has suggested one. Accordingly, wash trades, under our rule, will constitute a *per se* violation of Market Behavior Rule 2.

D. Market Behavior Rule 2(b) (Prohibition Against Transactions Predicated on Submission of False Information)

1. Commission Proposal

59. In addition to the prohibition against market manipulation set forth in proposed Market Behavior Rule 2, we also proposed, as a specific action or transaction that would be prohibited, ''transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; scheduling non-firm service or products sold as firm; or conducting 'paper trades' where an entity falsely designates resources and fails to have those resources available and feasibly functioning).''

2. Comments

60. Commenters raise three principal concerns regarding the proposed rule: (i) Its failure to include an intent standard; (ii) its apparent prohibition against virtual trading practices already permitted in organized markets; and (iii) its reference to a practice, *i.e.*, to ''paper trades,'' for which, it is claimed, there is no common definition in the industry.

61. First, commenters assert that an intent standard should be adopted in order to protect sellers from the imposition of sanctions relating to inadvertent or honest errors that were

[32] *See also* Comments of Ontario Power Generation Inc. at 4.

[33] *See e.g.*, Comments of EPSA, *et al.* at Att. B, p. 3; Comments of EEI at 13; Comments of Pinnacle West at 7; Merrill Lynch, *et al.* at 8; Comments of Duke Energy at 36; Reply Comments of ANP, *et al.* at 3.

[34] Western Markets Report at VI–1.

[35] The two resulting sales (which are only offsetting to the ''sleeving'' seller) are each with economic risk, with a change in beneficial ownership and, usually, at slightly different prices to reflect the use of the ''sleeving'' sellers' credit.

not intended to manipulate market prices.[36] To address this issue, EPSA, *et al.* recommend that Market Behavior Rule 2(b) be revised to prohibit actions or transactions predicated on ''knowingly'' submitting false information to transmission providers or other entities responsible for operation of the transmission grid ''with intent to manipulate the market.''[37]

62. Related to this same concern, Dynegy notes that due to forecasting errors, load forecasts and generation data are rarely 100 percent accurate. Dynegy further notes that sellers often face unknowable circumstances relating to the timing and duration of derates or outages. Given these and related contingencies, Dynegy seeks clarification that Market Behavior Rule 2(b) is not intended to supersede or otherwise nullify existing practices and/or market rules which allow for variation between forecasted and actual outcomes. Similarly, AES seeks clarification that the proposed prohibition does not apply to situations where submitted load data or generation data was incorrect due to the occurrence of a legitimate and verifiable contingency, or situations that occur in the normal course of business and are separately governed by terms and conditions of tariffs already on file with the Commission.

63. EEI also raises concerns regarding the interplay between the proposed rule and the existing practice known as virtual trading.[38] EEI proposes that the following language be incorporated into the proposed rule: ''This prohibition [*i.e.*, the prohibition set forth in Market Behavior Rule 2(b)] does not apply to transactions such as virtual trading that are an intentional part of an RTO or ISO market design.''[39] Finally, commenters assert that the term ''paper trade'' be deleted from the rule. Duke Energy claims, in this regard, that there is no common meaning in the industry for this term and thus it could refer to any number of transactions, many of which may be legitimate.

3. Commission Ruling

64. As discussed below, we will adopt Market Behavior Rule 2(b), subject to two revisions. As requested, we will adopt an intent standard applicable to our prohibition against the submission of false information to transmission providers or to other entities responsible for operation of the transmission grid, *i.e.*, to be actionable under this rule, the seller's submittal must be knowingly false. Second, we will strike the example of ''paper trades'' from our illustrative, non-exclusive list of submissions subject to our rule. As revised, Market Behavior Rule 2(b) will prohibit:

> Transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; or scheduling non-firm service or products sold as firm), unless Seller exercised due diligence to prevent such occurrences.

65. Commenters generally agree, as do we, that a Market Behavior Rule addressing market manipulation appropriately includes within its prohibitions the submission of false information to transmission providers or other entities responsible for operation of the transmission grid. As requested, however, we are approving this rule subject to the clarification that inadvertent or honest errors will not constitute a prohibited act under Market Behavior Rule 2. Rather, to be actionable under this rule, it must be shown that a seller has knowingly submitted false information.

66. This due diligence standard, however, will not be measured by the Commission with respect to the individual who actually tenders the data or who may otherwise be responsible for its submission. Rather, it will apply to the seller alone.[40] In this regard, we expect the seller to have in place processes that will assure the sufficiency and accuracy of the submitted information, regardless of who is actually responsible for submitting the information. Where a seller does not have such processes in place, it can be no defense to this rule that the submission of data was made by a particular individual who did not personally know it to be false or incomplete.

67. Dynegy requests clarification that Market Behavior Rule 2(b) is not intended to supersede existing market rules which allow for variation between forecasted and actual demand or generation availability. We will grant Dynegy's request. We recognize that where required, both buyers and sellers submit information to transmission providers or other entities responsible for operation of the transmission grid based on forecasts. We understand that these forecasts are not and cannot be entirely accurate. Market Behavior Rule 2(b), as approved herein, fully accommodates this reality by addressing the knowing submission of false information. Submitting information based on good faith estimates that turn out to be incorrect, then, would not be a case of knowingly submitting false information.

68. Commenters also express concern that Market Behavior Rule 2(b) could be read to prohibit Commission-approved activities such as virtual bidding. While we do not believe that virtual bidding is premised on the knowing submission of false information, we explained in the June 26 Order,[41] and reiterate here, that virtual bidding and other Commission-approved activities will not be considered actions taken in violation of our Market Behavior Rules. To underscore this point expressly (and as discussed above), we have revised the prohibition set forth in Market Behavior Rule 2 to provide that ''[a]ctions or transactions undertaken by Seller which are explicitly contemplated in Commission-approved rules and regulations of an applicable power market (such as virtual supply or load bidding) are not in violation of the Market Behavior Rule 2.''

69. Finally, based on commenters' objections, we have omitted the example of ''paper trade'' from our non-exclusive, illustrative list of submittals subject to Market Behavior Rule 2(b). We agree with Duke that because the term ''paper trade'' has no common meaning in the industry, at this time, using such an example to clarify the scope and reach of Market Behavior Rule 2(b) would not be beneficial.

[36] *See* Comments of EPSA, *et al.* at Attachment B, p.3; Comments of EEI at 14; Comments of AES at 26–27; Comments of FirstEnergy at 9; Comments of Reliant at 10.

[37] EEI proposes a slight variation in this intent standard to prohibit actions or transactions ''predicated on intentionally submitting false information to transmission providers including ISOs and RTOs (such as scheduling non-firm service or products sold as firm; or conducting 'paper trades' where an entity falsely designates resources and also fails to have those resources available and feasibly functioning).'' *See* Comments of EEI at 14. *See also* Comments of Reliant at 10 (''transactions predicated on submitting information known to be false'').

[38] A virtual trade can be distinguished from a physical trade that is actually scheduled to the extent that it involves no actual purchase (physical acquisition) or sale (physical disposition) of electricity. It is a purely financial transaction designed to capture an arbitrage opportunity. *See, e.g.*, PJM Interconnection, L.L.C., 104 FERC ¶ 61,39 (2003).

[39] The interplay between the Market Behavior Rules and virtual trading is also raised by commenters in connection with Market Behavior Rule 2(c), discussed below.

[40] We make the same clarification, below, as it relates to Market Behavior Rules 2(d) and 3.

[41] June 26 Order, 103 FERC at n.18.

E. Market Behavior Rule 2(c) (Prohibition Against Transactions Relating to the Creation of Artificial Congestion Followed by the ''Relief'' of Such Artificial Congestion)

1. Commission Proposal

70. In addition to the prohibition against market manipulation set forth in proposed Market Behavior Rule 2, we also proposed, as a specific action or transaction that would be prohibited, ''transactions in which an entity first creates artificial congestion and then 'relieves' such artificial congestion.''

2. Comments

71. Colorado Consumer Counsel, *et al.* argue that, in addition to the prohibition set forth in the proposed rule, the Commission should also address how all gradations of congestion will be managed in a wholesale market context and how market power, during periods of congestion, will be constrained.

72. Reliant asserts that the Commission's apparent focus in Market Behavior Rule 2(c) is on market designs like those in California that do not use locational marginal pricing (LMP) as a tool to manage congestion. Reliant states that, if so, the Commission should clarify that its rule does not apply in LMP markets. EEI also questions the need and scope of the rule, noting that any transaction that would create ''artificial congestion'' would necessarily involve the submission of false information, as encompassed within the prohibition set forth in Market Behavior Rule 2(b). EEI and Pinnacle West also argue that the prohibition set forth in the rule should not apply to transactions that are consistent with an RTO's or an ISO's rules.

73. Reliant and EEI request that the Commission define what it means by ''artificial congestion'' because, in theory, this term could be construed to apply to (and thus be a sanction against) virtual transactions. Pinnacle West also requests clarification regarding the meaning of this term in this context.[42]

74. The New York ISO also claims that Market Behavior Rule 2(c) requires clarification with respect to the day-ahead and real-time markets it operates. Specifically, the New York ISO claims that the proposed rule could be interpreted to prohibit changes in day-ahead schedules in response to changes in market conditions between the day-ahead and real-time markets, *i.e.*, to prohibit legitimate arbitrage between forward and real-time markets. Such a prohibition, it is argued, would be harmful to these markets because it would restrict market participants from responding in a competitive manner to the forces of supply and demand. The New York ISO explains that, in practice, congestion that may exist in the forward market may not exist in the real-time market, where market participants are permitted to respond competitively to these changed conditions. The New York ISO concludes that Market Behavior Rule 2(c) should be read to permit such responses in the real-time market.

75. Commenters also assert that Market Behavior Rule 2(c) should be modified to incorporate an intent standard.[43] EPSA, *et al.* recommend that the prohibition apply to transactions in which an entity ''intends to'' first create artificial congestion and then relieve such artificial congestion.[44]

3. Commission Ruling

76. We will adopt Market Behavior Rule 2(c), subject to the inclusion of an intent standard, as requested by commenters. As revised, Market Behavior Rule 2(c) will address, as a prohibited transaction:

> Transactions in which an entity creates artificial congestion and then purports to relieve such artificial congestion (unless Seller exercised due diligence to prevent such an occurrence).

77. Commenters generally agree, as do we, that a Market Behavior Rule addressing market manipulation should include as an express prohibition transactions predicated on the creation and subsequent ''relief'' of artificial congestion. Experience has shown that in certain markets (including, in particular, markets that have not adopted an LMP market design) activities of this nature have been undertaken for the purpose of generating revenue without the occurrence of any corresponding economically substantive transaction.[45] Market Behavior Rule 2(c) makes clear that market manipulation of this sort, to the extent it can occur, has no legitimate business purpose and is therefore prohibited.

78. We agree with commenters, however, that Market Behavior Rule 2(c) should be revised to include an intent standard, *i.e.*, that the prohibition set forth in this rule should be predicated on a seller having knowingly committed the prohibited conduct. As we held, above, in addressing the use of this intent standard in the context of Market Behavior Rule 2(b), however, this due diligence exception will be applied only to the entity subject to this rule, *i.e.*, to the seller itself, not the individual acting on behalf of the seller who may have engaged in or otherwise authorized the prohibited conduct.[46]

Moreover, we will find that the seller has knowingly violated this rule where the prohibited conduct is found to have occurred in the absence of adequate internal procedures designed to prohibit its occurrence.

79. Commenters also request clarification regarding the scope and definition of the term artificial congestion, as it will be interpreted by the Commission in the context of our rule. We will grant these requests and hereby clarify that artificial congestion, under our rule, will be understood to include all forms of congestion that may result from scheduling power flows in an uneconomic manner for the purpose of creating congestion (real or perceived).

80. Finally, the New York ISO seeks clarification that the prohibition set forth in Market Behavior Rule 2(c) is not intended to be applied in those cases where a market participant may be legitimately responding to changing circumstances relative to the day-ahead and real time markets. The New York ISO points out that from time-to-time, there may be a level of congestion in the day-ahead markets that is not present in real-time markets because market participants can respond to changing conditions. The New York ISO requests clarification that such real time responses to congestion that were anticipated in the day-ahead markets will not be prohibited under our rule. We will grant the requested clarification. The market responses addressed by the New York ISO reflect appropriate behavior which is reactive to the price signals emanating from the LMP congestion management system. Market conduct of this sort will not be characterized as a prohibited act under our rule.

[42] *See also* Comments of the New York ISO at 12–13.

[43] *See* Comments of EPSA, *et al.* at Attachment B, pp. 3–4; Comments of Reliant at 10–11.

[44] *See also* Comments of Reliant at 10 (transactions in which an entity ''intends first to create'' artificial congestion and then ''to purport to relieve'' such artificial congestion); Comments of EEI at 15 (''intentionally engaging in transactions or scheduling resources that qualify for a congestion relief payment with the intent of profiting for relieving that congestion and canceling later is prohibited. This prohibition does not apply to transactions consistent with markets'').

[45] *See* Western Markets Report at VI at 26–30.

[46] We make this same clarification, below, as it relates to Market Behavior Rule 3.

F. Market Behavior Rule 2(d) (Prohibition Against Certain Collusive Acts)

1. Commission Proposal

81. In addition to the prohibition against market manipulation set forth in proposed Market Behavior Rule 2, we proposed, as a specific action or transaction that would be prohibited, ''collusion with another party for the purpose of creating market prices at levels differing from those set by market forces.''

2. Comments

82. Commenters generally support a market behavior rule directed towards non-competitive collusive acts or transactions, but argue that Market Behavior Rule 2(d) should include language (and should be interpreted) consistent with federal antitrust laws and thus *not* read to create new or different norms of permissible behavior.[47] The New York ISO agrees, noting that the antitrust laws include a significant volume of precedents dealing with the appropriate meaning and scope of such terms as ''collusion'' and ''unlawful constraints on competition.''

83. The New York ISO also points out that Market Behavior Rule 2(d), in its proposed form, varies with federal antitrust laws in a way that it should not. Specifically, the New York ISO asserts that the term ''for the purpose of creating market prices,'' as used in the proposed rule, suggests a reliance on an intent standard contrary to the accepted antitrust approach to collusion. In addition, the New York ISO argues that the proposed rule's focus on prices to the exclusion of non-price considerations is also inconsistent with federal antitrust law. Finally, the New York ISO suggests that the term ''market forces,'' as used in the proposed rule, departs from the antitrust term ''competition'' and the focus of the antitrust laws on the ''unreasonable restraint of competition.''

84. The FTC also addresses these issues. The FTC points out that some seller conduct could violate both the antitrust laws and Market Behavior Rule 2, while other conduct could violate the Commission's rule (because it may be unjust and unreasonable) but not the antitrust laws. The FTC submits that to avoid potential conflicts in policing anti-competitive behavior, the Commission should reaffirm its general rule that sellers with market-based rate authority are prohibited from engaging in conduct that would violate the antitrust laws.

3. Commission Ruling

85. We will adopt Market Behavior Rule 2(d), as revised, to prohibit Sellers from engaging in:

> Collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for electric energy or electricity products.

86. To avoid possible confusion regarding the interpretation and scope of the term proposed in the June 26 Order (concerning ''market prices [set] at levels differing from those set by market forces), we are replacing this term with language consistent our prohibition (''manipulating market prices, market conditions, or market rules for electric energy or electricity products''). Thus, we are prohibiting market manipulation undertaken by one seller acting alone and we are prohibiting market manipulation undertaken collectively.

87. As noted above, commenters, while disagreeing over the scope of our rule, generally agree that a specific market manipulation prohibition addressing collusive acts is both appropriate and necessary. EEI, for example, states that it agrees with the underlying concept embodied in the rule, while Duke concludes that the Commission's rule legitimately targets collusive activity. EPSA, moreover, as part of its code of ethics and sound trading practices, has adopted a similar standard.[48]

88. EEI, however, suggests that our prohibition should simply incorporate by reference existing federal antitrust law and its jurisprudence, while EPSA, *et al.* (reaching the same conclusion) points out that the Commission's proposed prohibition is too vague and overbroad because, among other things, there is no widespread consensus in the industry on the meaning of the term ''creating market prices at levels differing from those set by market forces.''

89. We disagree with these assertions. While commenters are correct in their observation that the prohibition set forth in Market Behavior Rule 2(d), as applied, may be similar in certain respects to the prohibitions set forth in federal antitrust law, specifically to the prohibitions against unreasonable restraints of trade as set forth in the Sherman Anti-Trust Act,[49] our authority as it relates to Market Behavior Rule 2(d) derives not from federal antitrust law, but rather from the FPA itself and its requirement that all rates and charges made, demanded, or received by any public utility subject to our jurisdiction and all rules and regulations affecting or pertaining to such rates and charges be just and reasonable. Our approach includes elements of anti-trust law but is not limited to such. For example, it also encompasses ''partnerships'' whose existence do not implicate anti-trust concerns.[50]

90. Thus, we need not address, here, whether or to what extent federal antitrust law may be broader in scope, in certain instances, or more narrow in scope, in other cases. Federal antitrust law, rather, will apply to sellers in the judicial proceedings or other authorized settings in which it is found to apply. Our rule, on the other hand, will be governed by the unique facts and circumstances at play in the wholesale electric industry and will be interpreted by the Commission consistent with our statutory duties relating to these issues.[51]

91. We also disagree that the Commission's standard is vague and overbroad and thus will not give sellers adequate notice of the conduct it requires or prohibits. While we address commenters' due process challenges in greater detail in Section N, below, we note here, with respect to Market Behavior Rule 2(d) in particular, that our rule merely expands upon the prohibition against market manipulation set forth in Market Behavior Rule 2. As discussed above, moreover, this prohibition is limited to actions or transactions that do not have a legitimate business purpose. As such, a seller cannot be found to have violated the prohibition set forth in Market Behavior Rule 2(d) where the conduct at issue (as known to the seller itself, in the first instance) has a legitimate business purpose. This limitation, we believe, puts sellers on adequate notice regarding the scope of our rule.

92. Finally, we do not agree that the industry lacks an understanding regarding the meaning of the terms referred to in our rule. These terms, rather, have more than a mere

[47] *See* Comments of the FTC at 13; Comments of EPSA, *et al.* at Attachment B, p. 4; Comments of EMI at 7; Comments of EEI at 15; Comments of Duke Energy at 37.

[48] The EPSA standard prohibits parties from colluding with other market participants to affect the price or supply of power, allocate territories, customers or products, or otherwise unlawfully restrain competition.

[49] *See* 15 U.S.C. 1 (2000).

[50] *See* Enron Power Marketing, Inc., *et al.*, 103 FERC ¶ 61,346 (2003) (*Enron Partnerships Order*) (requiring Enron and other entities with whom it had partnerships or other arrangements to show cause why they should not be found to have jointly engaged in manipulation schemes).

[51] *See e.g.*, *Pennsylvania Water & Power Co.* v. *FPC*, 193 F.2d 230, 236 (DC Cir. 1951) (''A rate is not necessarily illegal because it is the result of a conspiracy in restraint of trade in violation of the Anti-Trust Act. What rates are legal is determined by the regulatory statute.'' [cit. omit.]).

hypothetical or theoretical existence, as our recent experience relating to collusion in the Western markets aptly demonstrates.[52]

G. Market Behavior Rule 2(e) (Prohibition Against Certain Bidding Behavior).

1. Commission Proposal

93. In addition to the prohibition against market manipulation, as set forth in proposed Market Behavior Rule 2, we also proposed, as a specific action or transaction that would be prohibited, ''bidding the output of or misrepresenting the operational capabilities of generation facilities in a manner which raises market prices by withholding available supply from the market.''

2. Comments

94. Commenters challenge Market Behavior Rule 2(e) on a number of grounds. As a legal matter, EEI and others assert that the proposed rule is vague and overbroad, thus failing to provide market participants with sufficient notice of the conduct it would require or prohibit.[53] The New York ISO adds that the proposed rule fails to make any distinction between competitive and anti-competitive behavior or set a threshold that would permit market participants to have reasonable flexibility to adjust their bidding behavior in conformance with legitimate market forces. AES asserts that the proposed rule is vulnerable to misinterpretation and would require substantial oversight on the part of regulators.

95. Commenters also argue that the rule, if implemented, should adopt an intent standard, among other revisions. Reliant argues that inadvertent misrepresentations should not be considered violations of the rule and should not subject a seller to the same penalties that would attach to intentional violations. FirstEnergy adds that a seller should not be penalized for the types of action prohibited by the rule absent a showing that the actions at issue were intended to raise market prices above competitive levels.

96. Commenters also address whether and to what extent the proposed rule should define and more squarely address the concepts of physical withholding and economic withholding on an industry-wide basis.[54] Reliant asserts that its proposed definition of physical withholding would include an intent requirement and, with respect to subsection (b), would note that there may be legitimate reasons for not complying with a must-offer requirement.[55] EPSA, *et al.* add that the Commission's rule against physical withholding should include safe harbor language that would not require sellers to run their units in certain specified circumstances (*e.g.*, when doing so would risk jeopardizing public health and safety or damaging the seller's facilities, in order to comply with facility licensing, environmental or other legal requirements; or when doing so would be uneconomic under the given circumstances).

97. Commenters also raise a number of concerns regarding the definition and scope of the term economic withholding, as it might be applied by the Commission under its proposed Market Behavior Rule 2(e) standard. The New York ISO asserts that any prohibition on withholding supply from the market should not be triggered by the inclusion of legitimate opportunity costs in a unit's bid. Reliant, on the other hand, asserts that defining what would and what would not constitute withholding under the proposed rule is virtually undoable.

98. Finally, EEI asserts that because Market Behavior Rule 1 and Market Behavior Rule 2(b) require sellers to operate their generation units consistent with RTO and ISO rules and prohibit the submission of false information, Market Behavior Rule 2(e) is redundant and unnecessary. The New York ISO claims that the prohibitions contemplated by the rule could be implemented by existing market mitigation measures approved by the Commission.

3. Commission Ruling

99. We agree with commenters that Market Behavior Rule 2(e) is redundant and unnecessary and therefore will not adopt it. For the reasons discussed below, we find that Market Behavior Rule 1 sufficiently addresses the concerns we intended to address in proposing the express prohibition embodied in Market Behavior Rule 2(e).

100. Several commenters appear to have misread the intent of our proposed rule. They suggest that, if implemented, the proposed rule would have imposed a must-offer condition in markets in which such a requirement is not currently in effect. However, we did not intend to create this or any other new substantive obligation applicable to sellers, *i.e.*, obligations other than those which already apply to sellers in the markets in which they operate. Our intent, rather, was simply to provide clarity regarding a specific form of market manipulation that would, as proposed, be expressly prohibited under Market Behavior Rule 2.

101. Because our proposed rule related to ''bidding'' into organized markets and to misrepresentations concerning the ''operational capabilities of generation facilities,'' commenters are correct that the requirements addressed by our proposed rule were necessarily tied to the existing requirements of the applicable power markets in which sellers operate and thus were already addressed by the unit operation requirements addressed in Market Behavior Rule 1. Given this overlap, *i.e.*, this redundancy in our proposed rules, we agree with those commenters who assert that Market Behavior Rule 2(e), as proposed, is unnecessary and should be rejected.

102. In reaching this conclusion, however, we are not finding that physical withholding,[56] or economic withholding,[57] cannot be a component of an activity that constitutes market manipulation, as prescribed by Market Behavior Rule 2.[58] Nonetheless, we clarify here that seller's compliance with Market Behavior Rule 1, *i.e.*, with the Commission-approved bidding and outage reporting rules in organized markets, should be sufficient to meet a sellers' obligations concerning bidding and reporting requirements with respect to a generating facility, absent seller's participation in manipulative conduct.

[52] *See Enron Partnerships Order*, 103 FERC at P46.

[53] *See* Comments of EEI at 17; Comments of Southern at 14; Comments of InterGen at 15; Comments of Reliant at 11.

[54] Reliant proposes that the rule be revised to adopt the following standard relating to physical withholding: Entities may not physically withhold the output of an Electric Facility (Generating unit or Transmission Facility) by (a) intentionally falsely declaring that an Electric Facility has been forced out of service or otherwise become unavailable, or (b) intentionally failing to comply with any applicable must-offer conditions of a participating generator agreement.

[55] *See also* Comments of EEI at 16–17 (noting that generating capacity may be withheld from the market for reasons not associated with anti-competitive activity).

[56] The term ''physical withholding'' means not offering available supply in order to raise the market clearing price. Such a strategy is only profitable for a firm that benefits from the higher price in the market.

[57] The term ''economic withholding'' means bidding available supply at a sufficiently high price in excess of the supplier's marginal costs and opportunity costs so that it is not called on to run and where, as a result, the market clearing price is raised. Such a strategy is only profitable for a firm that benefits from the higher price in the market.

[58] To the extent this behavior violated any Commission-approved bidding rules in the applicable power market, moreover, it could also be found to be a violation of Market Behavior Rule 1.

H. Market Behavior Rule 3 (Communications)

1. Commission Proposal

103. In the June 26 Order, we proposed that sellers be required to ''provide complete, accurate, and factual information, and not submit false or misleading information, or omit material information, in any communication with the Commission, market monitors, [RTOs, ISOs], or similar entities.'' We sought comment on whether this proposed rule would be sufficient in its scope and breadth to cover any and all matters relevant to wholesale markets, including maintenance and outage data, bid data, price and transaction information, and load and resource data. In addition, we sought comment on whether this remedial authority would serve as a useful and appropriate tool in ensuring just and reasonable rates.

2. Comments

104. Commenters argue that the proposed rule should only prohibit violations knowingly committed.[59] Reliant points out that accidental violations, including mistakes made when responding to a request for data, or a reasonable but erroneous understanding of the type or scope of information requested, should not constitute a violation of the rule. EEI adds that unintentional errors and omissions occur in the ordinary course of business. Similarly, EPSA, *et al.* submit that market participants should retain the right to challenge requests for information and to exercise their judgment in determining the adequacy of a response, subject to subsequent direction from the Commission.

105. Commenters also favor limitation of the proposed rule to ''Commission-approved entities'' and thus the deletion of the proposed term ''or similar entities.''[60] Commenters argue that the application of the rule to entities other than jurisdictional entities would create unnecessary confusion and uncertainty. Undue market uncertainty is also alleged with respect to the potential scope of the proposed rule. Dynegy, for example, argues that the term ''material information'' creates an overly high and ambiguous standard that is not required to protect sophisticated commercial entities.[61] Similarly, Reliant submits that the word ''complete'' effectively requires sellers to become mind-readers in to order to avoid running afoul of the Commission's rule.[62] Amerada Hess asserts that it should be left to the RTOs, ISOs, and the market monitors to specify what does and what does not fall within the scope of the rule. Finally, commenters argue that the rule should be modified to require that any entity receiving data pursuant to the rule have appropriate data confidentiality protocols in place in order to ensure the confidentiality of the data it receives.[63]

3. Commission Ruling

106. We will adopt Market Behavior Rule 3, as revised. As revised, Market Behavior Rule 3 will require a market-based rate seller to:

> Provide accurate and factual information and not submit false or misleading information, or omit material information in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators or jurisdictional transmission providers, unless Seller exercised due diligence to prevent such occurrences.

107. In adopting this rule, we are emphasizing the need for market-based rate sellers to act honestly and in good faith when interacting with the Commission or organizations and entities tasked by the Commission with the responsibility of carrying out non-discriminatory transmission access and wholesale electric market administration. The integrity of the processes established by the Commission for open competitive markets rely on the openness and honesty of market participant communications.

108. We have modified the proposed rule, however, to make clear that it will only apply to communications with the Commission and entities subject to its jurisdiction. We believe that such clarification is appropriate to assure sellers that the information sought or provided hereunder will be directly related to the wholesale transactions for which they have received market-based rate authority.

109. In addition, we clarify that this rule will not be a basis for a jurisdictional entity requesting or receiving information covered by this rule to compel the provision of such information or to fail to provide requested confidential treatment. The ability to compel the provision of information requested and determinations with respect to requests for confidential treatment will depend on the Commission-approved rules and regulations of the institution requesting or receiving the information.

110. We have also revised the rule to assure that inadvertent submission of inaccurate or incomplete information will not be sanctioned. As revised, the rule prohibits the knowing submission of false or misleading data.[64] In this regard, we intend the ''due diligence'' exception to apply to the entity, not the individual, submitting the data. As such, we expect the seller submitting the information to have in place processes that assure the accuracy of the submitted information. The submission of false or incomplete information on behalf of a seller by an individual that did not personally know it to be false or incomplete in the absence of a process to insure data accuracy and sufficiency will not excuse the seller's conduct under this rule.

I. Market Behavior Rule 4 (Reporting)

1. Commission Proposal

111. In the June 26 Order, we applied the prohibition against false reporting, as set forth in proposed Market Behavior Rule 3, to the reporting of price data to publishers of electricity or natural gas price indices. We proposed that to the extent sellers engage in reporting of transactions to publishers of electricity or natural gas price indices, sellers will be required to provide complete, accurate and factual information to any such publisher. We further proposed that sellers would be required to notify the Commission of whether they engage in such reporting for all sales and that in addition, sellers would be required to adhere to such other standards and requirements for price reporting as the Commission may order.

112. We noted that Staff, in the Western Markets Report, supported the inclusion of such a requirement in sellers' market-based rate tariffs and authorizations.[65] We sought comment

[59] *See* Comments of EPSA, *et al.* at Attachment B, p.6; Comments of EEI at 18–19; Comments of Duke Energy at 38; Comments of Exelon at 13; Comment of Reliant at 18; Comments of MidAmerican Energy at 5.

[60] *See* Comments of EPSA, *et al.* at Attachment B, p. 6; Comments of EEI at 18–19; Comments of Reliant at 18. *But see* Comments of the California Commission at 6 (proposing that the term ''state regulatory authorities'' be added to the list of entities to whom accurate information must be be provided).

[61] *See also* Comments of EPSA, *et al.* at Attachment B, p. 6 (noting that the word ''material'' is not currently defined).

[62] *See also* Comments of Central Vermont, *et al.* at 17.

[63] *See* Comments of Reliant at 18; Comments of EME at 8; Comments of Pinnacle West at 9.

[64] As noted above, we make the same clarification as it relates to Market Behavior Rules 2(b) and 2(c).

[65] *See* June 26 Order, 103 FERC ¶ 61,349 at P28, *citing* Western Markets Report at ES–17. We also noted that EPSA, in its code of ethics and sound trading practices, requires its members to ''ensure that any information disclosed to the media, including market publications and publishers of

Continued

on whether our rule, as proposed, would remedy the abuses outlined by Staff in the Western Markets Report by ensuring that published price indices represent a fair and accurate measure of actual prices and trading volumes. Finally, we noted that in Docket No. AD03–7–000, we were considering certain price formation issues, including a requirement covering the reporting of price data by jurisdictional entities.[66] Accordingly, we proposed to condition our rule by stating that ''seller shall adhere to such other standards and requirements for price reporting as the Commission may order.''

2. Comments

113. Issues raised by commenters with respect to the proposed rule generally mirror the concerns discussed above relating to Market Behavior Rule 3. These concerns include, principally, (i) the absence of an intent standard;[67] (ii) the need for confidentiality when reporting transactions to publishers;[68] and (iii) the importance of clarifying the scope of the information to be reported.[69]

114. With respect to scope, Platts submits that if the Commission does require sellers to state whether they report ''all sales'' to publishers, the Commission should further specify the information it expects to be provided. Platts argues that sellers should be required in their notification to state whether they are reporting their prices for electricity transactions, gas transactions or both, and to state to which publications they are reporting prices. Platts adds that sellers should be required to state that the information they provide to publishers includes all of the company's trading at all North American trading points, not merely a complete set of data for those points at which a seller chooses to report data.

115. The Intercontinental Exchange, Inc. (Intercontinental) argues that since there are only a small number of index publishers relative to the hundreds of sellers, the Commission should compel index publishers to reveal the number of sellers reporting transaction-level data and the number of transactions reported for each index at each hub on a daily (for day-ahead indices) and monthly (for month-ahead indices) basis. Finally, NASUCA and TDU Systems argue that Market Behavior Rule 4 should require mandatory reporting in order to restore liquidity and confidence to electricity and natural gas markets. NASUCA submits that this requirement should apply to all purchases as well as sales.

3. Commission Ruling

116. We will adopt Market Behavior Rule 4, as revised. As revised, Market Behavior Rule 4 will require that a market-based rate seller comply with the following:

> To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement issued by the Commission in Docket No. PL03–3 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

117. In the June 26 Order, we referred to our on-going proceeding investigating price index formation in Docket No. AD03–7–000. As commenters note, since our proposal regarding these rules was issued, we have issued a Policy Statement addressing standards we believe appropriate for the formation of price indices that will be robust and accurate in the context of a voluntary reporting regime.[70] Included in the Policy Statement is an allowance for a ''safe harbor,'' pursuant to which reporting errors would not be subject to Commission sanction (*e.g.*, as seller's conduct may relate to Market Behavior Rule 4).

118. In our rule, as revised herein, we explicitly adopt the standards set forth in the Policy Statement for transaction reporting. Further, we also adopt the ''safe harbor'' set forth therein as a component of our enforcement policy with respect to this rule. In addition, we make clear that all sellers will be required to inform the Commission of their ''reporting status'' within 15 days of the effective date of this revision to their tariff and within 15 days of any subsequent change in reporting status.

119. Finally, several commenters suggest that we require mandatory reporting, while other commenters contend that we have created requirements that will have a chilling effect on reporting. We believe that we have struck an appropriate balance in our rule. For the moment, we are attempting to work within the framework of voluntary reporting. We are awaiting Staff's review of the comprehensiveness of reporting in the wake of our Policy Statement. At this time, we are not mandating reporting. We have engaged in a comprehensive investigation of transaction reporting and related issues and believe the practices set forth in our Policy Statement represent the necessary minimum for those entities that choose to report. Accordingly, we will not require reporting, here, but will set forth practical standards for entities that do report.

J. Market Behavior Rule 5 (Record Retention)

1. Commission Proposal

120. In the June 26 Order, we noted that in the Western Markets Report, Staff recommended that all electric market-based rate tariffs and authorizations be expressly conditioned to require sellers to retain data and information needed to reconstruct a published price index for a period of three years.[71] Based on Staff's recommendation, we proposed and sought comment on the record retention guidelines set forth in Market Behavior Rule 5. Specifically, we sought comment on whether this Market Behavior Rule, as proposed, would ensure that companies adopt suitable retention policies permitting the Commission and interested entities to better monitor these transactions and practices.

2. Comments

121. Commenters generally agree that a data retention requirement of some kind should be imposed on market-based rate sellers, but disagree over the number of years over which this requirement should apply. Some argue that the data retention period should be reduced from the proposed three-year period to a two-year or even one-year requirement,[72] others request that it be

surveys and price indices, is accurate and consistent.''

[66] *Id.* at P31.

[67] *See* Comments of EPSA, *et al.* at Attachment B, pp. 6–7; Comments of EEI at 20; Comments of MidAmerican Energy at 5; Reliant at 20; Comments of National Energy Marketers Association at 13; Comment of PG&E at 11; Comments of EME at 10.

[68] *See e.g.*, Comments of EME at 10.

[69] *See* Comments of Central Vermont, *et al.* at 18; Comments of the FTC at 17–18; Comments of OPG at 5.

[70] *See* Price Discovery in Natural Gas and Electric Markets, 104 FERC ¶ 61,121 (2003).

[71] *See* Western Markets Report at ES–14 and III–52. EPSA, in its code of ethics and sound trading practices, requires its members to ''maintain documentation on all transactions for an appropriate period of time as required under applicable laws and regulations.''

[72] *See* Comments of Central Vermont, *et al.* at 18–19 (two years); Comments of Merrill Lynch, *et al.* at 9 (two years); Comments of FirstEnergy at 21 (two years) Comments of EPSA, *et al.* at Attachment B, p. 7 (one year).

increased to a six-year or even seven-year requirement,[73] and others recommend that it be approved, as proposed.[74]

122. Commenters also raise concerns regarding the scope and specificity of the proposed requirement. EEI, Dynegy and MidAmerican, for example, argue that the language in the rule is too vague, while Exelon submits that the proposed rule would arguably require a seller to retain virtually every piece of paper it generates. These and other commenters conclude that without a more narrow, clearly articulated requirement, the proposed rule could be burdensome and costly.[75] Reliant requests clarification that the data retention requirement not extend to economic analyses associated with the development of prices and bids that underlie the prices charged by a seller (*e.g.*, fuel cost, variable operation and maintenance expenses, or opportunity costs). In addition, Reliant argues that the products specified in Market Behavior Rule 5 be limited to jurisdictional products for which sellers have express authority to sell at market-based rates.

3. Commission Ruling

123. We will adopt Market Behavior Rule 5, as revised. As revised, Market Behavior Rule 5 will require a market-based rate seller to:

> Retain for a period of three years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to this tariff or the prices it reported for use in price indices.

124. In revising this rule, we clarify that we are not seeking retention of ''cost-of service'' or analytical data related to all sales, as some commenters perceived from our use of the word ''reconstruction'' in our original proposal. Rather, we are requiring that sellers retain the complete set of contractual and related documentation upon which they billed their customers for their sales. The sales contemplated are sales made pursuant to the seller's market-based rate tariff. The Commission is indifferent as to whether this material is retained in paper form or in an electronic medium as long as the data can be made accessible in a reasonable fashion if its review is required by the Commission or its Staff.

125. In addition, commenters suggest that the length of the retention period may be burdensome. On balance, however, requiring sellers to retain records for the period proposed, *i.e.*, for three years, will not constitute an undue burden on sellers, particularly given the fact that sellers can satisfy this requirement either by retaining their records in a hard copy form or electronically. To permit a shorter retention period may not allow sufficient time for the investigations into possible violations.

K. Market Behavior Rule 6 (Related Tariff Matters)

1. Commission Proposal

126. In the June 26 Order, we noted that in the Western Markets Report, Staff had found that sellers had failed to abide by their market-based rate codes of conduct[76] and their Order No. 889 standards of conduct.[77] We noted that these tariff provisions, among other things, required the functional separation of transmission and wholesale merchant personnel. We sought comment on whether Market Behavior Rule 6, as proposed, was sufficient in its scope and breadth to cover any and all matters relating to violations of the market-based rate codes of conduct and the Order No. 889 standards of conduct.

2. Comments

127. Notwithstanding the discussion which accompanied our proposed rule, commenters suggest that the language set forth in Market Behavior Rule 6, as proposed, could be construed to apply to codes of conduct other than sellers' market-based rate codes of conduct. Accordingly, commenters seek clarification that the codes of conduct to which Market Behavior Rule 6 refers are the codes of conduct contained in sellers' market-based rate schedules. EEI also challenges the proposed rule as being too heavy-handed, permitting the Commission, in theory, to revoke a seller's market-based rate authority for any code of conduct or standards of conduct violation, no matter how small or insignificant the infraction (*e.g.*, failing to correctly post a job description).[78]

3. Commission Ruling

128. We will adopt Market Behavior Rule 6, as revised. As revised, Market Behavior Rule 6 will require that a market-based rate seller:

> Not violate or collude with another party in actions that violate Seller's market-based rate code of conduct or Order No. 889 standards of conduct, as they may be revised from time to time.

129. Market Behavior Rule 6 is designed to emphasize our commitment to make certain that entities adhere to our electric power sales code of conduct and Order No. 889 standards of conduct. In response to commenter concerns, we have revised this rule to add clarity. In revising this rule, we clarify that this rule applies to a seller's electric power sales code of conduct contained in a Seller's market-based rate tariff or rate schedule as well as seller's Order No. 889 standards of conduct. We intend that any violation of this provision will subject the seller and its affiliates to disgorgement of unjust profits, as applicable, or other remedies as the Commission may find appropriate.

130. We further clarify that, in adopting this rule, it is not the Commission's intention to order disgorgement of unjust profits or other remedies for inadvertent errors (such as incorrectly posting a job description). However, the Commission is concerned with all violations and, in particular, those violations which involve affiliate sales and preferential treatment, including access to transmission information or service.

L. Additional Rules and Alternative Options

1. Commission Proposal

131. In the June 26 Order, we noted that the prohibitions set forth in our proposed Market Behavior Rules represented only one of the tools available to the Commission to ensure just and reasonable rates and that in undertaking our enforcement decisions, we would focus on the best outcome for assuring just and reasonable rates in our jurisdictional markets. We stated that in some instances, significant remedial action may be warranted, while in other instances, we may use a specific set of facts and circumstances to clarify our requirements for acceptable public utility activities. We noted that in formulating our proposed rules, we were required to balance a number of competing interests. We sought comments from interested entities on whether our proposed rules struck the appropriate balance.

[73] *See* Comments of NASUCA at 23 (six years); Comments of East Texas Cooperatives at 10 (seven years).

[74] *See* Comments of Reliant at 21.

[75] *See e.g.*, Comments of Duke Energy at 39–40.

[76] The Commission requires a market-based rate code of conduct when a power marketer is affiliated with a public utility with a franchised service area and captive customers. *See* Carolina Power & Light Company, 97 FERC ¶ 61,063 (2001).

[77] *See* Open Access Same-time Information System and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,135 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs ¶ 31,049 (1997), *reh'g denied*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[78] *See also* Comments of EME at 11 (asserting that the proposed rule is vague and ill-defined).

2. Comments

132. A number of commenters assert, in effect, that the Commission's proposed Market Behavior Rules fail to strike the necessary balance of interests, given the Commission's asserted failure to address various additional issues.

133. El Paso Electric Company (El Paso), for example, states that June 26 Order failed to examine or otherwise provide any understanding on a number of important threshold questions underlying the Commission's stated objectives in this proceeding. Specifically, El Paso asserts that the Commission is attempting to articulate Market Behavior Rules without a full understanding of what constitutes a market, what dynamics foster a competitive market, and what kinds of behavior are beneficial or harmful.

134. The FTC points out that structurally competitive markets are generally the best remedy against anticompetitive behavior and that, as such, the Commission should give high priority to achieving structurally competitive markets while it pursues interim measures, if any, to address Market Behavior Rule violations. Similarly, EPSA, *et al.* submits that the solution for most of the alleged and actual inappropriate market behavior is well-functioning markets with clear and efficient rules that foster efficient investment and competitive behavior.[79]

135. In addition, commenters assert that the Market Behavior Rules should apply to all market participants, including transmission owners and load serving entities (LSEs). AE Supply argues that buyers who manipulate markets to depress prices should be subject to complaints by sellers to recover appropriate surcharges. EEI notes that this could be accomplished by including the Market Behavior Rules in the tariffs administered by all RTOs, ISOs, and the Western Systems Power Pool.

136. APPA, TAPS, and TDU Systems propose that the Commission broaden the scope of its undertaking in this proceeding by addressing structural market issues. APPA and TAPS propose as additional rules, a requirement imposing long-term sales obligations for the benefit of LSEs, a requirement for capacity auctions to de-concentrate generation, and additional rules providing for greater access to transmission and the relief of existing transmission constraints. TDU Systems recommends that the Commission take action on its proposed supply reassessment screen to provide an up-front measure of a seller's potential market power.

3. Commission Ruling

137. We share the views of those commenters who assert that the Commission's proposed Market Behavior Rules, taken alone, will not be adequate to ensure that the rates, terms and conditions offered by market-based rate sellers will be just and reasonable. We also agree with EPSA, *et al.* and others that a well functioning market may be the best single, long-term remedy against the abuse of market power. In fact, the Commission is pursuing these efforts in other concurrent proceedings.[80]

138. As we have recognized in the past, however, even in a structurally competitive market, individual sellers may have the ability to exercise market power. Individual sellers may have the ability to engage in market manipulation or other deceptive practices. Thus, it is appropriate that the Commission delineate well-defined rules of the road applicable to market-based rate sellers. Where these rules are violated, it is appropriate that the Commission provide a remedy for such conduct. It is important that such conduct be deterred to the extent possible.

M. Available Remedies and Complaint Procedures

1. Commission Proposal

139. In the June 26 Order, we indicated that in complaint proceedings brought before the Commission to enforce our proposed Market Behavior Rules, the principal remedy available to complainants for any Market Behavior Ruleviolation shown to have occurred (in addition to the potential revocation of the seller's market-based rate authority) would be the disgorgement of the seller's unjust profits attributable to the specific violation at issue.[81]

140. In addition, we proposed to limit the applicability of potential disgorgement of unjust profits exposure by requiring that any violation alleged by a market participant be made on a transaction-specific basis and that any market participant request for disgorgement relief be made no later than 60 days after the end of the calendar quarter in which the violation is alleged to have occurred. We proposed that if a market participant can show that it did not know and should not have known of the behavior which forms the basis for its complaint within the period prescribed in our proposal, then the 60-day period would be deemed to run from the time when the market participant knew or should have known of the behavior. Finally, we proposed that these time limitations not apply to enforcement actions undertaken by the Commission.

2. Comments

141. EEI rejects the remedial approach set forth by the Commission in the June 26 Order. EEI asserts that to avoid regulatory uncertainty, the Commission should only pursue remedies on a prospective basis after the Commission identifies new market problems and/or the need for new market rules.

142. Numerous comments (both pro and con) were received regarding the specific financial remedy proposed by the Commission, *i.e.*, a disgorgement remedy. On the one hand, commenters challenge the Commission's authority to impose any remedies at all in this context based on various legal challenges (discussed below), the impracticalities involved in attempting to calculate such a remedy, and/or the commercial undesirability of doing so.[82] Other commenters stake out a position on the opposite end of the spectrum, suggesting that a financial remedy limited to the disgorgement of unjust profits is entirely inadequate, unfair, and will not provide a sufficient deterrent against sellers who violate the Commission's rules.[83] The middle ground position between these two polar views, *i.e.*, a disgorgement remedy that would not require the seller to make the market whole (as proposed by the Commission in the June 26 Order), is supported by EPSA, *et al.* and others.

[79] *See also* Comments of East Texas Cooperative at 4–6 (stating that the lack of competitive markets remains a fundamental concern); Comments of ANP, *et al.* at 14 (the Commission should continue to rely on preventive measures tailored to specific markets, rather than adopting blanket rules that, by their own design, cannot stop anticompetitive behavior); Reply Comments of TDU Systems at 3 (noting that the Commission must address not only the behavior of market participants but the structure of the markets themselves).

[80] *See e.g.*, Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,145 (2003); California Independent System Operator Corporation, 105 FERC ¶ 61,140 (2003).

[81] June 26 Order, 103 FERC ¶ 61,349 at P38.

[82] *See* Comments of EEI at 22–26; Comments of TransCanada at 4; Comments of Southern at 18 (noting that it may prove difficult, if not impossible, to calculate unjust profits in the context of market-based rates); Reply Comments of Mirant and TransAlta at 11 (noting that disgorgement liability could completely chill bulk power markets and severely limit capital market access for bulk power market participants); Reply Comments of Cinergy Services, Inc. (Cinergy) at 1–4 (arguing that a make-whole remedy would be unreasonable, unnecessary, impractical, and unauthorized by the FPA).

[83] *See* Comments of TDU Systems at 10; Nucor Steel, *et al.* at 7; SMUD at 6–7; PG&E at 3; Comments of Cal ISO at 5; Comments of NASUCA at 31; Comments of Cal Oversight Board at 5–6; Reply Comments of Central Maine, *et al.* at 8–9.

143. Commenters also stake out a number of different positions regarding the Commission's proposed 60-day complaint limitation rule. EPSA, *et al.* and others submit that this complaint limitation proposal is both necessary and appropriate, as it relates to market participant complaints because, among other things, it will promote transactional certainty.[84] Others, including TDU Systems and East Texas Cooperatives, submit that this time limitation requirement will significantly undermine the Commission's overall objectives in this proceeding. Similarly, Central Maine, *et al.* argue for an extended period in which to file complaints, given (it contends) the complexity of an LMP-based market (and the time it requires to analyze market outcomes), the practicalities associated with billing cycles and correction periods, and the administrative burden associated with determinations of when a particular party knew or should have known of a rule violation. NECPUC submits that, at a minimum, the 60-day rule should be modified by providing all market participants 180 days to file a complaint from the date they know, or should know, of the violation at issue.[85]

144. Commenters also address the Commission's statement in the June 26 Order that it would not be bound by the 60-day complaint limitation requirement applicable to market participant complaints. On the one hand, the Louisiana Commission asserts that this 60-day complaint exemption is appropriate and that it should also apply to state regulators. On the other hand, EPSA, *et al.* and EEI warn that such an allowance would constitute an open-ended risk that the Commission might question any seller's transaction at any time (even in response to a hotline complaint made by a market participant otherwise precluded from filing a complaint) and would have a chilling effect on the market.[86]

145. Commenters seek a number of clarifications regarding the Commission's role in enforcing its Market Behavior Rules. EPSA, *et al.* seek clarification that while the Commission might reexamine transactions and provide guidance at any time, it will nonetheless be bound by the time limitation imposed herein with respect to any remedies it might impose. Central Vermont, *et al.* also seek a limitation on the Commission's authority in this area, proposing that there be a time limit of six months following the date on which the violation is alleged to have occurred for the Commission to initiate an investigation and order disgorgement of unjust profits. The California Commission seeks clarification that a Commission Staff investigation initiated in response to an alleged tariff violation will be open to the public, noting that complaint proceedings initiated by other parties will necessarily be open to the public. Mirant and TransAlta also assert that the triggering event for bringing a complaint or initiating an investigation is unclear in the Commission's proposal. These entities propose that the triggering event be the time that the transaction at issue is entered into, absent fraud or the willful withholding of material information. Finally, Nucor Steel, *et al.* propose that revocation of a seller's market-based rate authority be made mandatory if it is determined that the seller is in violation of any Market Behavior Rule.

3. Commission Ruling

146. We will adopt the remedies and complaint procedures outlined in the June 26 Order, as revised (*see* Appendix B). Specifically, we will adopt the remedies and complaint procedures as they relate to market participant complaints, subject to the modification that the complaint limitation period will be 90-days, not 60-days, as proposed. Thus, a complaint must be brought within 90 days from the end of the calendar quarter in which the violation has been alleged to have occurred, unless a complainant can show that it did not know or should not have known of the behavior which forms the basis for its complaint within this time period.

147. Upon consideration of the comments received concerning our 60-day proposal, in the Commission's view the 60-day time period may be insufficient time for parties to discover and act upon violations of these rules. Accordingly, the Commission will modify its original proposal to allow 90 days from the end of the quarter from which a violation occurred for a party to bring a complaint based on these rules. A 90-day time period provides a reasonable balance between encouraging due diligence in protecting one's rights, discouraging stale claims, and encouraging finality in transactions. Furthermore, the Commission clarifies that its exception regarding the time period applicable to the filing of a complaint, where the complainant could not have known of the alleged violation, incorporates a reasonableness standard, *i.e.*, the 90-day time period to file a complaint does not begin to run until a reasonable person exercising due diligence should have known of the alleged wrongful conduct. Rather than being impermississibly vague, this safeguard ensures a sufficient time-period for complainants to discover hidden wrongful conduct and submit a claim.

148. We will also place a time limitation on Commission enforcement action for potential violations of these Market Behavior Rules. The Commission, unlike the market participants who may be buyers or otherwise directly affected by a transaction, may not be aware of actions or transactions that potentially may violate our rules. Thus, the Commission will act within 90 days from the date it knew of an alleged violation of its Market Behavior Rules or knew of the potentially manipulative character of an action or transaction. Commission action in this context means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR part 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject transaction. Knowledge on the part of the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

149. We will not adopt commenters' additional proposed revisions and arguments. First, we reject EEI's argument that the disgorgement remedy proposed in the June 26 Order is inappropriate, because, EEI asserts, it will retroactively or retrospectively declare actions to be market abuses when such actions were not envisioned when the rules were promulgated. In fact, EEI's premise is mistaken. Our Market Behavior Rules establish clear advance guidelines to govern market participant conduct. Moreover, in approving these Market Behavior Rules and requiring sellers to be fully accountable for any unjust gains attributable to their violation, we do not foreclose our reliance on existing procedures or other remedial tools, as may be necessary, including generic rule changes or the approval of new market rules applicable to specific

[84] *See also* Reply Comments of EEI at 12–13; Reply Comments of Cinergy at 4–6.

[85] *See also* Comments of SMUD at 5–6 (pointing out that a market participant that uncovers a violation on the last day of the calendar quarter has only one third the amount of time to prepare a complaint as a market participant who happens to find evidence of a violation on the first day of the calendar quarter); Reply Comments of TDU Systems at 5.

[86] *See also* Reply Comments of Mirant and TransAlta at 8.

markets.[87] As always, we will consider the full range of options available to the Commission to promote competition and to ensure that rates remain just and reasonable.

150. We also reject commenters' assertions that a disgorgement remedy may be difficult to calculate in a particular case, or may operate as a chill on the market in other circumstances. The concerns raised by commenters, in this regard, are speculative at best. Moreover, any such concerns can be fairly evaluated by the Commission on a case-by-case basis, with a full opportunity for input from all interested parties. Thus, we need not reject a disgorgement remedy in all cases simply because it may be inappropriate to apply (and need not be imposed) in a specific case. For the reasons discussed below (*see* Section H, ''Legal Authority'') we will also reject the assertion that the Commission is precluded from applying a disgorgement remedy under section 206 of the FPA or on due process grounds.

151. We also reject commenters' assertions that, in enforcing our Market Behavior Rules, the Commission should consider a make-the-market-whole remedy. In fact, the remedies outlined by the Commission in the June 26 Order, including the possible revocation of Sellers' market-based rate authority, will provide a sufficient inducement for sellers to comply with our rules. Our primary focus, in this regard, is on encouraging appropriate market behavior and deterring inappropriate market behavior.

152. Finally, we will reject the proposal made by Mirant and TransAlta that the triggering event applicable to market participant complaints be the date on which the transaction was entered into, absent fraud or willful withholding of material information on the part of the seller. We will not limit market participant complaints in this way. First, the Commission's Market Behavior Rules address both actions and transactions and thus cannot be limited to dates applicable to transactions alone. For example, the declaration of an outage, as addressed by Market Behavior Rule 1, could be an action that does not necessarily involve a transaction.[88] Second, the June 26 Order was clear that the 60-day requirement would be triggered by the occurrence of the violation, which (in the case of a transaction) could come well after the transaction date. Finally, the extension of this 60-day period, we said, would be based on whether the complainant knew or should have known of the behavior which forms the basis for its complaint, not fraud or any other conduct that the complainant would be required to attribute to the seller as a pre-condition to its right to seek relief.

N. Legal Authority

1. Commission's Findings in the June 26 Order

153. In the June 26 Order, we concluded that section 206 of the FPA would not bar the Commission from either approving or enforcing our proposed Market Behavior Rules.[89] We noted that we had initiated this proceeding under section 206, for the purpose of examining whether sellers' market-based rate tariffs are just and reasonable, or whether, conversely, they should be revised as proposed herein. We stated that should we determine that sellers' currently effective tariffs are unjust and unreasonable or may lead to unjust and unreasonable rates without the inclusion of the market behavior rules we proposed herein, we would require that these tariffs be revised to include the rules prospectively, as section 206 requires.

154. We also found that the refund limitations of section 206(b) would not bar the Commission from enforcing our proposed Market Behavior Rules. We found that any remedies stemming from a violation of our proposed tariff provisions would be based on the tariff conditions themselves, as approved herein, and that we were fully authorized to take actions and impose remedies when tariffs are violated.

2. Comments

155. A number of commenters continue to challenge the Commission's authority to promulgate and/or enforce its proposed Market Behavior Rules, given the asserted limitations of Section 206 of the FPA.[90]

156. In addition, commenters also challenge one or more of the Commission's proposed Market Behavior Rules on due process grounds.[91] Southern, for example, argues that fundamental concepts of due process require that standards of conduct be sufficiently clear and unambiguous so as to provide a reasonable guide by which to identify prohibited conduct.[92] Southern further asserts that basic principles of administrative law require agencies to provide regulated entities with adequate notice of the conduct expected of them.[93] Southern adds that an agency fails to provide fair notice if the regulations and other policy statements issued by the agency are so unclear that regulated entities are unable to identify with ascertainable certainty the standards with which the agency expects parties to conform.[94]

157. AE Supply points to two Commission cases in which the Commission required the proposed tariff provisions at issue to impose a more clear and specific obligation and suggests that applying this same degree of specificity here, the Commission's proposed rules do not pass muster. AE Supply states that in *California Power Exchange*,[95] the Commission held that a tariff provision addressing the improper use of market power could only prohibit specific actions or specific outcomes and required the utility to provide actual examples of the specific actions that would be prohibited. AE Supply further notes that in *New York Independent System Operator, Inc.*,[96] the Commission rejected a proposed market power mitigation remedy, in part, because the New York ISO had not described with enough specificity the types of conduct that would trigger the imposition of the proposed measures and because the New York ISO had not established specific thresholds or bright line tests that would trigger the

[87] Moreover, if Congress grants the Commission additional remedial power, including the authority to levy civil penalties, the Commission will, in addition to the remedies set forth herein, implement such authority and utilize it when appropriate for violations of these Market Behavior Rules.

[88] In this regard, while we held in the June 26 Order that our disgorgement remedy, in the context of a market-participant complaint, could only be sought on ''transaction-specific basis,'' we clarify here that this requirement, as it relates to actions, need only refer to specific actions.

[89] *See* June 26 Order, 103 FERC ¶ 61,349 at P46. Our discussion of this issue, we noted, was prompted by the comments we received in response to the more broadly-stated tariff condition proposed in our Initial Order issued in this proceeding. *See* Initial Order, 97 FERC at 61,976 and note 4, *supra*.

[90] *See e.g.*, Comments of EEI at 27; Comments of ANP. Inc., *et al.* at 6–10; Comments of Central Vermont, *et al.* at 3; Comments of Cinergy at 21; Comments of Duke Energy at 14; Comments of FPL Energy, LLC at 9; Comments of Mirant and TransAlta at 6; Comments of TransCanada at 6.

[91] *See* Comments of EEI at 23; Comments of Southern at 13; Comments of ANP Inc., *et al.* at 1012; Comments of BPA at 5; Comments of BP Energy Company at 4–5; Comments of Cinergy at 23; Comments of Duke Energy at 8; Comments of InterGen at 9; Comments of Mirant and TransAlta at 18; Comments of TransCanada at 5.

[92] *See* Comments of Southern at 13, *citing Gates & Fox, Co.* v. *OSHRC*, 790 F.2d 154, 155 (DC Cir. 1986).

[93] *Id.*, *citing Satellite Broadcasting Company, Inc.* v. *FCC*, 824 F.2d 1, 3 (DC Cir. 1987); *McElroy Electronics Corporation* v. *FCC*, 990 F.2d 1351, 1358 (DC Cir. 1993).

[94] *Id.*, *citing Trinity Broadcasting of Florida, Inc.* v. *FCC*, 211 F.3d 618, 628 (DC Cir. 2000).

[95] 88 FERC ¶61,112 at 61,265 (1999).

[96] 89 FERC ¶61,196 at 61,605 (1999).

conclusion that market power had been exercised.

3. Commission Ruling

158. For the reasons discussed below, we find that: (i) the Commission is not barred by section 206 of the FPA from approving Market Behavior Rules applicable to market-based rate sellers, or allowing as a remedy the disgorgement of unjust profits and other remedies, as discussed herein; and (ii) these Market Behavior Rules are not unduly vague or overbroad.

159. First, we reject the suggestion that the potential financial consequences for sellers found to be in violation of the Commission's Market Behavior Rules would violate the refund limitations set forth in section 206(b) of the FPA.[97] As we noted in the June 26 Order, we initiated this proceeding under Section 206 for the purpose of examining whether sellers' market-based rate tariffs are just and reasonable, or whether, conversely, they should be revised as proposed herein. We stated that should we determine that sellers' currently effective tariffs are unjust and unreasonable or may lead to unjust and unreasonable rates without the inclusion of Market Behavior Rules, we would require that these tariffs be revised, but only on a prospective basis, as section 206 requires.

160. Our Market Behavior Rules will operate as conditions to the grant of market-based rate authority and the Commission, in such a case, has broad authority to impose conditions that will help ensure that rates are within a zone of reasonableness. We held in the June 26 Order and reiterate here that the approval of Market Behavior Rules, under these circumstances, and any future remedies imposed for their violation, would neither violate the filed rate doctrine nor the refund limitations of section 206(b).[98]

161. Further, the Commission has the authority to impose the appropriate remedy where it finds that violations of its Market Behavior Rules have occurred.[99] In particular, we reject the argument that a violation of an existing condition of service may not be remedied by the Commission from the time the violation occurred. In fact, the courts have held that the Commission has this authority in the fully analogous context presented by the Natural Gas Act (NGA).[100] The courts have also held that the Commission has a great deal of discretion when imposing remedies devised to arrive at maximum reinforcement of Congressional objectives.[101] In devising its remedy, the Commission is required to exercise its discretion to arrive at an appropriate remedy,[102] and to explore all equitable considerations and practical consequences of its action pursuant to its statutory delegation.[103]

162. In addition, this order is based upon the Commission's finding after hearing that existing tariffs are unjust and unreasonable under section 206 of the FPA. In a proceeding brought pursuant to these rules, the issue would be whether the entity has violated its tariff. Therefore, in a remedial proceeding brought pursuant to these rules, unlike an FPA section 206 investigation initiated by the Commission, the regulated entity has notice of the conditions required for service at the time of the implementation of the service conditions and the Commission may, at its discretion, fashion an appropriate remedy.

163. In addition, we find that our Market Behavior Rules, including specifically the prohibitions set forth in Market Behavior Rule 2 (relating to market manipulation), are not unduly vague on their face.[104] While constitutional due process requirements mandate that the Commission's rules and regulations be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit,[105] this standard is satisfied ''[i]f, by reviewing [our rules] and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.''[106] Our Market Behavior Rules will satisfy this due process requirement ''so long as they are sufficiently specific that a reasonably prudent person, familiar with the conditions the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require.'' [107]

164. As applied by the courts, this due process standard has been held to allow for flexibility in the wording of an agency's rules and for a reasonable breadth in their construction.[108] The courts have recognized, in this regard, that specific regulations cannot begin to cover all of the infinite variety of cases to which they may apply and that ''[b]y requiring regulations to be too specific, [courts] would be opening up large loopholes allowing conduct which should be regulated to escape regulation.'' [109]

165. The Supreme Court has further noted that the degree of vagueness tolerated by the Constitution, as well as the relative importance of fair notice and fair enforcement, depend in part on the nature of the rules at issue.[110] In *Hoffman*, for example, the Court held that in the case of economic regulation (as opposed to criminal sanctions), the vagueness test must be applied in a less

[97] Section 206(b) requires that any refunds made in a section 206 proceeding initiated by the Commission on its own motion be based on a refund effective date no earlier than 60 days after the publication by the Commission of notice of its intent to initiate such a proceeding, or, in the case of a complaint, no earlier than 60 days after the complaint was filed. Section 206(b) also limits the refund effective period to five months after the expiration of such 60-day period.

[98] *See San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services, et al.*, 97 FERC ¶ 61,121, 61,370 (2000), *order on reh'g, San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services, et al.*, 97 FERC ¶ 61,275 (2001), *appeal pending, Public Utilities Commission of the State of California, et al.* v. *FERC,* Nos. 01–71051, *et al.* (9th Cir., June 29, 2001).

[99] *See e.g., Coastal Oil Corp,* v. *FERC*, 782 F.2d 1249 (DC Cir. 1986).

[100] *See* Consolidated Gas Transmission Corp., *et al.*, 771 F.2d 1536 (DC Cir. 1985) (holding that the Commission has the authority under section 16 of the NGA to order retroactive refunds to enforce conditions in certificates).

[101] The courts have held that ''the breadth of agency discretion is, if anything, at its zenith when the action assailed relates * * * to the fashioning of policies, remedies and sanctions.'' *Columbia Gas Transmission Corp.* v. *FERC*, 750 F.2d 105, 109 (DC Cir. 1984), *quoting Niagara Mohawk Power Corp.* v. *FPC*, 379 F.2d 153, 159 (DC Cir. 1967).

[102] *Gulf Oil Corp.* v. *FPC*, 536 F.2d 588 (3rd Cir. 1977), *cert denied*, 434 U.S. 1062 (1978), *reh'g denied*, 435 U.S. 981 (1978).

[103] *Continental Oil Co.* v. *FPC*, 378 F.2d 510 (5th Cir. 1967) and *FPC* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145 (1962).

[104] We note that due process challenges regarding the application of our rules to a particular case are not presented in this proceeding. Thus, commenters' arguments are limited to a facial challenge to our rules, *i.e.*, an assertion that one or more of our rules is vague in all its possible applications.

[105] *See Freeman United Coal Mining Company* v. *Federal Mine Safety and Health Review Commission*, 108 F.3d 358, 362 ((DC Cir. 1997) *(Freeman).*

[106] *See General Electric Co.* v. *EPA*, 53 F.3d 1324, 1329–30 (DC Cir. 1995) (holding that the agency's interpretation of its rules was ''so far from a reasonable person's understanding of the regulations that [the regulations] could not have fairly informed GE of the agency's perspective.'').

[107] *See Freeman*, 108 F.3d at 362. *See also Faultless Division, Bliss & Laughlin Industries, Inc.* v. *Secretary of Labor*, 674 F.2d 1177, 1185 (7th Cir. 1982) (''[T]he regulations will pass constitutional muster even though they are not drafted with the utmost precision; all that due process requires is a fair and reasonable warning.'').

[108] *See Grayned* v. *City of Rockford*, 408 U.S. 104, 110 (1971) (holding that an anti-noise ordinance was not vague where the words of the ordinance ''are marked by flexibility and reasonable breadth, rather than meticulous specificity.'').

[109] *See Ray Evers Welding Co.* v. *OSHRC*, 625 F.2d 726, 730 (6th Cir. 1980).

[110] *See Village of Hoffman Estates, et al.* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1981) (Hoffman).

strict manner because, among other things, ''the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process.'' [111]

166. Applying these standards here, we find that our Market Behavior Rules satisfy the requirement of due process. Market Behavior Rule 1, for example, gives sellers ''ascertainable certainty'' that in operating and scheduling their generation facilities, undertaking maintenance, declaring outages, and committing or otherwise bidding supply, they must do so in a manner that ''complies with the Commission-approved rules and regulations of the applicable power market.'' There can be no reasonable uncertainty, in this regard, as to what these broadly-practiced, generally-understood activities encompass in the wholesale electric utility industry (*i.e.*, operating facilities, scheduling, undertaking maintenance, declaring outages, and bidding supplies). Nor can there be any reasonable doubt as to the ''rules and regulations'' to which the rule applies.[112]

167. Similarly, we cannot agree that the prohibitions against market manipulation, as set forth in Market Behavior Rule 2, are unclear in their requirement. It should be noted, in this regard, that our requirement that seller's actions or transactions have a ''legitimate business purpose'' is intended to give sellers an opportunity to explain their actions, while still safeguarding market participants against market manipulation for which there can be no legitimate business purpose attached. Sellers will not be required to guess at the meaning of this term, as applied, then, because the term can only have meaning with specific reference to a seller's own business practices and motives, *i.e.*, if the seller has a legitimate business purpose for its actions or transactions, it cannot be sanctioned under this rule.

168. Moreover, as fully discussed in the June 26 Order and reiterated above, there is an important justification underlying our prohibition against market manipulation. We must be able to protect market participants against abuses whose precise form and nature cannot be envisioned today. As we have previously stated, in establishing these rules, we have worked to strike a necessary balance. We have attempted to set forth with sufficient specificity the class of behaviors we intend to prohibit and to do so in a manner that will inform market-based rate sellers of the type of activities that are consistent with just and reasonable rates. At the same time, we have also attempted to maintain our ability to address particular activities and situations that cannot be envisioned today. Our Market Behavior Rules, we have said, are designed to codify our requirements and provide a regulatory vehicle for their enforcement going forward.

169. The Commission would not be able to fulfill its statutory responsibilities, however, if it established rules addressing future activities based only on the specificity of the past. While we have provided clarity and specificity, where possible, with respect to our experience with past market conduct, we must also establish general rules to prohibit a class of behavior going forward if we are to adequately protect customers to ensure that rates are the product of competitive forces (and thus are just and reasonable). Thus, our Market Behavior Rules have been designed to meet these twin objectives—to be specific in order to inform sellers as to the type of behavior that is prohibited today, while containing enough breadth and flexibility to address new and unanticipated activities, as they may arise in the future.

170. In sum, we believe our Market Behavior Rules, as modified, explained and approved herein, put sellers and all market participants on fair notice regarding the conduct we seek to encourage and the conduct we seek to prohibit. Stripped to their essentials, these guidelines amount to the following: (i) Act consistently within the Commission's established rules; (ii) do not manipulate or attempt to manipulate power markets; (iii) be honest and forthright with the Commission and the institutions it has established to implement open-access transmission and entities publishing indices for the purpose of price transparency; and (iv) retain associated records. Viewed in this context, there can be no reasonable uncertainty over the underlying objectives embodied in our rules or their requirements going forward.

171. Nonetheless, we are committed to making our Market Behavior Rules as specific as they possibly can be and thus, as discussed above, we are adopting a number of the revisions proposed by commenters in order to better focus and fine-tune the scope and application of our rules.

172. With respect to Market Behavior Rule 2, we have clarified that the rule applies to actions without a legitimate business purpose which are undertaken for the purpose of manipulation of wholesale power markets or prices and that actions which are explicitly contemplated in Commission approved processes such as virtual load or supply bidding are not considered manipulation.[113] We have further explained that implementing Market Behavior Rule 2, we will consider all of the relevant facts and circumstances surrounding the particular transaction in question to determine whether the market-based rates sellers actions were without a legitimate business purpose but rather taken to impact the competitive market in a manner inconsistent with just and reasonable rates. We recognize that our standard is necessarily non-specific with respect to the particular activities it prohibits but believe that our explanation of its meaning and associated enforcement philosophy accompanying the rule make clear that we are acting to prohibit actions which create or are designed to create artificial prices which would not have existed in a competitive market but for the manipulative acts. We have provided specific examples of such acts in Market Behavior Rule 2(a) through 2(d).[114] As explained above, we expect our administration of this rule will provide a vehicle to highlight specific prohibited activities on a case-by-case basis.

173. We have also revised the language of Market Behavior Rules 3 and 4 to assure that inadvertent factual errors in communications will not be sanctionable under our rules and, with respect to Market Behavior Rule 3, that only the Commission and entities relied upon by the Commission to implement open access transmission are the entities triggering seller's factual reporting obligations. We have also revised Market Behavior Rule 5 to make clear that we are not requiring ''cost-based'' or other data but rather the data upon which the seller based its market-based

[111] *Id. See also Texas Eastern Products Pipeline Co.* v. *OSHRC*, 827 F.2d 46, 50 (7th Cir. 1987) (''Texas Eastern, as a major pipeline company, in which trenching and excavation are a part of its routine, had ample opportunity to know of the earlier interpretation, should have been able to *see* the sense of the regulations on their face, and if still in doubt Texas Eastern should have taken the safer position both for its employees and for itself.'').

[112] In fact, as discussed above, we are adopting the clarification that the rules and regulations to which this rule refers are limited to ''Commission-approved'' rules and regulations.

[113] Statutes such as section 10(b) of the Securities and Exchange Act of 1937, 15 U.S.C. 78j (2000), prohibit the usage of any ''manipulative or deceptive device or contrivance'' in connection with the sale of securities. Courts have recognized that specific examples of such prohibited activities would emerge over time while market participants understood that ''market manipulation'' related to certain types of practices.

[114] As noted above, we have also deleted proposed Market Behavior Rule 2(e).

charges to its buyer and upon which it reported its transactions to index publishers.

174. In sum, we have carefully considered our proposal and the comments we have received in light of our obligation to assure that wholesale power rates are just and reasonable and that sellers subject to our regulation are fairly apprised of their obligations as participants in a competitive power market subject to Commission oversight. We believe the rules we are establishing herein will allow us to assure just and reasonable rates and provide an adequate basis for sellers to understand our expectations of them.

O. RTO/ISO Coordination Issues

1. Commission Proposal

175. In the June 26 Order, we noted that the Market Behavior Rules we were proposing would apply to any market-based rate sale, whether in the bilateral market or in an organized market, *i.e.*, in the bid-based markets administered by RTOs or by an ISO. We stated that these Market Behavior Rules were intended to complement any RTO or ISO tariff conditions and market rules that may apply to sellers in these markets.[115]

2. Comments

176. Commenters disagree over whether and to what extent the Commission's Market Behavior Rules should be applied in organized markets. Some argue that in these markets, the Market Behavior Rules should not apply.[116] The New York ISO, the New York Commission, and ELCON seek clarification, in this regard, that when a generator unit operates and bids within the automated mitigation procedure (AMP) thresholds established by the New York ISO, such behavior will not be treated as a violation of any Market Behavior Rule.

177. Others assert that the Commission's Market Behavior Rules should play a vital role in the organized markets. Central Maine, *et al.*, for example, point out that market power problems have continued to plague the LMP markets, notwithstanding the oversight and intervention of market monitors.

178. EEI asserts that market participants should not be left with conflicting sets of rules and no guidance as to which applies or which takes precedence over the other. EEI recommends that where there is an inconsistency between the Market Behavior Rules and an RTO or ISO tariff provision approved by the Commission, the Market Behavior Rule should be treated as subordinate. This is appropriate, EEI argues, because the RTO or ISO tariff provision, in this instance, will be the product of a regional stakeholder process specifically suited to meeting regional energy market needs.

179. EPSA, *et al.*, on the other hand, argue that while regional differences may be appropriate on various discrete matters, many of the Market Behavior Rules address generic issues and should be applied uniformly across all markets.

3. Commission Finding

180. In our discussion of Market Behavior Rule 1, above, we clarified that absent inclusion in a broader manipulative scheme addressed in Market Behavior Rule 2, compliance with the Commission-approved rules and regulations of an applicable power market, such as an ISO/RTO market, will serve as compliance with our behavioral rules.[117] However, in order to provide as much clarity as possible to market participants and market monitoring units (MMUs), we will also provide guidance concerning how we expect both these Market Behavior Rules and ISO/RTO rules to be applied and enforced by the Commission and MMUs.

181. As stated in our order issued in Docket No. RT03–1–000 (Communications with Commission-Approved Market Monitors), MMUs may be viewed as the ''functional equivalent'' of the Commission's staff and, for example, are not typically subject to our *ex parte* rules in communicating with the Commission or Commission Staff.[118] In this regard, in ISO/RTO tariffs, we have approved certain limited authority to MMUs to enforce tariffs and implement sanctions for a market participant's failure to comply with tariff requirements.[119] In each case, the determination of a tariff violation and the sanctions imposed may be appealed to the Commission.

182. We believe it is appropriate to authorize MMUs to enforce certain ISO/RTO tariff matters if those matters are: (i) Expressly set forth in the tariff; (ii) involve objectively-identifiable behavior; and (iii) do not subject the seller to sanctions or other consequences other than those expressly approved by the Commission and set forth in the tariff.[120] Beyond this defined MMU authority, sellers' behavior will be subject to direct Commission enforcement in the first instance, regardless of whether the behavior occurs in ISO/RTO administered markets or bilateral markets. Market-based rate authority has been granted to sellers not only based on a finding of lack, or mitigation, of market power, but also with the expectation that such seller will not act in an anti-competitive manner. Through our administration of these rules, the Commission can assure that anti-competitive behavior is not countenanced and that rates remain just and reasonable.

183. While MMUs may take actions as authorized by the ISO/RTO tariff, the Commission retains its responsibility to oversee tariff compliance on the part of any market-based rate seller. For example, a repeated pattern of tariff violations across several markets could lead the Commission to consider revoking a seller's market-based rate authorization. Further, except to the extent that enforcement authority has explicitly been authorized for an MMU in an ISO/RTO tariff, these behavioral rules will apply and be administered by the Commission.

184. The roles of the MMUs and the Commission will require the Commission staff and the MMUs to continue to forge a close working relationship. This process has been underway for some time. Commission Staff is coordinating data collection and reporting functions with MMUs, including developing appropriate triggers for referring compliance issues to the Commission. We expect an MMU to maintain an on-going dialogue with our staff so that we are apprised at all times of the status of the markets and activities of market participants. If an MMU becomes aware of activities of a market participant that appear to violate that market participant's market-based rate tariff condition or other requirement that has not been assigned to the MMU for enforcement in the first instance, the MMU is expected to bring the matter to the attention of the Commission staff.[121]

[115] *See* June 26 Order, 103 FERC ¶ 61,349 at P8.

[116] *See* Comments of AES at 5; Comments of Exelon at 5.

[117] *See supra,* Section A.

[118] *See,* Communications with Commission-Approved Market Monitors, 102 FERC ¶ 61,041 (MMU Communications Order), *order denying reh'g,* 103 FERC ¶ 61,151 (2003).

[119] *See e.g.*, New York Independent System Operator, Inc., 96 FERC ¶ 61,249 (2001).

[120] With respect to such matters, we will rely on the MMUs to identify and take action with respect to a specific behavior covered in the tariff, subject to later appeal to the Commission. If the MMU does not take action in such a case, the seller, absent an appeal to the Commission, will not be exposed to subsequent Commission enforcement actions regarding behavior found acceptable by the MMU.

[121] We have stated that the MMUs ''serve an important practical and unique function as the Commission's 'eyes and ears' in the marketplace,

Continued

185. Therefore, the behavioral rules adopted by the Commission for market-based rates sellers will apply to all markets. To the degree these rules overlap with a clearly stated tariff provision for which the Commission has assigned the first-line enforcement authority with associated sanctions to a MMU subject to appeal to the Commission, we will defer in the first instance to the MMU, subject to possible review. The Commission will exclusively undertake consideration of all other asserted violations of these rules. The Commission staff and the MMUs will work together to act to comprehensively assure that the overall competitiveness of jurisdictional electricity markets is maintained.

186. In addition, as discussed in our consideration of Market Behavior Rule 1, absent a situation in which an activity is part of a broader manipulative scheme prohibited by Market Behavior Rule 2, a compliance with Commission-approved ISO and RTO rules (such as bidding consistent with the AMP process in the New York ISO) will be deemed in compliance with these market behavior rules.

P. Administrative Findings and Notices

1. Information Collection Statement

187. As noted above, the Market Behavior Rules approved herein will require jurisdictional market-based rate sellers, to the extent they engage in reporting of transactions to publishers of electricity or natural gas price indices, to provide accurate and factual information and not submit false or misleading information or omit material information to any such publisher.[122] In addition, these Market Behavior Rules will require market-based rate sellers to retain certain records for a minimal period of three years, as required by Market Behavior Rule 5.[123]

188. Given these requirements, the collection of information set forth below has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[124] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[125] The Commission identifies the information provided for under this order as FERC–516, Electric Rate Schedule Filings.

| Data collection | Number of respondents | Number of responses | Hours per total | Total annual hours |
|---|---|---|---|---|
| FERC–516 | | | | |
| (Reporting) | 864 | 3 | 1.5 3 | 3,888 |
| (Recordkeeping) | 864 | 1 | 5.0 | 4,320 |
| Totals | | | 6.5 | 8,208 |

Total annual hours for Collection (reporting + recordkeeping) = 8,208.

189. *Information Collection Costs:* The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost of all respondents to be: $252,720 (3,888 @ $65.00 per hour, for reporting) + $2,000,160 (4,320 hours @ $31.00 per hour + $1,866,240 maintenance/storage/recordkeeping) = $2,252,880.

190. OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting a copy of this order to OMB.

*Title:* Electric Rate Schedule Filings.

*Action:* Proposed Collection.

*OMB Control No:* 1902–0096.

*Respondents:* Businesses or other for profit.

*Frequency of Responses:* On occasion.

*Necessity of Information:* The Market Behavior Rules approved herein will revise market-based rate sellers' tariffs and authorizations and are intended to ensure that rates and terms of service offered by market-based rate sellers remain just and reasonable.

*Internal review:* The Commission has reviewed the requirements pertaining to Market Behavior Rules 4 and 5 and has determined that these tariff conditions are necessary to ensure just and reasonable rates. These tariff requirements, moreover, conform to the Commission's plan for efficient information collection, communication, and management within the electric utility industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information/data retention requirements.

191. Interested persons may obtain information on the information requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202)502–8415, fax: (202)273–0873, e-mail: *michael.miller@ferc.gov*.]

192. For submitting comments concerning the collection of information and the associated burden estimates, please send your comments 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.]

2. Environmental Analysis

193. 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.[126] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[127]

The actions proposed to be taken 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.[128] Therefore, an environmental assessment

and are charged with reporting back to the Commission any problems and anomalies which they encounter so that the Commission may take appropriate action under the Federal Power Act.'' *See* MMU Communications Order, 102 FERC at 61,091. In other words, the most important function an MMU performs is to provide feedback to the Commission in order for the Commission to take substantive action in accord with the statute. As we have stated, MMUs ''are practically an extension, or a surrogate for, the Commission's own monitoring and investigative staff.'' *Id.*

[122] *See* Appendix A at Market Behavior Rule 4.

[123] *Id.* at Market Behavior Rule 5.

[124] 44 U.S.C. 3507(d) (2000).

[125] 5 CFR 1320.12 (2003).

[126] 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).

[127] 18 CFR 380.4 (2003).

[128] *Id.* at §§ 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27).

is unnecessary and has not been prepared in connection with this order.

3. Regulatory Flexibility Act Certification

194. The Regulatory Flexibility Act of 1980 (RFA)[129] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[130]

195. The Commission does not believe that the Market Behavior Rules approved herein would have such an impact on small entities. Most of the sellers required to comply with the proposed regulations would be entities who do not meet the RFA's definition of a small entity whether or not they are under the Commission's jurisdiction. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

4. Document Availability

196. 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.

197. From FERC's Home page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

198. User assistance is available for eLibrary and the FERC's Web site during normal business hours by contacting FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)292–3676 or for TTY, contact (202)502–8659.

5. Effective Date and Congressional Notification

199. The Commission has determined that the Market Behavior Rules approved in this order do not constitute a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules, therefore, do not apply to this order.

Q. Mirant Corp. v. FERC

200. On September 12, 2003, the Bankruptcy Court for the Northern District of Texas issued a ''Temporary Restraining Order Against the Federal Energy Regulatory Commission'' (TRO) in *In re Mirant Corp.* (*Mirant* v. *FERC*), Adversary Proceeding No. 03–4355, which enjoins the Commission ''from taking any action, directly or indirectly, to require or coerce the [Mirant] Debtors to abide by the terms of any Wholesale Contract [to which a Mirant Debtor is a party] which Debtors are substantially performing or which Debtors are not performing pursuant to an order of the Court unless FERC shall have provided the Debtors with ten (10) days' written notice setting forth in detail the action which FERC seeks to take with respect to any Wholesale Contract which is the subject of this paragraph.''

201. Should the TRO be converted into a preliminary injunction, an action that the Commission opposes, the Commission will appeal that order. Despite the Commission's disagreement with the validity of the TRO and its expectation that the TRO (or a preliminary injunction) will be vacated on appeal, the Commission must comply with it until vacated. The TRO requires ten days' written notice before the Commission takes a proscribed action with respect to a covered Mirant Wholesale Contract. Accordingly, to the extent that this order requires Mirant to act in a manner proscribed by the TRO, the order will provide written notice to Mirant of the action that the Commission will take with respect to a covered Mirant Wholesale Contract.

*The Commission Orders*

(A) The Market Behavior Rules set forth in Appendix A to this order are hereby adopted, as discussed in the body of this order, to become effective 30 days from the date of issuance of this order.

(B) In compliance with this order, market-based rate sellers are hereby directed to include the Market Behavior Rules, as approved herein, at such time as they file any amendment to their market-based rates tariff or (if earlier) at such time as they seek continued authorization to sell at market-based rates (*e.g.*, in their three-year update filings). Notwithstanding this time allowance, as applicable to sellers' compliance filings, the effective date for the tariff revisions approved herein shall be the effective date, as specified in ordering paragraph A, above.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

(D) Southern's request for rehearing of the June 26 Order is hereby dismissed, as discussed in the body of this order.

(E) The entities listed in Appendix C to this order shall be treated as parties to this proceeding.

By the Commission. Commissioners Massey and Brownell concurring with separate statements attached.

**Linda Mitry,**

*Acting Secretary.*

## Appendix A—Market Behavior Rules

As a condition of market-based rate authority, [Company Name] (hereafter, Seller) will comply with the following Market Behavior Rules:

1. *Unit Operation*: Seller will operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Compliance with this Market Behavior Rule 1 does not require Seller to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or requirement applicable to Seller.

2. *Market Manipulation*: Actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for electric energy or electricity products are prohibited. Actions or transactions undertaken by Seller that are explicitly contemplated in Commission-approved rules and regulations of an applicable power market (such as virtual supply or load bidding) or taken at the direction of an ISO or RTO are not in violation of this Market Behavior Rule. Prohibited actions and transactions include, but are not limited to:

a. Pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called ''wash trades'');

b. Transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; or scheduling non-firm service or products sold as firm), unless Seller exercised due diligence to prevent such occurrences;

c. Transactions in which an entity first creates artificial congestion and then purports to relieve such artificial congestion (unless Seller exercised due diligence to prevent such an occurrence; and

d. Collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for electric energy or electricity products.

3. *Communications:* Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission,

[129] 5 U.S.C. 601–612 (2000).

[130] *Id.* at section 605(b).

Commission-approved market monitors, Commission-approved regional transmission organizations, or Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercised due diligence to prevent such occurrences.

4. *Reporting:* To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas price indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement issued by the Commission in Docket No. PL03–3 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

5. *Record Retention:* Seller shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to this tariff or the prices it reported for use in price indices.

6. *Related Tariffs:* Seller shall not violate or collude with another party in actions that violate Seller's market-based rate code of conduct or Order No. 889 standards of conduct, as they may be revised from time to time.

Any violation of these Market Behavior Rules will constitute a tariff violation. Seller will be subject to disgorgement of unjust profits associated with the tariff violation, from the date on which the tariff violation occurred. Seller may also be subject to suspension or revocation of its authority to sell at market-based rates or other appropriate non-monetary remedies.

## Appendix B—Remedies and Complaint Procedures

Complaints alleging any violation of the Commission's Market Behavior Rules will be subject to the following remedies and procedures, in addition to all other remedies and procedures, as may be applicable, pursuant to the Commission's Rules of Practice and Procedure.

(1) Any complaint seeking relief for a violation of the Commission's Market Behavior Rules shall be made no later than 90 days after the end of the calendar quarter in which the violation is alleged to have occurred.

(2) If a complainant can show that it did not know and should not have known of the behavior which forms the basis for its complaint, within the period prescribed by these procedures, then the 90-day period will be deemed to run from the time when the complainant knew or should have known of the behavior.

(3) Commission action on a complaint not meeting the filing deadlines, as prescribed in these procedures, will be prospective only.

(4) The applicability of the Commission's disgorgement remedy in any complaint proceeding alleging a violation of the Commission's Market Behavior Rules will be limited by requiring that any such violation be shown to have occurred on a transaction-specific basis.

(5) The Commission will act within 90 days from the date it knew of an alleged violation of its Market Behavior Rules or knew of the potentially manipulative character of an action or transaction. Commission action, in this context, means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR Section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of the Commission must take the form of a call to our Hotline alleging inappropriate behavior, communication with our enforcement Staff.

## Appendix C—Entities Filing Comments and/or Reply Comments

AES Eastern Energy, L.P.
Allegheny Energy Supply Company, LLC
Amerada Hess Corporation
American National Power, Inc., PPL Energy Plus, LLC and Sempra Energy*
American Public Power Association and Transmission Access Study Group*
Bonneville Power Administration
BP Energy Company
California Electricity Oversight Board
California Independent System Operator Corporation
Public Utilities Commission of the State of California
Canadian Electricity Association
Central Maine Power Company, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation**
Central Vermont Public Service Corporation, El Paso Electric Company, Southern Indiana Gas & Electric Company & WPS Resources Corporation
City of Seattle, Washington
Colorado Office of Consumer Counsel, *et al.*
Connecticut Department of Public Utility Control
Cinergy Services, Inc.
Duke Energy Corporation
Dynegy Power Marketing, Inc., *et al.*
East Texas Cooperatives
Eastern Energy, L.P.
Edison Electric Institute
Edison Mission Energy
ELCON, *et al.*
Electric Power Supply Association, Independent Energy Producers of California, Independent Power Producers of New York, Inc. and the Western Power Trading Forum*
El Paso Electric Company
Entergy Services, Inc.
Exelon Corporation
Federal Trade Commission
FPL Energy, LLC
FirstEnergy Service Company
Intercontinental Exchange, Inc.
Intergen North America, L.P.
Louisiana Public Service Commission
Merrill Lynch Capital Services, Inc. (Morgan Stanley Capital Group, Inc.)
MidAmerican Energy Company
Mirant Americas Energy Marketing, L.P. and TransAlta Energy Marketing (U.S.), Inc.*
Modesto Irrigation District
Montana Consumer Counsel
Montana Public Service Commission
National Association of State Utility Consumer Advocates
National Energy Marketers Association
National Rural Electric Cooperative Association
New England Conference of Public Utility Commissioners
New York Independent System Operator
New York State Public Service Commission
NiSource Inc.
Northeast Utilities Service Company
Ontario Power Generation Inc.
PacificCorp
Pacific Gas and Electric Company
Pinnacle West Companies
PJM Industrial Customer Coalition
PLATTS
Powerex Corp.
PPL Montana, LLC and PPL EnergyPlus, LLC**
Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc.
Sacramento Utility District
Southern California Edison Company
Southern Company Services, Inc.
Steel Producers
TECO Energy, Inc.
TransCanada Companies
Transmission Dependent Utility Systems
Tucson Electric Power Company
Williams Energy Marketing & Trading Company

---

* Entities Filing Both Comments and Reply Comments.

** Entities Filing Reply Comments Only.

Massey, Commissioner, *concurring in part*:

The tariff conditions that the Commission approves today send a clear message to market-based rate sellers: don't lie, don't manipulate market conditions, don't violate market rules and don't collude with others. For sellers who choose to behave otherwise, the Commission now has the tools to sanction such bad behavior and we give notice of what some of those sanctions could be. This action should help to restore the faith in energy markets that has been lost in the last few years.

There is one aspect of today's order, however, that I would have written differently. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. In such a case, the appropriate remedy may be that the manipulating seller makes the market whole. I would prefer to not take this or any monetary remedy off of the table, but instead to allow the Commission the flexibility to tailor the remedy to the circumstances of each case.

This one concern with today's order should not be interpreted, however, as diminishing in any way my enthusiastic support for this otherwise excellent order. I commend my colleagues for taking this important and much needed step.

For these reasons, I concur in part with today's order.

William L. Massey,
*Commissioner.*

Brownell, Commissioner, *concurring:*

1. We are adopting behavioral rules for market participants in the electric and natural gas markets. No one can question the good intention behind these behavioral rules. As I have stated before, if there are violations of our rules, regulations or policies, we must be willing to punish and correct. Concurrently, if there is misconduct by market participants that is intended to be anticompetitive, we must have the ability to remedy those market abuses.

2. Conversely, when we originally proposed behavioral rules, I had a number of concerns. I was concerned that the use of vague terms would create uncertainty and, thereby, undermine the good intentions of the rules. I feared that subsequent applications of the proposed behavior rules to real world actions could result in overly proscriptive ''rules of the road'' that will dampen business innovation and creative market strategies. The net effect would be less competition and the associated higher costs to consumers. I was concerned that we may be proposing a model that simply does not fit with the larger lessons we have learned in fostering competition over the past two decades, particularly in the gas market.

3. It is difficult to strike the right balance. I have carefully weighed the comments and believe the revisions and clarifications to the proposed behavioral rules achieve the appropriate balance. We clarify that these rules do not impose a ''must offer'' requirement. We revise the definition of manipulation to relate to actions that are ''intended to or foreseeably could'' manipulate markets. We add the exclusion that action taken at the direction of an RTO or ISO does not constitute manipulation.

4. Commenters also challenge the sufficiency of the term ''legitimate business purpose'' in distinguishing between prohibited and non-prohibited behavior. We clarify that transactions with economic substance, in which a seller offers or provides a service to a buyer where value is exchanged for value, are not prohibited behavior. Behavior driven by legitimate profit maximization or that serves important market functions is not manipulation. Moreover, I think it is important to recognize that scarcity pricing is the market response to a supply/demand imbalance that appropriately signals the need for infrastructure. For example, the high prices of 2000–2001 that reflected supply/demand fundamentals resulted in the first new power plants being constructed in California in ten years; price risk being hedged through the use of long-term contracting; and renewed efforts to correct a flawed market design.

5. We have also adopted measures that require accountability. A complaint must be brought to the Commission within 90 days after the calendar quarter that the manipulative action was alleged to have occurred. The 90-day time limit strikes an appropriate balance between providing sufficient opportunity to detect violations and the market's need for finality. The Order also places a similar time limit on Commission action. As a matter of prosecutorial policy, the Commission will only initiate a proceeding or investigation within 90 days from when we obtained notice of a potential violation through either a hotline call; conversations with our enforcement staff; or notification from a market monitor.

6. While these rules are designed to provide adequate opportunity to detect, and the Commission to remedy, market abuses and are clearly defined so that they do not create uncertainty, disrupt competitive commodity markets or prove simply ineffective, competitive markets are dynamic. We need to periodically evaluate the impact of these behavior rules on the electric and natural gas markets. We have directed our Office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these behavioral rules on an annual basis and include their analysis in the State of the Market Report.

Nora Mead Brownell.

[FR Doc. 03–29299 Filed 11–21–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

November 17, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project Nos.:* 12475–000 and 12476–000.

c. *Date filed:* October 20, 2003.

d. *Applicant:* Southern Nevada Water Authority (Authority).

e. *Names of Projects:* Sloan Small Conduit Hydroelectric Project and Sloan Las Vegas Valley Water District (LVVWD) Interconnection Small Conduit Hydroelectric Project.

f. *Location:* The projects would be located, respectively, in an existing Rate-of-Flow Control (ROFC) station upstream of the Sloan Pumping Plant, and in a 130–K ROFC station that is planned to be constructed downstream, on the outlet side of the Sloan Pumping Plant, in eastern Las Vegas, Clark County, Nevada. The Authority's water is diverted from the Colorado River via Lake Mead.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a– 825r.

h. *Applicant Contact:* Mr. Rodney J. Clark, Southern Nevada Water Authority, 1900 East Flamingo Road, Suite 170, Las Vegas, NV 89119, (702) 862–3428.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* The applications are ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the applications be filed with the Commission by December 17, 2003. All reply comments must be filed with the Commission by January 2, 2004.

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.

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.

l. *Description of Projects:* The proposed Sloan Project would consist of: (1) A generating unit with a rated capacity of 607 kilowatts replacing the pressure dissipating valve in a 54-inch pipeline in the ROFC station, and (2) the other two pipelines in the station, to be used as bypass facilities. The average annual energy production would be 3.2 gigawatt hours. The proposed Sloan LVVWD Project would consist of: (1) A generating unit with a rated capacity of 600 kilowatts installed in lieu of a pressure dissipating valve in one of two pipelines in the 130–K ROFC station serving LVVWD Zone 1985, and (2) the other Zone 1985 pipeline in the station, to be used as a bypass facility. The average annual energy production would be 1.95 gigawatt hours. Power produced by the two projects would help offset the energy requirements of operating the Sloan Pumping Plant.

m. The filings are available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filings may also be viewed on the web at *http//www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–12475 or P–12476) 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. Copies are also available for review and reproduction at the address in item h. above.

n. *Development Application:*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *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.

p. *Protests or Motions to Intervene:* Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the applications directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required 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, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to either application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in the proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00356 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application To Amend the Project Boundaries and Soliciting Comments, Motions To Intervene, and Protests

November 17, 2003.

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 license to change project boundary.

b. *Project No.:* 2674–014.

c. *Date Filed:* October 21, 2003, supplement filed November 12, 2003.

d. *Applicant:* Green Mountain Power Corporation (GMP).

e. *Name of Project:* Vergennes Hydroelectric Project.

f. *Location:* The Vergennes Hydroelectric Project is located on Otter Creek in the City of Vergennes, Addison County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Harriet King, King & King, PO Box 879 Prentis House, 4219 Main Street, Waitsfield, Vermont 05673, telephone (802) 496–4371 or Mr. Jon Soter, P.E., Manager of Corporate Services, Green Mountain Power Corporation, 163 Acorn Lane, Colchester, VT, 05446, telephone (802) 864–5731.

i. *FERC Contact:* Robert Shaffer, telephone (202) 502–8944, e-mail Robert. *Shaffer@ferc.gov*.

j. *Deadline for filing comments and or motions:* December 19, 2003.

k. *Description of Request:* The licensee proposes to amend the project's boundary due to the proposed sale of about 1.9 acres of land, which consist of: (1) The Grist Mill Island (about 0.5 acres); and (2) two parcels of land, one is located on the easterly side of Canal Street (0.2 acres) and the other on the west side of Canal Street (1.2 acres). The land proposed for sale contains buildings listed on the National Register and is located within the Vergennes Historic District. The licensee states that the subject buildings are currently vacant and none is used in connection with the operation of the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 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 the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will

consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00357 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene and Protests

November 17, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI03–5–000.

c. *Date Filed*: September 5, 2003; amended October 16, 2003.

d. *Applicant:* Robert S. White.

e. *Name of Project:* White's Micro Hydro Project.

f. *Location:* The White's Micro Hydro Project is located on Sec. 19, Township 3 North, Range 15 East, on an unnamed stream near Centerville, Klickatat County, Washington. The proposed project will not occupy Federal Lands.

g. *Filed pursuant to:* 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Robert S. White, 1752 Centerville Highway, Centerville, Washington 98613, telephone (509) 773–3830, cell (509) 250–0004, or e-mail address: *puresnow@gorge.net*.

i. *FERC Contact:* Any questions on this notice should be addressed to Etta L. Foster, (202) 502–8769, or e-mail address: *etta.foster@ferc.gov*.

j. *Deadline for filing comments, protests and/or motions:* December 19, 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. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*. Please include the docket number (DI03–5–000) on any comments, protests or motions filed.

k. *Description of Project:* The White's Micro Hydro Project would consist of: (1) A 4-foot-high wooden dam; (2) a 4-inch-wide, 12-foot-long pipe for water intake; (3) a micro generator with a capacity of 48 Volts of direct current, and (4) appurtenant facilities. The main purpose of the dam is to create a pond for wildlife.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or waterpower from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Location of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''e-Library'' link. Select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERConlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3–00366 Filed 11–21–03; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7590–4]**

## Agency Information Collection Activities OMB Responses

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

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information 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.

**FOR FURTHER INFORMATION CONTACT:** Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No. 1052.07; NSPS Subpart D, Standards of Performance for Fossil-Fuel-Fired Steam Generating Units; was approved 11/06/2003; in 40 CFR part 60, subpart D; OMB Number 2060–0026; expires 11/30/2006.

EPA ICR No. 1696.04; Fuels and Fuel Additives—Health—Effects Research Protocols; was approved 11/06/2003; in 40 CFR part 79, subpart F; OMB Number 2060–0297; expires 11/30/2006.

EPA ICR No. 1893.03; Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (Small); was approved 11/06/2003; in 40 CFR part 62, subpart GGG; OMB Number 2060–0430; expires 11/30/2006.

EPA ICR No. 1772.03; Activities Associated with EPA's Energy Star Buildings Program in the Commercial and Industrial Sectors; was approved 11/06/2003; OMB Number 2060–0347; expires 11/30/2006.

EPA ICR No. 1088.10; NSPS for Industrial-Commercial-Institutional Steam Generating Units; was approved 11/06/2003; in 40 CFR part 60, subpart Db; OMB Number 2060–0072; expires 11/30/2006.

EPA ICR No. 1061.09; NSPS for the Phosphate Fertilizer Industry; was approved 11/05/2003; in 40 CFR part 60, subpart T, U, V, W, and X; OMB Number 2060–0037; expires 11/30/2006.

EPA ICR No. 1084.07; NSPS for Nonmetallic Mineral Processing; was approved 11/05/2003; in 40 CFR part 60, subpart OOO; OMB Number 2060–0050; expires 11/30/2006.

EPA ICR No. 1128.07; NSPS for Secondary Lead Smelters; was approved 11/05/2003; in 40 CFR part 60, subpart L; OMB Number 2060–0080; expires 11/30/2006.

EPA ICR No. 1093.07; NSPS for the Surface Coating of Plastic Parts for Business Machines (Renewal); was approved 11/05/2003; in 40 CFR part 60, subpart TTT; OMB Number 2060–0162; expires 11/30/2006.

EPA ICR No. 1060.12; NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (Renewal); was approved 11/06/2003; in 40 CFR part 60, subparts AA and AAa, OMB Number 2060–0038; expires 11/30/2006.

EPA ICR No. 1665.06; Confidentiality Rules; was approved 11/03/2003; in 40 CFR part 2, subpart B; OMB Number 2020–0003; expires 11/30/2006.

EPA ICR No. 1415.05; NESHAP for Perchlorethylene Dry Cleaning Facilities; was approved 10/28/2003; in 40 CFR part 63, subpart M, OMB Number 2060–0234; expires 10/31/2006.

EPA ICR No. 0976.11; The 2003 Hazardous Waste Report; was approved 10/26/2003; in 40 CFR 262.41,264.75, 265.75; OMB Number 2050–0024; expires 10/31/2005.

Dated: November 17, 2003.

**Doreen Sterling,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 03–29318 Filed 11–21–03; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7590–3]**

## Proposed Settlement Agreement, Clean Air Act Citizen Suit

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

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by the Louisiana Environmental Action Network, represented by the Tulane Environmental Law Clinic: *Louisiana Environmental Action Network* v. *Horinko*, No. 03–1338 (M.D. La.). On or about May 12, 2003, plaintiff filed a complaint seeking to compel the Administrator of the EPA to respond to an administrative petition to object to a state operating permit issued by the Louisiana Department of Environmental Quality (''LDEQ''). Under the terms of the proposed settlement agreement, EPA will respond to the petition by November 20, 2003. Within thirty days of EPA's response to the petition, plaintiff will file a motion for voluntary dismissal of the complaint, with prejudice to its refiling. Additionally, the Louisiana Environmental Action Network will be paid the sum of $3,200 for attorneys fees and costs.

**DATES:** Written comments on the proposed settlement agreement must be received by December 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Cecilia Kim, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone: (202) 564–7606.

**ADDRESSES:** Submit your comments, identified by Docket ID number OGC–2003–0003, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Settlement

The Clean Air Act affords EPA a 45-day period to review and object to, as appropriate, Title V operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this 45-day review period to object to state operating permits if EPA has not done so. Plaintiff filed an administrative petition to object to a state operating permit issued by LDEQ to Dupont Dow Elastomers, L.L.C., for a chloroprene facility in St. John the Baptist Parish, Louisiana. The lawsuit alleges that EPA has a nondiscretionary duty to grant or deny the petition within

60 days, and seeks to compel EPA to respond to the petition.

The settlement agreement provides that, within ten days after execution by the parties, the parties will file a joint motion with the court requesting the lawsuit be stayed. Plaintiff may request the court to lift the stay of the lawsuit, and establish a schedule for further proceedings if EPA fails to sign a response to the petition by November 20, 2003.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

## II. Additional Information About Commenting on the Proposed Settlement

### *A. How Can I Get a Copy of the Settlement?*

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0003 which contains a copy of the proposed settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

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.

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. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

### *B. How and to Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. 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 submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. 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. 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. The electronic public docket 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. In contrast to EPA's electronic public docket, EPA's electronic mail (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, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 18, 2003.

**Richard Ossias,**

*Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.*

[FR Doc. 03–29317 Filed 11–21–03; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[RCRA–2003–0023; FRL–7590–8]**

## Hazardous Waste Management System: Petroleum Refining Process Wastes; Identification of Characteristically Hazardous Self-Heating Solids; Land Disposal Restrictions: Treatment Standards for Spent Hydrorefining Catalyst (K172) Hazardous Waste—Extension of Comment Period; Correction

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

**ACTION:** Extension of comment period; correction.

**SUMMARY:** On October 20, 2003 (68 FR 59935) EPA published a notice of data availability (NODA) to make available to the public certain analytical data pertaining to spent hydrorefining catalyst from petroleum refining operations (K172). The original comment period was to expire on December 4, 2003; today's notice extends the comment period to January 18, 2004. In addition, in the **ADDRESSES** section of the October 20, 2003 NODA, EPA made an inadvertent reference to a ''treatability study'' and ''peer review documents.'' EPA is correcting this by indicating today that there is no ''treatability study'' or ''peer review documents'' related to this NODA.

**DATES:** Submit comments on or before January 18, 2004. Comments postmarked after this date will be marked ''late'' and may not be considered.

**ADDRESSES:** Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in section I of the **SUPPLEMENTARY INFORMATION** section of

the October 20, 2003 **Federal Register** document.

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** issued on October 20, 2003 (68 FR 59935). In that document, EPA published a notice of data availability (NODA) to make available to the public certain analytical data pertaining to the polyaromatic hydrocarbon (PAH) content of spent hydrorefining catalyst from petroleum refining operations (K172). The data were originally submitted by the Vanadium Producers and Reclaimers Association (VPRA), formerly known as The Ferroalloys Association (TFA), in a petition requesting EPA to amend the land disposal restriction (LDR) treatment standards for the K172 listed waste. The VPRA petition also asserted that K171 and K172 wastes are often being landfilled without being decharacterized for their ignitability/reactivity potential. In the October 20, 2003 NODA, EPA provided information supporting the petitioner's assertions and requested comment and submittal of any additional relevant documentation, but only on the analytical data for K172 and information supporting VPRA's concerns about characteristically hazardous solids. EPA is hereby extending the comment period, which was set to end on December 4, 2003 to January 18, 2004.

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Section I of the **SUPPLEMENTARY INFORMATION** section of the October 20, 2003 **Federal Register** document. If you have questions, contact Ross Elliott at (703) 308–8748, *elliott.ross@epa.gov,* or write him at the Office of Solid Waste, Mail Code 5304W, U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Dated: November 7, 2003.

**Matt Hale,**

*Acting Director, Office of Solid Waste.*

[FR Doc. 03–29319 Filed 11–21–03; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7589–9]**

### Proposed Administrative Settlement; Richmond Townhouse Apartments Site

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the Richmond Townhouse Apartments Superfund Site was executed by the United States Environmental Protection Agency (EPA) on November 12, 2003. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) against Carlson Boulevard, L.P.; Community Housing Development Corporation of North Richmond; Devine & Gong, Inc.; and The John Stewart Company (the Purchaser). The Purchaser plans to acquire the 10-acre parcel constituting the Superfund Site, located at 2989 Carlson Boulevard, Richmond, California, and continue to operate it as low income housing.

In exchange for the settlement, Carlson has agreed to pay EPA $100,000 in cash. In addition, Carlson has agreed to comply with a Covenant to Restrict Use of Property.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before December 24, 2003.

**ADDRESSES:** The proposed Prospective Purchaser Agreement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Janet Magnuson, EPA Region IX, 75 Hawthorne Street, ORC–3, San Francisco, CA 94105, telephone number 415–972–3887. Comments should reference the Richmond Townhouse Apartments Superfund Site, Richmond, California and EPA Docket No. 2004–05 and should be addressed to Janet Magnuson at the above address.

**FOR FURTHER INFORMATION CONTACT:** Janet Magnuson, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3887; fax: (415) 947–3570; e-mail: *magnuson.janet@epa.gov.*

Dated: November 14, 2003.

**Nancy Lindsay,**

*Acting Director, Superfund Division, Region IX.*

[FR Doc. 03–29316 Filed 11–21–03; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7589–6]**

### Proposed CERCLA Administrative Cost Recovery Settlement; Richmond Townhouse Apartments Site

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Richmond Townhouse Apartments Site in Richmond, Contra Costa County, California with the following settling parties: Richmond Townhouses Apartments, Ltd.; Partnership Investor Services, Inc.; Westport Housing Corporation; Stephen D. Moses; and S. Chandler Sweetser, Jr. The settlement requires the settling parties to pay $1,400,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before December 24, 2003.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Janet Magnuson, EPA Region IX, 75 Hawthorne Street, ORC–3, San Francisco, CA 94105, telephone number 415–972–3887. Comments should

reference the Richmond Townhouse Apartments Superfund Site, Richmond, California and EPA Docket No. 2004–06 and should be addressed to Janet Magnuson at the above address.

**FOR FURTHER INFORMATION CONTACT:** Janet Magnuson, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3887; fax: (415) 947–3570; e-mail to: *magnuson.janet@epa.gov.*

Dated: November 14, 2003.

**Nancy Lindsay,**

*Acting Director, Superfund Division, Region IX.*

[FR Doc. 03–29315 Filed 11–21–03; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Sunshine Act Meeting

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Tuesday, November 25, 2003 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**OPEN AGENDA ITEM:** Short Term Insurance Program for Iraq.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation for Item No. 1 only. Attendees that are not employees of the Executive Branch will be required to sign in prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. 202–565–3957).

**Peter B. Saba,**

*General Counsel.*

[FR Doc. 03–29424 Filed 11–20–03; 1:23 pm]

**BILLING CODE 6690–01–M**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Meetings

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice of meetings for 2004.

*Board Action:*

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in room 7C13 of the GAO Building unless otherwise noted:

—Wednesday and Thursday, March 3 and 4, 2004

—Wednesday and Thursday, April 28 and 29, 2004

—Friday, June 25, 2004, 1–4 p.m.

—*Wednesday, June 30, 2004, 1–4 p.m. at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC*

—Thursday, July 1, 2004, 1–4 p.m.

—Wednesday and Thursday, August 25 and 26, 2002

—Wednesday and Thursday, October 20 and 21, 2004

—Wednesday and Thursday, December 15 and 16, 2004

The purposes of the meetings are to discuss issues related to:

—FASAB's conceptual framework,

—Stewardship Reporting,

—Social Insurance,

—Natural Resources,

—Inter-entity Costs,

—Technical Agenda, and

—Any other topics as needed.

A more detailed agenda can be obtained from the FASAB Web site (*http://www.fasab.gov*) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at least one day prior to the respective meeting.

**FOR FURTHER INFORMATION CONTACT:** Wendy M. Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. 92–463.

Dated: November 19, 2003.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 03–29292 Filed 11–21–03; 8:45 am]

**BILLING CODE 1610–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### Network Reliability and Interoperability Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the final meeting of the Network Reliability and Interoperability Council VI (Council) under its charter renewed as of December 26, 2001. The meetings will be held at the Federal Communications Commission in Washington, DC.

**DATES:** Friday, December 5, 2003 from 10 a.m. to 1 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St., SW., Room TW–C305, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Goldthorp at 202–418–1096 or TTY 202–418–2989.

**SUPPLEMENTARY INFORMATION:** The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that will enhance network security, reliability and interoperability. At this sixth and last meeting of the Network Reliability and Interoperability Council VI, the Council will consider and vote on its final recommendations.

Inadvertent administrative delay prevented publication of this in the **Federal Register** fifteen days before the meeting, and given the large number of people arriving from different parts of the country, it would have been infeasible to reschedule the meeting before the expiration of the Council's charter.

The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by e-mail, *Jeffery.Goldthorp@fcc.gov* or U.S. mail (7–A325, 445 12th St., SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/*
.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–29346 Filed 11–20–03; 1:46 pm]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03–28720) published on page 65070 of the issue for Tuesday, November 18, 2003.

Under the Federal Reserve Bank of Richmond heading, the entry for Bank of America Corporation, Charlotte, North Carolina, is revised to read as follows:

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. Bank of America Corporation*, Charlotte, North Carolina; to merge with FleetBoston Financial Corporation, Boston, Massachusetts, and thereby indirectly acquire Fleet National Bank, Providence, Rhode Island, and Fleet Maine, National Association, South Portland, Maine.

In connection with this proposal, Bank of America has applied to acquire up to 19.9 percent of FleetBoston Financial Corporation, and FleetBoston Financial Corporation has an option to acquire 19.9 percent of the voting shares of Bank of America Corporation.

Comments on this application must be received by December 15, 2003.

Board of Governors of the Federal Reserve System, November 18, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–29239 Filed 11–21–03; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Secretary's Advisory Committee on Human Research Protections

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the second meeting of the Secretary's Advisory Committee on Human Research Protections (SACHRP). The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below.

**DATES:** The meeting will be held on Thursday, December 11 and Friday, December 12, 2003, and will convene each day from approximately 8:30 a.m. until 5 p.m. EST.

**ADDRESSES:** The Sheraton Four Points Hotel, 1201 K Street, NW., Washington, DC, 20005.

**FOR FURTHER INFORMATION CONTACT:** Bernard Schwetz, D.V.M., Ph.D., Acting Executive Secretary, SACHRP, Department of Health and Human Services (HHS), Office of Public Health and Science (OPHS), 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 496–7005, fax: (301) 402–0527, e-mail address: *sachrp@osophs.dhhs.gov* or Catherine Slatinshek, Executive Director, SACHRP, HHS, OPHS, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 496–5433, fax: (301) 496–0527, e-mail address: *cslatinshek@osophs.dhhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, HHS established SACHRP to provide expert advice and recommendations to the Secretary of HHS and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On December 11, SACHRP will receive and discuss preliminary reports from its three subcommittees that were created by SACHRP at its July 22, 2003 meeting to address issues related to the following three topics areas: Department of Health and Human Services (HHS) regulations and policies for research involving prisoners, HHS regulations and policies for research involving children, and the accreditation of human research protection programs by non-federal accrediting bodies. On December 12, SACHRP will hold panel discussions related to human subjects research in international settings and adverse event reporting requirements under HHS and Food and Drug Administration regulations. The committee will also discuss future tasks for 2004.

Members of the public will have the opportunity to provide comments at the meeting on December 11 and 12, 2003. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to SACHRP members should submit materials to the Acting Executive Secretary of SACHRP (contact information listed above) prior to close of business December 2, 2003.

Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://ohrp.osophs.dhhs.gov/sachrp/sachrp.htm.*

Dated: November 18, 2003.

**Bernard A. Schwetz,**

*Acting Director, Office for Human Research Protections, Acting Executive Secretary, Secretary's Advisory Committee on Human Research Protections.*

[FR Doc. 03–29298 Filed 11–21–03; 8:45 am]

**BILLING CODE 4150–36–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–04–04]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Restriction on Travel of Persons (OMB No. 0920–0488)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

In 2000, the Food and Drug Administration (FDA) and CDC consolidated regulations related to controlling the spread of communicable diseases. FDA formerly administered the regulations contained in part 1240 of title 21, Code of Federal Regulations, which pertained to interstate control of communicable diseases. These regulations may now be found in part 70 of title 42, Code of Federal Regulations.

FDA transferred 21 CFR part 1240 to CDC. This mandate regulates the interstate travel of any person who is in the communicable period of cholera, plague, smallpox, typhus, or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof. One of the sections—

formerly 21 CFR 1240.50 and now 42 CFR 70.5 (Certain communicable diseases; special requirements)—contains a requirement for reporting certain information to the Federal government. Specifically, this regulation requires any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of state and local health authorities, with federal assistance being sought by those authorities on a cooperative basis without application of federal regulations. The regulations formerly administered by FDA and assumed by CDC were developed to facilitate Federal action in the event of large outbreaks requiring a coordinated effort involving several states, or in the event of inadequate local control. While it is not known whether, or to what extent situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is now commonplace. Should this occur, CDC will use the reporting and record-keeping requirements contained in the regulations to carry out quarantine responsibilities as required by law. The estimated annualized burden is 3,600 hours.

| Regulation/purpose | Respondent | No. of applicants | No. of responses per applicant | Average burden per response |
|---|---|---|---|---|
| 42 CFR 70.3 Application to the State of destination for a permit to move from one State to another with a communicable disease. | Any person with a communicable disease who is seeking to travel from one State to another. | 2,000 | 1 | 15/60 |
| | Attending physician | 2,000 | 1 | 15/60 |
| 42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority under this provision. | State health authority | 8 | 250 | 6/60 |
| 42 CFR 70.4 Report by the master of a vessel person in charge of a conveyance of the incidence of a communicable disease occurring while in interstate transit. | The master of a vessel or person in charge of a conveyance engaged in interstate traffic when a case or potential case of a communicable disease is identified. | 1,500 | 1 | 15/60 |
| 42 CFR 70.4 Copy of material submitted to State or local health authority under this provision. | State or local health authority | 20 | 75 | 6/60 |
| 42 CFR 70.5 Application for a permit to move from State to State while in the communicable period of or having been exposed to smallpox. | Any person with or in the incubation period of certain communicable diseases who is seeking to travel form one State to another. | 3,750 | 1 | 15/60 |
| | Attending physician | 3,750 | 1 | 15/60 |

Dated: November 17, 2003.

**Laura Yerdon Martin,**

*Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.*

[FR Doc. 03–29213 Filed 11–21–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–02–04]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Evaluation of Customer Satisfaction with the Agency for Toxic Substances and Disease Registry Internet Home Page and Links (OMB No. 0923–0028)—Reinstatement—Agency for Toxic Substances and Disease Registry (ATSDR).

ATSDR proposes to conduct customer satisfaction research for its Internet site. Information on the site focuses on prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. The site is designed to serve the general public, persons at risk for exposure to hazardous substances, and health professionals.

Approval for a similar Customer Satisfaction Survey was requested in 2002 jointly with the Centers for Disease Control and Prevention (OMB No. 0920–0449, Expiration Date 09/30/2003). The new survey is solely for ATSDR and is significantly shorter and would require less time to complete.

This research will ensure that targeted audiences find the information easy to access, clear, informative, and useful. Specifically, the research will examine whether the information is presented in an appropriate technological format and meets the needs, wants, and preferences of visitors or ''customers'' using the Web site. Results from the previous survey were utilized to redesign the ATSDR Web site—making improvements to architecture, links, organization, and content. Results from the new survey will assist ATSDR in making more improvements to the Web site in order to better serve its customers and visitors. The estimated annualized burden is 83 hours.

| Respondents | Number of respondents | Number of responses/ respondent | Average burden per response (in hrs.) |
|---|---|---|---|
| Visitors to ATSDR Internet Site | 1,000 | 1 | 5/60 |

Dated: November 13, 2003.

**Laura Yerdon Martin,**

*Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.*

[FR Doc. 03–29214 Filed 11–21–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–07–04]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project*: National Youth Tobacco Survey—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). The proposed project is the 2004 national school-based National Youth Tobacco Survey. The purpose of this request is to obtain OMB approval to continue a biennial survey among junior and senior high school students attending regular public, private, and Catholic schools in grades 6–12. This survey was previously funded by the American Legacy Foundation in 1999, 2000, and 2002. The survey covers the following tobacco-related topics: prevalence of use (cigarettes, smokeless tobacco, cigars, pipe, bidis, and kreteks), knowledge and attitudes, media and advertising, minors' access and enforcement, school curriculum, environmental tobacco smoke exposure, and cessation. Tobacco use, a major preventable cause of morbidity and mortality in the U.S., is one of the 28 focus areas in Healthy People 2010. In the Healthy People 2010 focus area of tobacco use, the National Youth Tobacco Survey provides data relevant to six health objectives. The survey also provides data to monitor one of the 10 Leading Health Indicators for Healthy People 2010 that addresses tobacco use. In addition, the National Youth Tobacco Survey can identify racial and ethnic disparities in tobacco-related topics listed above. The National Youth Tobacco Survey is the most comprehensive source of nationally representative data regarding high school students and tobacco. Moreover, the National Youth Tobacco Survey is the only source of such national data for middle school students (grades 6–8). The data have significant implications for policy and program development for school health programs nationwide.

To provide contextual data, in each participating school, the principal or another designated administrator will be asked to complete a questionnaire on the school's tobacco-related policies. The annualized burden for this data collection is 18,663 hours.

| Respondents | No. of respondents | No. of responses per respondent | Average burden per responses (in hours) |
|---|---|---|---|
| Students | 24,500 | 1 | 45/60 |
| School Administrator | 516 | 1 | 30/60 |

Dated: November 17, 2003.

**Laura Yerdon Martin,**

*Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.*

[FR Doc. 03–29216 Filed 11–21–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–05–04]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Data Collection, Management, Reporting, and Evaluation for the Minority AIDS Initiative (MAI)—New—National Center for HIV, STD and Tuberculosis Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC is requesting OMB approval to collect data to assess the HIV prevention and capacity-building activities of community-based organizations (CBOs) and other not-for-profit organizations funded under the MAI. The essence of this initiative is to implement an approach to HIV Prevention for minority communities through three strategies: (1) Support of CBOs to deliver HIV prevention services; (2) community coalition development (CCD) projects to increase access to a linked network of HIV, STD, TB, and substance abuse services; and (3) capacity-building assistance (CBA) to sustain, improve, and expand HIV prevention services.

CDC requires MAI grantees to evaluate their programs. CDC has the responsibility to support these evaluation efforts by assisting grantees in the design and implementation of

their program evaluation activities, including the provision of evaluation forms and conducting an overall evaluation of the MAI. The data collected during this evaluation will allow CDC to (1) address accountability needs, (2) provide necessary information to the MAI grantees for improving their programs, and (3) provide a context for understanding the effectiveness of programs targeting African Americans and other racial and ethnic minorities.

Data collection will include self-administered questionnaires, which will be submitted quarterly, document reviews, and interviews with directors of community-based organizations, collaborating organizations, other community organizations, and community members served by these organizations. The first wave of data collection is planned for the summer of 2003. Subsequent waves of data collection are planned for 2004. The annualized burden for this data collection is 255 hours.

| Data collection forms | Number of respondents | Number of responses per respondent | Average burden per response (in hrs) |
|---|---|---|---|
| Community-Based Organization (CBO) Questionnaire and Capacity-Building Recipient Questionnaire | 136 | 1 | 60/60 |
| CBO HIV Counseling, Testing and Referral Questionnaire: | | | |
| Part I | 54 | 1 | 10/60 |
| Part II | 54 | 4 | 10/60 |
| Capacity-Building Assistance (CBA) Provider Regionally-Based Resource Networks Questionnaire | 1 | 1 | 5/60 |
| CBA Provider Questionnaire | | | |
| Part I | 16 | 1 | 10/60 |
| Part II | 17 | 1 | 20/60 |
| Part III | 17 | 4 | 15/60 |
| Community Coalition Development Questionnaire | | | |
| Part I | 11 | 1 | 60/60 |
| Part II | 11 | 4 | 30/60 |
| Strategic Alliance | | | |
| Part I | 5 | 1 | 60/60 |
| Part II | 5 | 4 | 30/30 |

Dated: November 17, 2003.

**Laura Yerdon Martin,**

*Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.*

[FR Doc. 03–29217 Filed 11–21–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 62456–62469, dated November 4, 2003) is amended to reflect the consolidation CDC's information technology infrastructure functions into a single organizational component entitled the Information Technology Services Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Following the title and functional statement for the *Office of Security and Emergency Preparedness (CAJ8), Office of the Chief Operating Officer (CAJ),* insert the following:

*Information Technology Services Office (CAJ9).* (1) Develops and coordinates CDC-wide plans, budgets, policies, and procedures for information technology (IT) infrastructure services including: desktop computing support, directory services, e-mail, helpdesk support, infrastructure software, IT security, networking, data center services, office automation, remote access, server management, videoconferencing, and telecommunications; (2) provides all IT infrastructure services for CDC; (3) provides consulting services, technical advice, and assistance across CDC in the effective and efficient use of IT infrastructure technologies, assets, and services to carry out mission activities, enhance personnel and organizational productivity, and develop information systems; (4) develops CDC's IT infrastructure architecture; (5) maintains state-of-the-art expertise in information technology and computer science; (6) conducts research and development, evaluation, and testing of new IT infrastructure technologies to support CDC's mission; (7) manages CDC's IT capital investments and CDC-wide IT acquisitions of infrastructure technologies; (8) implements CDC information technology security operations; (9) manages and coordinates CDC-wide IT continuity of operations and disaster recovery facilities ensuring integrity, availability, security, and recoverability of critical data and systems; (10) provides IT infrastructure support services by triaging and responding to requests for services, problem reports, and taking necessary actions; (11) coordinates with the CDC Corporate University to identify training and educational programs needed by staff to effectively use IT infrastructure technologies and services; (12) conducts the IT infrastructure program in compliance with applicable Federal laws, regulations, and policies.

Revise the mission statement for the *Information Resources Management Office (CAJ5)* as follows:

Delete item (1) and insert the following: (1) Develops and coordinates CDC-wide plans and budgets for the management of information technology and services.

Delete items (4) and (9) in their entirety. Delete from item (8) the word ''equipment.''

Delete in their entirety the titles and functional statements for the *Large Systems Computing Branch (CAJ52)* and the *Network Technology Branch (CAJ54).*

Delete item (4) of the functional statement for the *Financial Systems Branch (CAJ25), Financial Management Office (CAJ2),* and insert the following: (4) responsible for financial systems application software and support utilized within the Financial

Management Office and used officially across CDC.

Delete item (4) of the Functional statement for the *Management Analysis Branch (CAJ64), Management Analysis and Services Office (CAJ6),* and renumber the remaining items accordingly.

Delete item (7) of the functional statement for the *Office of the Director (CAJ71), Procurement and Grants Office (CAJ7),* and renumber the remaining items accordingly.

Delete the functional statement for the *Information Resources Management Activity (CB132), Office of Program Management and Operations (CB13), Epidemiology Program Office (CB),* and insert the following: (1) Provides technical information support to the communications, epidemiologic, surveillance, training, and prevention research activities of EPO; (2) provides interface with CDC and DHHS management systems; (3) plans, coordinates, and provides EPO-wide Information Resources Management (IRM) support and services; (4) represents EPO on a variety of IRM committees, task forces, and workgroups; (5) coordinates the utilization of data information systems and technologies.

Delete item (7) of the functional statement for the *Office of Administrative Services (CC11), Office of the Director (CC1), National Institute for Occupational Safety and Health (CC),* and inserting the following: (7) Coordinates the utilization of data processing services within the Institute.

Delete item (2) of the functional statement for the *Administrative Services Branch (Spokane) (CC114),* and insert the following: (2) Provides access to library and information services for Spokane Research Laboratory personnel.

Delete the functional statement for the *Management Systems Branch (CC115)* and insert the following: (1) Conducts management systems studies and provides technical services in the field of operations management; (2) provides for interface with CDC, PHS, and HHS management systems; (3) assures that all functional groups within the Institute have access to suitable and compatible data processing and services; (4) provides Institute-wide consultation assistance in data processing.

Delete item (6) from the functional statement for the *Communication and Information Activity (CCA12), Office of the Director (CCA1), Division of Respiratory Disease Studies.*

Delete item (3) from the functional statement for the *Information Management and Dissemination Activity (CCB2), Division of Safety Research (CCB).*

Delete item (7) of the functional statement for the *Office of the Director (CH51), Division of Public Health Systems Development and Research (CH5, Public Health Practice Program Office (CH),* and insert the following: (7) Establishes data systems and knowledge required to support State, local, and Divisional needs.

Delete item (11) from the functional statement for the *Office of the Director (CJ1), National Immunization Program (CJ),* and insert the following: (11) Provides administrative, fiscal, and information services for Program activities.

Delete item (7) from the functional statement for the *Financial and Administrative Services Office (CK12), Office of the Director (CK1), National Center for HIV, STD, and TB Prevention (CK),* and insert the following: (7) Provides oversight and management of NCHSTP conference rooms, support and coordination of Envision services and audio-visual equipment.

Delete item (8) from the functional statement for the *Prevention Informatics Office (CK14),* and insert the following: (8) Supports organizational components to disseminate or access information on the Internet.

Delete items (5) through (8) from the functional statement for the *Information Technology and Statistics Branch (CK43), Division of Tuberculosis Elimination (CK4),* and insert the following: (5) Provides technical assistance in the areas of IT systems and services to process information; (6) manages information security for the Division's information systems; (7) maintains application software systems; (8) provides training and consultation to headquarters and field staff in the use of application software.

Delete item (8) from the functional statement for the *Epidemiology and Statistics Branch (CL42), Division of Diabetes Translation (CL4), National Center for Chronic Disease Prevention and Health Promotion (CL),* and insert the following: (8) Provides information systems support for headquarters operation of the Division.

Delete item (3) from the functional statement for the *Information Technology, Statistics, and Surveillance Branch (CL65), Division of Reproductive Health (CL6),* and insert the following: (3) Determines and recommends software and information technology solutions for Division programs and projects.

Delete item (10) from the functional statement for the *Office of the Director (CR1), National Center for Infectious Diseases (CR),* and insert the following: (10) Provides leadership and support for NCID Programs in the areas of statistics and database management.

Delete item (15) from the functional statement for the *Office of the Director (CR21), Division of Global Migration and Quarantine (CR2),* and insert the following: (15) Evaluates new software for statistical analysis, database management, graphics production, geographic information systems, and other functions related to Division objectives.

Delete item (11) in the functional statement for the *Office of the Director (CR21)* and renumber the remaining items accordingly.

Delete item (8) from the functional statement for the *Biostatistics and Information Management Branch (CRP3), Division of Bacterial and Mycotic Diseases (CRP),* and insert the following: (8) Sets Division policy on statistical procedures, analysis of surveillance data, and procedures for data collection and processing.

Delete item (5) from the functional statement for the *Biostatisics and Information Management Branch (CRP3)* and renumber the remaining items accordingly.

Delete in their entirety the title and functional statement for the *Information Management Section (CRP33).*

Delete item (6) from the functional statement for the *Data Management Activity (CRS–2), Division of Parasitic Diseases (CRS),* and insert the following: (6) Evaluates new software for statistical analysis, database management, graphics production, geographical information systems, and other functions related to DPD objectives.

Delete item (2) from the functional statement for the *Data Management Activity (CRS–2)* and renumber remaining items accordingly.

Delete items (1) and (2) from the functional statement for the *Information Technology Activity (CRU12), Office of the Director (CRU1), Division of Viral and Rickettsial Diseases (CRU),* and renumber remaining items accordingly.

Delete item (5) from the functional statement for the *Office of the Director (CR41), Division of Viral Hepatitis (CR4),* and insert the following: (5) Provides leadership and oversight to the provision of state-of-the-art informatics for DVH, including information systems, computer programs, programming and data management support, and management of DVH internet and intranet websites.

Delete item (3) from the functional statement for the *Office of Information Technology and Services (CS3),* National Center for Health Statistics

(CS), and insert the following: (3) Provides IRM policy coordination for the Center and systems contract support.

Delete items (4) and (8) from the functional statement for the *Division of Information Technology (CS34)* and insert the following: (4) Provides software consultation, database management, research, design, and support services needed by NCHS survey, registration and administrative systems, emphasizing projects which are not program specific; * * * (8) manages and administers contracts for Center-wide emerging information technology services.

Delete item (5) from the functional statement for the *Division of Information Technology (CS34)* and renumber remaining items accordingly.

Delete item (3) from the functional statement for the *Office of the Director (CS341)* and insert the following: (3) Evaluates and recommends new information technology software and methods in support of NCHS.

Delete item (2) from the functional statement for the *Office of the Director (CS341)* and renumber remaining items accordingly.

Delete items (1) and (3) from the functional statement for the *Software Solutions and Engineering Branch (CS342)* and insert the following: (1) Conducts and evaluates studies on emerging software technologies and methodologies for NCHS as input to the IT and IRM planning process and serves as a clearinghouse on these emerging technologies for NCHS; * * * (3) partners with NCHS programs, outside agencies and the States, to pilot the application of new software technologies and methodologies to meet NCHS-wide needs.

Delete in their entirety the title and functional statement for the *Network Engineering Branch (CS343).*

Delete item (6) from the functional statement for the *Systems and Programming Branch (CS72), Division of Health Interview Statistics (CS7),* and renumber remaining items accordingly.

Delete items (3) and (6) from the functional statement for the *Informatics Branch (CS83), Division of Health and Nutrition Examination Surveys (CS8),* and insert the following: (3) develops, implements, and supports technologies, data architectures, and database management for the Division's data collection and analytic programs consistent with state-of-the-art trends in computer and informatics research; * * * (6) develops and implements standards for the Division's data collection programs and data access (*e.g.,* data dissemination, telemedicine applications).

Dated: November 10, 2003.

**William H. Gimson,**

*Chief Operating Officer, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 03–29218 Filed 11–21–03; 8:45 am]

BILLING CODE 4160–18–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0318]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by December 24, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products—21 CFR Part 123 (OMB Control Number 0910–0354)—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)), and became effective on December 18, 1997.

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided. HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry.

The burden estimate in table 1 of this document includes only those

collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. For example, the current food manufacturing practices provisions in 21 CFR part 110 already require that all food processors ensure good sanitary practices and conditions, monitor the quality of incoming materials, monitor and control food temperatures to prevent bacterial growth, and perform certain corrective actions and verification procedures. Furthermore, the estimate does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently, the estimates in table 1 of this document account only for new information collection and recording requirements attributable to part 123.

In the **Federal Register** of July 28, 2003 (68 FR 44341), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

ESTIMATED ANNUAL RECORDKEEPING BURDEN[1,3]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping[1] | Total Annual Records | Hours per Recordkeeper[2] | Total Hours | Total Operating & Maintenance Costs |
|---|---|---|---|---|---|---|
| 123.6(a), (b), and (c) | 243 | 1 | 243 | 16.00 | 3,888 | $58,320.00 |
| 123.6(c)(5) | 4,850 | 4 | 19,400 | 0.30 | 5,820 | $87,300.00 |
| 123.8(a)(1), and (c) | 4,850 | 1 | 4,850 | 4.00 | 19,400 | $291,000.00 |
| 123.12(a)(2)(ii) | 1,000 | 80 | 80,000 | 0.20 | 16,000 | $240,000.00 |
| 123.6(c)(7) | 4,850 | 280 | 1,358,000 | 0.30 | 407,400 | $6,111,000.00 |
| 123.7(d) | 1,940 | 4 | 7,760 | 0.10 | 1,940 | $29,100.00 |
| 123.8(d) | 4,850 | 47 | 227,950 | 0.10 | 22,795 | $341,925.00 |
| 123.11(c) | 4,850 | 280 | 1,358,000 | 0.10 | 135,800 | $2,037,000.00 |
| 123.12(c) | 1,000 | 80 | 80,000 | 0.10 | 8,000 | $120,000.00 |
| 123.12(a)(2) | 50 | 1 | 50 | 4.00 | 200 | $3,000.00 |
| 123.10 | 243 | 1 | 24 | 24.00 | 5,832 | $87,480.00 |
| Annual Burden Hours | | | | | 627,075 | $9,406,125.00 |

[1]The above estimates include the information collection requirements in the following sections:
§ 123.16–Smoked Fish—process controls (see 123.6(b))
§ 123.28(a)–Source Controls—Molluscan Shellfish (see 123.6(b))
§ 123.28(c),(d)–Records—molluscan shellfish (see 123.6(c)(7))
Based on an estimated 280 working days per year.
[2] Estimated average time per 8 hour work day unless one time response
[3] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 7, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–29195 Filed 11–21–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0508]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on focus groups as used by FDA to gauge public opinion. Policymakers can use focus group results to test and refine their ideas so they can conduct further research, as well as, adopt new policies and to allocate or redirect significant resources to support these policies.

**DATES:** Submit written or electronic comments on the collection of information by January 23, 2004.

**ADDRESSES:** Submit electronic comments on the collection of information to: http://www.fda.gov/dockets/ecomments. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Focus Groups as Used by the Food and Drug Administration—(OMB Control Number 0910–0497)**

FDA will collect and use information gathered through the focus group vehicle. This information will be used to develop programmatic proposals, and as such, compliments other important research findings to develop these proposals. Focus groups do provide an important role in gathering information because they allow for a more indepth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies.

Also, information from these focus groups will be used to develop policy and redirect resources, when necessary, to our constituents. If this information is not collected, a vital link in information gathering by FDA to develop policy and programmatic proposals will be missed causing further delays in policy and program development.

FDA estimates the burden for completing the forms for this collection of information in table 1 of this document .

The total annual estimated burden imposed by this collection of information is 2,830 hours annually.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Center | Subject | No. of Focus Groups per Study | No. of Focus Groups Sessions Conducted Annually | No. of Participants per Group | Hours of Duration for Each Group (includes screening) | Total Hours |
|---|---|---|---|---|---|---|
| Center for Biologics Evaluation and Research | May use focus groups when appropriate | 1 | 5 | 9 | 1.58 | 71 |
| Center for Drug Evaluation and Research | Varies (e.g., direct-to-consumer Rx drug promotion, physician labeling of Rx drugs, medication guides, over-the-counter drug labeling, risk communication | 10 | 100 | 9 | 1.58 | 1,422 |
| Center for Devices and Radiological Health | Varies (e.g., FDA Seal of Approval, patient labeling, tampons, on-line sales of medical products, latex gloves | 4 | 16 | 9 | 2.08 | 300 |
| Center for Food Safety and Applied Nutrition | Varies (e.g., food safety, nutrition, dietary supplements, consumer education) | 8 | 40 | 9 | 1.58 | 569 |
| Center for Veterinary Medicine | Varies (e.g., animal nutrition, supplements, labeling of animal Rx) | 5 | 25 | 9 | 2.08 | 468 |
| Total | | 28 | 186 | | 1.78 | 2,830 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Annually, FDA projects about 28 focus group studies using 186 focus groups lasting an average of 1.78 hours each. FDA has allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs.

Dated: November 14, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–29197 Filed 11–21–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003D–0512]**

### Guidance for Industry and Food and Drug Administration Staff; User Fees and Refunds for Premarket Approval Applications; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''User Fees and Refunds for Premarket Approval Applications.'' This guidance outlines the types of premarket approval applications (PMAs), including supplements and other submissions, that are subject to user fees as well as those that do not have an associated fee. The guidance also identifies industry and FDA actions on these submissions that may result in a partial refund of the fee. The guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''User Fees and Refunds for Premarket Approval Applications'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding device issues*: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

*Regarding biologics issues*: Sayah Nedjar, Center for Biologics Evaluation and Research (HFM–380), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3524.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), amends the Federal Food, Drug, and Cosmetic Act to allow FDA to collect user fees for certain premarket reviews. The new law also permits partial refunds under certain circumstances, such as in the case of a non-filing decision for a PMA. In other cases, the statute permits a refund but stipulates that it is to be in an amount determined by the level of effort expended by the agency during its review of the application. The guidance outlines the user fees due with certain PMAs, the refunds set by statute, and FDA's plan for determining the amount of the fee to be refunded when the exact amount is not prescribed by the new law.

FDA is making this guidance document immediately available because prior public participation was not feasible. MDUFMA's user fee provisions were effective immediately, and it is essential for the agency to provide guidance to its stakeholders on the user fee program as quickly as possible. Although it was not feasible to obtain comments before issuing the guidance, in accordance with this agency's GGP procedures, FDA will accept comments on the guidance at any time.

## II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on user fees and refunds for PMAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

To receive a copy of ''User Fees and Refunds for Premarket Approval Applications'' by fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1224) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

## IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the user fee forms (OMB control number 0910–0511), which expires on August 31, 2006, and the regulations governing administrative practices and procedures (21 CFR part 10, OMB control number 0910–0192).

## V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this guidance. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 14, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–29196 Filed 11–21–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, 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 a proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the end-of-course evaluation form used to evaluate the National Fire Academy's (NFA) resident and regional delivery courses.

**SUPPLEMENTARY INFORMATION:** The NFA is mandated under the Fire Prevention and Control Act of 1974, Public Law 93–498, to provide training and education to the Nation's fire service and emergency service personnel. To maintain the quality of these programs, it is necessary to evaluate them on an ongoing basis. The National Fire Academy Course Evaluation Form provides one means of maintaining quality assurance for NFA resident and regional courses. This form is used for on-campus courses delivered at the NFA facility, located in Emmitsburg, Maryland, and for NFA regional courses, which are identical to the NFA resident courses, but offered in selected regions to students unable to travel to NFA for the resident offering of the course.

**Collection of Information**

*Title:* National Fire Academy Course Evaluation Form.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 1660–0032.

*Form Number:* FEMA Form 95–20, National Fire Academy Course Evaluation Form.

*Abstract:* The National Fire Academy Course Evaluation Form is used to evaluate the effectiveness of all resident and regional delivery courses. The form is primarily used to assess the effectiveness of course materials, instructor delivery and physical location. The demographic information is used in developing needs assessments and identifying the student population's representation.

*Affected Public:* Individuals participating in NFA on-campus or regional courses.

*Estimated Total Annual Burden Hours:* 1,450.

*Estimated Number of Respondents:* 5,800.

*Estimated Hour Burden Per Response:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Cost:* The annualized cost to respondents is minimal. Respondents utilize the hour burden at the end of each course to complete the written evaluation form, therefore, a cost estimate is not included.

*Comments:* Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

**ADDRESSES:** Interested persons should submit written comments to Muriel B. Anderson, Branch Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Contact Terry Gladhill, Program Analyst, National Fire Academy at (301) 447–1239 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *Information.Collections@fema.gov.*

Dated: November 13, 2003.

**Edward W. Kernan,**

*Division Director, Information Resources Management Division, Information Technology Services Directorate.*

[FR Doc. 03–29290 Filed 11–21–03; 8:45 am]

BILLING CODE 9110–17–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* FEMA's Excess Federal Real Property Program Application.

*Type of Information Collection:* New.

*Abstract:* GSA provides announcements to FEMA, and to State and local governments, concerning available Federal surplus real property for emergency management response use purposes including fire and rescue services. An applicant must notify the disposal agency such as GSA Regional and Headquarters offices, or the Department of Defense (DOD) Base Realignment Closure (BRAC) offices, and FEMA Regional and Headquarters offices of its intent to acquire the property. The notification should occur within 20 days after notification of property availability. States, the District of Columbia, any territory or possession of the United States, or any political subdivision or instrumentality thereof, may apply for the transfer or conveyance of surplus real property for emergency management response use purposes. An applicant must formally submit a completed FEMA Excess Federal Real Property Program application including supporting

documentation to FEMA. After receiving this information, FEMA will then determine if the requested excess Federal real property is required for emergency management response use. The application process is designed to ensure that the applicant's proposed use of the Federal real property is for emergency management use as an integral part of applicable State and local government plans. The completed application form is designed to ensure that the applicant conforms to GSA and DOD regulatory conditions.

*Affected Public:* State, Local, or Tribal Governments.

*Number of Respondents:* 1.

*Estimated Time per Respondent:* 3 hours.

*Estimated Total Annual Burden Hours:* 3 hours.

*Frequency of Response:* On occasion.

*Comments:* Interested persons are invited to submit written comments within 30 days of the date of this notice on the proposed information collection to the FEMA Desk Officer at the Office of Management and Budget (OMB) at e-mail address *David_Rostker@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be sent to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency at e-mail address *Information.Collections@fema.gov*.

Dated: November 13, 2003.

**Edward W. Kernan,**

*Division Director, Information Resources Management Division, Information Technology Services Directorate.*

[FR Doc. 03–29291 Filed 11–21–03; 8:45 am]

BILLING CODE 9110–07–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4815–N–90]**

### Notice of Submission of Proposed Information Collection to OMB: Customer Service and Satisfaction Survey

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This proposed survey measures the respondent's level of satisfaction with their living conditions, facilitates interaction and communication between PHAs/owners and residents, and guides managers in recognizing areas of concern identified by residents.

**DATES:** *Comments Due Date:* December 24, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2507–0001) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Customer Service and Satisfaction Survey.

*OMB Approval Number:* 2507–0001.

*Form Numbers:* None.

*Description of the Need for the Information and It's Proposed Use:* The proposed survey measures the respondent's level of satisfaction with their living conditions, interaction and communication between PHAs/owners and residents, and guides managers in recognizing areas of concern identified by residents.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

*Frequency of Submission:* Annually.

*Reporting Burden:* Number of Respondents 580,797; Average response per respondent 0.37; Total annual responses 216,979; Average burden per response 0.29 hrs.

*Total Estimated Burden Hours:* 64,021.

*Status:* Revision of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 14, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 03–29203 Filed 11–21–03; 8:45 am]

BILLING CODE 4210–72–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4815–N–91]**

### Notice of Submission of Proposed Information Collection to OMB: Public Housing Agencies' Management Operations Review

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This submission is a request for extension of OMB approval to collect the subject information. PHAs (or Resident Management Corporations) submit management information for evaluation of all major areas of a participant's management operations. The information is used to assess the management performance of PHAs.

**DATES:** *Comments Due Date:* December 24, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2535–0106) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Public Housing Agencies' Management Operations Review.

*OMB Approval Number:* 2535–0106.

*Form Numbers:* Form HUD–50072.

*Description of the Need for the Information and It's Proposed Use:* PHAs (or Resident Management Corporations) submit management information for evaluation of all major areas of a participant's management operations. The information is used to assess the management performance of PHAs.

*Respondents:* Not-for-profit institutions, State, Local or Tribal Government.

*Frequency of Submission:* Annually.

*Reporting Burden:* Number of Respondents 3,170; Average response per respondent 1; Total annual responses 3,170; Average burden per response 1.26 hrs.

*Total Estimated Burden Hours:* 3,170.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 17, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 03–29204 Filed 11–21–03; 8:45 am]

BILLING CODE 4210–72–P

## DEPARTMENT OF THE INTERIOR

### Utah Reclamation Mitigation and Conservation Commission

### Central Utah Project Completion Act

**AGENCY:** Department of the Interior. Office of the Assistant Secretary—Water and Science; and the Utah Reclamation Mitigation and Conservation Commission (Commission).

**ACTION:** Notice of availability, Draft Environmental Impact Statement (DEIS), Lower Duchesne river Wetlands Mitigation Project, Duchesne and Uintah Counties, Utah.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Central Utah Project Completion Act Office, and the Utah Reclamation Mitigation and Conservation Commission (Commission), propose to create, restore, and otherwise enhance riparian wetland habitats along the Duchesne River, utah, as partial mitigation for the Bonneville Unit, Central Utah Project (CUP). This project has been planned in conjunction with the Ute Indian Tribe of the Uintah and Ouray Agency and is intended to fulfill long-standing commitments to mitigate for impacts to Ute Indian tribal and non-tribal wetland-wildlife habitats arising from construction and operation of the Bonneville Unit, and to provide additional wetland/wildlife benefits to the Ute Indian Tribe.

A Proposed Action and two alternatives are evaluated, along with the No Action Alternative, in the DEIS. Under the Proposed Action, approximately 7,790 acres of land composed of Ute Indian Tribal trust lands, up to 2,154 acres of fee lands to be acquired by the Federal Government, and a 1,087-acre parcel of existing Federal land would be acquired and/or developed into a cohesive wetlands management unit. A portion of the water currently managed by the Bureau of Indian Affairs for the uinta Indian Irrigation Project would be utilzed, along with water available under rights owned by the Federal Government, and any water acquired with fee lands, to improve existing, and restore prior existing, wetlands throughout the property. In general, the lands would be improved and managed for fish and wildlife habitat and wetland resources in a manner that replaces wetland resources, especially Ute Indian Tribal resources, lost or adversely impacted by the Bonneville Unit, CUP. All project lands would be managed by the Ute Indian Tribe under management agreements with the Joint Lead Agencies to achieve the prescribed wetlands-associated fish and wildlife benefits, and for other wetland/wildlife-related tribal benefits. The alternatives included in the DEIS are similar to the Proposed Action, differing only in the acreage amounts and locations.

The public is invited to submit comments on the adequacy of the DEIS and the assessment of environmental impacts. Comments received in response to this notice will be part of the public record and available for public review pursuant to the Freedom of Information Act (5 U.S.C. 552) and may be released to the public upon request. This will normally include names, addresses, and any other personal information be withheld from such releases by so indicating in their letter of comment or by means of separate written communication.

**DATES:** The DEIS will be available for public review and comment for a minimum of forty-five (45) calendar days following the publication of this notice. The deadline for submittal of written comments on the DEIS will be stated on the cover sheet of the document and noted in the transmittal letter to all reviewers.

Comments on the DEIS may also be presented verbally or in writing at the public meetings to be held at the vicinity of the project. Public meetings are being held to present the evaluation of environmental impacts to the public and provide additional opportunity for public comment on the project. The places, dates, and times of public

meetings will be noted in the transmittal letter to all reviewers and announced in local newspapers.

Public meetings will be held at the following locations:

December 16, 2003: West Junior High School, East Highway 40, Fort Duchesne, Utah 84026.

December 17, 2003: Crossroads Senior Center, 50 East 200 South, Roosevelt, Utah 84066.

December 18, 2003: State Office, Bureau of Land Management, Third Floor Conference Room, 324 South State Street, Salt Lake City, Utah 84138.

All meetings will begin at 6 pm and conclude at 8 pm.

**ADDRESSES:** Comments on the DEIS should be addressed to: Mr. Ron Groves, Director, Wissiups Wetlands Project, Ute Indian Tribe, PO Box 190, Ft. Duchesne, Utah 84026.

**FOR FURTHER INFORMATION CONTACT:** Copies of the Draft EIS and the resource technical reports can be obtained by contacting Mr. Ron Groves, Director, Wissiups Wetlands Project, Ute Indian Tribe, PO Box 190, Ft. Duchesne, Utah 84026, Telephone: (435) 722–5867, E-mail address: *wetlands@ubtanet.com.*

Copies of the DEIS are also available for inspection at:

Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah 84101.

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606.

Department of the Interior, Natural Resource Library, 1849 C Street, NW., Washington, DC 20240.

Duchesne County Library, 70 East Lagoon, Roosevelt, Utah 84066.

Headquarters, Ute Indian Tribe of the Uintah and Ouray Agency, 988 South 7500 East, Ft. Duchesne, Utah 84026.

Information on other matters related to this notice may be obtained by calling or writing Mr. Ralph G. Swanson, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone (801) 379–1254, E-mail address: *rswanson@uc.usbr.gov.*

Dated: September 8, 2003.

**Ronald Johnston,**

*CUP Program Director, Department of the Interior.*

Dated: September 8, 2003.

**Michael C. Weland,**

*Executive Director, Utah Reclamation Mitigation and Conservation Commission.*

[FR Doc. 03–29243 Filed 11–21–03; 8:45 am]

**BILLING CODE 4310–RK–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent To Conduct Restoration Planning for Natural Resources Injured by the Release of Oil From the MV Stuyvesant Oil Spill, Humboldt County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Fish and Wildlife Service (Department of the Interior), California Department of Fish and Game, and California State Lands Commission are joint trustees (Trustees) for natural resources and are authorized to assess injuries to Federal and State resources caused by the MV *Stuyvesant* Oil Spill and to plan and implement restoration actions to address those injuries. The Trustees announce the intent to conduct restoration planning for the MV *Stuyvesant* Oil Spill. The purpose of this restoration planning effort is to complete an assessment of the natural resource injuries and damages caused by the oil spill, and to prepare a plan for the restoration of the injured resources.

**DATES:** To ensure consideration, we must receive written comments on or before December 24, 2003.

**ADDRESSES:**

#### Review of Administrative Record

The Administrative Record will be available for public inspection, by appointment, during normal business hours at these locations:

- U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825
- California Department of Fish and Game, 619 2nd Street, Eureka, California 95501

You may schedule a time to review the Administrative Record by contacting the Sacramento Fish and Wildlife Office or the California Department of Fish and Game's Eureka office (*see* **FOR FURTHER INFORMATION CONTACT**).

#### Submission of Comments

You may submit your written comments on this Notice, Administrative Record materials, and all upcoming restoration planning documents by any of the following methods:

1. Send written comments and information by mail to Charlene Hall, Sacramento Fish and Wildlife Office, at the above address.

2. Hand-deliver written comments to the Sacramento Fish and Wildlife Office, at the above address.

3. Fax comments to (916) 414–6713 (Attn.: Charlene Hall).

4. Send comments by electronic mail (e-mail) to *Charlene_Hall@fws.gov*. For directions on how to submit electronic comments, see the ''Public Comments Solicited'' section.

**FOR FURTHER INFORMATION CONTACT:** Charlene Hall, Sacramento Fish and Wildlife Office, telephone (916) 414–6590; California Department of Fish and Game, Eureka, (707) 441–5752. To receive public notices about future Restoration Planning activities, contact Charlene Hall by telephone.

**SUPPLEMENTARY INFORMATION:**

#### Background

On or about September 6, 1999, oil was spilled from the dredge vessel M/V Stuyvesant into the Pacific Ocean offshore of Humboldt Bay in the State of California. Oil was spread by tide, currents and winds and washed ashore along the coasts of Humboldt and Del Norte Counties. The oil affected a number of natural resources, including seabirds, shorebirds, marine waters, and beaches. This oil spill is hereafter referred to as the ''Incident.''

Pursuant to section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.*, Federal and State trustees (Trustees) for natural resources are authorized to assess natural resource damages resulting from oil spills into navigable waters and to develop and implement a plan for restoration of such injured resources. The Trustees for this Incident are the U.S. Fish and Wildlife Service (Department of the Interior), the California Department of Fish and Game, and the California State Lands Commission. The Natural Resource Damage Assessment Regulations under OPA, 15 CFR part 990 (the ''NRDA regulations''), provide that the Trustees are to prepare a Notice of Intent to Conduct Restoration Planning (Notice) if they determine certain conditions have been met and if they decide to quantify the injuries to natural resources and to develop a restoration plan.

This Notice is to announce, pursuant to § 990.44 of the NRDA regulations, that the Trustees, having collected and analyzed data, intend to proceed with restoration planning actions to address injuries to natural resources resulting from the Incident. The purpose of this restoration planning effort is to further evaluate injuries to natural resources and services and to use that information to determine the need for, type of, and scale of restoration actions.

**Determination of Jurisdiction**

The Trustees have made the following determinations pursuant to 15 CFR 990.41 and 990.42:

(1) On or about September 6, 1999, the dredge vessel MV *Stuyvesant* spilled a quantity of intermediate fuel oil, estimated to be at least 2,100 gallons, in the Pacific Ocean off Humboldt Bay, near Eureka, California. This occurrence constituted an ''Incident'' within the meaning of 15 CFR 990.30. The Incident is also a spill or discharge as defined at California Government Code 8670.3(u).

(2) The Incident was not permitted under a permit issued under Federal, State, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

(3) Oil discharged during the Incident affected marine and shoreline habitats, wildlife, and human uses of natural resources in the area. Consequently, natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

(4) As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under the Federal Oil Pollution Act (OPA), 33 U.S.C. 2701–2761, and California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code Sections 8670.1 *et seq.*

**Determination To Conduct Restoration Planning**

The Trustees have determined, pursuant to 15 CFR 99.42(a), that:

(1) Data collected pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources have resulted from the Incident, including but not limited to the following:

(i) Injury to a wide variety and number of seabirds and shorebirds, among them marbled murrelets and western snowy plovers (species listed as threatened under the Endangered Species Act, 16 U.S.C. 1531–1544);

(ii) Impacts to beaches, tide pools, offshore rocks, sea cliffs, and jetties such that the ecological services provided by these habitats were reduced for varying periods of time;

(iii) Impacts to water quality in marine waters affected by the spill such that the ecological services provided by this habitat were reduced for some period of time; and

(iv) Lost public recreational uses of beaches, parks, and other public areas, including lost or diminished opportunities for public hiking, camping, fishing, surfing, beach combing, and wildlife viewing.

(2) The response and cleanup actions taken during early stages of the Incident have not adequately addressed the injuries resulting from the Incident to the extent where restoration would not be necessary. Response efforts included collection and removal of oil and oiled debris along beaches and rehabilitation of oiled birds. These efforts reduced the magnitude and duration of impacts to beach habitats and wildlife, but did not eliminate all injuries or make restoration unnecessary.

(3) Potential assessment procedures to be used to evaluate injuries and to design and implement the appropriate type and scale of restoration for these injured natural resources and services consist of, but are not limited to:

(i) Compilation of data on numbers, species, and collection locations of dead or debilitated birds found during the spill response;

(ii) Compilation of demographic data for key bird species;

(iii) Field studies and/or literature searches to estimate rates of removal of carcasses from beaches by scavengers and effectiveness of wildlife operations personnel and techniques at finding oiled birds stranded on beaches;

(iv) Computer modeling of bird distribution and abundance data and/or oil trajectory data to estimate spill-related avian mortality;

(v) Resource Equivalency Analysis or other techniques to scale bird restoration projects to bird injuries;

(vi) Habitat Equivalency Analysis or other techniques to scale habitat restoration projects to habitat injuries;

(vii) Field studies to ascertain restoration suitability of various tracts of land; and

(viii) Analysis of habitat quality information to properly scale restoration projects.

(4) Feasible primary and compensatory restoration actions exist to address injuries from the Incident. Restoration activities are expected to focus on marbled murrelets and other seabirds, snowy plovers and other shorebirds, marine and shoreline habitats, and lost recreation. Restoration actions for the injured resources may include, but are not necessarily limited to:

(i) Acquisition of marbled murrelet nesting habitat from willing sellers, potentially including acquisition of forested lands identified as the Grizzly Creek Marbled Murrelet Conservation Area in the Pacific Lumber Company's Habitat Conservation Plan;

(ii) Enhancement and/or protection of nesting locations of seabirds along the California coast;

(iii) Enhancement and/or protection of beaches, wetlands and other habitats used by bird species that were affected by the spill, potentially including eradication of invasive exotic plants from dune areas; and

(iv) Enhancement of trails or other facilities used for public recreation at beaches or parks where public access was lost or diminished during the spill response.

**Administrative Record**

The Trustees have opened an Administrative Record (Record) in compliance with 15 CFR 990.45. The Record includes documents relied upon by the Trustees during the assessment and restoration planning performed thus far in connection with the Incident, including data supporting the above determinations. The Record is on file and available to the public at the locations specified in the **ADDRESSES** section.

**Public Comments Solicited**

Pursuant to 15 CFR 990.14(d), the Trustees seek public involvement in restoration planning for this Incident, through public review of, and comment on, this Notice and the documents contained in the Administrative Record, as well as on the Draft Restoration Plan after it has been prepared.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: Stuyvesant NOI'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling Charlene Hall at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. 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.

### Author

The primary author of this notice is Daniel Welsh (Sacramento Fish and Wildlife Office; see **ADDRESSES** section).

### Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*).

Dated: November 14, 2003.

**Michael B. Fris,**

*Acting Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 03–29301 Filed 11–21–03; 8:45 am]

**BILLING CODE 4310–55–P**

---

## DEPARTMENT OF THE INTERIOR

## Geological Survey

### Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the information collection described has been submitted to the Office of Management and Budget (OMB) for Approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Copies of the proposed collection instrument may be obtained by contacting the USGS clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, OMB, via e-mail to *OIRA_DOCKET@omb.eop.gov* or via facsimile to (202) 395–6566; and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. 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 forms of information technology.

*Title:* National Atlas of the United States of America.

*Current OMB approval number:* 1028–0057.

*Abstract:* Potential customers of electronic national atlas products will be asked questions that provide (1) potential uses of these products; (2) type of personal computer used; (3) current method of acquiring atlas-type information; (4) demographic information; and (5) personal expectations from the products. Survey questionnaires will be distributed by mail in the return postage-paid format and via the World Wide Web. Focus groups will be held at various locations across the United States and could include prototype product testing. Software usability studies will be conducted at various locations and will result in the development of products that are easier to use. Customer information gathered from the questionnaires, focus groups, and usability studies will be used to evaluate the National Atlas of the United States products and to make development adjustments based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs. The USGS intends to develop a cooperative research and development agreement with private industry to assist in product development and to provide an additional avenue for product distribution.

*Bureau form number:* None.

*Frequency:* An estimated 2–3 surveys, and 2–5 focus group studies per year to evaluate potential customer segments and reactions.

*Description of respondents:* Owners of powerful home personal computers, some with Internet access—potentially the general public, libraries, and schools.

*Estimated completion time:* Varies depending on the mechanism used: approximately 15 minutes per survey and 1 hour per focus group session.

*Annual responses:* Approximately 1,000 survey and 100 focus group responses.

*Annual burden hours:* 350.

*Bureau clearance officer:* John Cordyack, 703–648–7313.

Dated: October 2, 2003.

**Robert A. Lidwin,**

*Chief of Staff for Geography.*

[FR Doc. 03–29225 Filed 11–21–03; 8:45 am]

**BILLING CODE 4310–Y7–M**

---

## DEPARTMENT OF THE INTERIOR

## Geological Survey

### Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Proposal to extend the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure maximum consideration. Comments and suggestions on the proposal should be made directly to the Desk Officer for the Interior Department, OMB–OIRA, via e-mail to *OIRA DOCKET@omb.eop.gov* or via facsimile to (202) 395–6566, and to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive., Reston, Virginia, 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:
3. The quality, utility, and clarity of the information to be collected; and
4. 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 forms of information technology.

*Title:* Annual National Earthquake Hazards Reduction Program Announcement.

*OMB approval number:* 1028–0051.

*Abstract:* Respondents submit proposals to support research in earthquake hazards and earthquake

prediction to earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports and required on each selected performances.

*Bureau form number:* None.

*Frequency:* Annual proposals, annual or final reports.

*Description of respondents:* Education institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

*Annual responses:* 370.

*Annual burden hours:* 12,800 hours.

*Bureau clearance officer:* John Cordyack, 703–648–7313.

Dated: October 6, 2003.

**P. Patrick Leahy,**

*Associate Director for Geology.*

[FR Doc. 03–29226 Filed 11–21–03; 8:45 am]

BILLING CODE 4310–y7–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–070–1430–01; NMNM108615]**

### Notice of Realty Action; Recreation and Public Purpose (R&PP) Act Classification, Rio Arriba County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described public land is determined suitable for classification for leasing or conveyance to the Jemez Mountain School District, Gallina, New Mexico under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*).

**DATES:** Interested parties may submit comments regarding the proposed leasing/conveyance or classification of the lands to the Bureau of Land Management at the following address until January 8, 2004. The Bureau of Land Management, Farmington Field Manager, 1235 La Plata Highway, Farmington, NM 87401, who may sustain, vacate, or modify this realty action, will review any adverse comments. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and effective on January 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary Jo Albin, Realty Specialist, at the Bureau of Land Management, Farmington Field Office, at (505) 599–6332. Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, and Farmington, NM 87401.

**SUPPLEMENTARY INFORMATION:** The Jemez Mountain School District proposes to use the land for a school with related buildings and educational facilities.

**New Mexico Principal Meridian**

T. 23 N., R. 6 W.,
Sec. 17: SW¼SE¼.

Containing 40 acres, more or less.

Publication of this notice segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws for a period until November 25, 2005. The segregative affect will terminate upon issuance of the lease and patent to the Jemez Mountain School District or November 25, 2005, whichever occurs first.

The lease, when issued, will be subject to the following terms:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

3. Provisions of Title VI of the Civil Rights Act of 1964.

4. Provisions that the lease be operated in compliance with the approved Development Plan.

The patent, when issued, will be subject to the following terms:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.

2. Reservation to the United States of all minerals.

3. All valid existing rights, *e.g.*, rights-of-way and leases of record.

4. Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is devoted to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits it agents, employees, contractors, or subcontractors, including without limitation, lessees, sublessees and permittees, to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

Leasing and later patenting is consistent with current Bureau of Land Management policies and land use planning. The proposal serves the public interest since it would provide a school with educational facilities that would meet the needs of the surrounding Navajo Indian population.

Dated: October 8, 2003.

**Joel E. Farrell,**

*Assistant Field Manager.*

[FR Doc. 03–29205 Filed 11–21–03; 8:45 am]

BILLING CODE 4310–VB–P

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–03–037]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** International Trade Commission.

**TIME AND DATE:** December 1, 2003 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: None

2. Minutes

3. Ratification List

4. Inv. No. 731–TA–1056 (Preliminary) (Certain Aluminum Plate from South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on December 1, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 8, 2003.)

5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 20, 2003.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03–29406 Filed 11–20–03; 11:59 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training; Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Monday, December 8, 2003, beginning at 9 a.m. at the Embassy Suites Hotel, 1300 Concourse Drive, Baltimore, Maryland (near the Baltimore/Washington International Airport).

Written comments are welcome and may be submitted by addressing them to: Mr. John Muckelbauer, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1325, Washington, DC, 20210.

The agenda will focus on the best ways to provide job-search assistance and related services to separating service members during their period of transition into civilian life.

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Mr. John Muckelbauer at telephone number 202/693–4700 no later than Wednesday, December 3, 2003.

Signed at Washington, DC, this 18th day of November, 2003.

**Frederico Juarbe, Jr.,**

*Assistant Secretary of Labor for Veterans' Employment and Training.*

[FR Doc. 03–29256 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–79–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51, 835]**

### Agilent Technologies, Manufacturing Test Business Unit, Electronic Manufacturing Test Division, Loveland, CO; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 12, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Agilent Technologies, Inc., Information Technology Division (IT), Loveland, Colorado was signed on June 20, 2003, and published in the **Federal Register** on July 10, 2003 (68 FR 41179).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Agilent Technologies, Inc., Information Technology Division (IT), Loveland, Colorado engaged in computer consulting services combined with providing information technology. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner alleges that the negative determination was erroneous because they produce ''new software and firmware to support test hardware sent abroad.'' The petitioner appears to imply that the fact that they are developing ''new'' software for a U.S. company, and that their jobs are being shifted abroad, that they should be considered eligible for TAA.

Software development does not constitute production within the meaning of section 222 of the Trade Act.

Even if the software development performed by subject firm workers did constitute production, an investigation would have to establish whether (a) imports contributed importantly to layoffs at the subject firm, or (b) whether a shift in production occurred to a country within the following four categories:

1. Is party to a free trade agreement with the United States.
2. Is a beneficiary country under the Andean Trade Preference Act.
3. Is a beneficiary country under African Growth and Opportunities Act.
4. Is a beneficiary country under the Caribbean Basin Economic Recovery Act.

The Software developed by subject firm workers is sent to Singapore for incorporation into foreign production. Thus, the software is developed exclusively for the export market, as their production is incorporated into a final product produced at a foreign facility. Therefore, there is no evidence of imports that are ''like or directly competitive'' with those produced at the subject firm contributing importantly to layoffs at the subject facility division.

Finally, the United States' Free Trade Agreement with Singapore is expected to come into force in January of 2004, at which point shifts in production to Singapore will meet the required ''shift in production'' criteria outlined in TAA legislation. However, this future date falls outside of the relevant period of this investigation and thus has no bearing on petitioning worker eligibility.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29264 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,220]**

### Agilent Technologies, Loveland, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2003 in response to a worker petition filed on behalf of workers at Agilent Technologies, Loveland, Colorado.

The petitioning group of workers is covered by an earlier petition filed on October 7, 2003 (TA–W–53,164) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 17th day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29273 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,918]**

### Alstom T&D Industries, High Voltage Switchgear Division, Charleroi, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 26, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on August 12, 2003, and published in the **Federal Register** on September 2, 2003 (68 FR 52227).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Alstom T&D, Industries, High Voltage Switchgear Division, Charleroi, Pennsylvania was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974 was not met and production was not shifted abroad.

The worker who filed the reconsideration request stated that affiliated companies of Alstom T&D Industries in Mexico produce the same products as Alstom T&D Industries, High Voltage Switchgear Division, Charleroi, Pennsylvania. Consequently, a decline in production and employment at the subject facility is a result of increasing production in Mexico facilities.

Contact with a company official confirmed that Alstom International, a parent company of the subject firm, does indeed own a facility in Mexico. However, the company official specified that the products manufactured in Mexico are not like or directly competitive with those produced in Charleroi, Pennsylvania. Workers at the Mexico facility specialize in production of instrumentation transformers and circuit breakers for LIFE tanks, while workers at Alstom T&D, Industries, High Voltage Switchgear Division, Charleroi, Pennsylvania produce circuit breakers for DEAD tanks. Both facilities cover two completely different and unaffiliated markets. Thus, an increase in production at the facilities in Mexico has no impact on production and employment at the subject facility. The company official stated that there was no evidence of a shift from the subject facility to the Mexican affiliate or any U.S. imports resulting from this or any other foreign production and a decrease in production at Alstom T&D, Industries, High Voltage Switchgear Division, Charleroi, Pennsylvania is solemnly the result of the overall decrease of demand in the market.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 31st day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29263 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,080]**

### Arland Tool and Manufacturing, Inc., Sturbridge, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 1, 2003, in response to a petition filed by the company on behalf of workers at Arland Tool and Manufacturing, Inc., Sturbridge, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of October 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29284 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,963]**

### Chicago Cold Rolling, Portage, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 24, 2003 in response to a worker petition which was filed on behalf of workers at Chicago Cold Rolling, Portage, Indiana.

An active certification covering the petitioning group of workers is already in effect (TA–W–51,241I, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of October 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29259 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,590]**

### Delta International Machinery, Pentair Tool Group, Tupelo, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003, in response to a worker petition filed by a company official on behalf of workers at Delta International Machinery, Pentair Tool Group, Tupelo, Mississippi.

The petitioning individual of the company has requested that this petition be withdrawn; therefore, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 29th day of October, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29278 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,077]**

### Dupont Teijin Films, Florence, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 1, 2003 in response to a worker petition filed by a company official on behalf of workers at DuPont Teijin Films, Florence, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 24th day of October 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29283 Filed 11–21–03; 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 4, 2003.

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 4, 2003.

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 30th day of October, 2003.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted between 10/14/2003 and 10/17/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 53,218 | F/V Cape Lookout (Comp) | Kodiak, AK | 10/14/2003 | 09/22/2003 |
| 53,219 | Mycrosensor Technologies (Wkrs) | Phoenix, AZ | 10/14/2003 | 10/07/2003 |
| 53,220 | Agilent Technologies (Wkrs) | Loveland, CO | 10/14/2003 | 09/26/2003 |
| 53,221 | Inter Metro Industries (USWA) | Wilkes-Barre, PA | 10/14/2003 | 10/10/2003 |
| 53,222 | Eastman Kodak Co. (Comp) | Rochester, NY | 10/14/2003 | 10/10/2003 |
| 53,223 | Nighswonger Contract Cutting (OR) | Coquille, OR | 10/14/2003 | 06/18/2003 |
| 53,224 | Nevamar Co. (Comp) | Odenton, MD | 10/14/2003 | 10/08/2003 |
| 53,225 | ASML (Comp) | Hillsboro, OR | 10/14/2003 | 10/01/2003 |
| 53,226 | Cavalier Specialty Yarn Co., USA (Comp) | Gastonia, NC | 10/14/2003 | 10/10/2003 |
| 53,227 | Voith Paper (Comp) | Salisbury, NC | 10/14/2003 | 10/13/2003 |
| 53,228 | Aurora Casket Co. (IBT) | Clarksburg, WV | 10/14/2003 | 10/10/2003 |
| 53,229 | Conoco Phillips (Wkrs) | Ponca City, OK | 10/14/2003 | 09/20/2003 |
| 53,230 | Amerbelle Corp. (Comp) | Vernon, CT | 10/14/2003 | 10/13/2003 |
| 53,231 | GE EM, ITS (Wkrs) | Erlanger, KY | 10/14/2003 | 10/09/2003 |
| 53,232 | Fall River Mfg., II (Comp) | Gaffney, SC | 10/14/2003 | 10/11/2003 |
| 53,233 | TDK Ferrites Corp. (Wkrs) | Shawnee, OK | 10/14/2003 | 10/13/2003 |
| 53,234 | Kendro Laboratory Products (Comp) | Newtown, CT | 10/14/2003 | 09/29/2003 |
| 53,235 | Keith Dennis Co., LLC (Comp) | Dandridge, TN | 10/14/2003 | 10/08/2003 |
| 53,236 | Analog Devices (Wkrs) | Santa Clara, CA | 10/14/2003 | 10/10/2003 |
| 53,237 | Lane Co., Inc. (The) (Wkrs) | Altavista, VA | 10/14/2003 | 10/09/2003 |
| 53,238 | West Linn Paper Co. (Comp) | West Linn, OR | 10/14/2003 | 10/07/2003 |
| 53,239 | Fairway Products (Comp) | Quincy, MI | 10/14/2003 | 09/26/2003 |
| 53,240 | Friedrich Air Conditioning Co. (Comp) | San Antonio, TX | 10/14/2003 | 09/30/2003 |
| 53,241 | Art Leather Mfg. Co., Inc. (Comp) | Elmhurst, NY | 10/14/2003 | 09/30/2003 |
| 53,242 | Wellington Leisure Products (Comp) | Leesville, SC | 10/14/2003 | 10/07/2003 |
| 53,243 | Crown Media Intl./Hallmark Channel (The) (CO) | Greenwood Vill., CO | 10/14/2003 | 10/06/2003 |
| 53,244 | Vesuvius USA (Comp) | Champaign, IL | 10/15/2003 | 09/24/2003 |
| 53,245 | Twin City Knitting Company, Inc. (Comp) | Newton, NC | 10/15/2003 | 10/10/2003 |
| 53,246 | Piedmont Industries, Inc. (Comp) | Hickory, NC | 10/15/2003 | 10/10/2003 |
| 53,247 | MT Picture Display Corp. of America (Comp) | Horseheads, NY | 10/15/2003 | 10/13/2003 |
| 53,248 | Gateway (Comp) | N. Sioux City, SD | 10/15/2003 | 10/13/2003 |
| 53,249 | Louisiana Pacific Corp. (Wkrs) | Mayie Springs, ID | 10/15/2003 | 10/08/2003 |
| 53,250 | L.S. Starrett Co., Inc. (Comp) | Alum Bank, PA | 10/15/2003 | 10/15/2003 |
| 53,251 | Majestic Mold and Tool, Inc. (Comp) | Phoenix, NY | 10/15/2003 | 10/09/2003 |
| 53,252 | Cytec Industries (NJ) | Woodbridge, NJ | 10/15/2003 | 10/14/2003 |
| 53,253 | W.R. Thread Cutting Works (UFCW) | Union City, NJ | 10/15/2003 | 10/15/2003 |
| 53,254 | Rutgers Organics Corp. (Comp) | State College, PA | 10/15/2003 | 10/07/2003 |

APPENDIX—Continued

[Petitions instituted between 10/14/2003 and 10/17/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 53,255 | Savane International Corp. (TX) | El Paso, TX | 10/15/2003 | 10/14/2003 |
| 53,256 | Connector Service Corp. (Comp) | Elgin, IL | 10/15/2003 | 10/14/2003 |
| 53,257 | Waggon Cellers (Wkrs) | Amarillo, TX | 10/15/2003 | 10/06/2003 |
| 53,258 | Allied Machine and Engineering Corp (Comp) | Dover, OH | 10/15/2003 | 10/14/2003 |
| 53,259 | Oneal Steel, Inc. (Wkrs) | Roanoke, VA | 10/15/2003 | 10/10/2003 |
| 53,260 | Detail Tool and Engineering, Inc. (Wkrs) | Ramsey, MN | 10/15/2003 | 10/09/2003 |
| 53,261 | International Stone Products, Inc. (USWA) | Barre, VT | 10/15/2003 | 10/03/2003 |
| 53,262 | Graphic Packaging International (Comp) | Ft. Atkinson, WI | 10/16/2003 | 10/15/2003 |
| 53,263 | Thomson, Inc. (Comp) | Indianapolis, IN | 10/16/2003 | 10/07/2003 |
| 53,264 | Burlington Industries B H Finishing (Wkrs) | Burlington, NC | 10/16/2003 | 10/10/2003 |
| 53,265 | Panoramic, Inc. (Wkrs) | Janesville, WI | 10/16/2003 | 10/13/2003 |
| 53,266 | West Coast Fashion, Inc. (CA) | S. El Monte, CA | 10/16/2003 | 10/14/2003 |
| 53,267 | Columbia Forest Products (Wkrs) | Chatham, VA | 10/16/2003 | 10/14/2003 |
| 53,268 | JS Popper (NJ) | Little Ferry, NJ | 10/16/2003 | 10/16/2003 |
| 53,269 | Weyco Group (UFCW) | Beaver Dam, WI | 10/16/2003 | 10/14/2003 |
| 53,270 | C and L Manufacturing Co. (Comp) | Hays, NC | 10/16/2003 | 10/16/2003 |
| 53,271 | Stahlsac, Inc. (Comp) | Weaverville, NC | 10/16/2003 | 10/03/2003 |
| 53,272 | Capitol Manufacturing (Comp) | Fayetteville, NC | 10/16/2003 | 10/16/2003 |
| 53,273 | Tietex International (Comp) | Burlington, NC | 10/17/2003 | 09/22/2003 |
| 53,274 | Duluth Missabe and Iron Range Railway (MN) | Duluth, MN | 10/17/2003 | 10/16/2003 |
| 53,275 | Hetran, Inc. (Wkrs) | Orwigsburg, PA | 10/17/2003 | 09/26/2003 |
| 53,276 | H. Freeman and Sons (UNITE) | Philadelphia, PA | 10/17/2003 | 10/03/2003 |
| 53,277 | Ken Lee Precision Corp. (Comp) | Baltimore, MD | 10/17/2003 | 10/13/2003 |
| 53,278 | Sherwood Harsco (UAW) | Lockport, NY | 10/17/2003 | 10/03/2003 |
| 53,279 | Atchison Products, Inc. (Comp) | Atchison, KS | 10/17/2003 | 09/30/2003 |
| 53,280 | Allegheny Ludlum Corp. (Comp) | Pittsburgh, PA | 10/17/2003 | 10/09/2003 |
| 53,281 | Dunbrooke Industries (MO) | Independence, MO | 10/17/2003 | 10/15/2003 |
| 53,282 | J.P. Morgan Chase Corp. (Wkrs) | Houston, TX | 10/17/2003 | 10/08/2003 |
| 53,283 | Remy Reman, LLC (Comp) | Bay Springs, MS | 10/17/2003 | 10/02/2003 |

[FR Doc. 03–29255 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,157]**

### Fishing Vessel (F/V) Tri–K, Palmer, AK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2003 in response to a petition filed by a company official on behalf of workers of Fishing Vessel (F/V) Tri–K, Palmer, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 23rd day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29285 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,152]**

### FMC Measurement Solutions, Erie, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2003, in response to a worker petition filed by the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 714, on behalf of workers at FMC Measurement Solutions, Erie, Pennsylvania.

The Department issued a negative determination applicable to the petitioning group of workers on September 10, 2003 (TA–W–52,576). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29269 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,948]**

### Gary Works, a Subsidiary of United States Steel Corporation, Gary, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 24, 2003 in response to a petition filed by a company official on behalf of workers at Gary Works, a subsidiary of United States Steel Corporation, Gary, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29271 Filed 11–21–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,879]**

### Jan-Sew Manufacturing, Crossville, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 15, 2003 in response to a worker petition filed by a company official on behalf of workers at Jan-Sew Manufacturing, Crossville, Tennessee.

The petitioning worker group is included in a petition filed on September 15, 2003 (TA–W–53,092) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would therefore serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC this 17th day of October 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29272 Filed 11–21–03; 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 4, 2003.

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, no later than December 4, 2003.

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.

Dated: Signed at Washington, DC., this 31st day of October, 2003.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petition's instituted between 10/20/2003 and 10/24/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 53,284 | Jolly Tundra (MN) | Winthrop, MN | 10/20/2003 | 10/20/2003 |
| 53,285 | Mastercraft Fabrics (Wkrs) | Spindale, NC | 10/20/2003 | 9/20/2003 |
| 53,286 | Elox Corp (Comp) | Davidson, NC | 10/20/2003 | 10/17/2003 |
| 53,287 | Filtertek (PR) | Patillas, PR | 10/20/2003 | 10/10/2003 |
| 53,288 | Biddeford Blankets, LLC (Comp) | Biddeford, ME | 10/20/2003 | 10/17/2003 |
| 53,289 | L and I Atlantic, Inc. (ME) | Bangor, ME | 10/20/2003 | 10/14/2003 |
| 53,290 | Finisar Corporation (Wkrs) | Sunnyvale, CA | 10/20/2003 | 10/04/2003 |
| 53,291 | Cone Mills Corp. (Comp) | Cliffside, NC | 10/20/2003 | 10/14/2003 |
| 53,292 | Salmon Falls Precision Fabricators, Inc. | Rochester, NH | 10/20/2003 | 10/16/2003 |
| 53,293 | Harriet and Henderson Yarns, Inc. (Comp) | Clarkton, NC | 10/20/2003 | 10/17/2003 |
| 53,294 | Newell Porcelain (Wkrs) | Newell, WV | 10/20/2003 | 10/14/2003 |
| 53,295 | Stimson Lumber (Comp) | Coeur d'Alene, ID | 10/20/2003 | 10/15/2003 |
| 53,296 | Solectron Technology, Inc. (NC) | Charlotte, NC | 10/20/2003 | 10/17/2003 |
| 53,297 | DSM Pharma Chemicals (Comp) | Greenville, NC | 10/20/2003 | 10/17/2003 |
| 53,298 | Fisher Controls (Wkrs) | McKinney, TX | 10/21/2003 | 10/21/2003 |
| 53,299 | Cannon ITT Industries (Comp) | Santa Ana, CA | 10/21/2003 | 10/08/2003 |
| 53,300 | Kraft Foods (NJ) | Fairlawn, NJ | 10/21/2003 | 10/02/2003 |
| 53,301 | Celanese Acetate (UNITE) | Rock Hill, SC | 10/21/2003 | 10/11/2003 |
| 53,302 | Kiker Hosiery, Inc. (Comp) | Locust, NC | 10/21/2003 | 10/15/2003 |
| 53,303 | Champagne Dye Works, Inc. (Comp) | Asheboro, NC | 10/21/2003 | 10/20/2003 |
| 53,304 | Quality Scientific Plastics, Inc. (Comp) | Petaluma, CA | 10/21/2003 | 09/24/2003 |
| 53,305 | Dillon Floral Corp. (Wkrs) | Bloomsburg, PA | 10/21/2003 | 10/01/2003 |
| 53,306 | Springs Window Fashions (Comp) | Wausau, WI | 10/21/2003 | 10/20/2003 |
| 53,307 | Manpower (Wkrs) | Miami, FL | 10/21/2003 | 10/06/2003 |
| 53,308 | Burger Iron Management Corp. (USWA) | Akron, OH | 10/21/2003 | 10/03/2003 |
| 53,309 | Candle Corporation (Wkrs) | El Segundo, CA | 10/21/2003 | 10/09/2003 |
| 53,310 | Endeavor Mold and Design, Inc. (Comp) | Erie, PA | 10/21/2003 | 10/02/2003 |
| 53,311 | Honeywell (Wkrs) | Freeport, IL | 10/22/2003 | 10/17/2003 |
| 53,312 | Ethan Allen Furniture (Wkrs) | Dublin, VA | 10/22/2003 | 10/16/2003 |
| 53,313 | Classic Hosiery, Inc. (Comp) | Burlington, NC | 10/22/2003 | 10/17/2003 |

APPENDIX—Continued

[Petition's instituted between 10/20/2003 and 10/24/2003]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 53,314 | Acrotech Midwest Inc. (MN) | Crosby, MN | 10/22/2003 | 10/21/2003 |
| 53,315 | OBG Manufacturing Co. (Comp) | Liberty, KY | 10/22/2003 | 10/22/2003 |
| 53,316 | Robert Bosch Tool Corp. (Comp) | Elizabethtown, KY | 10/22/2003 | 10/21/2003 |
| 53,317 | Sofanou, Inc. of Kentucky (Wkrs) | Morgantown, KY | 10/23/2003 | 10/21/2003 |
| 53,318 | Moll Industries (Comp) | Austin, TX | 10/23/2003 | 10/21/2003 |
| 53,319 | Meadwestvaco (PA) | Pittsfield, MA | 10/23/2003 | 10/15/2003 |
| 53,320 | Standard Motor Products (Wkrs) | Argos, IN | 10/23/2003 | 10/16/2003 |
| 53,321 | Charter Fabrics, Inc. (Comp) | New York, NY | 10/23/2003 | 09/29/2003 |
| 53,322 | John Crane, Inc. (Comp) | Vandalia, IL | 10/23/2003 | 10/22/2003 |
| 53,323 | Franklin Electric (Wkrs) | Jonesboro, IN | 10/23/2003 | 10/16/2003 |
| 53,324 | New River Industries, Inc. (Comp) | Radford, VA | 10/23/2003 | 10/15/2003 |
| 53,325 | Security DBS (Comp) | Dallas, TX | 10/23/2003 | 10/21/2003 |
| 53,326 | Weyerhaeuser (AR) | W. Memphis, AR | 10/23/2003 | 10/21/2003 |
| 53,327 | Portland Pattern, Inc. (Comp) | Portland, OR | 10/23/2003 | 10/22/2003 |
| 53,328 | International Paper (Wkrs) | Kaukauna, WI | 10/23/2003 | 10/20/2003 |
| 53,329 | Advanced Forming Technology (CO) | Longmont, CO | 10/23/2003 | 10/14/2003 |
| 53,330 | Air Products and Chemical, Inc. (Wkrs) | Allentown, PA | 10/23/2003 | 10/23/2003 |
| 53,331 | Budd Group (The) (Comp) | Grover, NC | 10/23/2003 | 10/23/2003 |
| 53,332 | NXL Investments, Inc. (Comp) | Euclid, OH | 10/23/2003 | 10/23/2003 |
| 53,333 | Fishing Vessel (F/V) WW Northland (Comp) | Haines, AK | 10/24/2003 | 10/12/2003 |
| 53,334 | Eugene Aluminum and Brass Foundry, Inc. (Comp) | Eugene, OR | 10/24/2003 | 10/17/2003 |
| 53,335 | Fairchild Semiconductor (Comp) | Mountaintop, PA | 10/24/2003 | 10/20/2003 |
| 53,336 | Henredon Furniture Ind. (Comp) | Spruce Pine, NC | 10/24/2003 | 10/23/2003 |
| 53,337 | De Machine Shop (Comp) | Berthoud, CO | 10/24/2003 | 10/23/2003 |
| 53,338 | Diversified Tool Corp. (Wkrs) | Cambridge Springs, PA | 10/24/2003 | 10/17/2003 |
| 53,339 | National Manufacturing Co. (Comp) | Sterling IL | 10/24/2003 | 10/15/2003 |
| 53,340 | Star Machine Shop (Wkrs) | Galax, VA | 10/24/2003 | 10/17/2003 |
| 53,341 | Underwood Industries of NY (Comp) | Waverly, NY | 10/24/2003 | 10/15/2003 |
| 53,342 | Halmode Apparel, Inc. (Wkrs) | Roanoke, VA | 10/24/2003 | 09/30/2003 |
| 53,343 | Arteva Specialities S.a.r.l. (Comp) | Shelby, NC | 10/24/2003 | 10/23/2003 |
| 53,344 | Royal Appliance Mfg., Co. (Comp) | Glenwillow, OH | 10/24/2003 | 10/16/2003 |
| 53,345 | Parkdale American, LLC (Comp) | Landis, NC | 10/24/2003 | 10/09/2003 |
| 53,346 | Parkdale Mills, Inc. (Comp) | Belmont, NC | 10/24/2003 | 10/09/2003 |
| 53,347 | Thomas Apparel Company (Wkrs) | Hartville, MO | 10/24/2003 | 10/31/2003 |
| 53,348 | Sampo Corporation of America (Wkrs) | Fremont, CA | 10/24/2003 | 10/07/2003 |
| 53,349 | Ethan Allen Mfg., Co. (Wkrs) | Beecher Falls, VT | 10/24/2003 | 10/20/2003 |
| 53,350 | Zytec America, Inc. (Comp) | Greensboro, NC | 10/24/2003 | 10/15/2003 |

[FR Doc. 03–29254 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,929]**

### LeSportsac, Manufacturing and Distribution Division, Stearns, KY; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 1, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 11, 2003, and published in the **Federal Register** on July 22, 2003 (68 FR 43371).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of LeSportsac, Manufacturing and Distribution Division, Stearns, Kentucky was denied because criterion (2) was not met. Sales and production of luggage and women's handbags at the subject plant increased from February through May 2001 to the corresponding period of 2002 and also increased from February through May of 2002 to the same period in 2003.

In the request for reconsideration, the petitioner alleged that figures indicating sales and production increases at the subject facility incorporated volumes of imports from China. The petitioner questions how an employment decline could have occurred in conjunction with a sales/production increase.

A communication with a company official in regard to this allegation revealed that the sales and production figures provided to the Department in this investigation were for the Stearns facility exclusively. The official further stated that the company is in the midst of a reorganization of its domestic facilities and that employment declines were a result of streamlining production processes more efficiently and reapportioning employment to other domestic facilities.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the

facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29262 Filed 11–21–03; 8:45 am]

**BILLING CODE 4510–30–P**

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,251]**

### Majestic Mold & Tool, Inc., Phoenix, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a petition filed by a company official on behalf of workers of the Corey Farmer Set Net Operation, Eagle River, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 20th day of October 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29268 Filed 11–21–03; 8:45 am]

**BILLING CODE 4510–30–P**

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,687]**

### Metso Paper USA, Inc., Logistics Division, Beloit, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 24, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on March 30, 2003 and published in the **Federal Register** on June 19, 2003 (68 FR 36845).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Metso Paper USA, Inc., Beloit, Wisconsin was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974 was not met and production was not shifted abroad.

In the reconsideration investigation, it was revealed that the production worker group is embedded within the Logistics Division of the subject facility.

The petitioner alleges that ''production has shifted to Finland for many of the spare parts supplied from Metso to U.S. papermills.'' Contact from another petitioner alleged that the company was serving former and present subject firm customers with foreign production, and implies that the company is attempting to hide the fact that they are engaged in foreign production from their customers.

A history of the subject facility site revealed that the subject facility was once owned by Beloit Paper, and was sold to the current owners following bankruptcy in 2000. The purchasing company included a facility in Finland. Prior to the relevant period of this investigation, the new owners dramatically downsized the production capacity of the subject facility due to dramatically decreased demand following the bankruptcy. Contact with company officials revealed that the subject facility only produced doctor blades and headbox vanes (parts used in paper making equipment) in the relevant period, and that the majority of work performed in the Logistics Division of the Metso Beloit facility involves buying, warehousing and shipping many other spare parts purchased by, but not produced at the subject facility. The officials stated that the company had not shifted production of doctor blades or headbox vanes away from the subject facility. One official did confirm that the company did outsource many of the parts that were warehoused at the same site. However, items that are not like or directly competitive with production at the subject facility in the relevant period are not pertinent to this investigation.

The petitioner states that production of doctor blades shifted to Finland, and implies that this shifted production is being used to supply U.S. customers. Further contact with the petitioners yielded a request that we obtain a copy of a ''BaaN'' report from the company that would reveal the volume of doctor blades that had been sourced in Finland, and subsequently imported to the U.S.

Contact with a company official revealed that the subject facility supplied almost all of their North American business. He further stated that the Finnish facility did on rare occasions supply customers with doctor blades in cases where an unanticipated increased demand occurred. The official later clarified that they also imported Finnish doctor blades in cases where ''odd ball'' sizes were requested, but the doctor blades with these specifications had never been produced at the subject facility. Results of the company ''BaaN'' report revealed that imports represented a very small amount of total subject firm production.

The petitioner asserted that ''castings'' previously produced in ''Beloit, Wisconsin or the ''Stateline Area'' surrounding Beloit'' were shifted to Canada.

Castings were not produced at the subject facility in the relevant period and are therefore irrelevant to this investigation.

The petitioner alleges that coater rods and assemblies previously ''machined'' at the subject facility are currently being produced in finished form in Finland for U.S. customers.

In regard to this issue, a company official stated that coater rods produced in Finland are ''cut to length'' at the subject facility, but there has been no change in the production location in the relevant period.

The petitioner alleges that the company's customers have begun purchasing headbox vanes from competitors in Canada.

The reconsideration investigation revealed that plant production of headvane boxes declined slightly in the relevant period, while sales increased. It was revealed that the subject firm produces two different types of headvane boxes, one made of lexan (which needs to be replaced every six months or so), and the other made of graphite, which lasts for two to three years before requiring a replacement.

The more durable and more expensive graphite product would account for the dip in production, as customers would not have to re-order the item as frequently. The official stated further that the only known competition in this market is domestic.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 17th day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29267 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,033]**

### Modern Packaging Products, Deer Park, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 26, 2003 in response to a petition filed on by a company official on behalf of workers of Modern Packaging, Inc., Deer Park, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of October 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29270 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,067]**

### Pall Corporation, Life Sciences Groups, Capsule Department, Ann Arbor, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 6, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 22, 2003, and published in the **Federal Register** on August 14, 2003 (68 FR 48645).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Pall Corporation, Life Sciences Groups, Capsule Department, Ann Arbor, Michigan was denied because criterion (1) was not met. Employment at the subject plant increased from 2001 to 2002, and January 2003 as compared to January 2002.

The petitioner suggests that the data indicating an increase in employment at the subject facility is mitigated by the fact that the company has reduced positions in ''skilled worker jobs'', and that the total number of employees is buffered by ''low wage level work'.

In following the directives of TAA legislation, the Department assesses whether worker groups are separately identifiable by product line. If workers at the subject facility are all engaged in the production of the same products, it is directed to consider the totals of all production workers. Thus the type of distinctions sought by the petitioner are not relevant to an investigation regarding group eligibility requirements for TAA.

In the request for reconsideration, the petitioner seems to imply that a shift of production to Puerto Rico on the part of the company constitutes a shift of production to a country included in Caribbean Basin Economic Recovery Act. The petitioner seems to conclude that it is this shift that is responsible for separations at the subject facility.

Puerto Rico is a U.S. Territory and therefore any movement of production to this region would not constitute a shift of production to a foreign source.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 17th day of October, 2003.

**Elliott S. Kushner**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29261 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,101]**

### Pearl Baths, Inc., a Division of MAAX, Inc., Brooklyn Park, MN; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 18, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on July 25, 2003 and published in the **Federal Register** on August 14, 2003 (68 FR 48645).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Pearl Baths, Inc., a division of MAXX, Inc., Brooklyn Park, Minnesota engaged in the production of whirlpool baths was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974 was not met and production was not shifted abroad.

The petitioner's main allegation consisted in the fact that employees of the Marketing, Customer Service, Tech Service and Accounting Departments, who were engaged in production, were separated as a result of a shift of their positions to Canada.

Marketing, customer service, tech service and accounting do not constitute

production according to the eligibility requirements for trade adjustment assistance.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 2nd day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29260 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,652]**

### Plastene Supply Co., Plant 1, Division of Siegel Robert, Inc., Portageville, MO; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 14, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 6, 2003, and published in the **Federal Register** on June 19, 2003 (68 FR 36846).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Plastene Supply Co., Plant 1, Division of Siegel Robert, Inc., Portageville, Missouri was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met and production did not shift to a foreign source. The subject firm shifted production to another domestic source.

In the reconsideration request, the petitioners state that other products were produced at the subject facility other than the ''automotive nameplates'' cited in the negative determination.

The negative determination was based on data received by the company regarding sales totals of all products at the subject facility. This data indicates that there was a direct domestic shift from the Portageville plant to another company owned plant in Farmington, Missouri. Totals of collective sales of competitive products from these two plants over the relevant period of this investigation indicate that there were no declines in domestic production.

The petitioners further allege that the subject firm served as a ''downstream producer'' because ''many parts were shipped to Canada or Mexico''.

The initial negative determination was issued on the basis of a primary investigation; no specific trade certified customers were indicated either in the initial petition or the reconsideration request. Further, in order to be eligible as secondary ''downstream producers'', the subject facility would have to assemble or finish products from primary firm production that was the basis for a trade adjustment assistance certification. There is no indication that subject firm production served this purpose.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 17th day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29265 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,873]**

### Progress Casting Group, Inc., Plymouth, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 17, 2003 in response to a worker petition filed by a company official on behalf of workers at Progress Casting Group, Inc., Plymouth, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 21st day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29274 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,952]**

### Business Confidential, Old Time Cutting, A.K.A. R&S Cutting, Passaic, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 24, 2003 in response to a petition filed by a State agency representative on behalf of workers at Old Time Cutting, also known as R&S Cutting, Passaic, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29281 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–40,521]**

### Republic Technologies, International Currently Known as Republic Engineered Products Headquartered in Akron, OH, Including Facilities in the Following Locations:

TA–W–40,521A Massillon, OH (Central Machine),
TA–W–40,521B Chicago, IL (Chicago Plant),
TA–W–40,521C Blasdell, NY (Lackawanna Plant),
TA–W–40,521E Massillon, OH (Hot Rolled Plant),
TA–W–40,521F Beaver Falls, PA,
TA–W–40,521G Gary, IN (E. Dune Hwy),
TA–W–40,521H Gary, IN (E. Seventh Ave.),
TA–W–40,521I Harvey, IL,
TA–W–40,521J Massillon, OH (Cold Finished Plant), and
TA–W–40,521K Canton, OH (Canton Special Metals Plant); 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 February 19, 2002, applicable to workers of Republic Technologies International located in Lorain, Ohio. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9325). The certification was amended on May 6, 2003 to reflect the change in ownership and include workers of Republic Engineered Products, Lorain, Ohio (TA–W–40,521D). The notice was published in the **Federal Register** on May 19, 2003 (68 FR 27110–27111).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce hot rolled steel bars. The company reports that Republic Technologies International was purchased by Republic Engineered Products in August 2002 and that workers wages are reported under the Unemployment Insurance tax account for the new owner.

Accordingly, the Department is amending the certification to reflect the change in ownership.

The intent of the Department's certification is to include all workers of the firm adversely impact by increased imports of steel bars.

The amended notice applicable to TA–W–40,521 is hereby issued as follows:

''All workers of Republic Technologies International, currently known as Republic Engineered Products, headquartered in Akron, Ohio, including the following facilities producing hold rolled steel: Central Machine/Fabrication and Massillon Hot Rolled Plant, Massillon, Ohio; Chicago Plant, Chicago, Illinois; Lackawanna Plant, Blasdell, New York; Lorain Hot Rolled Bar Plant, Lorain, Ohio, and the following facilities producing cold finished steel: Beaver Falls Cold Finished plant, Beaver Falls, Pennsylvania; Gary Cold Finished Plants (E. Dunes Hwy and E. Seventh Ave.), Gary, Indiana; Harvey Cold Finished Plant, Harvey, Illinois and Massillon Cold Finished Plant, Massillon, Ohio, who became totally or partially separated from employment on or after November 19, 2000, through February 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 23rd day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29136 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–M

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,014]**

### Robert Bosch Fuel Systems Corporation Formerly Diesel Technology Company a Division of Robert Bosch North America Including Leased Workers of K–Force Professional Staffing, Kentwood, MI; 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 July 11, 2003, applicable to workers of Robert Bosch Fuel Systems Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America, Kentwood, Michigan. The notice was published in the **Federal Register** on July 22, 2003 (68 FR 43372).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of K–Force Professional Staffing were employed at Robert Bosch Fuel Systems Corporation to produce fuel injector systems at the Kentwood, Michigan location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of K–Force Professional Staffing working at Robert Bosch Fuel Systems Corporation, Kentwood, Michigan.

The intent of the Department's certification is to include all workers employed at Robert Bosch Fuel Systems Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America who was adversely affected by the shift in production to Brazil, Germany and Charleston, South Carolina.

The amended notice applicable to TA–W–52,014 is hereby issued as follows:

All workers of Robert Bosch Fuel Systems Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America, Kentwood, Michigan, including leased workers of K–Force Professional Staffing, producing fuel injector systms at Robert Bosch Fuel Systms Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America, Kentwood, Michigan, who became totally or partially separated from employment on or after June 10, 2002, through July 11, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29129 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–M

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,014]**

### Robert Bosch Fuel Systems Corporation, Formerly Diesel Technology Company, a Division of Robert Bosch North America, Including Leased Workers of Adecco Technical and K-Force Professional Staffing, Kentwood, MI; 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 July 11, 2003, applicable to workers of Robert Bosch Fuel Systems Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America,

Kentwood, Michigan. The notice was published in the **Federal Register** on July 22, 2003 (68 FR 43372).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Adecco Technical were employed at Robert Bosch Fuel Systems Corporation to produce fuel injector systems at the Kentwood, Michigan location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Adecco Technical working at Robert Bosch Fuel Systems Corporation, Kentwood, Michigan.

The intent of the Department's certification is to include all workers employed at Robert Bosch Fuel Systems Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America who were adversely affected by the shift in production to Brazil and Germany.

The amended notice applicable to TA–W–52,014 is hereby issued as follows:

All workers of Robert Bosch Fuel Systems Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America, Kentwood, Michigan, including leased workers of Adecco Technical and K-Force Professional Staffing, producing fuel injector systems at Robert Bosch Fuel Systems Corporation, formerly Diesel Technology Company, a division of Robert Bosch North America, Kentwood, Michigan, who became totally or partially separated from employment on or after June 10, 2002, through July 11, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of October 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29277 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,104]**

### Sanmina—SCI Corporation, Including Leased Workers of Adecco, Manpower and Next Level Communications, Inc., Augusta, ME; 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 July 25, 2003, applicable to workers of Sanmina—SCI Corporation, including leased workers of Adecco and Manpower, Augusta, Maine. The notice was published in the **Federal Register** on August 14, 2003 (68 FR 48646).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that a leased worker of Next Level Communications, Inc. were employed at Sanmina—SCI Corporation to produce telecommunication and medical electronic systems assembly at the Augusta, Maine location of the subject firm.

Based on these findings, the Department is amending this certification to include a leased worker of Next Level Communications, Inc. working at Sanmina—SCI Corporation, Augusta, Maine.

The intent of the Department's certification is to include all workers employed at Sanmina—SCI Corporation who was adversely affected by the shift in production to Mexico and Canada.

The amended notice applicable to TA–W–52,104 is hereby issued as follows:

• All workers of Sanmina—SCI, Augusta, Maine, who became totally or partially separated from employment on or after June 20, 2003, through July 25, 2005; and leased workers of Adecco, Manpower and Next Level Communications, Inc., producing telecommunication and medical electronic systems assembly at Sanmina—SCI, Augusta, Maine, who became totally or partially separated from employment on or after June 19, 2002, through July 25, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of October, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29275 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,901]**

### Snap-On Tools Manufacturing Company, Mt. Carmel, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 23, 2003 in response to a petition filed by a company official on behalf of workers of Snap-on Tools Manufacturing Company, Mt. Carmel, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of October 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29280 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,968]**

### Snap-On Tools Manufacturing Company, Kenosha, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 25, 2003 in response to a petition filed by a company official on behalf of workers of Snap-on Tools Manufacturing Company, Kenosha, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of October 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29282 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,099]**

### Sony Semiconductor Company, Including Workers of BOC Edwards and Leased Workers of Manpower Professionals, San Antonio, TX; 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 July 17, 2003, applicable to workers of Sony Semiconductor Company, including leased workers from Manpower

Processionals, San Antonio, Texas. The notice was published in the **Federal Register** on August 5, 2003 (68 FR 46231).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that workers of BOC Edwards were employed at Sony Semiconductor Company to maintain wet and dry pumps used in the equipment needed to produce semiconductor wafers at the San Antonio, Texas location of the subject firm.

Based on these findings, the Department is amending this certification to include workers of BOC Edwards, San Antonio, Texas working at Sony Semiconductor Company, San Antonio, Texas.

The intent of the Department's certification is to include all workers of Sony Semiconductor Company who were adversely affected by increased imports of semiconductor wafers.

The amended notice applicable to TA–W–52,099 is hereby issued as follows:

- All workers of Sony Semiconductor Company, San Antonio, Texas, including workers of BOC Edwards working at Sony Semiconductor Company, San Antonio and leased workers of Manpower Processional, working at Sony Semiconductor, San Antonio, Texas, engaged in employment related to the production of semiconductor wafers at Sony Semiconductor Company, San Antonio, Texas, who became totally or partially separated from employment on or after June 18, 2002, through July 17, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29276 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,780]**

### SPX Dock Products, a Division of SPX Corporation, Milwaukee, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2003, in response to a petition filed by Teamsters ''General'' Local Union, No. 200, on behalf of workers at SPX Dock Products, a division of SPX Corporation, Milwaukee, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of September, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29279 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,295]**

### Stimson Lumber Company, Atlas Plant, Coeur d'Alene, ID; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Stimson Lumber Company, Coeur d'Alene, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 31st day of October, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29258 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,200]**

### Timber Resource Management, Inc., Livingston, MT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 9, 2003, in response to a petition filed by a company official on behalf of workers at Timber Resource Management, Inc., Livingston, Montana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of October, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29286 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,244]**

### Vesuvius USA, Champaign, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 15, 2003, in response to a worker petition filed by a company official on behalf of workers at Vesuvius USA, Champaign, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 29th day of October, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29287 Filed 11–21–03; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,230]**

### Vanguard EMS, Inc., a/k/a Viasystems Portland, Inc., Beaverton, OR; Notice of Negative Determination on Reconsideration

On July 25, 2003, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 7, 2003 (68 FR 47096).

On April 16, 2003, the Department initially denied TAA to workers of Vanguard EMS, Inc., Beaverton, Oregon a/k/a Viasystems Portland, Inc. that produce circuit boards for projectors because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974 was not met.

On reconsideration, the department surveyed additional customers of the subject plant regarding their purchases of circuit boards for projectors during

the relevant period. The survey revealed that major declining customer(s) increased their imports of projectors, but not circuit boards for projectors. However, as projectors are not like or directly competitive with circuit boards for projectors produced by the subject firm, there is no evidence of ''like or directly competitive'' imports contributing importantly to layoffs at the subject firm.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Vanguard EMS, Inc., Beaverton, Oregon a/k/a Viasystems Portland, Inc., Beaverton, Oregon.

Signed in Washington, DC this 10th day of October 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–29266 Filed 11–21–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Claim for Compensation by Dependents Information Reports (CA–5, CA–5b, CA–1031, CA–1074, Letter of Compensation Due at Death and Letter of Student/Dependency). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before January 23, 2004.

**ADDRESSES:** Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

**SUPPLEMENTARY INFORMATION**

*I. Background:* The forms included in this package are forms used by Federal employees and their dependents to claim benefits, to prove continued eligibility for benefits, to show entitlement to remaining compensation payments of a deceased beneficiary under the Federal Employees' Compensation Act. There are six forms in this information collection request. The information collected by Forms CA–5 and CA–5b, is used by dependents for claiming compensation for the work related death of a Federal Employee. Form CA–1031 is used in disability cases and to determine whether a claimant is supporting a dependent and is entitled to additional compensation. Form CA–1074 is a follow up to CA–5b to request clarification of any information that is unclear and incomplete in the CA–5b. The letter of ''Compensation Due at Death'' replaces Forms CA–1085 and CA–1093; this letter is used to request information necessary to distribute compensation due when an employee dies who was receiving or was entitled to compensation at the time of death. The letter of ''Student/Dependency'' replaces Forms CA–1615, CA–1617, and CA–1618; this letter is used to obtain information regarding the student status of a dependent. This information collection is currently approved for use through April 30, 2004.

*II. Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

*III. Current Actions:* The Department of Labor seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees Compensation to determine entitlement to benefits under the Act, to verify dependent status, and to initiate, continue, adjust, or terminate benefits based on eligibility criteria.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Claim for Compensation by Dependents Information Reports.

*OMB Number:* 1215–0155.

*Agency Number:* CA–5, CA–5b, CA–1031, CA–1074, Letter of Compensation Due at Death and Letter of Student/Dependency.

*Affected Public:* Individuals or households.

*Total Respondents:* 1,880.

*Total Responses:* 1,880.

| Forms | Respondents | Frequency | Minute per form | Burden hours |
|---|---|---|---|---|
| CA–5 | 150 | Once | 90 | 225 |
| CA–5b | 20 | Once | 90 | 30 |
| CA–1031 | 150 | Annually | 15 | 37 |
| CA–1074 | 10 | Once | 60 | 10 |
| Student/Dependency | 1,050 | Semiannually | 30 | 525 |
| Compensation Due at Death | 500 | Once | 30 | 250 |

| Forms | Respondents | Frequency | Minute per form | Burden hours |
|---|---|---|---|---|
| Total | 1,880 | | | 1,077 |

*Estimated Total Burden Hours:* 1,077.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $431.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 18, 2003.

**Bruce Bohanon,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 03–29257 Filed 11–21–03; 8:45 am]

**BILLING CODE 4510–CH–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 52–008]**

## Dominion Nuclear North Anna, LLC, North Anna Early Site Permit; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Dominion Nuclear North Anna, LLC (Dominion) has submitted an application for an early site permit (ESP) for a location in central Virginia identified as the North Anna ESP site. The site is located near the Town of Mineral in Louisa County, Virginia, on the southern shore of Lake Anna. The application for the ESP was submitted by letter dated September 25, 2003, pursuant to 10 CFR part 52. The application also includes a site redress plan in accordance with 10 CFR 52.17(c) and 52.25. If a site redress plan is incorporated in an approved ESP, the applicant may carry out certain site preparation work and limited construction activities. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on October 16, 2003 (68 FR 59642). A notice of acceptance for docketing of the application for the ESP was published in the **Federal Register** on October 29, 2003, (68 FR 61705). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the ESP application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act (NEPA).

In accordance with 10 CFR 52.17(a)(2), 10 CFR 51.45 and 10 CFR 51.50, Dominion submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp/north-anna.html*. In addition, the Louisa County Library, located at 881 Davis Highway, Mineral, Virginia, has agreed to make the ER available for public inspection.

The following key reference documents related to the ESP applications and the NRC staff's review process are available through the NRC's Web site at *http://www.nrc.gov:*

a. 10 CFR part 51, Environmental protection regulations for domestic licensing and related regulatory functions.

b. 10 CFR part 52, Early site permits; standard design certifications; and combined licenses for nuclear power plants.

c. 10 CFR part 100, Reactor site criteria.

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants.

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process.

f. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations.

g. Fact Sheet on Nuclear Power Plant Licensing Process.

h. Draft Review Standard RS–002, Processing Applications for Early Site Permits.

i. NRR Office Instruction LIC–203, Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues.

The regulations, NUREG-series documents, regulatory guide, and fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC Web page. The draft review standard is at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp/esp-public-comments-rs-002.html*. Finally, Office Instruction LIC–203 can be found in ADAMS in two parts under accession numbers ML011710073 (main text) and ML011780314 (charts and figures).

This notice advises the public that the NRC intends to gather the information necessary to prepare an environmental impact statement (EIS) in support of the review of the application for the ESP and the site redress plan at the North Anna ESP site. Possible alternatives to the proposed action (issuance of the ESP at the North Anna ESP site) include no action and consideration of alternative sites. The NRC is required by 10 CFR 52.18 to prepare an EIS in connection with the issuance of an ESP. This notice is being published in accordance with the NEPA and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the EIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the EIS.

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the EIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies.

h. Describe how the EIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Dominion Nuclear North Anna, LLC.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold a public scoping meeting for the EIS regarding the North Anna ESP application and the associated site redress plan. The scoping meeting will be held in the Forum at the Louisa County Middle School, 1009 Davis Highway, Mineral, Virginia, on Monday, December 8, 2003. The meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meeting will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule, and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions one hour before the start of the meeting outside the Forum in the Louisa County Middle School. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting Ms. Stacey Imboden, by telephone at 1–800–368–5642, extension 2462, or by Internet to the NRC at *NorthAnna_ESP@nrc.gov* no later than December 3, 2003. Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. Ms. Imboden will need to be contacted no later than December 3, 2003, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the North Anna ESP and site redress plan review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by January 9, 2004. Electronic comments may be sent by the Internet to the NRC at *NorthAnna_ESP@nrc.gov*. Electronic submissions should be sent no later than January 9, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Notice of a hearing regarding the application for an ESP will be the subject of a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the NRC's PERR link. The staff will then prepare and issue for comment the draft EIS, which will be the subject of separate notices and a separate public meeting. A copy will be available for public inspection at the above-mentioned address, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final EIS, which will also be available for public inspection.

Pursuant to the Coastal Zone Management Act of 1972, as amended, the applicant for a Federal license for an activity in Virginia is required to conduct its activities in a manner consistent with the federally approved Virginia Coastal Resources Management Program (*see* section 307(c)(1) of the Act and 15 CFR part 930, subpart D, §§ 930.50 *et seq.*). In this case, the applicant will submit a consistency certification to the Virginia Department of Environmental Quality (VDEQ) as part of its compliance with the Federal consistency requirements and request that VDEQ provide its concurrence in the consistency determination.

Information about the proposed action, the EIS, and the scoping process may be obtained from Ms. Imboden at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 18th day of November, 2003.

For the Nuclear Regulatory Commission.

**K. Steven West,**

*Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–29249 Filed 11–21–03; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–368]**

### Entergy Operations, Inc., Arkansas Nuclear One, Unit 2; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF–6 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Operating License No. NPF–6, which authorize the Entergy Operations, Inc. (Entergy) to operate Arkansas Nuclear One, Unit 2, at 3026 megawatts thermal. The renewed license would authorize the applicant to operate Arkansas Nuclear One, Unit 2, for an additional 20-years beyond the period specified in the current license. The current operating license for Arkansas Nuclear One, Unit 2, will expire on July 17, 2018.

On October 15, 2003, the Commission's staff received an application from Entergy, filed pursuant to 10 CFR Part 54, to renew the Operating License No. NPF–6 for Arkansas Nuclear One, Unit 2. A Notice of Receipt and Availability of the license renewal application, ''Entergy Operation Inc., Arkansas Nuclear One, Unit 2; Notice of Receipt and Availability of Application for Renewal of Facility Operating License No. NPF–6 for an Additional 20-Year Period,'' was published in the **Federal Register** on October 24, 2003 (68 FR 61020).

The Commission's staff has determined that Entergy has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket No. 50–368 for Operating License No. NPF–6, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings. As discussed further herein, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

Within 30 days from the date of publication of this **Federal Register** notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, 11555 Rockville Pike (first floor) Rockville, Maryland, an on the NRC Web site at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/ano-2.html.* If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board (ASLB) designated by the Commission or by the Chairman of the ASLB Panel will rule on the request(s) and/or petition(s), and the Secretary or the designated ASLB will issue a notice of hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than 15 days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or it may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and the petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to the United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission at (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Craig G. Anderson, Vice President, Operations ANO, Entergy Operations, Inc., 1448 S. R. 333, Russellville, AR 72801.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the ASLB that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal.html.* A copy of the application to renew the operating license for Arkansas Nuclear One, Unit 2, is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20855–2738, and on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/ano-2.html* while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML032890483. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The staff has verified that a copy of the license renewal application is also available to local residents near the Arkansas Nuclear One site at the Ross Pendergraft Library and Technology Center at the Arkansas Tech University in Russellville, Arkansas.

Dated at Rockville, Maryland, this the 14th day of November, 2003.

For the Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–29106 Filed 11–21–03; 8:45 am]

BILLING CODE 7590–01–P

---

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–31160, License No. 21–26060–01EA–03–100]**

## In the Matter of Mid American Inspection Services, Inc., Gaylord, MI; Order Imposing Civil Monetary Penalty

### I

Mid American Inspection Services, Inc. (Licensee) is the holder of Materials License No.21–26060–01 issued (renewed) by the Nuclear Regulatory Commission (NRC or Commission) August 27, 2001. The license authorizes the Licensee to perform industrial radiography using NRC-licensed materials in accordance with the conditions specified therein.

### II

The NRC conducted an inspection of the Licensee's activities on April 10, 2003. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 12, 2003. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated, September 8, 2003. In its response, the Licensee admitted the violation and provided its corrective actions to prevent recurrence of similar violations in the future. The Licensee also requested reduction of the proposed civil penalty.

### III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for reduction contained therein, the NRC staff has exercised discretion and lowered the proposed civil penalty of $6,000 to $3,000. Therefore, a civil penalty in the amount of $3,000 should be imposed.

### IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $3,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

### V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to

the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.*

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether, on the basis of the violations admitted by the license, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated this 14th day of November, 2003.

**Frank Congel,**

*Director, Office of Enforcement.*

[FR Doc. 03–29244 Filed 11–21–03; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–285]**

### Omaha Public Power District, Fort Calhoun Station, Unit 1; Notice of Issuance of Renewed Facility Operating License No. DPR–40 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License No. DPR–40 to Omaha Public Power District (the licensee), the operator of the Fort Calhoun Station, Unit 1 (Fort Calhoun, Unit 1). Renewed Facility Operating License No. DPR–40 authorizes operation of Fort Calhoun, Unit 1, by the licensee at reactor core power levels not in excess of 1500 megawatts thermal in accordance with the provisions of the Fort Calhoun, Unit 1, renewed license and its Technical Specifications.

Fort Calhoun, Unit 1, is a pressurized, light water moderated and cooled, nuclear reactor located in Washington County, Nebraska.

The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter 1, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on April 22, 2002 (67 FR 19599).

For further details with respect to this action, see (1) the Omaha Public Power District's renewal application for Fort Calhoun, Unit 1 dated January 9 and April 5, 2002, as supplemented by letters dated November 22, 2002 (two letters), December 12, 2002, December 19, 2002 (two letters), March 14, 2003, April 4, 2003, May 16, 2003, and July 7, 2003; (2) the Commission's safety evaluation report, dated October, 2003 (NUREG–1782); (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statements (NUREG–1437, Supplement 12, for Fort Calhoun, Unit 1, dated August 15, 2003). These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License No. DPR–40, may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1782), and the final environmental impact statements (NUREG–1437), Supplement 12, for Fort Calhoun, Unit 1 may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.access.gpo.gov/su_docs*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 4th day of November, 2003.

For the Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, Division of Regulatory Improvement Programs.*

[FR Doc. 03–29246 Filed 11–21–03; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–34730]**

### Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 07–00455–40, Bristol-Myers Squibb Pharma Company, Wilmington, DE

**ACTION:** Notice of availability of Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Sattar Lodhi, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406; telephone (610) 337–5364; fax (610) 337–5269; or by e-mail: ASL@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Bristol-Myers Squibb Pharma Company for Materials License No. 07–00455–40, to authorize release of its facilities in Wilmington, Delaware for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

#### II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Wilmington, Delaware, facilities for unrestricted use. The subject license was originally issued to DuPont Pharmaceuticals Company on February 25, 1999, to use licensed material at the site. Bristol-Myers Squibb Pharma Company acquired the license on October 9, 2001, and continued the use of radioactive materials for research and

development, and preparation and distribution of radioactive drugs at the site. On April 29, 2003, Bristol-Myers Squibb Pharma Company requested that NRC release the facility for unrestricted use. Bristol-Myers Squibb Pharma Company has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

## III. Finding of No Significant Impact

The NRC staff has evaluated Bristol-Myers Squibb Pharma Company's request and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

## IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML033170352, ML031330024, ML031360368, ML031400814, ML031400824, ML031400830, ML031400836, ML031400847, ML031400886, and ML031400887). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

Dated at King of Prussia, Pennsylvania, this 14th day of November, 2003.

For the Nuclear Regulatory Commission.

**John R. McGrath,**

*Acting Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.*

[FR Doc. 03–29245 Filed 11–21–03; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–27]**

## Environmental Assessment and Finding of No Significant Impact for a License Amendment for BWX Technologies, Inc., Located in Lynchburg, VA

**ACTION:** Notice of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for a license amendment.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald Stout, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001, telephone: (301) 415–5269 and e-mail: *des1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing an amendment to Special Nuclear Material License SNM–42 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 BWX Technologies (BWXT) facility located in Lynchburg, VA, to impose limits on these shipments.

The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on this evaluation, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed licensing action.

## II. Environmental Assessment

### *1.0 Background*

The NRC staff has evaluated the environmental impacts of the exemption of BWXT 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. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The BWXT facility in Lynchburg, VA, is authorized under NRC Materials License SNM–42 to manufacture nuclear products utilizing Strategic Special Nuclear Material, specifically high-enriched uranium, and to receive, possess, use, store and transfer source material. These activities generate low-level radioactive waste (LLRW). Examples of this waste include, but are not limited to, filter cake solids, debris generated during plant renovation and/or decommissioning operations, and dry active waste that consists of paper, plastic, glass, gloves, dry filters, light metal, and other contaminated material.

On April 15, 2002, the Westinghouse facility in Hematite, MO (SNM–33), received a fissile material exemption for use in decommissioning the Hematite facility. Also, on January 2, 2003, the Westinghouse Commercial Nuclear Fuel Facility in Columbia, SC (SNM–1107) received the same exemption from fissile material classification and package standards listed in 10 CFR 71.55 and 71.59.

### 1.1 Review Scope

In accordance with 10 CFR part 51, this EA serves to: (1) Present information and analysis for determining whether to issue a FONSI or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the NEPA when no EIS is necessary; and (3) facilitate preparation of an EIS when one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

This document serves to evaluate and document the impacts of the proposed action. Other activities on the site have previously been evaluated and documented in the 1991 EA for the Renewal of the NRC license for BWXT. The 1991 document is referenced when no significant changes have occurred. Besides the proposed licensing action, operations will continue to be limited to those authorized by the license.

### 1.2 Proposed Action

The proposed action is to amend NRC Materials License SNM–42 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.

1.3 Need for Proposed Action

BWXT is currently manufacturing products for the Department of Energy and downblending high-enriched SNM to low-enriched SNM for commercial reactor use. It is requesting the exemption for transportation of LLRW generated during normal, routine operations. The reason for this request is to better utilize shipping containers.

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). The net effect to BWXT has been an increase in the number of waste shipments and a corresponding increase in costs. Under part 71, BWXT is limited to 400 grams of U-235 per consignment.

BWXT must make many small LLRW shipments to comply with the current SNM limits. With this amendment, BWXT will be able to efficiently utilize the volume of strong-tight containers or intermodal containers, B–25 containers, etc; thus, shipping, in one shipment, LLRW that currently requires several shipments. Therefore, BWXT 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.

1.4 Alternative to the Proposed Action

The NRC considered one alternative to the proposed activity which is to take no action (*i.e.,* deny the exemption 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 BWXT site. A full description of the site and its characteristics is given in the 1991 EA for the Renewal of the NRC license for BWXT. The BWXT facility is located on a 525 acre site in Campbell County, VA, approximately 5 miles east of Lynchburg, VA.

*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 BWXT 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**, and grant the amendment.

*4.0 Agencies and Persons Contacted*

During a September 10, 2003, telephone call with the Virginia Department of Environmental Quality (VDEQ), NRC staff confirmed that the proposed action would not affect the regulation in 10 CFR 70.42 requiring BWXT to verify that waste disposal facilities are authorized to receive their shipments. VDEQ had no comments or concerns with the proposed action.

Because the proposed action is entirely within existing facilities and established 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), June 1995, ''Environmental Assessment for Renewal of Special Nuclear Material License SNM–42.''

U.S. Nuclear Regulatory Commission (NRC), January 2003, ''Westinghouse Electric Company, LLC, Amendment 35—Approval of Exemption from Fissile Material Transport Classification and Package Standards,'' ADAMS No. ML030080034.

## III. Finding of No Significant Impact

The Commission has prepared the above Environmental Assessment related to the amendment of Special Nuclear Material License SNM–42. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and, therefore, do not warrant the preparation of an Environmental Impact Statement. It has been determined that a Finding of No Significant Impact is appropriate.

## IV. Further Information

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.*

Dated at Rockville, Maryland, this 17th day of November, 2003.

For the Nuclear Regulatory Commission.

**John W. Lubinski,**

*Chief, Fuel Manufacturing Section, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–29247 Filed 11–21–03; 8:45 am]

BILLING CODE 7590–01–P

---

## NUCLEAR REGULATORY COMMISSION

### Draft U.S. Nuclear Regulatory Commission FY 2004–2009 Strategic Plan, NUREG–1614, Volume 3

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of draft NUREG–1614, Volume 3, ''U.S. Nuclear Regulatory Commission, FY 2004–2009 Strategic Plan,'' dated November 7, 2003. The draft strategic plan will be open for public comment until December 31, 2003.

**DATES:** The comment period for the draft strategic plan will close on December 31, 2003.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the phrase ''Draft Strategic Plan'' in the subject line of your submission. Comments submitted in writing or in electronic form will be made available to the public in their entirety. Personal information will not be removed from your comments.

*Preferred submission method:* E-mail your comments, preferably as a WordPerfect or Microsoft Word attachment, to: *NRCREP@nrc.gov.*

Mail comments to: Chief, Rules and Directives Branch, MS–T6–D59, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax comments to: Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Draft NUREG–1614, Volume 3, and other publicly available documents related to this notice are available for electronic viewing on public computers in the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR's reproduction services contractor will provide copies of publicly available documents for a fee.

Publicly available documents related to this notice, including public comments received, are also available electronically through the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Draft NUREG–1614, Volume 3, is publicly available in ADAMS under Accession No. ML033140570. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov.*

A free single copy of Draft NUREG–1614, Volume 3, to the extent of availability, may be requested by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001; facsimile: 301–415–2289; e-mail: *DISTRIBUTION@nrc.gov.*

Some publications in the NUREG series available through the NRC's Electronic Reading Room at *www.nrc.gov/reading-rm/doc-collections* are updated regularly and may differ from the last printed version.

**FOR FURTHER INFORMATION CONTACT:** Leslie W. Barnett, Director, Division of Planning, Budget, and Analysis, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7540.

**SUPPLEMENTARY INFORMATION:** As a normal course of activities, agencies periodically re-visit their strategic plans. The NRC is developing a new strategic plan for FY 2004–2009 to replace the agency's existing strategic plan.

The NRC is seeking comments on its draft FY 2004–2009 Strategic Plan (ADAMS Accession No. ML033140570). The draft Strategic Plan establishes the agency's long-term strategic direction and outcomes. It provides a foundation to guide NRC's work and to allocate NRC's resources.

The NRC's draft Strategic Plan does not represent a fundamental change in the agency's mission. However, it better aligns the agency's goals with its mission and strategic objective to

''enable the use and management of radioactive materials and nuclear fuels for beneficial purposes in a manner that (1) protects the public health and safety and the environment, (2) promotes the security of our nation, and (3) provides for regulatory actions that are effective, efficient, and open.'' Additionally, the draft Strategic Plan has been restructured to improve its focus and readability. The restructuring significantly reduced the redundancy that exists in the agency's current strategic plan.

The NRC's draft Strategic Plan now includes a vision statement for NRC. The NRC's vision in fulfilling its responsibilities is: ''Excellence in regulating the safe and secure use and management of radioactive materials for the public good.'' The draft plan also focuses on five general goals: Safety, security, openness, effectiveness, and management excellence. These goals support our ability to maintain the public health, safety, and trust. The overarching goal of ensuring the safe use of radioactive materials and of enhancing safety, as appropriate, remains unchanged. The general goal on security has been added to reflect recent changes in our environment, while the general goal on openness emphasizes those actions we can directly control and states that public confidence should be an outcome of openness.

The NRC encourages all interested parties to comment on the draft Strategic Plan. The comment period will close on December 31, 2003. Comments on the draft plan may be submitted by any of the methods outlined under the **ADDRESSES** heading. Stakeholder feedback will be valuable in helping the Commission develop a final plan that has the benefit of the many views in the regulated civilian nuclear industry.

The final version of NUREG–1614, Volume 3, is expected to be released on or about March 30, 2004.

Dated at Rockville, Maryland, this 18th day of November, 2003.

For the Nuclear Regulatory Commission.

**Leslie W. Barnett,**

*Director, Division of Planning, Budget, and Analysis, Office of the Chief Financial Officer.*

[FR Doc. 03–29248 Filed 11–21–03; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–26257; File No. 812–13028]**

## AIG SunAmerica Life Assurance Company, et al.; Notice of Application

November 18, 2003.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of an application for an order (the ''Order'') of approval pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act.

*Applicants:* AIG SunAmerica Life Assurance Company and Variable Separate Account of AIG SunAmerica Life Assurance Company (collectively, the ''Applicants.'')

*Summary of the Application:* The Applicants request an order (a) permitting the substitution of Growth Series, International Series, Growth-Income Series, Asset Allocation Series, High-Yield Bond Series, U.S. Government/AAA Rated Securities Series and Cash Management Series (the ''Replaced Portfolios''), each a series of the Anchor Pathway Fund (''Anchor Fund ''), for Class 3 shares of the Growth Fund, International Fund, Growth-Income Fund, Asset Allocation Fund, High-Income Bond Fund, U.S. Government/AAA–Rated Securities Fund and Cash Management Fund (the ''Replacement Portfolios''), each a series of the American Funds Insurance Series (''AFIS''); and (b) permitting certain in-kind transactions in connection with the proposed substitutions (the ''Substitutions'').

*Filing Date:* The application was filed on January 28, 2003, amended and restated on September 22, 2003, and amended on November 14, 2003.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 12, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., East Lobby, Suite 400, Washington, DC 20007, Attention: Joan E. Boros, Esq.

**FOR FURTHER INFORMATION CONTACT:** Mark Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549–0102 [tel. (202) 942–8090].

### Applicants' Representations

1. AIG SunAmerica Life Assurance Company (''AIG SunAmerica'') is a stock life insurance company originally organized under the laws of the state of California in April 1965, and redomesticated under the laws of the state of Arizona on January 1, 1996. AIG SunAmerica is a wholly-owned subsidiary of SunAmerica Life Insurance Company, an Arizona corporation, which is, in turn, wholly-owned by AIG SunAmerica Inc., a Delaware corporation, which is, in turn, wholly-owned by American International Group, Inc. AIG SunAmerica was previously known as Anchor National Life Insurance Company. AIG SunAmerica is authorized to conduct annuity and life insurance business in the District of Columbia and all states except New York.

2. Variable Separate Account of AIG SunAmerica (the ''Separate Account'') was established by AIG SunAmerica on June 25, 1981, in accordance with the laws of the state of California and is currently authorized under the laws of the state of Arizona as a result of AIG SunAmerica's redomestication on January 1, 1996. The Separate Account is registered as a unit investment trust under the 1940 Act. The Separate Account is used to fund the contract under which the proposed Substitutions are to take place (the ''Contract'') and other annuity contracts issued by AIG SunAmerica and is currently divided into a total of sixty-six (66) variable accounts (''Variable Accounts''); however, only seven (7) of the Variable Accounts and portfolios (''Portfolios'') in which they invest are available on an exclusive basis, under the Contract that is the subject of the application.

3. The Contract issued by AIG SunAmerica through its Separate Account, the American Pathway II Variable Annuity, is an individual flexible premium deferred non-participating variable annuity contract that currently utilizes only the Replaced Portfolios as underlying investments. AIG SunAmerica discontinued new sales of the Contract as of the close of business on August 31, 1993, but continues to accept subsequent purchase payments on existing Contracts and to issue the Contract to new participants in existing qualified retirement plans using the Contract as a funding vehicle.

4. The Replaced Portfolios, each of which offers a single class of shares, constitute each of the separate series available through the Anchor Fund. The Anchor Fund was organized as a Massachusetts business trust on March 23, 1987, and established to provide a funding medium for the Variable Accounts of the Separate Account that are its sole shareholders. The Separate Account buys and sells shares of the Anchor Fund at net asset value that is net of the management fees (''Business Management Fee''), which range from .20% to .24% of average daily net assets, paid to SunAmerica Asset Management Corp. (''SAAMCO''), an affiliate of AIG SunAmerica, to manage the business affairs of the Anchor Fund and to provide administrative services pursuant to a written agreement (''Business Management Agreement''). The Anchor Fund is registered as a diversified, open-end management investment company under the 1940 Act, and its shares are registered as securities under the Securities Act of 1933 (the ''1933 Act''). Capital Research and Management Company (''Capital Research'' or the ''Adviser'') serves as the investment adviser to the Anchor Fund. Capital Research is not affiliated with AIG SunAmerica.

5. The Replacement Portfolios represent the Class 3 shares of seven (7) of the thirteen (13) series of AFIS, each of which also offers Class 1 and Class 2 shares. AFIS is registered as a diversified, open-end management investment company under the 1933 Act and was organized as a Massachusetts business trust on September 13, 1983. Its Class 1 and Class 2 shares are sold currently only to separate accounts of various insurance companies to provide a funding medium for their variable annuity contracts and variable life policies. The Replacement Portfolios, which the Separate Account will purchase, will be offered at net asset value subject to a plan adopted pursuant to Rule 12b–1 under the 1940 Act (the ''Rule 12b–1 Plan''). Pursuant to the plan, AFIS will pay .18%, subject to the condition discussed below with respect to the Growth Fund, of the average daily net assets attributed to the Class 3 shares to reimburse AIG SunAmerica for performing administrative services (the ''Service Fee'').

6. Once registered, the Class 3 shares of the Replacement Portfolios will initially be sold only to the Separate Account to serve as the exclusive funding medium for the Variable Accounts under the Contract. However, AFIS would be permitted to offer shares of the Replacement Portfolios to other insurance companies. Capital Research serves as the investment adviser to AFIS. Capital Research is not affiliated with AIG SunAmerica.

7. The application covers all of the available Portfolios in which the Separate Account invests under the Contract. AIG SunAmerica reviewed the Portfolios available under the Contract. The primary goal of the review was to consider and determine whether to replace certain or all of the Portfolios based on a review of their investment objectives and principal investment strategies, total annual expenses, net asset size, and performance. The review resulted in the proposal that AIG SunAmerica discontinue offering Variable Accounts investing in the Replaced Portfolios as investment options under the Contract and substitute shares of the Replacement Portfolios. Taking into account that the Contract is no longer offered for sale and will not be offered for sale after the Substitutions occur, this proposal was due primarily to AIG SunAmerica's conclusion that the larger and growing asset size of the Replacement Portfolios would provide the only feasible means of maintaining lower total annual expenses and maintaining effective asset management with the goal of improving performance. No other contract is funded through investment in the Replaced Portfolios, and therefore, there is no growth potential for the Replaced Portfolios.

8. The Applicants represent that each of the Replacement Portfolios has investment objectives, policies, and restrictions substantially identical in all material respects to those of its corresponding Replaced Portfolio. In addition, the Replacement Portfolios utilize the same investment adviser as the Replaced Portfolios, Capital Research, a well-known and respected investment adviser.

9. The Applicants represent that each of the Replacement Portfolios has lower total annual expenses than those of its corresponding Replaced Portfolio (except for the Growth Fund, which has slightly higher total annual expense than the Growth Series), as set forth in the following chart.

EXPENSE RATIOS

[As a percentage of average daily net assets]

| Replaced portfolios (one year period ended 2/28/03)[1] growth series | | Replacement portfolios (one year period ended 12/31/02) growth fund | |
|---|---|---|---|
| Advisory Fee | 0.30 | Advisory Fee | 0.38 |
| Business Mgmt. Fee | 0.20 | Service (12b–1) Fee | 0.18 |
| Other Expenses | 0.05 | Other Expenses | 0.02 |
| Total Operating Expenses | 0.55 | Total Operating Expenses | 0.58 |
| **International Series** | | **International Fund** | |
| Advisory Fee | 0.62 | Advisory Fee | 0.57 |
| Business Mgmt. Fee | 0.24 | Service (12b–1) Fee | 0.18 |
| Other Expenses | 0.16 | Other Expenses | 0.06 |
| Total Operating Expenses | 1.02 | Total Operating Expenses | 0.81 |
| **Growth-Income Series** | | **Growth-Income Fund** | |
| Advisory Fee | 0.30 | Advisory Fee | 0.34 |

EXPENSE RATIOS—Continued

[As a percentage of average daily net assets]

| Replaced portfolios (one year period ended 2/28/03)[1] growth series | | Replacement portfolios (one year period ended 12/31/02) growth fund | |
|---|---|---|---|
| Business Mgmt. Fee | 0.20 | Service (12b–1) Fee | 0.18 |
| Other Expenses | 0.05 | Other Expenses | 0.01 |
| Total Operating Expenses | 0.55 | Total Operating Expenses | 0.53 |
| **Asset Allocation Series** | | **Asset Allocation Fund** | |
| Advisory Fee | 0.32 | Advisory Fee | 0.43 |
| Business Mgmt. Fee | 0.21 | Service (12b–1) Fee | 0.18 |
| Other Expenses | 0.11 | Other Expenses | 0.02 |
| Total Operating Expenses | 0.64 | Total Operating Expenses | 0.63 |
| **High-Yield Bond Series** | | **High-Income Bond Fund** | |
| Advisory Fee | 0.34 | Advisory Fee | 0.50 |
| Business Mgmt. Fee | 0.22 | Service (12b–1) Fee | 0.18 |
| Other Expenses | 0.17 | Other Expenses | 0.02 |
| Total Operating Expenses | 0.73 | Total Operating Expenses | 0.70 |
| **U.S. Government/AAA-Rated Securities Series** | | **U.S. Government/AAA-Rated Securities Fund** | |
| Advisory Fee | 0.33 | Advisory Fee | 0.45 |
| Business Mgmt. Fee | 0.22 | Service (12b–1) Fee | 0.18 |
| Other Expenses | 0.12 | Other Expenses | 0.02 |
| Total Operating Expenses | 0.67 | Total Operating Expenses | 0.65 |
| **Cash Management Series** | | **Cash Management Fund** | |
| Advisory Fee | 0.34 | Advisory Fee | 0.44 |
| Business Mgmt. Fee | 0.23 | Service (12b–1) Fee | 0.18 |
| Other Expenses | 0.17 | Other Expenses | 0.02 |
| Total Operating Expenses | 0.74 | Total Operating Expenses | 0.64 |

[1] February 28, 2003 is the fiscal year end for the Anchor Fund.

10. The Applicants represent that each of the Replacement Portfolios has a significantly larger asset base than that of its corresponding Replaced Portfolio. Moreover, AIG SunAmerica believes that it is no longer economical to continue to offer the Replaced Portfolios as their smaller and dwindling asset size will make it more difficult to manage such assets so as to keep expense ratios down and to maintain performance.

11. The Applicants represent that each of the Replacement Portfolios has a performance record comparable to that of its corresponding Replaced Portfolio.

12. The Applicants will effect the proposed Substitutions by first redeeming shares of each of the Replaced Portfolios wholly on an in-kind basis at their net asset value and then immediately contributing those assets in-kind to the corresponding Replacement Portfolio to purchase their respective shares (the ''In-Kind Transactions''). The In-Kind Transactions will be done in a manner consistent with the investment objectives, policies and restrictions, and diversification requirements of the Replaced and Replacement Portfolios. Capital Research will review the In-Kind Transactions, and given that it is the investment adviser and employs the same system of multiple portfolio counselors in managing assets for both the Replaced and Replacement Portfolios, which have substantially identical investment objectives, policies and restrictions, Applicants anticipate that all redeemed assets of the Replaced Portfolios will be suitable for the corresponding Replacement Portfolios. For these same reasons, Applicants also submit that the portfolio securities to be contributed in-kind for shares of the Replacement Portfolios will be of the type and quality that each Replacement Portfolio could have acquired, respectively, with the proceeds from the sale of its shares had the shares been sold for cash. In effecting the In-Kind Transactions, Applicants will follow the requirements of Rule 17a–7 under the 1940 Act to the extent possible and all assets and liabilities will be valued based on the normal valuation procedures of the Replaced and Replacement Portfolios, as set forth, respectively, in the Anchor Fund and AFIS's registration statements.

13. At all times, before and after the Substitutions, monies attributable to owners of the Contract (''Owners'') then invested in the Replaced Portfolios will remain fully invested and will result in no change in the amount of any Owner's Contract value, death benefit or investment in the Separate Account so that the full net asset value of the redeemed shares held by the Separate Account will be reflected in the Owners' accumulation values or annuity unit values following the Substitutions. In addition, AIG SunAmerica hereby undertakes to assume all transaction costs and expenses relating to the Substitutions, including any direct or indirect costs of liquidating the assets of the Replaced Portfolios such as legal and accounting fees (or any brokerage commissions, if any redemptions are effected otherwise on an in-kind basis), so that the full net asset value of redeemed shares of the Replaced Portfolios held by the Separate Account will be reflected in the Owners' accumulation values or annuity unit values following the Substitutions.

14. Owners will not incur any fees or charges as a result of the Substitutions, nor will the rights of Owners or obligations of AIG SunAmerica under the Contract be altered in any way. The

proposed Substitutions will not have any adverse tax consequences to Owners. The proposed Substitutions will not cause Contract fees and charges currently being paid by existing Owners to be greater after the proposed Substitutions than before the proposed Substitutions. The proposed Substitutions will not be treated as transfers for the purpose of transfer limits or assessing transfer charges.

15. AIG SunAmerica will schedule the Substitutions to occur after issuance of the requested order and any required state insurance department approvals. Further, although the Substitutions will result in the replacement of the Portfolios of all the available Variable Accounts under the Contract, AIG SunAmerica will not exercise any right it may have under the Contract to collect transfer fees or impose any additional restrictions on Owners who may wish to make transfers among the available Variable Accounts funded by the Replacement Portfolios for a period of at least thirty (30) days following mailing of the Notice, as defined below, of the proposed Substitutions (the ''Free Transfer Period''). During the Free Transfer Period, transfers among the available Variable Accounts funded by the Replacement Portfolios will be permitted without those transfers being counted against any limit on free transfers under the Contract.

16. Upon filing the Application, AIG SunAmerica supplemented the prospectus for the Contract to reflect the proposed Substitutions. Within five days after the Substitutions, AIG SunAmerica will send to its Owners written notice of the Substitutions (the ''Notice''), identifying the shares of the Replaced Portfolios that have been eliminated and the shares of the Replacement Portfolios that have been substituted. AIG SunAmerica will also include in the mailing of the Notice the applicable prospectus supplement for the Contract describing the Substitutions and a copy of the prospectus for the Replacement Portfolios to Owners who have not already received a copy of that prospectus in the ordinary course. The Notice will further advise Owners that during the Free Transfer Period, Owners may transfer all assets, as substituted, among the available Variable Accounts funded by the Replacement Portfolios without limit or charge and without those transfers being counted against any limit on free transfers under their Contract.

**Applicable Law**

*Section 26(c) of the 1940 Act*

1. Section 26(c) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [SEC] shall have approved such substitution.''

2. Applicants represent that the proposed Substitution involves a substitution of securities within the meaning of meaning of Section 26(c) of the 1940 Act. The Applicants, therefore, request an order from the SEC pursuant to Section 26(c) approving the proposed Substitution.

3. Applicants represent that the Substitutions do not present the type of costly forced redemption or other harms that Section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

a. The Substitutions will continue to fulfill Owners' objectives and risk expectations, because the Replacement Portfolios corresponding to the Replaced Portfolios have objectives, policies, and restrictions substantially identical in all material respects to the objectives, policies, and restrictions of the Replaced Portfolios;

b. After receipt of the Notice informing an Owner of the Substitutions, an Owner may request that his or her assets be reallocated among the available Variable Accounts funded by the Replacement Portfolios at any time during the Free Transfer Period without any limit or charge and without those transfers being counted against any limit on free transfers under the Contract. This right also will be granted to Owners who are receiving variable payments based on the Replaced Portfolios. The Free Transfer Period will provide sufficient time for Owners to consider their reinvestment and withdrawal options;

c. The Substitutions will be at net asset value of the respective shares, without the imposition of any transfer or similar charge, so that there will be not change in the Owners' accumulation values or any other contract values following the Substitution;

d. AIG SunAmerica has undertaken to assume all expenses and transaction costs, including, but not limited to, legal and accounting fees (or any brokerage commissions, if any redemptions are effected otherwise than on an in-kind basis), in connection with the Substitutions involving the Separate Account;

e. The Substitutions will in no way alter the contractual obligations of AIG SunAmerica or the rights and privileges of Owners under the Contract;

f. The proposed Substitutions will not have any adverse tax consequences to Owners;

g. The Substitutions are expected to confer certain economic benefits on Owners by virtue of generally lower expenses currently or in the long term;

h. At the time of the Substitutions, the total annual expenses of each Replacement Portfolio (except for the Growth Fund which has slightly higher total annual expenses than the Growth Series) are expected to be lower than those of the corresponding Replaced Portfolio;

i. It is anticipated that the Substitutions will be effected by redeeming shares of each of the Replaced Portfolios wholly on an in-kind basis and contributing those assets in-kind to the corresponding Replacement Portfolio to purchase their respective shares; and

j. The In-Kind Transactions will be done in a manner consistent with the investment objectives, policies and restrictions, and diversification requirements of the Replaced and Replacement Portfolios; and Capital Research will review the In-Kind Transactions.

4. Applicants anticipate that all redeemed assets of the Replaced Portfolios will be suitable for the corresponding Replacement Portfolios.

5. AIG SunAmerica represents that it and its affiliates currently do not, and will not for a period of three years from the date of the Order requested herein, receive any direct or indirect benefit from the Replacement Portfolios their adviser (or their adviser's affiliates) or underwriters and affiliates, in connection with assets attributable to the Contract affected by the Substitutions, at a higher rate, as a percentage of its Separate Account assets invested in such Replacement Portfolios, than it or any affiliate had received from the corresponding Replaced Portfolio its adviser, (or its adviser's affiliates) or underwriters and affiliates, including without limitation 12b–1, shareholder service, administrative or other service fees, revenue sharing or other arrangements.

6. AIG SunAmerica further represents that the proposed Substitutions involving the Replaced and Replacement Portfolios and its selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid to it or to any of its affiliates by the Replacement Portfolios, their adviser or

underwriters, or by affiliates of the Replacement Portfolios, their adviser or underwriters.

7. As explained more fully in the application, SAAMCO is entitled to receive a Business Management Fee from each Replaced Portfolio in return for certain business management and administrative services. Further, AIG SunAmerica will be entitled to receive a Service Fee from each Replacement Portfolio, to cover the expense of providing certain administrative services. Each Replacement Portfolio's Service Fee will be lower than the current Business Management Fee imposed on its corresponding Replaced Portfolio by between two and six basis points. Notwithstanding that advisory fees (including the Service Fees) for the Replacement Portfolios will be higher than the advisory fees (including the Business Management Fee) for the Replaced Portfolios (except for the International Fund, which has lower advisory fees), each Replacement Portfolio has a lower total expense ratio than its corresponding Replaced Portfolio (except for the Growth Fund, which has a slightly higher total annual expense than the Growth Series).

8. Applicants represent that, in the event that the Growth Fund's total annualized expenses are not equal to or lower than the total annual expenses of the Growth Series at February 28, 2003 during the 12-month period following the Substitution, as determined quarterly, the amount of the Service Fee imposed on the Growth Fund for a period of one-year following the Substitution will be reduced for such quarter by an amount equal to the disparity between the lower total annual expenses of the Growth Series and the then higher total annualized expenses of the Growth Fund.

9. The Applicants represent that, in the event that the Growth Fund total annualized expenses are not equal to or lower than the total annual expenses of the Growth Series at February 28, 2003 during the 12-month period following the Substitution, as determined quarterly, and waiver of the entire .18 basis point of Service Fees is insufficient to offset any excess of the Growth Fund fees over the expenses of the Growth Series, Applicants will make a corresponding reduction in the corresponding separate account sub-account expenses on the last day of each such quarterly period, such that the amount of the Growth Fund expenses, together with those of the corresponding sub-account will, on an annualized basis, be no greater than the sum of the net expenses of the Growth Series and the net expenses of the sub-account on February 28, 2003.

10. AIG SunAmerica will not increase any Contract fees or reduce any services to the Growth Series during the 12-month period following the Substitution.

11. The Applicants, on the basis of the facts and circumstances described in the Application, assert that the proposed Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and purposes of the1940 Act and therefore request that the Substitution should be granted.

*Section 17(a) of the 1940 Act*

1. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 17(b) of the 1940 Act provides that the SEC may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

3. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions.

4. Applicants submit that the terms of their proposed Substitutions, including the consideration to be paid and received, as described in their application, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also submit that their proposed Substitutions are consistent with the policies of the Anchor Fund (and each of its Replaced Portfolios) as recited in its current registration statement and reports filed under the 1940 Act, and AFIS (and each of its Replacement Portfolios), as recited in its registration statements and reports to be filed under the 1940 Act. As more fully described in the application, the In-Kind Transactions will be done in a manner consistent with the investment objectives, policies and restrictions, and diversification requirements of the Replaced and Replacement Portfolios, and Capital Research will review the In-Kind Transactions. The Applicants anticipate that all redeemed assets of the Replaced Portfolios will be suitable for the corresponding Replacement Portfolios.

5. Applicants submit that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act.

6. The In-Kind Transactions effecting the Substitutions will be carried out in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, and will substantially comply with the conditions of Rule 17a–7 under the 1940 Act. Owners will not incur any fees or charges as a result of the transfer of Contract value pursuant to the Substitutions. Owners' rights and privileges under the Contract and AIG SunAmerica's obligations thereunder will not be affected by the Substitutions. The Substitutions will not increase Contract or separate account fees and charges after the Substitutions. Expenses incurred in connection with the Substitutions including, but not limited to, legal and accounting fees (or any brokerage commissions, if any redemptions are effected otherwise than on an in-kind basis), will not be borne by Owners. Contract values will remain unchanged and fully invested following consummation of the Substitutions. Accordingly, Owner interests after the Substitutions, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitutions. In each case, the consideration to be received and paid is, therefore, reasonable and fair.

7. As more fully discussed in the application, the investment objectives of each of the Replacement Portfolios are substantially identical to the investment objectives of the corresponding Replaced Portfolios. In this regard, the Substitutions are consistent with the findings required under Section 17(b) of the 1940 Act.

8. The proposed In-Kind Transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed In-Kind Transactions will be effected in a manner consistent with the public interest and the protection of investors as Owners will be fully informed of the terms of the Substitutions through the

prospectus supplement for the Replacement Portfolios, the Notice and the prospectus for the Replacement Portfolios, and will have a opportunity during the Free Transfer Period to make transfers among the available Variable Accounts funded by the Replacement Portfolios without limit or charge and without those transfers being counted against any limit on free transfers under their Contract.

**Conclusion**

For the reasons set forth in the application, the Applicants respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act and respectfully request that the SEC issue an order of approval pursuant to Section 26(c) of the 1940 Act and order of exemption pursuant to Section 17(b) of the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–29294 Filed 11–21–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 68 FR 64672, November 14, 2003.

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Wednesday, November 19, 2003 at 3 p.m.

**CHANGE IN THE MEETING:** Additional item.

The following item has been added to the Closed Meeting of Wednesday, November 19, 2003: Institution of injunctive action.

Commissioner Glassman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: November 19, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–29411 Filed 11–20–03; 12:31 pm]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27763]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 17, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 12, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 12, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Gulf Power Company (70–10156)**

Gulf Power Company (''Gulf''), 500 Bayfront Parkway, Pensacola, Florida, 32501 a wholly owned public utility subsidiary of The Southern Company (''Southern''), a registered public utility holding company, has filed with the Commission a declaration (''Declaration'') under sections 6(a) and 7 of the Act and rule 54 under the Act.

Gulf proposes to issue and sell from time to time, through January 1, 2007 (''Authorization Period''), (i) short-term and/or term-loan notes to lenders and (ii) commercial paper to or through dealers in an aggregate principal amount at any one time outstanding of up to $600 million.

Gulf proposes to effect borrowings from certain banks or other lending institutions. These institutional borrowings will be evidenced by (i) notes to be dated as of the date of the borrowings and to mature in not more than seven years after the date of issue or (ii) ''grid'' notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than seven years after the date of issue. Gulf proposes that it may provide that any note evidencing these borrowings may not be prepayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid.

Gulf states that borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality, but asserts that these rates will not exceed the lender's prime rate or (i) London Inter Bank Offering Rate plus up to 3% or (ii) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing.

Gulf states that compensation for the credit facilities may be provided by fees of up to 1% per annum of the amount of the facility and that compensating balances may be used in lieu of fees to compensate certain of the lenders.

Gulf also proposes to issue and sell commercial paper (''Commercial Paper'') to or through dealers from time to time through the Authorization Period. Gulf states that the Commercial Paper will be in the form of promissory notes with varying maturities not to exceed 390 days.[1] Gulf states that actual maturities will be determined by market conditions, the effective interest costs and Gulf's anticipated cash flow, including the proceeds of other borrowings, at the time of issuance. Gulf states that the Commercial Paper will be issued in denominations of not less than $50,000 and will be sold directly to or through a dealer or dealers (''Dealer''). Gulf states that the discount rate (or the

[1] Applicants state that the ability to extend the maturity of commercial paper notes is a feature of an Extendible Commercial Notes program. Applicants state that the maturity of Commercial Paper notes issued under an Extendible Commercial Notes program is 365 days or less; however, if the principal of any Commercial Paper note is not paid at maturity, the maturity of the Commercial Paper note will be automatically extended to 390 days from the date of original issuance. Any Commercial Paper note with greater than 365 days remaining until maturity at the end of a reporting period will be treated as long-term debt for accounting purposes.

interest rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality of the particular maturity sold by issuers to commercial paper dealers.

Gulf states that it will pay a commission not to exceed 1/8 of 1% per annum payable to the Dealer in respect of Commercial Paper sold through the Dealer as principal. Gulf states that the Dealer will reoffer the commercial paper at a discount rate of up to 1/8 of 1% per annum less than the prevailing interest rate to Gulf or at an equivalent cost if sold on an interest-bearing basis.

By order dated December 13, 1996, (HCAR No. 26628) (''Short-Term Borrowings Order''), Gulf has authority to effect short-term borrowings, include bank borrowings and the issuance of commercial paper, in an amount not to exceed $300,000,000 prior to January 1, 2004.

Additionally, by order dated November 8, 2000 (HCAR No. 27273) (''Consolidated Commercial Paper Order''), Gulf states that it has authority to effect short-term borrowings in which Gulf is not the issuer. Gulf states that the Consolidated Commercial Paper Order authorizes Gulf to effect short-term borrowings through a Southern consolidated commercial paper program in an amount not to exceed $300,000,000 through June 30, 2004. The Consolidated Commercial Paper Order authorized a Southern subsidiary (''Issuer'') to issue commercial paper for the benefit of Gulf and other Southern utility subsidiaries, Georgia Power Company, Mississippi Power Company, Savannah Electric and Power Company, Alabama Power Company, and Southern Electric Generating Company (''Participants''). Each Participant borrows the proceeds from the sale of commercial paper by the Issuer for that Participant's benefit. Gulf states that it is authorized to borrow up to $300,000,000 outstanding principal amount at any time from the Issuer under to the Consolidated Commercial Paper Order.

According to terms of the Short-Term Borrowings Order and the Consolidated Commercial Paper Order, any borrowings under each order must be aggregated and may not exceed the $300,000,000 aggregate principal amount authorized by the Short-Term Borrowings Order. At September 30, 2003, Gulf states that it did not have any borrowings outstanding under either authorization.

Gulf now requests to increase its short-term borrowings authority from an aggregate principal amount of $300,000,000 to $600,000,000. Gulf proposes that the authorization sought in this Declaration would supersede and replace the authorization in the Short-Term Borrowings Order effective immediately upon the date of the Commission's order in connection with this Declaration but would not supercede the authorization in the Consolidated Commercial Paper Order. Gulf expects that a new filing requesting authority to continue the Southern consolidated commercial paper program (''Expected Filing'') will be filed prior to the expiration of the authorization in the Consolidated Commercial Paper Order. Gulf states that this filing will include $600,000,000 aggregate principal amount of borrowings for the benefit of Gulf, which will correspond to the amount sought in this Declaration.

Gulf requests that any borrowings entered into under authority granted in this Declaration and those entered into under the authority granted in the Consolidated Commercial Paper Order be aggregated and may not exceed the $600,000,000 aggregate principal amount. Gulf requests that at all times when the order in connection with this Declaration is in effect, Gulf will have short-term borrowings authorization in an amount not to exceed $600,000,000 aggregate principal amount.

Gulf states that proceeds from the proposed borrowings will be used for working capital purposes, including the financing in part of its construction program. Except as may be otherwise authorized by the Commission, Gulf states that any short-term or term-loan borrowings of Gulf outstanding after June 30, 2007 and June 30, 2014, respectively, will be retired from internal cash resources, the proceeds of equity financings or the proceeds of short or long-term debt.

Gulf represents that it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty percent. Gulf will not issue any securities under authority from this Declaration, unless upon original issuance thereof: (i) The securities, if rated, are rated at least investment grade, (ii) all outstanding securities of Gulf that are rated are rated investment grade, and (iii) all outstanding securities of Southern that are rated are rated investment grade. For purposes of this provision, any security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended. Gulf requests that it be permitted to issue a security that does not satisfy the foregoing condition if the requirements of rule 52(a)(i) and rule 52(a)(iii) are met and the issue and sale of the security have been expressly authorized by the Florida Public Service Commission. Gulf hereby requests that the Commission reserve jurisdiction over the issuance of any securities at any time that the conditions set forth above are not satisfied.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–29210 Filed 11–21–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48797; File No. SR–CBOE–2003–49]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Time Periods Within the Membership Process

November 17, 2003.

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 21, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE. 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 CBOE proposes to change the time periods (i) after which an individual's inactive nominee status will be terminated and (ii) during which a former individual member may reapply for membership through the renewal/change of status application process.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**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 CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set for in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBOE Rule 3.8(g) provides that a member organization may designate one or more inactive nominees. An inactive nominee is an individual who is eligible to become an effective nominee of a member organization with respect to any membership for which the organization is either an owner (and not a lessor) or is a lessee. In order to become an inactive nominee of a member organization, an individual must be approved for membership and become an effective nominee of the member organization, with authorized floor functions, within 90 days of the approval for membership. An inactive nominee has no rights or privileges of membership and no right of access to the Exchange's trading floor, unless and until the inactive nominee becomes an effective member. Additionally, Rule 3.8(g)(iv) provides that if at any time an individual remains an inactive nominee for 6 consecutive months, the individual's eligibility for membership is terminated and the individual must reapply for membership in order to again become eligible for inactive nominee status.

The Exchange proposes to extend the time period under Rule 3.8(g)(iv) by 3 months. Specifically, the Exchange proposes to amend Rule 3.8(g)(iv) to provide that an individual's inactive nominee status will terminate if at any time an individual remains an inactive nominee for 9 consecutive months. The Exchange believes this change will improve the efficiency of the Exchange's membership processes in that individuals will have a longer period of time during which they may remain inactive nominees before they are required to go through a membership application process.

Similarly, in order to further improve the efficiency of the Exchange's membership processes, the Exchange proposes to change the time period during which a former individual member may reapply for membership through the renewal/change of status application process. As with the inactive nominee termination period, the time period during which a former individual member may reapply for membership through the renewal/change of status application process is proposed to be extended from the current 6 month period following termination from membership to 9 months following membership termination. The foregoing change would be reflected in three ways in CBOE rules.

First, CBOE Rule 3.9(e) would be amended to provide that a posting period will not be applicable when an applicant has been a member within 9 months prior to the date of receipt of the applicant's membership application by the Membership Department. Currently, the name of an applicant and the application request are published in the Exchange Bulletin and posted on the Exchange Bulletin Board for 10 days if the applicant has not been a member within 6 months prior to submission of the application. This is the case because applicants that go through the renewal/change of status application process do not have a posting period. Accordingly, the time period under Rule 3.9(e) in which a former member is not subject to a posting period is also proposed to be changed to 9 months from membership termination in order to correspond to the new proposed time period during which a former member may reapply for membership through the renewal/change of status application process.

Second, Rule 3.9(f) would be amended to provide that applicants are not required to be investigated by the Exchange if the applicant was a member within 9 months (instead of the current 6 months) prior to submission of that applicant's membership application or if the applicant was investigated by the Membership Department within 9 months (instead the current 6 months) prior to submission of the application. This maintains the current procedure under which applicants that go through the renewal/change of status application process are not investigated by the Membership Department. However, the Membership Department would retain its current authority under Rule 3.9(f) to investigate any applicant that is not required to be investigated. Additionally, membership applicants that go through the renewal/change of status application process will continue to have their fingerprints submitted to the Attorney General of the United States or its designee in connection with the application.

Third, the Exchange's Membership Fee Circular would be amended to provide that the Renewal/Change of Status application fee would apply to a former individual member who reapplies for membership within 9 months (instead of the current 6 months) of his/her membership termination date and who becomes an effective member within 1 year of his/her membership termination date. Under the amended Membership Fee Circular, a former individual member who reapplies for membership within 9 months of termination from membership would be assessed the Renewal/Change of Status fee at the time of submission of the application. If that person becomes an effective member more than 1 year after his/her membership termination date, the person would then be charged an additional fee equal to the difference between the Individual/Nominee/CBOT Exerciser/Lessee/Lessor application fee and the Renewal/Change of Status fee.

The reason that an additional fee will be assessed if a former member reapplies for membership within 9 months of membership termination and then does not become an effective member within 1 year after membership termination is to discourage applicants from taking advantage of the lower Renewal/Change of Status fee and then not following through on the application or their membership approval on a timely basis. Rule 3.9(l) provides that if the membership application process is not completed within 6 months of the submission of a membership application, the application shall be deemed to be automatically withdrawn. Rule 3.10 provides that an applicant approved for membership must become effective in that status within 90 days of the approval for that status (except that an applicant approved as a lessor may become effective in that status within 6 months of approval). Therefore, it is conceivable that an applicant could request that the Membership Department defer action on a membership application for up to 6 months after it is submitted and then not become an effective member following membership approval for another 3 months (or another 6 months in the case of a lessor). The Exchange does not believe the Renewal/Change of Status fee should apply to such situations (for example, where an individual takes advantage of the Renewal/Change of Status fee and then does not become an effective member again until 18 months after termination

from membership) because the time frame between membership termination and becoming an effective member again in those situations is beyond the time period to which the Renewal/Change of Status fee is intended to apply.

Additionally, it should be noted that, irrespective of the changes proposed by this rule filing, CBOE Rule 3.9(g) will remain applicable. Rule 3.9(g) provides, in pertinent part, that any person who does not possess an authorized floor function for more than 1 year is required to re-attend the Exchange's New Member Orientation Program and to re-pass the Floor Member Qualification Exam in order to once again become eligible to have an authorized floor function. Retention of this requirement will ensure that former members that have not had an authorized floor function for an extended period of time will go through the Exchange's floor member orientation class again and will be required to pass the related Exchange exam.

2. Statutory Basis

The proposed rule change will improve the efficiency of the Exchange's membership application processes. Accordingly, the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and further the objectives of Section 6(b)(5)[4] in particular, in that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market while maintaining other current Exchange rules and procedures that are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition 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.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, 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 CBOE. All submissions should refer to File No. SR–CBOE–2003–49 and should be submitted by December 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–29296 Filed 11–21–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48773; File No. SR–DTC–2003–13]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Termination of the DALI Tax Service

November 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 2, 2003, The Depository Trust Company filed a proposed rule change with the Securities and Exchange Commission and on October 30, 2003, amended its proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change will terminate DTC's Data Link for Intermediaries (''DALI'') tax service.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change will terminate DTC's DALI tax service effective December 31, 2003. DALI is a communications hub that allows financial institutions (typically, a U.S. paying institution acting as a U.S. withholding agent and its foreign customer payee) to exchange the data necessary to determine correct withholding and reporting of U.S. tax on

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

payments such as dividends and interest to a foreign payee.[3]

DTC introduced DALI in January 2001 at the request of four DTC participants (''Consortium''). DALI's principal features are communicating payment events and withholding instructions relating to such events, managing payee tax documentation (such as IRS Forms W–8 and W–9), and aggregating information for tax reporting and recordkeeping.

At the Consortium's request, DTC agreed to act as project manager for developing the DALI software system and for operating and maintaining the system as a DTC service that would be available to all DTC participants and their customers at standard DTC fees. The Consortium members agreed to finance the product development costs and expected to be reimbursed for such costs over time from the proceeds of user service fees in excess of these costs. The Consortium also agreed to fund DALI's operating losses during the initial phase of operations. The Consortium expected that the DALI system would be widely used by DTC participants, which would therefore obviate the need for the Consortium to continue to fund operating losses and would enable the Consortium to recoup any amounts previously funded.

Only Consortium members have used DALI, and by mid-2003, only one out of those four members continued using DALI. Given the costs of maintaining DALI, DTC has determined that it will no longer offer this service. Consistent with the agreements between DTC and the Consortium, DTC will transfer the DALI system to the Consortium member that is still using and funding DALI. DTC will operate the system as a facilities manager on behalf of that member for a limited period of time (less than one year) during the transition. This member intends to operate the DALI system in-house for its own customers.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[4] and the rules and regulations thereunder applicable to DTC because it will enhance DTC's ability to safeguard securities and funds in its custody or control or for which it is responsible by promoting the efficient allocation of DTC resources. This will be done by terminating the operation of a service that is not being utilized by a sufficient number of DTC participants to support its costs or justify its use of DTC's operational resources.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change. Each of the three Consortium members that used DALI informed DTC that it has developed its own internal system to perform withholding and reporting with respect to DALI's functions and that DTC's discontinuance of DALI will not adversely affect it. DTC will assist the remaining Consortium member in transitioning the DALI system for its own use.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

DTC has not solicited nor received written comments on the proposed rule change. DTC will inform the Commission of any written comments it receives.

**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[5] and Rule 19b–4(f)(6) thereunder[6] because it effects a change that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative for 30 days after the date of the filing. 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.

**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 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–DTC–2003–13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html*. All submissions should refer to File No. SR–DTC–2003–13 and should be submitted by December 15, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–29297 Filed 11–21–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Sections 1441 *et seq.* of the Internal Revenue Code and regulations promulgated thereunder.

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 270.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48788; File No. SR–NASD–2001–85]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Affirmative Determination Requirements for Short Sale Orders Received by Members From Non-Member Broker-Dealers

November 14, 2003.

**I. Introduction**

On November 27, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc., 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 require that before accepting

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

a short sale order from a broker-dealer that is not an NASD member (''non-member broker-dealer'') a member must make an affirmative determination that the member will receive delivery of the security from the non-member broker-dealer or that the member can borrow the security on behalf of the non-member broker-dealer for delivery by settlement date. The proposed rule change was published for comment in the **Federal Register** on January 23, 2002.[3] The Commission received one comment letter on the proposal. On July 18, 2003, the NASD submitted Amendment No. 1 to the proposed rule change. On September 15, 2003, the NASD submitted Amendment No. 2 to the proposed rule change. This order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1 and 2.

## II. Description of the Proposal

NASD Rule 3370(b)(2)(A) provides that no member or person associated with a member shall accept a short sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. For purposes of NASD Rule 3370(b)(2), the term ''customer'' is defined in NASD Rule 0120(g) and excludes a broker or dealer.

As a result, the requirements of NASD Rule 3370(b)(2)(A) generally do not apply directly to orders received by a member from another broker-dealer (the ''originating broker-dealer''). This does not present regulatory concerns where the originating broker-dealer is also an NASD member because, as a member, the originating broker-dealer would have an independent obligation to comply with the requirements under NASD Rule 3370(b)(4)(B) (''Affirmative Determination Requirements'') with respect to the order. Non-member broker-dealers, however, are not subject to NASD rules and, therefore, are not independently required to comply with the NASD's Affirmative Determination Requirements. Thus the Affirmative Determination Requirements generally do not apply to short sale orders that originate with a non-member broker-dealer and are subsequently routed to an NASD member.

To address these concerns, the proposed rule change would amend NASD Rule 3370(b)(2)(A) to require that no member or person associated with a member shall accept a short sale order for any customer, or any non-member broker-dealer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or non-member broker-dealer, or that the member can borrow the security on behalf of the customer or non-member broker-dealer for delivery by settlement date. In such instances, members also would be required to comply with the corresponding recordkeeping requirements under NASD Rule 3370(b)(4)(B).

While NASD members generally are required to make affirmative determinations for both customer and proprietary orders, there are limited exceptions for proprietary orders that are bona fide market making, bona fide fully hedged or bona fide fully arbitraged transactions.[4] Under the proposed rule change, if a member can establish and document that a proprietary order it has received from a non-member broker-dealer meets one of these exceptions, it would be in compliance with the proposed amendments to the Affirmative Determination Requirements.

## III. Comments and NASD Response

The Commission received one comment letter from Island ECN, Inc. (''Island''). Island's comment letter makes two basic points. First, it suggests the Commission should not approve the proposal until the issue of the Nasdaq primary market maker (''PMM'') standards exemption is addressed. Second, Island argues that the NASD offers no factual basis for the proposal. The NASD believes that no changes to the proposal are necessary in response to Island's letter.

Regarding Island's first point, the NASD's response is that Island confuses the requirements of the bid test, which addresses the price at which a short sale may be made, with the affirmative determination requirement, which prevents abusive short selling and ensures that short sellers satisfy their settlement obligations. According to the NASD, short selling members must comply with both affirmative determinations and bid test requirements. According to the NASD, the current rule applies only to a member's proprietary orders and customer orders, which excludes another broker or dealer by definition.[5] NASD proposes to close this gap.

Further, NASD has made similar changes NASD Rule 2860 to the option position, exercise and reporting requirements.[6]

NASD's response to Island second point is that NASD has set forth a factual basis for approval of the proposal consistent with section 15A(b)(6) of the Act.[7] According to NASD, hard evidence of violative conduct sought by Island has not been necessary for similar proposed rule changes, and, if required, would undermine the ability of self-regulatory organizations to close gaps in their rules. Moreover, NASD represents that it has observed cases of member firms that have not complied with short sale requirements for orders received from non-member broker-dealers. NASD believes that orders from non-member broker-dealers have the potential for fails to deliver just as short sales by other persons subject to the rule.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change, including whether Amendment Nos. 1 and 2 are 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–2001–85 and should be submitted by December 15, 2003.

## V. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

[3] *See* Securities Exchange Act Release No. 45257 (January 9, 2002), 67 FR 3249.

[4] NASD Rule 3370(b)(2)(B).

[5] *See* NASD Rule 0120(g).

[6] Securities Exchange Act Release No. 43718 (December 13, 2000), 65 FR 80969 (December 22, 2000) (approving SR–NASD–2000–36).

[7] 15 U.S.C. 78*o*–3(b)(6).

applicable to a national securities association.[8] In particular, the Commission believes that the proposal, as amended, is consistent with the requirements of section 15A(b)(7) of the Act[9] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 believes that the failure to have uniform application of the Affirmative Determination Requirements affects the integrity of the marketplace by potentially increasing fails to deliver and creates regulatory disparity by allowing certain firms to effect short sales outside the purview of the NASD's Affirmative Determination Requirements.

### VI. Accelerated Approval of Amendment Nos. 1 and 2

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[10] Amendment No. 1 extends NASD members' affirmative determination obligations to orders received from non-member broker-dealers. Amendment No. 2 specifies which firms can claim an exemption from the affirmative determination requirements. These amendments will correct a regulatory disparity that allows certain firms to effect short sales outside the purview of the Affirmative Determination Requirements. The Commission believes that accelerating approval will allow the implementation of this rule without unnecessary delay.

### VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with section 15A(b)(7) of the Act.[11]

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–2001–85) is approved, and that Amendment Nos. 1 and 2 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–29295 Filed 11–21–03; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78*o*(3).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Senior Executive Service; Performance Review Board Members

**AGENCY:** Small Business Adminstration.

**ACTION:** Notice of members of the FY 2003 Performance Review Board.

**SUMMARY:** Section 4314(c)(4) of Title 5, U.S.C., requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following have been designated to serve on the FY 2003 Performance Review Boards for the U.S. Small Business Administration:

1. Lisa Goeas, Chief of Staff;
2. Cheryl Mills, Associate Deputy Administrator for Entrepreneurial Development;
3. Lewis D. Andrews, Jr., Associate Deputy Administrator for Management and Administration;
4. Stephen Galvan, Chief Information Officer;
5. Susan Hensley, Associate Administrator for Communications and Public Liaison;
6. Judith Roussel, District Director (Chicago);
7. José Sifontes, District Director (New York);
8. Robert J. Moffitt, Deputy Associate Deputy Administrator for Management and Administration;
9. Monika Edwards Harrison, Chief Human Capital Officer;
10. Loyola R. Trujillo, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance;
11. Eric Benderson, Associate General Counsel for Litigation;
12. Calvin Jenkins, Deputy Associate Deputy Administrator for Capital Access;
13. Jennifer Main, Deputy Chief Financial Officer;
14. James Rivera, Associate Administrator for Financial Assistance; and,
15. Jerry Williams, Deputy Chief Information Officer.

Dated: November 17, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–29227 Filed 11–21–03; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Delegation of Authority No. 266–1]**

### Delegation of Authority by the Under Secretary for Management for the Adminstrative Collection, Compromise, Suspension, Termination of Department Collection, Advance Decision, Settlement, and Waiver of Claims of or Against Debtors of the Department of State

### Section 1. General Delegation

By virtue of the authority vested in me as Under Secretary of State for Management, including under Delegation of Authority No. 198, dated September 16, 1992, I hereby delegate the duties, functions and responsibilities for the administrative collection, compromise, suspension, termination of Department collection, advance decision, settlement, and waiver of claims of or against debtors of the Department of State pursuant to section 211 of the Legislative Branch Appropriation Act, 1996, Public Law 104–53, 109 Stat. 514(1995); the Office of Management and Budget's Determination with Respect to Transfer of Functions Pursuant to Public Law 104–53 (June 30, 1996); sections 103(d), 105(b), 116, and 204 of the General Accounting Office Act of 1996, Public Law 104–316, 110 Stat. 3816 (1996); the Office of Management and Budget's Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316 (December 17, 1996); and Title 31 of the United States Code Chapter 37 to the Chief Financial Officer. I further delegate such authority to additional officers regarding claims for specified amounts as follows:

- Over $35,000 but not more than $50,000: Deputy Chief Financial Officer;
- Up to and including $35,000: Deputy Assistant Secretary for Global Financial Services; and
- Up to and including $500: Principal Officer of the post.

### Section 2. Delegation Revoked

The following delegation of authority is hereby revoked: the June 15, 1999,

delegation of authority to adjudicate and waive claims of or against the Department of State.

**Section 3. General Provisions**

(a) This Delegation of authority shall be published in the **Federal Register** and is effective upon the date of my signature.

(b) Notwithstanding any provision of this Delegation of Authority, the Secretary of State, the Deputy Secretary of State, or the Under Secretary of State for Management may at any time exercise any function delegated by this delegation of authority.

(c) Functions delegated by this delegation of authority may not be redelegated.

(d) Any reference in this delegation of authority to any act, executive order, determination, delegation of authority, regulation, or procedure shall be deemed to be a reference to such act, order, determination, delegation of authority, regulation, or procedure as amended from time to time.

Dated: October 22, 2003.

**Grant S. Green, Jr.,**

*Under Secretary of State for Management, Department of State.*

[FR Doc. 03–29310 Filed 11–21–03; 8:45 am]

BILLING CODE 4710–15–P

## DEPARTMENT OF STATE

### Office of the Secretary

**[Public Notice: 4542]**

### Extension of the Restriction on the Use of United States Passports for Travel to, in, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be a country ''where there is imminent danger to the public health or physical safety of United States travellers'' within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and the restriction herein shall expire at midnight November 24, 2004, unless extended or sooner revoked by Public Notice. The Department of State will review this restriction every three months while it remains in effect.

Dated: November 17, 2003.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 03–29311 Filed 11–21–03; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Fond du Lac & Sheboygan Counties, Wisconsin

**AGENCY:** Federal Highway Administration (FHWA), DOT.

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

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed improvements of STH 23 between CTH K east of Fond du Lac in Fond du Lac County and CTH P west of Plymouth in Sheboygan County, Wisconsin.

**FOR FURTHER INFORMATION CONTACT:** Mr. Johnny M Gerbitz, Field Operations Engineer, Federal Highway Administration, 567 D'Onofrio Drive, Madison, Wisconsin 53719–2814; telephone: (608) 829–7511. You may also contact Mr. Eugene Johnson, Director, Bureau of Equity & Environmental Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin 53707–7965; telephone: number 608–267–9527.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of **Federal Register**'s home page at: *http://www.archives.gov/* and the Government Printing Office's database at: *http://www.gpoaccess.gov/nara/index.html.*

**Background**

The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement to construct a four-lane facility on STH 23. The project begins at CTH K east of Fond du Lac in Fond du Lac County and extends approximately 19 miles to CTH P west of Plymouth in Sheboygan County, Wisconsin.

The anticipated format for the EIS will be Screening Worksheets rather than the typical narrative form. The Wisconsin Department of Transportation has developed a series of Environmental Screening Worksheets which are divided into Basic Sheets and Factor Sheets. The Screening Worksheets provide a flexible means of addressing the requirements for an Environmental Document.

The improvements to this highway are considered necessary to decrease the potential for crashes, lower congestion, and complete the constrution of a multi-lane highway facility between the Fond du Lac and Sheboygan urban areas.

Planning, environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives within the study area. These alternatives include (1) *No Build*—this alternative assumes the continued use of existing facility with the maintenance necessary to ensure its continued use; (2) *Upgrade the Existing Facilities*—this alternative would improve the safety and traffic handling capabilities of the existing route; (3) *Construction of Added Lanes on Existing or New Alignment*—This alternative would involve one or more proposals for construction of two new lanes adjacent to the existing highway or another local roadway, constructing four lanes on new locations, or a combination of add lanes and a new location. All alternatives will examine improvements to bicycle and pedestrian facilities.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the

meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. A Corridor Preservation Study is underway and will be a large contributor to the EIS study and the alternate development. Coordination with public officials and local residents will continue with focus groups, set up to help determine the alternatives to be evaluated. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 17, 2003.

**Johnny M Gerbitz,**

*Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.*

[FR Doc. 03–29215 Filed 11–21–03; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Safety Advisory 2003–03

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of safety advisory.

**SUMMARY:** FRA is issuing Safety Advisory 2003–03, which provides additional information on the potential catastrophic failure of 100-ton truck bolsters manufactured by National Castings of Mexico's (NCM) Sahagun, Mexico facility with Association of America Railroads (AAR) Identification Numbers B–2410 and B–2409 and National Patterns 52122 and 52202, respectively, used in 263,000 pound and 286,000 pound gross rail load freight cars. These two bolster patterns were manufactured by NCM from 1995 through 1998 and were installed on 29,186 U.S. freight cars of various type construction. Additionally, an overview of the railroad industry's AAR Safety Action Plan for appropriate handling and disposition of these cars is contained in this advisory.

**FOR FURTHER INFORMATION CONTACT:** Ronald Newman, Staff Director, Motive Power and Equipment Division (RRS–14), FRA Office of Safety Assurance and Compliance, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6241 of Thomas Herrmann, Staff Attorney, FRA Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6036.

**SUPPLEMENTARY INFORMATION:** On December 30, 2002, FRA issued Safety Advisory 2002–03 which identified a problem with National Castings of Mexico (NCM) bolsters bearing AAR identification #B–2410, and National Pattern 52122 used in 263,000 and 286,000 pound gross rail load freight cars. In that advisory, FRA referenced AAR Maintenance Advisory MA–81 and AAR Early Warning Letters EW–5191, EW–5191–S1, and EW–5191–S2 that indicated there were as many as 15,000 freight cars in revenue service, which may be equipped with the NCM bolsters. Since publication of FRA Safety Advisory 2002–03, FRA has been made aware of another series of bolsters, AAR Identification # B–2409 and National Pattern 52202, which pose a similar potential safety hazard. The NCM bolsters with pattern 52202 have been referenced in AAR Early Warning Letters EW–5194, EW–5195, EW–5196, and EW–5197. The total estimated population of defective truck bolsters from both NCM patterns is 58,373 bolsters. This large number of truck bolsters represents a fleet of roughly 29,186 freight cars, which may be equipped with the defective NCM bolsters. Extensive fatigue testing of both types of bolsters (both patterns 52122 and 52202) at the AAR Transportation Test Center in Pueblo, CO and two other laboratories confirmed a tendency of these bolsters to develop internal cracking (design flaw) which can lead to sudden and catastrophic failure. The fatigue testing indicated that the action plan, as outlined by the AAR and contained herein, would be an appropriate industry response for dealing with these defective bolsters.

During the week of March 10, 2003, the AAR tendered its *Industry Safety Action Plan* (the Plan), to FRA for the handling of potentially defective NCM bolsters. In this plan, a unique risk analysis was developed by the AAR to prioritize the removal of the bolsters (from tank cars and other high risk commodity shipments) without causing industry operating impacts due to unavailable and/or extremely delayed equipment for loading. AAR's risk assessment was built upon hazardous material commodity classifications, mileage (utilization) factors, loading/impact factors, to arrive at a composite risk rating. AAR also considered the original equipment manufacturer (OEM), supply/demand and existing inventory of replacement bolsters when determining the degree of risk to be assigned to each car type identified as having been equipped with the defective bolsters.

The Plan approved and implemented by AAR's Technical Services Working Committee (TSWC) provided the following proactive safety measures:

1. Tank car owners must complete 20% of their HAZMAT cars (complete bolster replacements) no later than May 31, 2003, and a minimum of 20% per month, thereafter, with 100% replacement no later than September 30, 2003 (Group I, HAZMAT cars).

2. Mill gondola and coal cars (subject to vertical loading impacts) must have bolsters either replaced or requalified (via radiographic inspection) no later than December 31, 2003 (Group II cars).

3. All other cars must either have bolsters replaced or requalified (via radiographic inspection) no later than April 1, 2004 (Group III and Category III, Tank cars, non-HAZMAT service).

FRA recognizes that some of the dates in the AAR industry action plan have not been met for a variety of reasons, primarily the result of not having a sufficient quantity of replacement bolsters. AAR, the railroads and car owners have taken additional measures to ensure safety based on AAR's waiver review, cars held out of service and special inspection procedures. Since initiation of the *Industry Safety Action Plan*, there have been no reported in-service bolster failures.

It should be noted that FRA Hazardous Materials Regulations (HMR), contained in 49 CFR parts 171–180, set forth the requirements for the safe transportation of hazardous materials in commerce by railcar, aircraft, vessel, and motor vehicle. The HMR prescribe requirements for classification, packaging, hazard communication, shipping papers, incident reporting, handling, loading, unloading, segregation, and movement of hazardous materials. FRA understands that there may be as many as 3,300 tank cars originally equipped with either the NCM bolsters in pattern(s) 52122 or 52202, some of

which may be in assigned hazardous materials shipments.

*Recommended Action:* In recognition of the need to assure safety, FRA recommends that railroads, manufacturers, and car owners make every attempt to adhere to the *Industry Safety Action Plan* developed by AAR and expedite wherever possible the handling of potentially defective NCM bolsters. FRA realizes that the industry has been delayed to some extent in meeting the time schedules detailed in the Safety Action Plan due to the short supply of replacement bolsters and the desire to minimize operating impacts. With this in mind, FRA expects owners of hazardous materials tank cars equipped with these defective bolsters to have the cars shopped once the cars become empty and NOT RELOAD until defective bolsters have been removed and once defective bolsters have been removed to so notify the AAR.

Failure of the rail industry to voluntarily take action consistent with the AAR *Industry Safety Action Plan* may result in FRA pursuing other corrective measures to enforce public safety under its rail safety authority. FRA may modify this Safety Advisory 2003–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the nation's railroads.

Issued in Washington, DC, on November 18, 2003.

**George A. Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 03–29338 Filed 11–21–03; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## Over-the-Road Bus Accessibility Program Grants

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of fiscal year 2004 funds; solicitation of grant applications.

**SUMMARY:** The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the availability of funds in fiscal year (FY) 2004 for the Over-the-Road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility final rule, published in a **Federal Register** notice on September 24, 1998. The OTRB Accessibility Program calls for national solicitation of applications, with grantees to be selected on a competitive basis. Federal transit funds are available to intercity fixed-route providers and other OTRB providers at up to 90 percent of the project cost.

FTA expects that in FY 2004, $5.25 million will be appropriated for intercity fixed-route service providers and $1.7 million will be appropriated for other over-the-road bus service providers. As of the date of this announcement, TEA–21 has been extended through February 29, 2004, and the FY 2004 funding for FTA programs has not yet been appropriated by Congress. This announcement describes application procedures for the OTRB Accessibility Program and the procedures FTA will use to determine which projects it will fund when the status of FY 2004 funding is resolved.

This announcement is available on the Internet on the FTA website at: *http://www.fta.dot.gov*. FTA will announce final selections on the website and in the **Federal Register**. A synopsis of this announcement will be posted in the FIND module of the government-wide electronic grants website at *http://www.grants.gov*.

**DATES:** Complete applications for OTRB Accessibility Program grants must be submitted to the appropriate FTA regional office (*see* Appendix A) by the close of business February 2, 2004.

The appropriate FTA regional office is that office which serves the state in which an applicant's headquarters office is located. FTA will announce grant selections in summer 2004, or when FY 2004 funds are fully available.

**FOR FURTHER INFORMATION:** Contact the appropriate FTA Regional Administrator (Appendix B) for application-specific information and issues. For general program information, contact Blenda Younger, Office of Program Management, (202) 366–2053, e-mail: *blenda.younger@fta.dot.gov*. A TDD is available at 1–800–877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. General Program Information
II. Guidelines for Preparing Grant Applications
III. Grant Application Review Process
Appendix A OTRB Accessibility Program Application
Appendix B FTA Regional Offices

### I. General Program Information

*A. Authority*

The program is authorized under Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). Although FY 2004 funds have not yet been appropriated as of the date of this notice, FTA is issuing the solicitation notice now to get the application cycle started.

*B. Background*

Over-the-road buses are used in intercity fixed-route service as well as other services, such as commuter, charter, and tour bus services. These services are an important element of the U.S. transportation system. TEA–21 authorized FTA's Over-the-road Bus Accessibility Program to assist over-the-road bus operators in complying with the Department's Over-the-road Bus Accessibility rule, ''Transportation for Individuals with Disabilities'' (49 CFR part 37) published in a **Federal Register** notice on September 24, 1998.

Summary of DOT's Over-the-Road Bus Accessibility Rule

*Deadlines for Acquiring Accessible Vehicles.* Under the over-the-road bus accessibility rule, all new buses obtained by large (Class I carriers, *i.e.*, those with gross annual operating revenues of $5.3 million or more), fixed-route carriers after October 30, 2000 must be accessible, with wheelchair lifts and tie-downs that allow passengers to ride in their own wheelchairs. The rule requires 50 percent of the fixed-route carriers' fleets to be accessible by 2006, and 100 percent of the vehicles in their fleets to be accessible by 2012. The buses acquired by small (gross operating revenues of less than $5.3 million annually) fixed-route providers after October 29, 2001 also are required to be lift-equipped, although they do not have a deadline for total fleet accessibility. Small providers also can provide equivalent service in lieu of obtaining accessible buses. Starting in 2001, charter and tour companies have to provide service in an accessible bus on 48 hours' advance notice. Fixed-route companies must also provide this kind of service on an interim basis until their fleets are completely accessible.

*Deadlines for Delivering Accessible Service.* The rules for delivering accessible motorcoach service went into effect October 29, 2001 for large fixed-route, charter, tour and other demand-responsive motorcoach companies. The rules went into effect for small operators on October 28, 2002. After these dates, companies must provide service in an accessible coach to a passenger who

requests it and gives 48 hours' advance notice. Small companies may provide equivalent service, instead of acquiring accessible coaches. This equivalent service may be provided in an alternate vehicle (*e.g.*, a van), provided that the service allows passengers to travel in their own wheelchairs.

Specifications describing the design features that an over-the-road bus must have to be readily accessible to and usable by persons who use wheelchairs or other mobility aids required by the ''Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles: Over-the-Road Buses'' rule (36 CFR part 1192) were published in another **Federal Register** notice on September 28, 1998.

*C. Scope*

Improving mobility and shaping America's future by ensuring that the transportation system is accessible, integrated, and efficient, and offers flexibility of choices is a key strategic goal of the Department of Transportation. Over-the-road Bus Accessibility projects will improve mobility for individuals with disabilities by providing financial assistance to help make vehicles accessible and provide training to ensure that drivers and others understand how to use accessibility features as well as how to treat patrons with disabilities.

*D. Eligible Applicants*

Grants will be made directly to operators of over-the-road buses. Intercity, fixed-route over-the-road bus service providers may apply for the $5.25 million that FTA expects will be available to intercity fixed-route providers in FY 2004. Other over-the-road bus service providers, including operators of local fixed-route service, commuter service, and charter or tour service may apply for the $1.7 million expected to be available in FY 2004 for these providers. OTRB operators who provide intercity, fixed-route service and another type of service, such as commuter, charter or tour, may apply for both categories of funds with a single application. Private for-profit operators of over-the-road buses are eligible to be direct applicants for this program. This is a departure from most other FTA programs for which the direct applicant must be a state or local public body.

*E. Vehicle and Service Definitions*

An ''over-the-road bus'' is a bus characterized by an elevated passenger deck located over a baggage compartment.

Intercity, fixed-route over-the-road bus service is regularly scheduled bus service for the general public, using an over-the-road bus that: operates with limited stops over fixed routes connecting two or more urban areas not in close proximity or connecting one or more rural communities with an urban area not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points.

Other over-the-road bus service means any other transportation using over-the-road buses, including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as meals, lodging, admission to points of interest or special attractions). While some commuter service may also serve the needs of some intercity fixed-route passengers, the statute includes commuter service in the definition of ''other'' service. Commuter service providers should apply for these funds, even though the services designed to meet the needs of commuters may also provide service to intercity fixed-route passengers on an incidental basis. If a service provider can document that more than 50 percent of its passengers are using the service as intercity fixed-route service, the provider may apply for the funds designated for intercity fixed-route operators.

*F. Eligible Projects*

Projects to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule (49 CFR part 37) are eligible for funding. Incremental capital costs eligible for funding include adding lifts, tie-downs, moveable seats, doors and all labor costs associated with work on the vehicle needed to make vehicles accessible. Retrofitting vehicles with such accessibility components is also an eligible expense. Please see Buy America section for further determination of eligibility.

FTA may award funds for costs already incurred by the applicants. Any new wheelchair accessible vehicles delivered since June 8, 1998, the date that the Transportation Equity Act for the 21st Century was effective, are eligible for funding under the program. Vehicles of any age that have been retrofitted with lifts and other accessibility components since June 8, 1998 are also eligible for funding.

Eligible training costs are those required by the final accessibility rule as described in 49 CFR 37.209. These activities include training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, and handling and storage of mobility devices. The costs associated with developing training materials or providing training for local providers of over-the-road bus services for these purposes are eligible expenses.

FTA will not fund the incremental costs of acquiring used wheelchair accessible OTRBs, as it may be impossible to verify whether or not FTA funds were already used to make the vehicles accessible. Also, it would be difficult to place a value on the accessibility features based upon the depreciated value of the vehicle. FTA wishes to increase the number of wheelchair accessible over-the-road buses available to persons with disabilities throughout the country, and the purchase of used accessible vehicles, whether or not they were previously funded by FTA, does not further this objective.

FTA has sponsored the development of accessibility training materials for public transit operators. FTA-funded Project Action is a national technical assistance program to promote cooperation between the disability community and the transportation industry. Project Action provides training, resources and technical assistance to thousands of disability organizations, consumers with disabilities, and transportation operators. It maintains a resource center with the most up-to-date information on transportation accessibility. Project Action may be contacted at: Project Action, 700 Thirteenth Street NW., Suite 200, Washington, DC 20590, *Phone*: 1–800–659–6428, *Internet address*: *http://www.projectaction.org/*.

*G. Grant Criteria*

FTA will award grants based on:

1. The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant;

2. The extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

3. The extent to which the over-the-road bus operator acquires equipment required by DOT's over-the-road bus accessibility rule prior to the required timeframe in the rule;

4. The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant; and

5. The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

These are the statutory criteria upon which funding decisions will be made. In addition to these criteria, FTA may also consider other factors, such as the size of the applicant's fleet and the level of FTA funding that may already have been awarded to applicants in prior years.

*H. Grant Requirements*

Applicants selected for funding must include documentation necessary to meet the requirements of FTA's Nonurbanized Area Formula program (Section 5311 under Title 49, United States Code). Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made.

Those applicants selected for funding will be required to comply with all of the Federal requirements applicable to the OTRB Accessibility Program, provided in the comprehensive compilation below. Federal requirements apply to the incremental cost of adding wheelchair accessibility features to new vehicles or when retrofitting existing vehicles, not to the entire vehicle. All applicants are advised to read the entire list of requirements to be confident of their responsibilities and commitments for compliance.

The authority for these requirements are provided by the Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, DOT and FTA regulations at 49 CFR, and FTA Circulars.

1. Buy America

In the OTRB Accessibility program, FTA's Buy America regulations, 49 CFR Part 661, apply to the incremental capital cost of making vehicles accessible. Those regulations do not apply to associated labor costs. The following discussion relates to the contract between the grantee and the prime contractor.

The ''General Requirements'' found at 49 CFR 661.5 apply to that portion of the accessibility system being funded. That section requires that all of the manufacturing processes for the product take place in the United States and that all components of the product be made in the United States. A component is considered domestic if it is manufactured in the U.S.A., regardless of the origin of its subcomponents. The lift, the moveable seats, and the securement devices will all be considered components for purposes of this program; accordingly, as components, each must be manufactured in the United States. Should a recipient choose to request funding for only a specific component, such as the lift or the securement device, then the Buy America requirements would apply only to that item funded by FTA.

Three exceptions to the general requirements can be found at 49 CFR 661.7: first, a waiver may be requested when the application of the regulation is not in the public interest; second, a waiver may be requested if the materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; and third, a price differential waiver may be requested where the results of competitive procurement show that there is a 25 percent price difference between the domestic and foreign products. FTA approval of a waiver must be received by the recipient of FTA funds prior to the execution of contract.

It should also be noted that FTA has issued a general public interest waiver for all purchases under the Federal ''small purchase'' threshold, which is currently $100,000. This waiver can be found in 49 CFR 661.7, Appendix A(e). In Section 3038(b) of TEA–21, Congress authorized FTA financing of the incremental capital costs of compliance with DOT's OTRB accessibility rule. Consistent with this provision, the small purchase waiver applies only to the incremental cost of the accessibility features FTA is funding. Where more than one bus is purchased, the grantee must consider the incremental cost increase for the entire procurement when determining if the small purchase waiver applies. For example, if $30,000 is the incremental cost for the accessibility features eligible under this program per bus (regardless of the Federal share contribution), then a procurement of three buses with a total such cost of $90,000, would qualify for the small purchase waiver. No special application to FTA would be required.

The grantee must obtain a certification from the bus manufacturer that all items included in the incremental cost for which the applicant is applying for funds meet Buy America requirements.

The Buy America regulations can be found at *http://www.fta.dot.gov/library/legal/buyamer/.*

2. Labor Protection

Before FTA may award a grant for capital assistance, 49 U.S.C. 5333(b) requires that fair and equitable arrangements must be made to protect the interests of transit employees affected by FTA assistance. Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the statute. When a labor organization represents a group of affected employees in the service area of an FTA project, the employee protective arrangement is usually the product of negotiations or discussions with the union. The grant applicant can facilitate Department of Labor (DOL) certification by identifying in the application any previously certified protective arrangements that have been applied to similar projects undertaken by the grant applicant, if any. Receiving funds under the OTRB Accessibility program, however, will not require the grantee's employees to be represented by organized labor. Nothing in the labor protection provisions in 49 U.S.C 5333(b) requires a motorcoach operator to become a union carrier or encourages union organizing in any manner. Upon receipt of a grant application requiring employee protective arrangements, FTA will transmit the application to DOL and request certification of the employee protective arrangements. In accordance with DOL guidelines, DOL notifies the relevant unions in the area of the project that a grant for assistance is pending and affords the grant applicant and union the opportunity to agree to an arrangement establishing the terms and conditions of the employee protections. If necessary, DOL furnishes technical and mediation assistance to the parties during their negotiations. The Secretary of Labor may determine the protections to be certified if the parties do not reach an agreement after good faith bargaining and mediation efforts have been exhausted. DOL will also set the protective conditions when affected employees in the service area are not represented by a union. When DOL determines that employee protective arrangements comply with labor protection requirements, DOL will provide a certification to FTA. The grant agreement between FTA and the grant applicant incorporates by reference the employee protective arrangements certified by DOL.

Applicants must identify any labor organizations that may represent their

employees and all labor organizations that represent the employees of any other transit providers in the service area of the project.

For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union local 1258) Since DOL makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

However, for each independent labor organization (*i.e.*, a union that is not affiliated with a national or international organization) the local information will be necessary (name of organization, address, contact person, phone, fax numbers).

Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company, and associated union information.

DOL issued a **Federal Register** notice addressing the new TEA–21 programs, including the OTRB Accessibility Program, ''Amendment to Section 5333(b) Guidelines to Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA–21)''; Final Rule, dated July 28, 1999. FTA issued a ''Dear Colleague'' letter, dated December 5, 2000, addressing DOL processing of grant applications. Attached to the letter is an application checklist which provides information that DOL must have in order to review and certify FTA grant applications. This letter and attachment can be found at: *http://www.fta.dot.gov/office/public/c0019.html.* Questions concerning protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Department of Labor, 200 Constitution Avenue NW., Room N–5411, Washington, DC 20210; telephone (202) 693–0126, fax (202) 219–5338.

3. Planning

Applicants are encouraged to notify the appropriate state departments of transportation and metropolitan planning organizations (MPO) in areas likely to be served by equipment made accessible through funds made available in this program. Those organizations, in turn, should take appropriate steps to inform the public, and individuals requiring fully accessible services in particular, of operators' intentions to expand the accessibility of their services. Incorporation of funded projects in the plans and transportation improvement programs of states and metropolitan areas by states and MPOs also is encouraged, but is not required.

4. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

A. *Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions.* As required by U.S. DOT regulations on Government-wide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) above, it shall indicate so in its signature page and provide a written explanation to FTA.

B. *Drug-Free Workplace Agreement.* As required by U.S. DOT regulations, ''Drug-Free Workplace Requirements (Grants),'' 49 CFR part 29, subpart F, as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace,

(b) Its policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees be engaged in the performance of the grant be given a copy of the statement required by paragraph (1) above;

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant, the employee will be required to:

(a) Abide by the terms of the statement, and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title,

to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

C. *Intergovernmental Review Assurance.* The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

D. *Nondiscrimination Assurance.* As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

E. *Assurance of Nondiscrimination on the Basis of Disability.* As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and

operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

5. Certifications Prescribed by the Office of Management and Budget (SF–424B and SF–424D) The Applicant certifies that it:

(a) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application.

(b) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(c) Will establish safeguard to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

(d) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval.

(e) Will comply with all statutes relating to nondiscrimination including, but not limited to:

(1) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(2) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;

(3) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(4) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(5) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(6) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(7) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(8) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(9) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(10) The requirements of any other nondiscrimination statute(s) that may apply to the project.

(f) Will comply, or has complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24 including, but not limited to the following:

(1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(4) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(9) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

(g) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does

not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply.

(h) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements.

(i) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(j) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 *note*;

(2) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 *note*;

(3) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 *note*;

(4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 *note*;

(5) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(6) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(8) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(9) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national, state, or local significance used in a transit project as required by 49 U.S.C. 303.

(k) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems.

(l) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*

(m) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

(n) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency.

(o) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

(p) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

(q) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the State.

(r) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance and DOT regulation, ''Protection of Human Subjects,'' 49 CFR part 11.

(s) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance.

(t) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, March 2000.''

(u) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

6. Lobbying Certification for an Application Exceeding $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. Consequently, FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting category ''II'' on the Signature Page at the end of this document.

(a) As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member

of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

(b) The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

## II. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the OTRB Accessibility program. Grant awards will be made on a competitive basis. Applicants should submit 3 copies of their project proposal application, consistent with the application format provided at Appendix A, to the appropriate regional office. Project proposal applications must be received by FTA no later than February 2, 2004. The OTRB operators should submit the application to the office in the region in which its headquarters office is located (see Appendix B). The application should provide information on all items for which you are requesting funding in FY 2004. The application must include the following elements:

*1. Applicant Information*

This addresses basic identifying information, including:

a. Company name and Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

b. Contact information for notification of project selection: Contact name, address, fax and phone number.

c. Description of services provided by company.

d. For fixed-route carriers, whether you are a large (Class I, with gross annual operating revenues of $5.3 million or more) or small (gross operating revenues of less than $5.3 million annually) carrier.

e. Existing fleet and employee information, including number of over-the-road buses used for intercity fixed-route service and other service and number of employees.

f. Estimate of the proportion of service, if any, that is intercity fixed-route.

g. Description of your technical, legal, and financial capacity to implement the proposed project.

*2. Project Information*

Every application must:

a. Provide the Federal amount requested for each purpose for which funds are sought.

b. How intercity fixed-route service meets the definition of intercity fixed-route service, including how service makes meaningful connections with scheduled intercity bus service to more distant points.

c. Document matching funds, including amount and source.

d. Describe project, including components to be funded, *i.e.*, lifts, tie-downs, moveable seats, etc., and/or training.

e. Provide project time-line, including significant milestones such as date or contract for purchase of vehicle(s), and actual or expected delivery date of vehicles.

f. Address each of the five statutory evaluation criteria.

g. Complete Standard Form 424, ''Application For Federal Assistance''.

3. Labor Information

a. Identify any labor organizations that may represent your employees and all labor organizations that represent the employees of any transit providers in the service area of the project. For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union local 1258.) Since DOL makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

b. For each independent labor organization (*i.e.*, a union that is not affiliated with a national or international organization) the local information will be necessary (name of organization, address, contact person, phone, fax numbers).

c. Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company and associated union information.

## III. Grant Application Review Process

Applications are to be submitted to the appropriate FTA Regional Office by the close of business on February 2, 2004. FTA will screen all applications to determine whether all required eligibility elements, as described in Section 2 of the application, are present. An FTA evaluation team will evaluate each application according to the criteria described in this announcement.

*Notification*

FTA expects to notify all applicants, both those selected for funding and those not selected, in summer 2004. Projects selected for funding will be published in a **Federal Register** notice.

Issued on: November 17, 2003.

**Jennifer L. Dorn,**

*Administrator.*

## Appendix A—Over-the-Road Bus Accessibility Program Project Proposal Application (Paper)

1. *Applicant Information*

A. *Company Name:*

B. *DUNS Number:*

C. *For Notification of Project Selection Contact:*

*Name of Individual:*

*Address:*

*Telephone number:*

D. *Describe Services Provided by Company, including Areas Served:*

E. *Intercity Fixed-Route Carriers:*

____Large/Class I (gross annual operating revenues of $5.3 Million or more)

____Small (gross annual revenues of less than $5.3 Million)

F. *Existing Fleet and Employee Information:*

#____Over-the-road Buses in fleet used for Intercity Fixed-route Service

#____ Over-the-road have lifts buses currently

#____Over-the-road Buses in fleet used for Other Service, *e.g.*, Charter, Tour, & Commuter

#____Over-the-road Buses currently have lifts

#____Employees

G. *If you provide both intercity fixed-route service and another type of service, such as commuter, charter or tour service, please provide an estimate of the proportion of your service that is intercity.*

____% of services is intercity fixed-route.

H. *Describe your technical, legal, and financial capacity to implement the proposed project.*

2. *Project Information*

A. *Federal Amount Requested (Up to 90% Federal Share):*

*Intercity Fixed Route Service:*

$____ for # ____ New Over-the-road Buses

$____ for # ____ Retrofits

$____ for # ____ Employees—Training

If funds are being requested for intercity fixed-route services, please describe how the service meets the definition of intercity fixed-route service, including how the service makes meaningful connections with scheduled intercity bus service to more distant points.

*Other Service (Commuter, Charter, or Tour)*

$____ for # ____ New Over-the-road Buses
$____ for # ____ Retrofits
$____ for # ____ Employees—Training

B. *Document Matching Funds, including Amount and Source:*

C. *Describe Project, including Components to be funded, i.e., Lifts, Tie-downs, Moveable Seats, etc. and/or Training:*

D. *Provide Project Time Line, including Significant Milestones such as Date of Contract for Purchase of Vehicle(s), and actual or expected delivery date of vehicles:*

E. *Project Evaluation Criteria—Projects will be evaluated according to the following criteria:*

The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant. (20 points)

The extent to which the applicant demonstrated innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities. (20 points)

The extent to which the over-the-road bus operator acquired equipment required by DOT's over-the-road bus accessibility rule prior to the required time-frame in the rule. (20 points)

The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant. (20 points)

The impact of accessibility requirements on the continuation of over-the-road bus service with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals. (20 points)

## Appendix B—FTA Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine

Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II—New York, New Jersey, Virgin Islands

Letitia Thompson, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC

Herman Shipman, Acting FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico

Jerry Franklin, FTA Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, (404) 562–3500

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan

Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, 24th Floor, Suite 320, Chicago, IL 60606–5232, (312) 353–2789

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma

Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550

Region VII—Iowa, Nebraska, Kansas, Missouri

Mokhtee Ahmad, Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah

Lee Waddleton, FTA Regional Administrator, Columbine Place 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam

Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133

Region X—Washington, Oregon, Idaho, Alaska

Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954

[FR Doc. 03–29238 Filed 11–21–03; 8:45 am]

BILLING CODE 4910–EX–P

---

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2002–15644 Notice 2]**

### Freightliner LLC; Grant of Application for Decision for Determination of Inconsequential Non-Compliance

This notice grants the application by Freightliner LLC (Freightliner) on behalf of Thomas Built Buses, Inc. (Thomas) of High Point, North Carolina, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing Materials.'' Freightliner has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Responsibility and Reports.'' Pursuant to 49 CFR Part 556, ''Exemption for Inconsequential Defect or Noncompliance,'' Freightliner has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, ''Motor Vehicle Safety.'' The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published August 19, 2003, (68 FR 49841) affording an opportunity for comment. The comment closing date was September 18, 2003. No comments were received.

From September 22, 2002 to February 24, 2003, Freightliner manufactured 700 Thomas Built Conventional, MPV–EF and HDX buses with driver side windows that do not meet the labeling requirements of paragraph S6 of FMVSS No. 205. The driver side windows were not marked with the ''DOT'' symbol, manufacturer's number and the AS 2 code mark.

FMVSS No. 205, paragraph S6, ''Certification and marking,'' requires that each piece of glazing material shall be marked in accordance with Section 6 of the American National Standard ''Safety Code for Safety Glazing Materials for Glazing Materials for Glazing in Motor Vehicles Operating on Land Highways' Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26). This specifies all safety glazing materials for use in accordance with this code shall be legibly and permanently marked in letters and numerals at least 0.070 inch (1.78 mm) in height, with the words ''American National Standard'' or the characters ''AS'' and, in addition, with a model number that will identify the type of construction of the glazing material. The glazing materials shall also be marked with the manufacturer's distinctive designation or trademark. In addition, FMVSS No. 205, paragraph S6.2 requires that each piece of glazing material be marked with the symbol ''DOT.'' Freightliner stated that the noncompliance consists of the driver side windows not being marked with the ''DOT'' symbol, manufacturer's number and the AS 2 code mark.

According to Freightliner, the manufacturer of the window, Double Eagle Window MFG, LLC, notified Freightliner on April 15, 2003 of the labeling noncompliance. Freightliner submitted a compliance test report indicating that the tempered glass parts in question were in full compliance with 49 CFR 571.205 except for labeling.

NHTSA has reviewed Freightliner's application and, for the reasons discussed in this paragraph, concludes that the noncompliance of the Freightliner driver side windows is inconsequential to motor vehicle safety. Freightliner has provided documentation indicating that the driver side windows do comply with all other safety performance requirements of the standard except labeling requirements. Consequently, the noncompliance would not affect the purposes of FMVSS No. 205, which include reducing injuries from impacts to glazing surfaces, ensuring driver

visibility, and minimizing the possibility of occupants being thrown through the vehicle windows in collisions. Furthermore, it is unlikely that the labeling would result in inadvertent replacement of windows with the wrong glazing since all buses have AS 2 glazing in the driver side window (which is necessary for driver visibility). In addition, the affected vehicles are large buses that are typically operated by professional drivers, and maintenance and repairs are performed by experienced mechanics.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety.

Accordingly, the application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

The applicant is hereby informed that all products manufactured on and after the date it determined the existence of this noncompliance must fully comply with the requirements of FMVSS No. 205.

**Authority:** 49 U.S.C. 30118(b), 30120(h), delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 18, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–29200 Filed 11–21–03; 8:45 am]

**BILLING CODE 4910–59–P**

---

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2003–15154; Notice 2]**

### General Motors North America, Grant of Application for a Decision of inconsequential Noncompliance

General Motors North America (GM), has determined that approximately 251,000 model year 2003 Silverado/Sierra pickup trucks, Tahoe/Suburban/Escalade sport utility vehicles, and Savanna/Express vans do not comply with either paragraph S5.3.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 105, or paragraph S5.5.3 of FMVSS No. 135. The Silverado/Sierra pickup trucks and the Savanna/ Express vans are required to comply with FMVSS No. 105, while the Tahoe/Escalade/Suburban sport utility vehicles are required to comply with FMVSS No. 135, based on gross vehicle weight ratings (GVWR).

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has applied for a determination that the noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of GM's application was published in the **Federal Register** on June 5, 2003 with a 30-day comment period (68 FR 33758). NHTSA received no comments on this application.

Specifically, the red ''Brake'' telltale, if illuminated, will be extinguished for the duration of an Antilock Brake System (ABS) activation event that involves the front wheels. Stated briefly, the ''Brake'' telltale will not be illuminated while ABS is modulating the front brakes. Both FMVSS Nos. 105 and 135 require that the ''Brake'' telltale, once activated, remain illuminated until the problem that activated the telltale is resolved.

The brake system malfunctions that can cause illumination of ''Brake'' telltale can result in brake system failure, therefore, it is important that the ''Brake'' telltale be visible to the driver whenever it is activated. A potential danger of this noncompliance is that the ''Brake'' telltale may be activated while the ABS is modulating the front brakes, which would momentarily prevent the illumination of the telltale. Also, if the telltale is extinguished for any length of time, the driver may believe the brake system problem has been corrected.

GM considers the momentary extinguishing of the ''BRAKE'' telltale while ABS is cycling to be inconsequential to motor vehicle safety. According to GM, malfunctions of the foundation brake system that results in ''Brake'' telltale illumination are rare events and the combination of ''Brake'' telltale illumination with a simultaneous ABS activation is extremely unlikely.

The owner's manual of the noncompliant vehicles includes the following text regarding the ''BRAKE'' telltale:

> ''If the light comes on while you are driving, pull off the road and stop carefully. You may notice that the pedal is harder to push. Or, the pedal may go closer to the floor. It may take longer to stop. If the light is still on, have the vehicle towed for service. CAUTION: Your brake system may not be working properly if the brake system warning light is on. Driving with the brake system warning light on can lead to an accident. If the light is still on after you've pulled off the road and stopped carefully, have the vehicle towed for service.''

According to GM, the instructions and caution are intended to prompt drivers to take immediate corrective action when the ''BRAKE'' telltale is illuminated, which would minimize the likelihood that the vehicle would experience ABS cycling subsequent to initial illumination of the telltale.

GM further supported the position that the noncompliance is inconsequential to motor vehicle safety by pointing out that S5.3.4 of FMVSS 105 allows the subject ''BRAKE'' telltale to be ''steady burning or flashing.'' The corresponding language in S5.5.4 of FMVSS 135 is ''continuous or flashing''. This explicit regulatory allowance for flashing demonstrates that momentary absence of telltale illumination is not per se a safety issue.

According to GM, the ''Brake'' and ''ABS'' telltales on the subject vehicles otherwise comply with all applicable provisions of paragraph S5.3 of FMVSS 105 and paragraph S5.5 of FMVSS 135 and GM is not aware of any crashes, injuries, owner complaints or field reports related to this condition.

The agency has reviewed paragraph S5.3 of FMVSS No. 105 and paragraph S5.5 of FMVSS No. 135, and concurs with the GM's decision that the extinguishment of the ''Brake'' telltale during an activation of the ABS would constitute a noncompliance with both standards. We do not have data to define the frequency of brake system malfunctions that activate the ''Brake'' telltale. Nevertheless, we believe that except in rare instances where fluid lost during a brake application would cause the ''Brake'' telltale to illuminate, the telltale would already be illuminated prior to the driver making a stop that engaged the ABS. The color red of the ''Brake'' telltale is one that requires immediate attention and is consistent with the red lamp in a traffic signal that directs the driver to stop.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety.

Accordingly, the application is granted and the applicant is exempted from providing the notification and remedy requirements of 49 U.S.C. 30118 and 49 U.S.C. 30120, respectively. (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 18, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–29201 Filed 11–21–03; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–416 (Sub–No. 4X)]**

### San Bernardino Associated Governments—Abandonment Exemption—in San Bernardino County, CA

Consistent with the Surface Transportation Board's decision in *Orange County Transportation Authority, Riverside County Transportation Commission, San Bernardino Associated Governments, San Diego Metropolitan Transit Development Board, North San Diego County Transit Development Board—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company,* Finance Docket No. 32173 *et al.* (STB served Mar. 12, 1997) (*Transit Agencies*), San Bernardino Associated Governments (SANBAG) has filed a verified notice of exempt abandonment, and information otherwise required under 49 CFR 1152 Subpart F—*Exempt Abandonments,* to abandon any residual common carrier obligation on a 19.80-mile line of railroad on the Baldwin Park line, formerly operated by Southern Pacific Transportation Company (SP), between milepost 515.70 at the San Bernardino/Los Angeles Counties, CA border and milepost 535.50 in San Bernardino County, CA.[1] The line traverses United States Postal Service Zip Codes 91701, 91730, 91739, 91763, 91786, 92335, 92336, 92376.[2]

In *Transit Agencies,* the Board granted SANBAG and several other California transit agencies an exemption from 49 U.S.C. Subtitle IV. The Board also adopted the agencies' proposal that they file a notice, reciting the labor protection the Board is required to impose and adopting the environmental and historic reports filed by the rail carrier (here SP) discontinuing service over the line, to meet the agencies' obligations in fully abandoning the subject rail lines. SANBAG has provided that information, and has submitted its own environmental and historic reports for this line because 10 years have elapsed since SP prepared and submitted the required environmental documentation for its discontinuance of rail service on the subject line.

Also, consistent with the requirements of 49 CFR part 1152, subpart F, SANBAG has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). This exemption will be effective on December 24, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 4, 2003. Petitions to reopen must be filed by December 15, 2003, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

SANBAG has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 28, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SANBAG shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SANBAG's filing of a notice of consummation by November 24, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 13, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–29033 Filed 11–21–03; 8:45 am]

**BILLING CODE 4915–00–P**

[1] Discontinuance authority was granted to SP for a 4.1-mile segment of the subject line in *Southern Pacific Transp. Co.—Abandonment,* 8 I.C.C.2d 495 (1992), *modified, Southern Pac. Transp. Co.—Aban.—L.A. County, CA,* 9 I.C.C.2d 385 (1993), and for the remainder of the subject line in *Southern Pacific Transportation Company—Discontinuance of Service Exemption-San Bernardino County, CA,* Docket No. AB–12 (Sub–No. 158X) (ICC served June 15, 1994).

[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. SANBAG, in its verified notice tendered for filing on October 7, 2003, indicated a proposed consummation date of November 26, 2003. Because applicant had failed to publish notice in the newspaper as required under 49 CFR 1105.12, the verified notice was not complete until November 4, 2003, when proof of newspaper publication was received at the Board and hence the notice was not deemed filed until then. Thus, the earliest possible consummation date is December 24, 2003. By letter filed November 4, 2003, applicant's representative has confirmed that the correct consummation date is December 24, 2003.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 17, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer,

Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before December 24, 2003 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0002.

*Form Number:* IRS Form CT–2.

*Type of Review:* Extension.

*Title:* Employee Representative's Quarterly Railroad Tax Return.

*Description:* Employee representatives file Form CT–2 quarterly compensation on which railroad retirement taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeeping:* 28.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—13 minutes
Learning about the law or the form—13 minutes
Preparing the form—24 minutes
Copying, assembling, and sending the form to the IRS—16 minutes

*Frequency of Response:* Quarterly.

*Estimated Total Responding/ Recordkeeping Burden:* 127 hours.

*OMB Number:* 1545–0135.

*Form Number:* IRS Form 1138.

*Type of Review:* Extension.

*Title:* Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.

*Description:* Form 1138 is filed by corporations to request an extension of time to pay their income taxes, including estimated taxes. Corporations may only file for an extension when they expect a net operating loss carryback in the tax year and want to delay the payment of taxes from a prior tax year.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 2,033.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—3 hr., 21 min.
Learning about the law or the form—42 min.
Preparing and sending the form to the IRS—46 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 9,800 hours.

*OMB Number:* 1545–0794.

*Regulation Project Number:* LR–311–81 Final (TD 7925).

*Type of Review:* Extension.

*Title:* Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time of Filing Information Returns of Owners, Officers and Directors of Foreign Corporation.

*Description:* Section 6406 requires information returns with respect to certain foreign corporations and the regulations provide the date by which these returns must be filed.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Respondent:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1 hour.

*OMB Number:* 1545–0946.

*Form Number:* IRS Form 8554.

*Type of Review:* Extension.

*Title:* Application for Renewal of Enrollment to Practice before the Internal Revenue Service.

*Description:* This information relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) by the Internal Revenue Service.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 39,500.

*Estimated Burden Hours Respondent/ Recordkeeper:* 1 hour, 12 minutes.

*Frequency of Response:* Other (on-time filing).

*Estimated Total Reporting/ Recordkeeping Burden:* 47,400 hours.

*OMB Number:* 1545–0949.

*Form Number:* IRS Form 2587.

*Type of Review:* Extension.

*Title:* Application for Special Enrollment Examination.

*Description:* This information relates to the determination of the eligibility of individuals seeking enrollment status to practice before the Internal Revenue Service.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 8,000.

*Estimated Burden Hours Respondent:* 6 minutes.

*Frequency of Response:* Other (one-time filing).

*Estimated Total Reporting Burden:* 800 hours.

*OMB Number:* 1545–1098.

*Regulation Project Number:* TD 8418 Final (FI–91–86; FI–90–86; FI–90–91; and FI–1–90).

*Type of Review:* Extension.

*Title:* Arbitrage Restrictions on Tax-Exempt Bonds.

*Description:* This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

*Respondents:* Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents/ Recordkeepers:* 3,100.

*Estimated Burden Hours Respondent/ Recordkeeper:* 2 hours, 45 minutes.

*Frequency of Response:* On occasion, Other (at most every 5 years).

*Estimated Total Reporting/ Recordkeeping Burden:* 8,550 hours.

*OMB Number:* 1545–1145.

*Form Number:* IRS Form 706–GS(T).

*Type of Review:* Extension.

*Title:* Generation-Skipping Transfer Tax Return for Termination.

*Description:* Form 706–GS(T) is used by trustees to compute and report the Federal GST tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 100.

*Estimated Burden Hours Respondent/ Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to the IRS (minutes) |
|---|---|---|---|---|
| Form 706–GS(T) | 39 | 32 | 32 | 20 |
| Schedule A | 13 | 13 | 37 | 20 |

| Form | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to the IRS (minutes) |
|---|---|---|---|---|
| Schedule B | 13 | 9 | 19 | 20 |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 702 hours.

*OMB Number:* 1545–1288.

*Form Number:* IRS Form 8828.

*Type of Review:* Revision.

*Title:* Recapture of Federal Mortgage Subsidy.

*Description:* Form 8828 is needed to compute the section 143(m) tax on recapture of the Federal subsidy from use of qualified mortgage bonds and mortgage credit certificates in cases where the financing is provided after 1990 and the home subject to the financing is sold during the first 9 years after financing was provided. IRS uses the information to determine that the proper amount of Federal subsidy is recaptured.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 10,000.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—1 hr., 18 min.

Learning about the law or the form—22 min.

Preparing the form—46 min.

Copying, assembling, and sending the form to the IRS—20 min.

*Frequency of Response:* Other (for year of sale of home).

*Estimated Total Reporting/ Recordkeeping Burden:* 26,340 hours.

*OMB Number:* 1545–1567.

*Form Number:* IRS Form 8854.

*Type of Review:* Extension.

*Title:* Expatriation Initial Information Statement.

*Description:* Internal Revenue Code section 6039G requires persons who lose U.S. citizenship to provide information concerning citizenship, income tax liability, net worth, and net assets. Form 8854 is used to report this information.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 11,000.

*Estimated Burden Hours Respondent/ Recordkeeper:*

| | Part I (minutes) | Part I and II |
|---|---|---|
| Recordkeeping | 33 | 2 hr., 57 min. |
| Learning about the law or the form | 13 | .25 min. |
| Preparing the form | 39 | 1 hr., 24 min. |
| Copying, assembling, and sending the form to the IRS | 20 | 34 min. |

*Frequency of Response:* Other (once).

*Estimated Total Reporting/ Recordkeeping Burden:* 23,060 hours.

*OMB Number:* 1545–1711.

*Regulation Project Number:* REG–116050–99 NPRM.

*Type of Review:* Extension.

*Title:* Stock Transfer Rules: Carryover of Earnings and Taxes.

*Description:* This document contains proposed regulations governing the manner in which certain tax attributes (*i.e.*, earnings and profits and foreign income tax accounts) carry over under section 381 and are allocated under section 312 in transactions described in section 367(b) of the Internal Revenue Code.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 600.

*Estimated Burden Hours Respondent:* 3 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1,800 hours.

*Clearance Officer:* R. Joseph Durbala, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3634.

*OMB Reviewer:* Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03–29241 Filed 11–21–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 17, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before December 24, 2003 to be assured of consideration.

### Bureau of the Public Debt (PD)

*OMB Number:* 1535–0009.

*Form Number:* PD F 1851.

*Type of Review:* Extension.

*Title:* Request for Reissue U.S. Savings Bonds to a Personal Trust.

*Description:* Used to request reissue of savings bonds in the name of a trustee of a personal trust estate.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 55,000.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 13,750 hours.

*OMB Number:* 1535–0068.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

*Description:* The information is requested to establish an Investor's Treasury Account; to dispose of

securities upon the owner's request; and, to determine entitlement to securities.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents:* 75,000.

*Estimated Burden Hours Per Respondent:* 7 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 8,775 hours.

*OMB Number:* 1535–0087.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Payment by Banks and Other Financial Institutions of U.S. Savings Bonds.

*Description:* Qualified financial institutions are authorized to redeem eligible savings bonds and receive settlement through Federal Reserve Board check collection system.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 40,000.

*Estimated Burden Hours Per Respondent:* 4 seconds.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 56,356 hours.

*OMB Number:* 1535–0089.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Implementing Regulations: Government Securities Act of 1986, as amended.

*Description:* The regulations require certain government securities brokers/dealers to make and keep certain records concerning government securities activities, to submit financial reports and make certain disclosures to investors-part of customer protection and financial responsibilities.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 4.039.

*Estimated Burden Hours Per Respondent/Recordkeeper:* Varies.

*Frequency of Response:* On occasion, Monthly, Quarterly, Annually.

*Estimated Total Reporting/Recordkeeping Burden Hours:* 363,957 hours.

*OMB Number:* 1535–0104.

*Form Number:* PD F 2066.

*Type of Review:* Extension.

*Title:* Application by Survivors for Payment of Bond or Check Issues Under Armed Forces Leave Act of 1946.

*Description:* Used by survivors for payment of bonds issued under Armed Forces Leave Act of 1946.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 400.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 200 hours.

*OMB Number:* 1535–0105.

*Form Number:* PD F 2481.

*Type of Review:* Extension.

*Title:* Application for Recognition as Natural Guardian of Minor Not under Legal Guardianship and Disposition of Securities.

*Description:* Used by natural guardian of minor to request disposition of securities.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 25.

*Estimated Burden Hours Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 5 hours.

*Clearance Officer:* Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328, (304) 480–6553.

*OMB Reviewer:* Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 (202) 395–7316.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03–29242 Filed 11–21–03; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Privacy Act of 1974, as Amended; System of Records

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed new privacy act system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled ''Treasury/IRS 00.008—Recorded Quality Review Records.''

**DATES:** Comments must be received no later than December 24, 2003. This new system of records will be effective January 5, 2004 unless the IRS receives comments that would result in a contrary determination.

**ADDRESSES:** Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection and copying upon request in the Freedom of Information Reading Room (1621), at the above address.

**FOR FURTHER INFORMATION CONTACT:** Anita Loftin, Senior Policy Analyst, W:CAS 401 West Peachtree Street, NW., Atlanta, Georgia 30308, 404–338–8914 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Our current quality monitoring process does not provide the same opportunity as the proposed system for all calls to be included in the sample selected for quality monitoring. A February 15, 2002 Treasury Inspector General for Tax Administration (TIGTA) review recommended that the IRS institute an automated call recording system that would provide a true random method of selecting calls from the entire population of taxpayer assistance calls. In a follow-up review dated January 16, 2003, TIGTA stated that the planned implementation of call recording will provide the IRS with an important opportunity for improving the effectiveness and efficiency of its quality assurance process and, in turn, would improve the quality of the customer's experience when calling the IRS for assistance. Taxpayers will be notified at the beginning of a call that their call may be monitored or recorded for quality improvement purposes.

The proposed automated call recording system will allow the IRS to improve quality of responses to taxpayers by providing an efficient and effective means of assessing employee performance. Managers may play the recording when discussing the evaluation of the call with the employee. Audio recordings and screen capture images will be kept long enough for the review and discussion process to take place, generally not more than 45 days.

By recording taxpayer calls and tracking employee actions, the IRS will be able to improve its service to the public by providing specific, tangible feedback to employees. The system will automatically keep track of evaluative data and will alert the manager to areas in which the employee needs improvement. As a result, targeted training will be provided to the employee either on-line or in one-on-one coaching sessions. The IRS is currently negotiating the proposed program with representatives of the National Treasury Employees Union.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed new system of records entitled ''Treasury/IRS 00.008—Recorded Quality Review Records'' is published in its entirety below.

**Teresa Mullett Ressel,**

*Assistant Secretary for Management and Chief Financial Officer.*

## Treasury/IRS 00.008

### SYSTEM NAME:

Recorded Quality Review Records—Treasury/IRS.

### SYSTEM LOCATION:

Andover Call Site—W&I, 310 Lowell Street, Andover, MA 01812.

Andover Remote Call Site, 900 Chelmford St., Tower III, Lowell, MA 01851.

Andover Methuen EITC, 96 Milk Street, Methuen, MA 01844.

Atlanta Call Site—W&I, 2385 Chamblee-Tucker Road, Chamblee, Georgia 30341.

Dunwoody AUR Call Site—W&I, 6655 Peachtree-Dunwoody Road, Dunwoody, Georgia 30328.

Austin Call Site—W&I, 1821 Director's Boulevard, Austin, TX 78744.

Baltimore Call Site—W&I, 100 S. Charles Street, Baltimore, MD 21201.

Boston Call Site, 25 New Sudbury Street, 10th Floor, JFK Federal Bldg., Boston, MA 02203.

Brookhaven Call Site—SB/SE, 1040 Waverly Avenue, Holtsville, NY 11742.

Buffalo Call Site—SB/SE, Union & Bennet Road, Cheektowaga, NY 14227.

Cincinnati Call Sitez—SB/SE, 333 Scott Street, Covington, KY 41019.

Cincinnati TE/GE Call Site, Peck Federal Bldg., 550 Main St., Room 2405, Cincinnati, OH 45201.

Cleveland Call Site—W&I, 1240 East 9th Street, Cleveland, OH 44109.

Dallas Call Site—W&I, 114 Commerce Street, Dallas, TX 75242.

Houston Call Site, 8701 South Gessner, Houston, TX 77074.

Denver Call Site—W&I, 600 17th Street, Denver, CO 80202.

Detroit Call Site, McNamara Federal Bldg., 477 Michigan Avenue, Detroit, MI 48226.

Fresno Call Site—W&I, 5045 E. Butler Avenue, Fresno, CA 93888.

Indianapolis Call Site—SB/SE 3849 Richardt Street, Indianapolis, IN 46226.

Jacksonville Call Site—W&I, 4057 Carmichael Drive, Jacksonville, FL 32207.

Jacksonville Call Site—W&I, One Independent Drive, 3rd Floor, Jacksonville, FL 32202.

Kansas City Call Site—W&I, 7720 W. 119th Street, Overland Park, KS 66213.

Memphis Call Site—SB/SE, 5333 Getwell Road, Memphis, TN 38118.

Memphis Call Site, 5410 S. Mendenhall, Ste. 10, Memphis, TN 38141.

Nashville Call Site—SB/SE, 5080 Nolensville Road, Nashville, TN 32701.

Oakland Call Site—SB/SE, 1301 Clay Street, Oakland, CA 94612.

Ogden Call Site—SB/SE, 2262 Wall Street, Ogden, UT 84401.

Ogden Compliance A Call Site, 1160 W. 1200 South St., Ogden, UT 84201.

Ogden Compliance E Call Site, 119 N. Jorgensen Ave., Ogden, UT 84404.

Philadelphia Call Site—SB/SE, 11601 Roosevelt Blvd., Philadelphia, PA 19154.

Philadelphia Compliance Call Site, 11601 Roosevelt Blvd., Philadelphia, PA 19154.

Pittsburgh Call Site—W&I, 100 Liberty Avenue, Pittsburgh, PA 15222.

Portland Call Site—W&I, 1220 SE. 3rd Avenue, Portland, OR 97204.

Richmond Call Site—W&I, 400 N. 8th Street, Richmond, VA 23240.

San Juan Call Site–W&I, 7 Tabonuco Street, San Juan, PR 00968.

Seattle Call Site–W&I, 915 2nd Avenue, Seattle, WA 98174.

St. Louis Call Site—W&I, 1222 Spruce Street, St. Louis, MO 63101.

Chicago Call Site, 230 S. Dearborn St., 22nd Fl., Chicago, IL 60604.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees who respond to taxpayer assistance calls.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records required to administer IRS quality review and employee performance feedback programs.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7801.

### PURPOSE(S):

Records in this system are used to administer IRS quality review programs. Although information will include questions and other statements from taxpayers or their representatives on recordings, the primary focus of the system is to improve service and retrieve information by the employee and not create records focusing on the taxpayer.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Records other than returns and return information may be used to:

(1) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged.

(2) Provide information to a congressional office in response to an inquiry made at the request of the employee to whom the record pertains.

(3) Disclose information to a contractor when necessary to perform a government contract.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Electronic media and paper.

#### RETRIEVABILITY:

Recorded contacts will be retrieved by unique identifier for the IRS employee handling the telephone call. Recorded calls or screens will not be retrieved by taxpayer name or taxpayer identifying number.

#### SAFEGUARDS:

Safeguard access controls will not be less than those provided for by IRM 25.10.1, Information Technology Security Policy and Guidance, and IRM 1.16, Manager's Security Handbook.

#### RETENTION AND DISPOSAL:

Record retention will be established in accordance with the National Archives and Records Administration Regulations part 1228, subpart B-Scheduling Records. Audio recordings and screen capture images will be kept long enough for the review and discussion process to take place, generally not more than 45 days.

**SYSTEM MANAGER(S) AND ADDRESS:**

Official prescribing policies and practices: Commissioner, Wage and Investment. Official maintaining the system: Head of the call site maintaining the file. See ''system location'' above for a list of the call sites and addresses.

**NOTIFICATION PROCEDURE:**

Individuals may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Inquiries should be addressed to the systesm manager address listed above.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in this system of records or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Inquiries should be addressed to the system manager address listed below.

**CONTESTING RECORD PROCEDURES:**

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. See ''Record Access Procedures'' above for seeking amendment for records that are not tax records.

**RECORD SOURCE CATEGORIES:**

Records in this system are provided by IRS employees when they provide information by identifying themselves for the purpose of assisting a taxpayer.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 03–29240 Filed 11–21–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–05; OTS Nos. H–4004 and 05190]**

### Provident Bank, Montebello, NY, and Provident Bancorp, Inc., Montebello, NY; Approval of Conversion Application

Notice is hereby given that on November 14, 2003, the Director, Supervision Policy, Office of Thrift Supervision (''OTS''), or her designee, pursuant to delegated authority, approved the application of Provident Bancorp, MHC and Provident Bank, both of Montebello, New York, to convert the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 18, 2003.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 03–29192 Filed 11–21–03; 8:45 am]

**BILLING CODE 6720–01–M**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–04: OTS Nos. H–3668 and 14617]**

### Synergy Financial Group, Inc., Cranford, NJ; Approval of Conversion Application

Notice is hereby given that on November 12, 2003, the Director, Supervision Policy, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Synergy Bank, Cranford, New Jersey, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 18, 2003.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 03–29191 Filed 11–21–03; 8:45 am]

**BILLING CODE 6720–01–M**

## UNITED STATES INSTITUTE OF PEACE

### Announcement of the Spring 2004 Solicited Grant Competition; Grant Program

**AGENCY:** United States Institute of Peace.

**ACTION:** Notice.

**SUMMARY:** The Agency Announces its Upcoming Spring 2004 Solicited Grant Competition. The Solicited Grant competition is restricted to projects that fit specific themes and topics identified in advance by the Institute of Peace.

The themes and topics for the Spring 2004 Solicited competition are:

- Solicitation A: The Proliferation of Weapons of Mass Destruction
- Solicitation B: Bridging the Divides: Improving Relations With, and Within, the Muslim World

Deadline: March 1, 2004.

Application material Available on Request.

Notification Date: September 31, 2004.

**ADDRESSES:** For more information and an application package: United States Institute of Peace, Grant Program, Solicited Grants, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grants@usip.org.*

Application material available on-line: *http://www.usip.org/grants.*

**FOR FURTHER INFORMATION CONTACT:** The Grant Program, Phone (202) 429–3842, E-mail: *grants@usip.org.*

Dated: November 18, 2003.

**Bernie J. Carney,**

*Director Office of Administration.*

[FR Doc. 03–29198 Filed 11–21–03; 8:45 am]

**BILLING CODE 6820–AR–M**

## UNITED STATES INSTITUTE OF PEACE

### Announcement of the Spring 2004 Unsolicited Grant Competition Grant Program

**AGENCY:** United States Institute of Peace.

**ACTION:** Notice.

**SUMMARY:** The Agency announces its Upcoming Unsolicited Grant Program, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Unsolicited competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

*Deadline:* March 1, 2004.

Application Material Available on Request.

**DATES:** Receipt of Application: March 1, 2004.

Notification Date: September 31, 2003.

**ADDRESSES:** For Application Package: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grants@usip.org.*

Application material available on-line: *www.usip.org/grants.*

**FOR FURTHER INFORMATION CONTACT:** The Grant Program, Phone (202)–429–3842, E-mail: *grants@usip.org.*

Dated: November 18, 2003.

**Bernice J. Carney,**

*Director, Office of Administration.*

[FR Doc. 03–29199 Filed 11–21–03; 8:45 am]

**BILLING CODE 6820–AR–M**

# Corrections

Federal Register

Vol. 68, No. 226

Monday, November 24, 2003

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 Part 52

**[TX–154–1–7590; FRL–7585–8]**

### Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits

*Correction*

In rule document 03–28416 beginning on page 64543 in the issue of Friday, November 14, 2003, make the following correction:

**§52.2270 [Corrected]**

On page 64549, in §52.2270(c), in the table, under **Subchapter F—Standard Permits**, in the last column, the first entry should read ''The SIP does not include section 116.601(a)(1).''

[FR Doc. C3–28416 Filed 11–21–03; 8:45 am]

BILLING CODE 1505–01–D

# Reader Aids

**Federal Register**

Vol. 68, No. 226

Monday, November 24, 2003

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, NOVEMBER

62213–62350 ..... 3
62351–62502 ..... 4
62503–62730 ..... 5
62731–63010 ..... 6
63011–63732 ..... 7
63733–63982 .....10
63983–64262 .....12
64263–64490 .....13
64491–64798 .....14
64799–64976 .....17
64977–65152 .....18
65153–65382 .....19
65383–65626 .....20
65627–65828 .....21
65829–66000 .....24

## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7727 .....62351
7728 .....62503
7729 .....62505
7730 .....62507
7731 .....64483
7732 .....64485
7733 .....64491
7734 .....64977
7735 .....65153
7736 .....65155
7737 .....65627

**Executive Orders:**
12170 (See Notice of November 12, 2003) .....64489

**Administrative Orders:**
Memorandums:
Memorandum of October 20, 2003 .....63975
Presidential Determinations:
No. 2004-05 of October 21, 2003 .....63977
No. 2004-06 of October 21, 2003 .....63979
No. 2004-07 of November 1, 2003 .....63981
No. 2004-07 of November 7, 2003 .....65383
Notices:
Notice of November 12, 2003 .....64489

**5 CFR**

532 .....64493
2600 .....62213
3601 .....64979

**7 CFR**

20 .....62213
205 .....62215
319 .....63983
331 .....62218
762 .....62221
764 .....62221
905 .....64494
916 .....64499
917 .....64499
984 .....65629
989 .....64502
1464 .....65385
1580 .....62731
1910 .....62221
1924 .....62221
1941 .....62221
1942 .....65829
1943 .....62221
1955 .....62221

**Proposed Rules:**
457 .....64570
624 .....65202
800 .....65210
959 .....65643
1423 .....65412

**9 CFR**

71 .....62225
77 .....65831
121 .....62218
130 .....62226, 64504
145 .....64507
147 .....64507
319 .....62228
381 .....62228, 63983

**Proposed Rules:**
93 .....62386
94 .....62386, 64274
95 .....62386

**10 CFR**

11 .....62509, 65765
25 .....62509, 65765
50 .....65386

**Proposed Rules:**
50 .....65415
61 .....64993

**11 CFR**

102 .....64512
106 .....64517
110 .....64512

**Proposed Rules:**
110 .....64571
113 .....64571
9004 .....64571
9034 .....64571

**12 CFR**

**Proposed Rules:**
352 .....65850
614 .....65417
620 .....65417
630 .....65417

**14 CFR**

23 .....63011, 64520
35 .....64799
39 .....62228, 62231, 62233, 62513, 63013, 64263, 64266, 64268, 64270, 64802, 64980, 64982, 65157
71 .....62514, 62515, 62732, 62733, 62734, 62735, 63017, 63985, 64522, 64523, 64524, 65159, 65161, 65162, 65163, 65389
73 .....64525
91 .....65382
95 .....65390
97 .....62234, 64983, 64985
121 .....65376
135 .....65376

145 ....65376
**Proposed Rules:**
1 ....64730, 64993, 65854
21 ....64730, 64993
25 ....64730, 64993
33 ....64730, 64993
39 ....62405, 62408, 62409, 62415, 62544, 62545, 64001, 64002, 64006, 64282, 64283, 64286, 64288, 64290, 64295, 64572, 64822, 64823, 64825, 64827, 64830, 64994, 64996, 64998, 65000, 65003, 65005, 65006, 65008, 65011, 65854, 65856, 65857
71 ....62548, 62758, 62759, 62760, 62761, 62762, 64008, 64574, 64575, 64832, 65224, 65417, 65859
73 ....64833
91 ....65854
97 ....65854
121 ....64730, 64993, 65854
125 ....65854
129 ....65854
135 ....64730, 64993, 65854

**15 CFR**
902 ....62501, 64986
**Proposed Rules:**
740 ....64009
742 ....64009
748 ....64009
754 ....64009
772 ....64009

**16 CFR**
305 ....65631, 65833

**17 CFR**
228 ....64952
229 ....64952
240 ....64952
241 ....65820
249 ....64952
270 ....64952
274 ....64952
**Proposed Rules:**
240 ....62872, 62910, 62972
242 ....62972

**18 CFR**
4 ....63194

**19 CFR**
206 ....65164

**20 CFR**
**Proposed Rules:**
321 ....63041
404 ....62670
408 ....62670
416 ....62670

**21 CFR**
1 ....63017
16 ....62353
20 ....63017, 65392
573 ....65632
1240 ....62353
1310 ....62735
522 ....65168
**Proposed Rules:**
868 ....65014
870 ....65014
882 ....65014
1300 ....62255
1301 ....62255
1304 ....62255
1307 ....62255

**22 CFR**
126 ....65633
**Proposed Rules:**
96 ....64296
98 ....64296

**23 CFR**
655 ....65496

**24 CFR**
203 ....65824

**25 CFR**
**Proposed Rules:**
161 ....64023

**26 CFR**
1 ....62516, 63733, 63734, 63986, 65634
31 ....63734
602 ....63734, 63986
**Proposed Rules:**
1 ....62549, 62553, 63743, 63744, 65346, 65419, 65645, 65646, 65864
301 ....62553

**27 CFR**
**Proposed Rules:**
9 ....62259, 63042

**28 CFR**
14 ....62516
81 ....62370
544 ....65169, 65170

**29 CFR**
**Proposed Rules:**
1910 ....64036
1915 ....64036
1926 ....64036, 65018
4022 ....64525
4044 ....64525

**30 CFR**
250 ....65172
707 ....65622
917 ....65835
943 ....62517
**Proposed Rules:**
906 ....65422
917 ....65424
950 ....62519

**31 CFR**
103 ....65392
575 ....65844

**32 CFR**
199 ....65172

**33 CFR**
100 ....62524, 63018, 65174
101 ....62502
104 ....62501
117 ....62524, 62528, 63986, 65174, 65175
160 ....62501, 63735
165 ....62501, 62524, 63988, 64527, 64988, 65177
385 ....64200
**Proposed Rules:**
165 ....64038, 65227, 65427
334 ....65019

**37 CFR**
2 ....63019
7 ....63019

**38 CFR**
20 ....64805
21 ....65399

**39 CFR**
3001 ....65348
**Proposed Rules:**
501 ....65429
551 ....65430

**40 CFR**
51 ....63021
52 ....62236, 62239, 62501, 62529, 62738, 62869, 63021, 63991, 64532, 64537, 64540, 64543, 65845, 65846, 66000
60 ....62529
63 ....63852, 64432
70 ....63735, 65401, 65637
81 ....62239
131 ....62740, 62744
271 ....64550
300 ....62747, 64806
350 ....64720
1600 ....65403
**Proposed Rules:**
Ch. 1 ....65120
52 ....62263, 62264, 62553, 64576, 65229, 65234, 65646, 65866
60 ....62553
63 ....65648
81 ....62264
93 ....62690
122 ....63042
123 ....65663
133 ....63042
260 ....65586
261 ....64834, 65586
271 ....62264, 64578
300 ....64843, 65020
350 ....64726
355 ....64041
501 ....65663

**42 CFR**
71 ....62353
73 ....62245
400 ....63692
405 ....63692
410 ....63196, 63398
414 ....63196
419 ....63398
426 ....63692, 65346

**44 CFR**
64 ....62748
65 ....64809, 64812
67 ....64817, 64819
206 ....63738
**Proposed Rules:**
67 ....63745, 64844, 64845, 64846

**45 CFR**
5b ....62250

**46 CFR**
2 ....62501
31 ....62501
71 ....62501
91 ....62501
115 ....62501
126 ....62501
176 ....62501
232 ....62535
281 ....62535
287 ....62535
295 ....62535
298 ....62535
310 ....62535
355 ....62535
380 ....62535
390 ....62535

**47 CFR**
25 ....62247, 63994
51 ....63999
64 ....62249, 62751, 63029
73 ....62539, 62540, 62541, 64555
**Proposed Rules:**
22 ....64050
24 ....64050
53 ....65665
73 ....62554, 64578, 64579
90 ....64050

**48 CFR**
204 ....64555, 64557
208 ....64559
210 ....64559
212 ....64557
213 ....64557
216 ....64661
219 ....64559
252 ....64557, 64559
**Proposed Rules:**
601 ....64297
602 ....64297
603 ....64297
604 ....64297
605 ....64297
606 ....64297
609 ....64297
611 ....64297
612 ....64297
613 ....64297
616 ....64297
617 ....64297
619 ....64297
622 ....64297
623 ....64297
625 ....64297
626 ....64297
628 ....64297
630 ....64297
632 ....64297
636 ....64297
637 ....64297
642 ....64297
651 ....64297
652 ....64297
653 ....64297
1801 ....64847
1803 ....64847
1804 ....64847
1805 ....64847
1806 ....64847
1807 ....64847
1808 ....64847
1809 ....64847
1811 ....64847
1821 ....64847

**49 CFR**
383 ....63030

571.....65179, 65404
579.....64568
1572.....63033
590.....65404
**Proposed Rules:**
192.....62555
195.....62555
224.....62942
393.....64072
571 .....62417, 65431, 65667
587.....62421

**50 CFR**

229.....65409
622 .....62373, 62542, 64820
635.....63738, 64990
648.....62250, 64821
660.....62374
**Proposed Rules:**
17.....65020
20.....65023
300.....63052
600.....62267, 64578
622.....62267, 62422
635.....63747
648.....64579
660.....62763, 63053
679.....62423, 65676

## REMINDERS

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 NOVEMBER 24, 2003

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Prunes (dried) produced in—
California; published 10-23-03

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Marine mammals:
Commercial fishing authorizations—
Atlantic Large Whale Take Reduction Plan; published 11-20-03

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:
New Mexico; published 10-9-03

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:
Arizona; published 10-30-03
Michigan; published 10-30-03

**INTERIOR DEPARTMENT**

**Land Management Bureau**

Minerals management:
Mining claims or sites, locating, recording, and maintaining; fee requirements; published 10-24-03

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; published 11-24-03

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Viruses, serums, toxins, etc.:
Bovine virus diarrhea and bovine rhinotracheitis vaccines; standard requirements; comments due by 12-5-03; published 10-6-03 [FR 03-25252]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish; comments due by 12-1-03; published 10-16-03 [FR 03-26074]
Gulf of Alaska groundfish; comments due by 12-4-03; published 11-4-03 [FR 03-27605]

**DEFENSE DEPARTMENT**

Acquisition regulations:
Indian Incentive Program; comments due by 12-1-03; published 10-1-03 [FR 03-24629]
Service contracts and task orders approval; comments due by 12-1-03; published 10-1-03 [FR 03-24627]

**EDUCATION DEPARTMENT**

Grants:
Faith-based organizations; eligibility to participate in direct grant, State-administered, and other such programs; comments due by 12-1-03; published 9-30-03 [FR 03-24292]

**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Clothes washers; comments due by 12-1-03; published 10-31-03 [FR 03-27468]
Clothes washers; comments due by 12-1-03; published 10-31-03 [FR 03-27469]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Puerto Rico; comments due by 12-1-03; published 10-31-03 [FR 03-27483]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Arizona; comments due by 12-3-03; published 11-3-03 [FR 03-27263]

Air quality implementation plans; approval and promulgation; various States:
California; comments due by 12-1-03; published 10-30-03 [FR 03-27267]
Kentucky; comments due by 12-3-03; published 11-3-03 [FR 03-27551]
Missouri; comments due by 12-1-03; published 10-30-03 [FR 03-27261]
Montana and Wyoming; comments due by 12-5-03; published 11-5-03 [FR 03-27265]

Air quality planning purposes; designation of areas:
California; comments due by 12-1-03; published 10-31-03 [FR 03-27487]

Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
South Dakota; comments due by 12-3-03; published 11-3-03 [FR 03-27553]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Vinclozolin; comments due by 12-1-03; published 9-30-03 [FR 03-24782]
Zinc phosphide; comments due by 12-1-03; published 9-30-03 [FR 03-24844]

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-1-03; published 10-30-03 [FR 03-27161]

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:
North Carolina; comments due by 12-1-03; published 10-22-03 [FR 03-26682]

Television stations; table of assignments:
New York; comments due by 12-1-03; published 10-31-03 [FR 03-27430]

Wireless radio and satellite spectrum, efficient use promotion; secondary markets development; regulatory barriers elimination; comments due by 12-5-03; published 11-25-03 [FR 03-29193]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

**HOMELAND SECURITY DEPARTMENT**

**Customs and Border Protection Bureau**

Articles conditiionally free, subject to reduced rate, etc.:
Caribbean Basin Economic Recovery Act; brassieres; preferential treatment; comments due by 12-1-03; published 9-30-03 [FR 03-24796]

Drawback:
Merchandise processing fees; claim eligibility based on substitution of finished petroleum derivatives; comments due by 12-1-03; published 10-2-03 [FR 03-24856]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:
Critical habitat designations—
Tennessee and Cumberland River Basin mussels; technical correction; comments due by 12-5-03; published 10-6-03 [FR 03-25184]
Scarlet-chested parakeet and turquoise parakeet; comments due by 12-1-03; published 9-2-03 [FR 03-22225]

Migratory bird permits:

Icelandic eiderdown; importation; comments due by 12-4-03; published 9-5-03 [FR 03-22298]

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Outer Continental Shelf; oil, gas, and sulphur operations:

Incident reporting requirements; comments due by 12-5-03; published 7-31-03 [FR 03-19459]

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Colorado; comments due by 12-5-03; published 11-20-03 [FR 03-28996]

**JUSTICE DEPARTMENT**

Grants:

Religious organizations; participation in department programs; equal treatment of all program participants; comments due by 12-1-03; published 9-30-03 [FR 03-24294]

**LABOR DEPARTMENT**

**Employment and Training Administration**

Workforce Investment Act; nondiscrimination and equal opportunity provisions:

Religious activities; Federal financial assistance; comments due by 12-1-03; published 9-30-03 [FR 03-24296]

**LABOR DEPARTMENT**

Workforce Investment Act; nondiscrimination and equal opportunity provisions:

Religious activities; Federal financial assistance; comments due by 12-1-03; published 9-30-03 [FR 03-24296]

**NATIONAL CREDIT UNION ADMINISTRATION**

Credit unions:

Conversion of insured credit unions to mutual savings banks; information disclosure; comments due by 12-1-03; published 10-1-03 [FR 03-24762]

Suretyship and guaranty requirements; maximum borrowing authority; comments due by 12-1-03; published 10-1-03 [FR 03-24761]

Freedom of Information Act; implementation; comments due by 12-1-03; published 10-30-03 [FR 03-27310]

**INTERIOR DEPARTMENT**

**National Indian Gaming Commission**

Indian Gaming Regulatory Act:

Fee rates; comments due by 11-30-03; published 10-8-03 [FR 03-25472]

**PERSONNEL MANAGEMENT OFFICE**

Health benefits, Federal employees:

Federal Employees Health Benefits Children's Equity Act of 2002; implementation; comments due by 12-1-03; published 10-1-03 [FR 03-24792]

Prevailing rate systems; comments due by 12-1-03; published 10-31-03 [FR 03-27382]

**SECURITIES AND EXCHANGE COMMISSION**

Investment companies:

Fund of funds investments; investment company's ability to acquire shares of another investment company broadened; registration forms amended; comments due by 12-3-03; published 10-8-03 [FR 03-25336]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 12-1-03; published 10-30-03 [FR 03-27323]

Australia Pty Ltd.; AeroSpace Technologies; comments due by 12-4-03; published 10-24-03 [FR 03-26899]

Boeing; comments due by 12-1-03; published 11-4-03 [FR 03-27672]

Bombardier; comments due by 12-1-03; published 10-31-03 [FR 03-27426]

General Electric Co.; comments due by 12-2-03; published 10-3-03 [FR 03-25000]

McDonnell Douglas; comments due by 12-1-03; published 10-15-03 [FR 03-25979]

Saab; comments due by 12-1-03; published 10-30-03 [FR 03-27321]

Class E airspace; comments due by 12-5-03; published 10-21-03 [FR 03-26560]

**TRANSPORTATION DEPARTMENT**

**Maritime Administration**

Information collection responses; electronic transmittal options; comments due by 12-5-03; published 11-5-03 [FR 03-27761]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Consolidated return regulations—

Section 108 application to consolidated group members; indebtedness income discharge; cross-reference; comments due by 12-3-03; published 9-4-03 [FR 03-22454]

Nonaccrual-experience method of accounting; use limitation; cross reference; public hearing; comments due by 12-3-03; published 9-4-03 [FR 03-22459]

## 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. 1442/P.L. 108–126**

To authorize the design and construction of a visitor center for the Vietnam Veterans Memorial. (Nov. 17, 2003; 117 Stat. 1348)

**H.R. 3288/P.L. 108–127**

To amend title XXI of the Social Security Act to make technical corrections with respect to the definition of qualifying State. (Nov. 17, 2003; 117 Stat. 1354)

**S. 677/P.L. 108–128**

Black Canyon of the Gunnison Boundary Revision Act of 2003 (Nov. 17, 2003; 117 Stat. 1355)

**S. 924/P.L. 108–129**

To authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes. (Nov. 17, 2003; 117 Stat. 1358)

**Last List November 17, 2003**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **1, 2 (2** Reserved) | (869–050–00001–6) | 9.00 | [4] Jan. 1, 2003 |
| **3** (2002 Compilation and Parts 100 and 101) | (869–050–00002–4) | 32.00 | [1] Jan. 1, 2003 |
| **4** | (869–050–00003–2) | 9.50 | Jan. 1, 2003 |
| **5 Parts:** | | | |
| 1–699 | (869–050–00004–1) | 57.00 | Jan. 1, 2003 |
| 700–1199 | (869–050–00005–9) | 46.00 | Jan. 1, 2003 |
| 1200–End, 6 (6 Reserved) | (869–050–00006–7) | 58.00 | Jan. 1, 2003 |
| **7 Parts:** | | | |
| 1–26 | (869–050–00007–5) | 40.00 | Jan. 1, 2003 |
| 27–52 | (869–050–00008–3) | 47.00 | Jan. 1, 2003 |
| 53–209 | (869–050–00009–1) | 36.00 | Jan. 1, 2003 |
| 210–299 | (869–050–00010–5) | 59.00 | Jan. 1, 2003 |
| 300–399 | (869–050–00011–3) | 43.00 | Jan. 1, 2003 |
| 400–699 | (869–050–00012–1) | 39.00 | Jan. 1, 2003 |
| 700–899 | (869–050–00013–0) | 42.00 | Jan. 1, 2003 |
| 900–999 | (869–050–00014–8) | 57.00 | Jan. 1, 2003 |
| 1000–1199 | (869–050–00015–6) | 23.00 | Jan. 1, 2003 |
| 1200–1599 | (869–050–00016–4) | 58.00 | Jan. 1, 2003 |
| 1600–1899 | (869–050–00017–2) | 61.00 | Jan. 1, 2003 |
| 1900–1939 | (869–050–00018–1) | 29.00 | [4] Jan. 1, 2003 |
| 1940–1949 | (869–050–00019–9) | 47.00 | Jan. 1, 2003 |
| 1950–1999 | (869–050–00020–2) | 45.00 | Jan. 1, 2003 |
| 2000–End | (869–050–00021–1) | 46.00 | Jan. 1, 2003 |
| **8** | (869–050–00022–9) | 58.00 | Jan. 1, 2003 |
| **9 Parts:** | | | |
| 1–199 | (869–050–00023–7) | 58.00 | Jan. 1, 2003 |
| 200–End | (869–050–00024–5) | 56.00 | Jan. 1, 2003 |
| **10 Parts:** | | | |
| 1–50 | (869–050–00025–3) | 58.00 | Jan. 1, 2003 |
| 51–199 | (869–050–00026–1) | 56.00 | Jan. 1, 2003 |
| 200–499 | (869–050–00027–0) | 44.00 | Jan. 1, 2003 |
| 500–End | (869–050–00028–8) | 58.00 | Jan. 1, 2003 |
| **11** | (869–050–00029–6) | 38.00 | Jan. 1, 2003 |
| **12 Parts:** | | | |
| 1–199 | (869–050–00030–0) | 30.00 | Jan. 1, 2003 |
| 200–219 | (869–050–00031–8) | 38.00 | Jan. 1, 2003 |
| 220–299 | (869–050–00032–6) | 58.00 | Jan. 1, 2003 |
| 300–499 | (869–050–00033–4) | 43.00 | Jan. 1, 2003 |
| 500–599 | (869–050–00034–2) | 38.00 | Jan. 1, 2003 |
| 600–899 | (869–050–00035–1) | 54.00 | Jan. 1, 2003 |
| 900–End | (869–050–00036–9) | 47.00 | Jan. 1, 2003 |
| **13** | (869–050–00037–7) | 47.00 | Jan. 1, 2003 |
| **14 Parts:** | | | |
| 1–59 | (869–050–00038–5) | 60.00 | Jan. 1, 2003 |
| 60–139 | (869–050–00039–3) | 58.00 | Jan. 1, 2003 |
| 140–199 | (869–050–00040–7) | 28.00 | Jan. 1, 2003 |
| 200–1199 | (869–050–00041–5) | 47.00 | Jan. 1, 2003 |
| 1200–End | (869–050–00042–3) | 43.00 | Jan. 1, 2003 |
| **15 Parts:** | | | |
| 0–299 | (869–050–00043–1) | 37.00 | Jan. 1, 2003 |
| 300–799 | (869–050–00044–0) | 57.00 | Jan. 1, 2003 |
| 800–End | (869–050–00045–8) | 40.00 | Jan. 1, 2003 |
| **16 Parts:** | | | |
| 0–999 | (869–050–00046–6) | 47.00 | Jan. 1, 2003 |
| 1000–End | (869–050–00047–4) | 57.00 | Jan. 1, 2003 |
| **17 Parts:** | | | |
| 1–199 | (869–050–00049–1) | 50.00 | Apr. 1, 2003 |
| 200–239 | (869–050–00050–4) | 58.00 | Apr. 1, 2003 |
| 240–End | (869–050–00051–2) | 62.00 | Apr. 1, 2003 |
| **18 Parts:** | | | |
| 1–399 | (869–050–00052–1) | 62.00 | Apr. 1, 2003 |
| 400–End | (869–050–00053–9) | 25.00 | Apr. 1, 2003 |
| **19 Parts:** | | | |
| 1–140 | (869–050–00054–7) | 60.00 | Apr. 1, 2003 |
| 141–199 | (869–050–00055–5) | 58.00 | Apr. 1, 2003 |
| 200–End | (869–050–00056–3) | 30.00 | Apr. 1, 2003 |
| **20 Parts:** | | | |
| 1–399 | (869–050–00057–1) | 50.00 | Apr. 1, 2003 |
| 400–499 | (869–050–00058–0) | 63.00 | Apr. 1, 2003 |
| 500–End | (869–050–00059–8) | 63.00 | Apr. 1, 2003 |
| **21 Parts:** | | | |
| 1–99 | (869–050–00060–1) | 40.00 | Apr. 1, 2003 |
| 100–169 | (869–050–00061–0) | 47.00 | Apr. 1, 2003 |
| 170–199 | (869–050–00062–8) | 50.00 | Apr. 1, 2003 |
| 200–299 | (869–050–00063–6) | 17.00 | Apr. 1, 2003 |
| 300–499 | (869–050–00064–4) | 29.00 | Apr. 1, 2003 |
| 500–599 | (869–050–00065–2) | 47.00 | Apr. 1, 2003 |
| 600–799 | (869–050–00066–1) | 15.00 | Apr. 1, 2003 |
| 800–1299 | (869–050–00067–9) | 58.00 | Apr. 1, 2003 |
| 1300–End | (869–050–00068–7) | 22.00 | Apr. 1, 2003 |
| **22 Parts:** | | | |
| 1–299 | (869–050–00069–5) | 62.00 | Apr. 1, 2003 |
| 300–End | (869–050–00070–9) | 44.00 | Apr. 1, 2003 |
| **23** | (869–050–00071–7) | 44.00 | Apr. 1, 2003 |
| **24 Parts:** | | | |
| 0–199 | (869–050–00072–5) | 58.00 | Apr. 1, 2003 |
| 200–499 | (869–050–00073–3) | 50.00 | Apr. 1, 2003 |
| 500–699 | (869–050–00074–1) | 30.00 | Apr. 1, 2003 |
| 700–1699 | (869–050–00075–0) | 61.00 | Apr. 1, 2003 |
| 1700–End | (869–050–00076–8) | 30.00 | Apr. 1, 2003 |
| **25** | (869–050–00077–6) | 63.00 | Apr. 1, 2003 |
| **26 Parts:** | | | |
| §§ 1.0–1–1.60 | (869–050–00078–4) | 49.00 | Apr. 1, 2003 |
| §§ 1.61–1.169 | (869–050–00079–2) | 63.00 | Apr. 1, 2003 |
| §§ 1.170–1.300 | (869–050–00080–6) | 57.00 | Apr. 1, 2003 |
| §§ 1.301–1.400 | (869–050–00081–4) | 46.00 | Apr. 1, 2003 |
| §§ 1.401–1.440 | (869–050–00082–2) | 61.00 | Apr. 1, 2003 |
| §§ 1.441–1.500 | (869–050–00083–1) | 50.00 | Apr. 1, 2003 |
| §§ 1.501–1.640 | (869–050–00084–9) | 49.00 | Apr. 1, 2003 |
| §§ 1.641–1.850 | (869–050–00085–7) | 60.00 | Apr. 1, 2003 |
| §§ 1.851–1.907 | (869–050–00086–5) | 60.00 | Apr. 1, 2003 |
| §§ 1.908–1.1000 | (869–050–00087–3) | 60.00 | Apr. 1, 2003 |
| §§ 1.1001–1.1400 | (869–050–00088–1) | 61.00 | Apr. 1, 2003 |
| §§ 1.1401–1.1503–2A | (869–050–00089–0) | 50.00 | Apr. 1, 2003 |
| §§ 1.1551–End | (869–050–00090–3) | 50.00 | Apr. 1, 2003 |
| 2–29 | (869–050–00091–1) | 60.00 | Apr. 1, 2003 |
| 30–39 | (869–050–00092–0) | 41.00 | Apr. 1, 2003 |
| 40–49 | (869–050–00093–8) | 26.00 | Apr. 1, 2003 |
| 50–299 | (869–050–00094–6) | 41.00 | Apr. 1, 2003 |
| 300–499 | (869–050–00095–4) | 61.00 | Apr. 1, 2003 |
| 500–599 | (869–050–00096–2) | 12.00 | [5] Apr. 1, 2003 |
| 600–End | (869–050–00097–1) | 17.00 | Apr. 1, 2003 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **27 Parts:** | | | |
| 1–199 | (869–050–00098–9) | 63.00 | Apr. 1, 2003 |
| 200–End | (869–050–00099–7) | 25.00 | Apr. 1, 2003 |
| **28 Parts:** | | | |
| 0–42 | (869–050–00100–4) | 61.00 | July 1, 2003 |
| 43–End | (869–050–00101–2) | 58.00 | July 1, 2003 |
| **29 Parts:** | | | |
| 0–99 | (869–050–00102–1) | 50.00 | July 1, 2003 |
| 100–499 | (869–050–00103–9) | 22.00 | July 1, 2003 |
| 500–899 | (869–050–00104–7) | 61.00 | July 1, 2003 |
| 900–1899 | (869–050–00105–5) | 35.00 | July 1, 2003 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–050–00106–3) | 61.00 | July 1, 2003 |
| 1910 (§§ 1910.1000 to end) | (869–050–00107–1) | 46.00 | July 1, 2003 |
| 1911–1925 | (869–050–00108–0) | 30.00 | July 1, 2003 |
| 1926 | (869–050–00109–8) | 50.00 | July 1, 2003 |
| 1927–End | (869–050–00110–1) | 62.00 | July 1, 2003 |
| **30 Parts:** | | | |
| 1–199 | (869–050–00111–0) | 57.00 | July 1, 2003 |
| 200–699 | (869–050–00112–8) | 50.00 | July 1, 2003 |
| 700–End | (869–050–00113–6) | 57.00 | July 1, 2003 |
| **31 Parts:** | | | |
| 0–199 | (869–050–00114–4) | 40.00 | July 1, 2003 |
| 200–End | (869–050–00115–2) | 64.00 | July 1, 2003 |
| **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 | (869–050–00116–1) | 60.00 | July 1, 2003 |
| 191–399 | (869–050–00117–9) | 63.00 | July 1, 2003 |
| 400–629 | (869–050–00118–7) | 50.00 | July 1, 2003 |
| 630–699 | (869–050–00119–5) | 37.00 | [7] July 1, 2003 |
| 700–799 | (869–050–00120–9) | 46.00 | July 1, 2003 |
| 800–End | (869–050–00121–7) | 47.00 | July 1, 2003 |
| **33 Parts:** | | | |
| 1–124 | (869–050–00122–5) | 55.00 | July 1, 2003 |
| 125–199 | (869–050–00123–3) | 61.00 | July 1, 2003 |
| 200–End | (869–050–00124–1) | 50.00 | July 1, 2003 |
| **34 Parts:** | | | |
| 1–299 | (869–050–00125–0) | 49.00 | July 1, 2003 |
| 300–399 | (869–050–00126–8) | 43.00 | [7] July 1, 2003 |
| 400–End | (869–050–00127–6) | 61.00 | July 1, 2003 |
| **35** | (869–050–00128–4) | 10.00 | [6] July 1, 2003 |
| **36 Parts** | | | |
| 1–199 | (869–050–00129–2) | 37.00 | July 1, 2003 |
| 200–299 | (869–050–00130–6) | 37.00 | July 1, 2003 |
| 300–End | (869–050–00131–4) | 61.00 | July 1, 2003 |
| **37** | (869–050–00132–2) | 50.00 | July 1, 2003 |
| **38 Parts:** | | | |
| 0–17 | (869–050–00133–1) | 58.00 | July 1, 2003 |
| 18–End | (869–050–00134–9) | 62.00 | July 1, 2003 |
| **39** | (869–050–00135–7) | 41.00 | July 1, 2003 |
| **40 Parts:** | | | |
| 1–49 | (869–050–00136–5) | 60.00 | July 1, 2003 |
| 50–51 | (869–050–00137–3) | 44.00 | July 1, 2003 |
| 52 (52.01–52.1018) | (869–050–00138–1) | 58.00 | July 1, 2003 |
| 52 (52.1019–End) | (869–050–00139–0) | 61.00 | July 1, 2003 |
| 53–59 | (869–050–00140–3) | 31.00 | July 1, 2003 |
| 60 (60.1–End) | (869–050–00141–1) | 58.00 | July 1, 2003 |
| 60 (Apps) | (869–050–00142–0) | 51.00 | [8] July 1, 2003 |
| 61–62 | (869–050–00143–8) | 43.00 | July 1, 2003 |
| 63 (63.1–63.599) | (869–050–00144–6) | 58.00 | July 1, 2003 |
| 63 (63.600–63.1199) | (869–050–00145–4) | 50.00 | July 1, 2003 |
| 63 (63.1200–63.1439) | (869–050–00146–2) | 50.00 | July 1, 2003 |
| 63 (63.1440–End) | (869–050–00147–1) | 64.00 | July 1, 2003 |
| 64–71 | (869–050–00148–9) | 29.00 | July 1, 2003 |
| 72–80 | (869–050–00149–7) | 61.00 | July 1, 2003 |
| 81–85 | (869–050–00150–1) | 50.00 | July 1, 2003 |
| 86 (86.1–86.599–99) | (869–050–00151–9) | 57.00 | July 1, 2003 |
| 86 (86.600–1–End) | (869–050–00152–7) | 50.00 | July 1, 2003 |
| 87–99 | (869–050–00153–5) | 60.00 | July 1, 2003 |
| 100–135 | (869–050–00154–3) | 43.00 | July 1, 2003 |
| 136–149 | (869–150–00155–1) | 61.00 | July 1, 2003 |
| 150–189 | (869–050–00156–0) | 49.00 | July 1, 2003 |
| 190–259 | (869–050–00157–8) | 39.00 | July 1, 2003 |
| 260–265 | (869–050–00158–6) | 50.00 | July 1, 2003 |
| 266–299 | (869–048–00156–5) | 47.00 | July 1, 2002 |
| 300–399 | (869–050–00160–8) | 42.00 | July 1, 2003 |
| 400–424 | (869–050–00161–6) | 56.00 | July 1, 2003 |
| 425–699 | (869–050–00162–4) | 61.00 | July 1, 2003 |
| 700–789 | (869–050–00163–2) | 61.00 | July 1, 2003 |
| 790–End | (869–050–00164–1) | 58.00 | July 1, 2003 |
| **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 | (869–050–00166–7) | 24.00 | July 1, 2003 |
| 102–200 | (869–050–00167–5) | 50.00 | July 1, 2003 |
| 201–End | (869–050–00168–3) | 22.00 | July 1, 2003 |
| **42 Parts:** | | | |
| 1–399 | (869–048–00166–2) | 56.00 | Oct. 1, 2002 |
| 400–429 | (869–048–00167–1) | 59.00 | Oct. 1, 2002 |
| 430–End | (869–048–00168–9) | 61.00 | Oct. 1, 2002 |
| **43 Parts:** | | | |
| 1–999 | (869–048–00169–7) | 47.00 | Oct. 1, 2002 |
| 1000–end | (869–048–00170–1) | 59.00 | Oct. 1, 2002 |
| **44** | (869–048–00171–9) | 47.00 | Oct. 1, 2002 |
| **45 Parts:** | | | |
| 1–199 | (869–048–00172–7) | 57.00 | Oct. 1, 2002 |
| 200–499 | (869–048–00173–5) | 31.00 | [9] Oct. 1, 2002 |
| 500–1199 | (869–048–00174–3) | 47.00 | Oct. 1, 2002 |
| 1200–End | (869–048–00175–1) | 57.00 | Oct. 1, 2002 |
| **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 | (869–050–00181–1) | 14.00 | Oct. 1, 2003 |
| 90–139 | (869–048–00179–4) | 42.00 | Oct. 1, 2002 |
| 140–155 | (869–048–00180–8) | 24.00 | [9] Oct. 1, 2002 |
| 156–165 | (869–048–00181–6) | 31.00 | [9] Oct. 1, 2002 |
| 166–199 | (869–048–00182–4) | 44.00 | Oct. 1, 2002 |
| 200–499 | (869–048–00183–2) | 37.00 | Oct. 1, 2002 |
| *500–End | (869–050–00187–0) | 25.00 | Oct. 1, 2003 |
| **47 Parts:** | | | |
| 0–19 | (869–048–00185–9) | 57.00 | Oct. 1, 2002 |
| 20–39 | (869–048–00186–7) | 45.00 | Oct. 1, 2002 |
| 40–69 | (869–048–00187–5) | 36.00 | Oct. 1, 2002 |
| 70–79 | (869–048–00188–3) | 58.00 | Oct. 1, 2002 |
| 80–End | (869–048–00189–1) | 57.00 | Oct. 1, 2002 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–048–00190–5) | 59.00 | Oct. 1, 2002 |
| 1 (Parts 52–99) | (869–048–00191–3) | 47.00 | Oct. 1, 2002 |
| 2 (Parts 201–299) | (869–048–00192–1) | 53.00 | Oct. 1, 2002 |
| 3–6 | (869–048–00193–0) | 30.00 | Oct. 1, 2002 |
| 7–14 | (869–048–00194–8) | 47.00 | Oct. 1, 2002 |
| 15–28 | (869–048–00195–6) | 55.00 | Oct. 1, 2002 |
| *29–End | (869–050–00199–3) | 38.00 | [9] Oct. 1, 2003 |
| **49 Parts:** | | | |
| 1–99 | (869–048–00197–2) | 56.00 | Oct. 1, 2002 |
| 100–185 | (869–048–00198–1) | 60.00 | Oct. 1, 2002 |
| *186–199 | (869–050–00202–7) | 20.00 | Oct. 1, 2003 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 200–399 | (869–048–00200–6) | 61.00 | Oct. 1, 2002 |
| 400–999 | (869–048–00201–4) | 61.00 | Oct. 1, 2002 |
| *600–999 | (869–050–00205–1) | 22.00 | Oct. 1, 2003 |
| 1000–1199 | (869–048–00202–2) | 25.00 | Oct. 1, 2002 |
| 1200–End | (869–048–00203–1) | 30.00 | Oct. 1, 2002 |
| **50 Parts:** | | | |
| 1–17 | (869–048–00204–9) | 60.00 | Oct. 1, 2002 |
| 18–199 | (869–048–00205–7) | 40.00 | Oct. 1, 2002 |
| 200–599 | (869–048–00206–5) | 38.00 | Oct. 1, 2002 |
| 600–End | (869–048–00207–3) | 58.00 | Oct. 1, 2002 |
| CFR Index and Findings Aids | (869–050–00048–2) | 59.00 | Jan. 1, 2003 |
| Complete 2003 CFR set | | 1,195.00 | 2003 |
| Microfiche CFR Edition: | | | |
| Subscription (mailed as issued) | | 298.00 | 2003 |
| Individual copies | | 2.00 | 2003 |
| Complete set (one-time mailing) | | 298.00 | 2002 |
| Complete set (one-time mailing) | | 290.00 | 2001 |

[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, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 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 July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 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.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.