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Contents

Federal Register

Vol. 69, No. 29

Thursday, February 12, 2004

Separate Parts In This Issue

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.

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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.

Rules and Regulations

Federal Register
Vol. 69, No. 29
Thursday, February 12, 2004

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–067–2]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On December 18, 2003, the Animal and Plant Health Inspection Service published a direct final rule. (*See* 68 FR 70421–70423.) The direct final rule notified the public of our intention to amend the regulations governing the importation of nursery stock and other articles by designating the ports of Atlanta, Georgia, and Agana, Guam, as plant inspection stations. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as February 17, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Petit de Mange, Senior Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1232; (301) 734–8295.

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of February, 2004.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–3070 Filed 2–11–04; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV04–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2003–2004 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2003–2004 crop year. The percentages are 75 percent free and 25 percent restricted and will establish the proportion of cherries from the 2003 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: This rule is effective July 1, 2003, through June 30, 2004. This rule applies to tart cherries acquired during the 2003–2004 crop year until the restricted cherries from that crop year are diverted or used for exempt purposes under the marketing order.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2003–2004 crop year, beginning July 1, 2003, through June 30, 2004. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District seven—Utah; District eight—Washington, and District nine—Wisconsin. Districts four, five, and six (New York, Oregon, and Pennsylvania, respectively) will not be regulated for the 2003–2004 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon and Pennsylvania, handlers in those districts would not be subject to volume regulation during the 2003–2004 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established. Because New York's production is less than 50 percent of the previous 5-year production average, handlers in New York also would not be subject to volume regulation during the 2003–2004 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast or by an average of such other crop estimates for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 26, 2003, and computed, for the 2003–2004 crop year, an optimum supply of 180 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 218 million pounds; a 10 million pound carryin added to that estimate results in a total available supply of 228 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 180 million pounds from the total estimated available supply results in a surplus of 48 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (205 million pounds) and resulted in a restricted percentage of 23 percent for the 2003–2004 crop year. The free percentage was 77 percent (100 percent minus 23 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2003–2004 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	180
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	180
Preliminary Percentages:	
(4) USDA crop estimate	218
(5) Plus carryin held by handlers as of July 1, 2003	10
(6) Total available supply for current crop year	228
(7) Surplus (item 6 minus item 3)	48

	Millions of pounds
(8) USDA crop estimate for regulated districts	205

	Percentages	
	Free	Restricted
(9) Preliminary percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	. 77	23

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage. The Board met on September 12, 2003, to recommend final free and restricted percentages.

The actual production reported by the Board was 222 million pounds, which is a four million pound increase from the USDA crop estimate of 218 million pounds.

A 10 million pound carryin was added to the Board's reported production of 222 million pounds, yielding a total available supply for the current crop year of 232 million pounds. The optimum supply of 180 million pounds was subtracted from the total available supply which resulted in a 52 million pound surplus. The total surplus of 52 million pounds is divided by the 210 million-pound volume of tart cherries produced in the regulated districts. This results in a 25 percent restricted percentage and a corresponding 75 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2003–2004 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	180
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	180
Final Percentages:	
(4) Board reported production	222
(5) Plus carryin held by handlers as of July 1, 2003	10
(6) Tonnage available for current crop year	232
(7) Surplus (item 6 minus item 3)	52
(8) Production in regulated districts	210

	Percentages	
	Free	Restricted
(9) Final Percentages (item 7 divided by item 8 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	75	25

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 18 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1998/99 through 2002/03, approximately 91 percent of the U.S. tart cherry crop, or 240.6 million pounds, was processed annually. Of the 240.6 million pounds of tart cherries processed, 55 percent was frozen, 30 percent was canned, and 15 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 36,900 acres in 2002/03. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2003/04 crop is moderate in size at 222.1 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 210 million pounds. A 25 percent restriction means 158 million pounds is available to be shipped to primary markets from these three states. Production levels of 7 million pounds for New York, 1.3 million pounds for Oregon, and 3.8 million pounds for Pennsylvania (the unregulated areas in 2003–2004), result in an additional 12.1 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 158 million pounds from Michigan, Utah, Washington, and Wisconsin, the 12 million pounds from the other producing states, the 18 million pound release, and the 10 million pound carryin inventory gives a total of 198 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.36 per pound. With volume controls, the estimated grower price would increase to approximately $0.43 per pound.

The use of volume controls is estimated to have a positive impact on growers' total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $79.9 million in 2003–2004. In this scenario, production is 222 million pounds and price, without regulation, is estimated to be $0.36 per pound. With regulation, growers' revenues from processed cherries are estimated to be $85.1 million. In this scenario, 198 million pounds are available for the primary markets with an estimated price of $0.43 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as average grower prices are $0.38 per pound or greater, then growers' are better off with the regulation. With a price of $0.38 per pound, the estimated revenues under no regulation would be similar to the revenues with a 25 percent regulation assuming that all the production would be sold and marketed under the no regulation scenario.

It is concluded that the 25 percent volume control would not unduly burden producers, particularly smaller growers. The 25 percent restriction would be applied to the growers in Michigan, Utah, Washington, and Wisconsin. The growers in the other three states covered under the marketing order will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001–2002 crop year.

Recent grower prices have been as high as $0.44 per pound in the 2002–2003 crop year. At current production and yield levels, the cost of production is reported to be $0.43 per pound. Thus, the estimated $0.43 per pound received by growers under the regulation scenario just covers the cost of production. Under the no regulation scenario, estimated grower prices would not cover the total cost of production. Lower yields and production result in higher costs of production. Overhead or fixed costs are spread over lower levels of production which result in higher costs of production per acre. Even in years when no production is harvested, growers face fixed costs of production and additional costs associated with maintaining the orchard for future years of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2003–2004 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2003 of the free and restricted percentages established by this rule (75 percent free and 25 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2003–2004 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart

cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A proposed rule concerning this action was published in the **Federal Register** on December 30, 2003 (68 FR 75148). Copies of the rule were mailed or sent via facsimile to all Board members and cherry handlers. Finally, this rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending January 14, 2004, was provided to allow interested persons to respond to the proposal. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping cherries from the 2003–2004 crop and this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.253 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.253 Final free and restricted percentages for the 2003–2004 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2003, which shall be free and restricted, respectively, are designated as follows: Free percentage, 75 percent and restricted percentage, 25 percent.

Dated: February 6, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–3069 Filed 2–11–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV04–984–1 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2003–04 and subsequent marketing years from $0.0120 to $0.0101 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2003–04 anticipated expenses of $2,863,350. The lower assessment rate is primarily due to a lower budget and a larger crop. The Board locally administers the marketing order (order) that regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Board for the 2003–04 and subsequent marketing years from $0.0120 to $0.0101 per kernelweight pound of assessable walnuts.

The California Walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0120 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 12, 2003, and unanimously recommended 2003–04 expenditures of $2,863,350 and an assessment rate of $0.0101 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,970,000. The assessment rate of $0.0101 is $0.0019 lower than the $0.0120 rate previously in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 315,000 tons (283,500,000 kernelweight pounds merchantable), and the budget is about 4 percent less than last year's budget. Sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for 2003–04 include $2,348,000 for program expenses, which includes marketing and production research projects, the salary for the production research director, the cost of the Board's crop acreage survey and production estimate, and compliance purchases, $334,625 for employee expenses such as administrative and office salaries, payroll taxes and workers compensation, and other employee benefits, $83,000 for office expenses such as rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture, $82,000 for other operating expenses, such as management travel, field travel, Board expenses, general insurance and financial audits, and $15,725 as a reserve for contingencies. Budgeted expenses for these items in 2002–03 were $2,438,403, $333,100, $80,500, $79,500, and $38,497, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 283,500,000 kernelweight pounds, which should provide $2,863,350 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2003–04 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over $5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under $5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual incomes over $750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Board and collected from handlers for the 2003–04 and subsequent marketing years from $0.0120 to $0.0101 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2003–04 expenditures of $2,863,350 and an assessment rate of $0.0101 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2003–04 anticipated expenses. The lower assessment rate is primarily due to a lower budget and a larger crop.

Major categories in the budget recommended by the Board for 2003–04 include $2,348,000 for program expenses, which includes marketing and production research projects, the salary for the production research director, the cost of the Board's crop acreage survey and production estimate, and compliance purchases, $334,625 for employee expenses such as administrative and office salaries, payroll taxes and workers compensation, and other employee benefits, $83,000 for office expenses such as rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture, $82,000 for other operating expenses, such as management travel, field travel, Board expenses, general insurance, and financial audits, and $15,725 as a reserve for contingencies. Budgeted expenses for these items in 2002–03 were $2,438,403, $333,100, $80,500, $79,500, and $38,497, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended $0.0101 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 283,500,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2003–04 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2003–04 marketing year as a percentage of total grower revenue could range between 1.4 and 2 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on November 21, 2003 (68 FR 65629). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 20, 2004, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 984 which was published at 68 FR 65629 on November 21, 2003, is adopted as a final rule without change.

Dated: February 5, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–3036 Filed 2–11–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–6 FIR]

Raisins Produced From Grapes Grown in California; Revision of Varietal Types

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that revised the list of varietal types of raisins specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This action continues to combine the Oleate and Related Seedless varietal type (Oleates) with the Natural (sun-dried) Seedless varietal type (Naturals), and make conforming changes to the order's volume and quality regulations. This action addresses changing cultural practices in the California raisin industry.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence

Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to revise the list of varietal types of raisins specified under the order. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the RAC. The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This action continues to combine the Oleate varietal type with the Natural varietal type, and make conforming changes to the order's volume and quality regulations. This action was unanimously recommended by the RAC at a meeting on May 15, 2003, and addresses changing cultural practices in the California raisin industry.

Varietal Types

The order provides authority for quality and volume regulations that are applied according to varietal type of raisin. Section 989.10 of the order defines the term varietal type to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. That section includes a list of eight varietal types, and provides authority for the RAC, with the approval of USDA, to change this list. A description of these varietal types, along with additional varietal types, may be found in § 989.110 of the order's administrative rules and regulations.

Prior to implementation of the interim final rule (68 FR 42943), paragraph (a) in § 989.110 defined the Natural varietal type to include all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless (NTS) raisins which, for the purpose of expediting drying, have not been dipped in or sprayed with water, with or without soda, oil or other chemicals prior to or during the drying process. Naturals are the predominant varietal type of California raisin, comprising about 90 percent of California's raisin production.

Also prior to implementation of the interim final rule, paragraph (c) in § 989.110 defined the Oleate varietal type to include all raisins produced by sun-drying or artificial dehydration of seedless grapes which, in order to expedite drying, are dipped in or sprayed with water with soda, oil, Ethyl Oleate, Methyl Oleate or any other chemicals either while such grapes are on the vine or after they have been removed from the vine.

Cultural practices are evolving in the raisin industry in an effort to reduce production and harvest costs. Traditionally, most California raisins have been made by hand picking grapes from the vine and drying them in the sun on trays laid on the ground. This process is labor intensive and expensive. Thus, in an effort to reduce costs, some growers have switched to sun-drying their grapes on the vine, and then mechanically harvesting them ("dried on the vine" or DOV). A drying agent such as Oleate may be applied to the grapes on the vine to hasten the drying process.

Additionally, there is concern that Oleate could be applied to sun-dried Natural raisins, and that the raisins could be represented as Oleates to circumvent the volume regulations that are typically in effect for Naturals. With the exception of the 1998–99 crop year, volume regulation has been in place for Naturals every year since 1983–84. (The raisin crop year (season) runs from August 1 through July 31.) For the 1992–93 through the 1999–2000 seasons, average acquisitions of Oleates were 441.38 tons. For the 2000–01 and 2001–02 seasons, Oleate acquisitions were 3,669 and 6,495 tons, respectively. Volume regulation was in place for the beginning of the 2001–02 season for Oleates, but was lifted in November 2001 due to no acquisitions up to that time. Once volume regulation was lifted, Oleates were acquired. For the 2002–03 season, the RAC recommended final volume regulation percentages for Oleates in January 2003. However, by the week ending February 1, 2003, Oleate acquisitions were at 2,121 tons, and far below the 5,268-ton trade demand. Because the supply of Oleates was well below demand, volume regulation was lifted in mid-February 2003. Since that time, 2002–03 Oleate acquisitions increased to 18,385 tons through July 31, 2003, the end of the 2002–03 crop year. Based on this data, and the fact that most raisins are typically acquired much earlier in the crop year, the RAC is concerned that Oleate could be sprayed on bins of Naturals and that the raisins could be represented as Oleates to circumvent volume regulation.

These different types of Oleate-treated grapes/raisins are difficult to distinguish from non-Oleate treated raisins. At its May 15, 2003, meeting, the RAC recommended eliminating the Oleate varietal type, and revising the Natural varietal type to include Oleates. Specifically, Naturals include all sun-dried raisins possessing similar identifiable characteristics as raisins produced from Natural Thompson Seedless grapes, or similar grape varieties, whether dried on trays or on the vine, with or without application of a drying agent that is a food-grade additive, such as, soda, oil, Ethyl Oleate, or Methyl Oleate prior to, during, or after the drying process. The RAC recommended using "accepted food-grade drying agent" in the definition rather than "drying agent that is a food-grade additive". USDA changed the RAC's recommendation so it conforms more closely to accepted U.S. Food and Drug Administration terminology. Soda was also added to the examples of drying agents because soda has been used by the industry for this purpose in past years. Accordingly, paragraph (c) in § 989.110 regarding Oleates was removed, and paragraph (a) regarding Naturals was revised to include Oleates.

Industry members considered the merits of revising the definition for Dipped Seedless raisins. Dipped Seedless includes all raisins produced by artificial dehydration of seedless grapes that possess characteristics similar to Thompson Seedless grapes which, in order to expedite drying, have been dipped in or sprayed with water only after such grapes have been removed from the vine. The current Oleate definition includes raisins produced by artificially dehydrating grapes with the application of a drying agent to the grapes. The question was raised regarding how raisins made from artificially dehydrated Oleate-treated grapes would be classified if sun-dried Oleates are included with Naturals. Industry members concluded that no such raisins are currently produced. Accordingly, the definition of Dipped Seedless raisins was not revised to include artificially dehydrated Oleate-treated grapes.

Volume Regulation and Reserve Pool Requirements

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Section 989.66 of the order specifies general requirements for reserve tonnage. Reserve tonnage acquired by handlers from producers and reserve tonnage transferred to a handler from the RAC must be held by the handler for the account of the RAC. Reserve tonnage must be stored separate and apart from other raisins and identified according to rules and procedures specified by the RAC and approved by the Secretary. Handlers may, under the direction and supervision of the RAC, substitute for any reserve tonnage raisins a like quantity of standard raisins of the same varietal type and of the same or more recent year's production.

Section 989.166 of the order's administrative rules and regulations specifies additional requirements for reserve raisins. Paragraph (a)(1) of that section prescribes identification, delivery, and transfer requirements for Natural reserve raisins. Specifically, lots of Natural reserve raisins that have been dipped in or sprayed with water, with or without chemicals, prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless, must be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card which must remain affixed until the raisins are processed or disposed of as natural condition raisins. Additionally, such reserve raisins cannot be delivered to the RAC nor transferred to another handler without approval of the RAC or the receiving handler.

The above language in § 989.166(a)(1) regarding chemicals applied to Naturals for purposes other than to expedite drying was added to the regulations in 1984 and refers to MP–11, a fungicide. The language regarding Naturals produced from grapes other than Thompson Seedless was added in 1991. In these respective instances, some handlers had indicated that they would not pack MP–11 raisins nor raisins made from grapes other than Thompson Seedless. In both cases, the RAC determined that these categories of Naturals should be considered as Naturals for volume and quality control purposes, but that additional requirements should be in place regarding identification, delivery, and transfers of reserve raisins.

As the RAC considered the merits of combining Oleates with Naturals, some handlers indicated that they would not pack Naturals treated with a drying agent such as Oleate. Thus, at its May 2003 meeting, the RAC recommended revising § 989.166(a)(1) to include reserve Naturals treated with drying agents. Such reserve raisins must be tagged and identified accordingly, and cannot be delivered to the RAC nor transferred to another handler without the approval of the RAC or the receiving handler. Handlers with only Oleate-treated reserve can substitute non-Oleate treated free tonnage Naturals if necessary. The RAC also recommended adding in this section authority for the RAC to specify additional categories of Naturals that have been produced using other cultural practices and that will be subject to these additional requirements. Any such additions will be made with USDA approval. This will give the RAC flexibility to address changing cultural practices regarding different categories of Naturals in the future. Section 989.166(a) was revised accordingly.

Another concern regarding this issue is the impact of volume regulation on handlers that may have built up a market for Oleate-treated raisins. There is concern that volume regulation would contribute to handlers losing this market. However, pursuant to § 989.66(b)(3), handlers of Oleate-treated Naturals have the flexibility to substitute free tonnage Naturals that will be acceptable to the RAC. Thus, handlers can substitute non-Oleate treated free tonnage Naturals for their Oleate-treated reserve raisins, and use their Oleate-treated fruit to meet their market needs.

Quality Requirements

This rule also continues to revise the quality requirements specified in the order's regulations to remove references to Oleates. Specifically, this rule continues to revise: the incoming quality requirements; the table of factors for converting between natural condition and processed weight; and the outgoing quality requirements. The details of these changes are discussed below.

Incoming Quality Requirements

Section 989.58(a) of the order provides authority for quality control regulations whereby natural condition raisins that are delivered from producers to handlers must meet certain incoming quality requirements. Section 989.701 of the order's regulations specifies minimum grade and condition standards for natural condition raisins for each varietal type. Prior to implementation of the interim final rule, paragraph (b) of that section specified requirements for three varietal types of raisins—Dipped Seedless, Oleate, and Other Seedless-Sulfured. Specifically, such raisins must have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall: (1) Be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) have a normal characteristic flavor and odor of properly prepared raisins; (3) contain no more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and also contain at least 50 percent well-matured or reasonably well-matured raisins; (4) not exceed 14 percent moisture; and (5) be of such quality and condition as can

be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the RAC. This rule continues to revise this paragraph to remove reference to the Oleate varietal type.

Paragraph (a) of § 989.701 specifies incoming quality requirements for Naturals, Monukka and Other Seedless raisins. This rule continues to combine Oleates with the Natural varietal type. Thus, the incoming quality requirements specified in § 989.701(a) now apply to Oleates. With the exception of the moisture requirement, the specifications in paragraphs (a) and (b) of § 989.701 are identical. Paragraph (a) specifies that Naturals, Monukkas, and Other Seedless raisins cannot exceed 16 percent moisture. The RAC's recommendation includes Oleates meeting a less restrictive moisture tolerance of 16 percent as opposed to the 14 percent required for Oleates prior to implementation of the interim final rule.

Weight Dockage System

Section 989.58(a) also contains authority for handlers to acquire natural condition raisins that fall outside the tolerance established for maturity, which includes substandard raisins, under a weight dockage system. Handler acquisitions of raisins and payments to producers are adjusted according to the percentage of substandard raisins in a lot, or the percentage of raisins that fall below certain levels of maturity. Section 989.210(a) of the order's regulations lists the varietal types of raisins that may be acquired pursuant to a weight dockage system. Sections 989.212 and 989.213 contain tables with dockage factors applicable to lots of raisins that fall outside the tolerances for substandard raisins and maturity, respectively, specified in § 989.701. The substandard and maturity dockage factors are identical for Oleates and Naturals. This rule continues to remove all references to Oleates that were contained in §§ 989.210(a), 989.212, and 989.213. This rule also continues to remove paragraph (e) in § 989.213 that was applicable only to the 1998–99 crop year and is thus obsolete.

Raisin Weight Conversion Table

Section 989.601 of the order's regulations specifies a list of conversion factors for raisin weights. The factors are used to convert the net weight of reconditioned raisins acquired by handlers as packed raisins to a natural condition weight. The net weight of the raisins after the completion of processing is divided by the applicable factor to obtain the natural condition weight. If the adjusted weight exceeds the original weight, the original weight is used. This rule continues to remove the reference to Oleates and its 0.92 conversion factor. Additionally, the table specifies a conversion factor for Naturals of 0.92. Thus, combining Oleates with the Natural varietal type results in no change to the conversion factor. Section 989.601 was revised accordingly.

Outgoing Quality Requirements

Section 989.59 of the order provides authority for quality control regulations for raisins subsequent to their acquisition by handlers (outgoing requirements). Section 989.702 of the order's regulations specifies minimum grade standards for packed raisins. Prior to implementation of the interim final rule, paragraph (a) of that section specified identical requirements for four varietal types of raisins—Natural, Dipped Seedless, Oleate, and Other-Seedless Sulfured. Since the outgoing requirements for Naturals and Oleates are identical, this rule continues to remove the reference to Oleates from paragraph (a).

Accordingly, Naturals must meet the requirements of U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1622 through 1624). At least 70 percent, by weight, of the raisins in a lot must be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized lots, the raisins must at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget) sized raisins must meet the U.S. Grade C tolerances for those factors.

Reporting Requirements

All raisin handlers are currently required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. These reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC–1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC–3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC–20); (4) Weekly Off-Grade Summary (RAC–30); (5) Inventory of Free Tonnage Standard Quality Raisins On Hand (RAC–50); and (6) Inventory of Off-Grade Raisins On Hand (RAC–51). These forms have been revised to remove the columns for Oleates. The total annual reporting burden on handlers for these six forms remains unchanged at 660 hours.

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), these information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0581–0178.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This rule continues to combine the Oleate varietal type with the Natural varietal type, and to make conforming changes to the order's volume and quality regulations. Pursuant to § 989.10 of the order, § 989.110 of the regulations was revised to remove the Oleate varietal type, and to include sun-dried raisins that may or may not be treated with Oleate or similar food-grade drying agent in the definition of the Natural varietal type. Pursuant to § 989.66, § 989.166(a)(1) was revised to add identification, delivery, and transfer requirements for Naturals treated with Oleate, or similar drying agents. Finally,

pursuant to §§ 989.58 and 989.59, the order's quality regulations were revised to remove references to Oleates as follows: Incoming quality requirements specified in §§ 989.210, 989.212, 989.213, and 989.701; a table of factors for converting between natural condition and processed weight specified in § 989.601; and outgoing quality requirements specified in § 989.702.

Regarding the impact of this action on affected entities, this rule continues to help ensure that sun-dried Natural Thompson raisins or raisins produced from similar grape varieties will be subject to the same volume regulation percentages. Concerns about circumventing volume regulation by representing Naturals as Oleates will be addressed. If volume regulation were in effect, handlers who have a market for Oleate-treated raisins will have the opportunity to substitute free tonnage non-Oleate treated Naturals for their reserve Oleates to meet their market needs.

The RAC considered several alternatives to this action. In the spring of 2002, the RAC recommended, and USDA approved, conducting a research study to determine if it is possible to distinguish whether Oleate or a similar agent was applied to a grape as opposed to a raisin. This would assist in determining if Oleate or a similar drying agent was being applied to raisins to circumvent volume regulation. Preliminary information indicates that distinguishing if Oleate or similar drying agent were applied to grapes or raisins may not be possible. There were also some discussions on establishing color specifications to differentiate between non-Oleate Naturals, Oleate-treated Naturals, and DOV. However, the general consensus is that raisins darken with time so that color specifications would be very difficult to apply. Further, there were discussions about requiring producers to file a declaration with the RAC prior to the beginning of the crop year regarding the use of Oleate or similar agent. However, such a producer declaration could not be required.

Regarding the impact of this action on reporting requirements under the order, all raisin handlers are required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. As previously listed, these reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC–1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC–3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC–20); (4) Weekly Off-Grade Summary (RAC–30); (5) Inventory of Free Tonnage Standard Quality Raisins On Hand (RAC–50); and (6) Inventory of Off-Grade Raisins On Hand (RAC–51). These forms have been revised to remove the columns for Oleates. The current total annual burden on handlers for these six forms remains unchanged at 660 hours.

As previously stated, in accordance with the PRA, the information collection requirements referenced above have been approved by the OMB under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Additionally, except for applicable section 8e import regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, Natural raisins must at least meet U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the AMA.

Further, this action was reviewed at several industry meetings as follows—the RAC's Industry Solutions Subcommittee on April 21, 2003, the Administrative Issues Subcommittee on April 23, 2003, work group meetings on April 29 and May 12, 2003, and an Administrative Issues Subcommittee and a RAC meeting on May 15, 2003. All of these meetings where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on July 21, 2003 (68 FR 42943). The RAC staff mailed copies of the rule to all RAC members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on September 19, 2003. One comment was received in opposition to this action.

The commenter contends that the order cannot be amended to abolish the Oleate varital type through informal rulemaking. The commenter states that, because § 989.10 was amended through a formal rulemaking proceeding to create Oleates as a distinct varietal type, Oleates can only be abolished by an equivalent formal rulemaking procedure.

USDA disagrees with the commenter's contention. The definition of varietal type has been part of the order since its promulgation in 1949. In 1960, the term was amended through a formal rulemaking proceeding to name additional varietal types of raisins known at that time, and to add authority for the list of varietal types to be changed through informal rulemaking. USDA's recommended decision from the proceeding states that the time may come when a certain type of raisin will no longer be produced in commercial quantities and could be excluded from the list (25 FR 8656; September 8, 1960). Thus, removing a varietal type through informal rulemaking was clearly envisioned when § 989.10 was revised in 1960. Additionally, as the commenter also states, Oleates were added to § 989.110 through informal rulemaking in 1981 (46 FR 39120; July 31, 1981), with a conforming change made to § 989.10 through formal rulemaking in 1983 (48 FR 32977; July 20, 1983).

The commenter also contends that USDA provided no proper basis for implementing this action through an interim final rule. The commenter alleges that USDA has known about the RAC proposal for months and could have published a proposal for comment long ago.

USDA disagrees with the commenter's contention. While there have been discussions at past RAC meetings regarding the concern that Oleate-treated sun-dried Natural raisins could be represented as Oleates to circumvent Natural volume regulation, the RAC did not recommend to USDA any related action until May 15, 2003. USDA relies on marketing order committees/boards to analyze relevant information and submit recommendations to USDA for informal rulemaking to change marketing order regulations. It would have been premature for USDA to proceed with informal rulemaking absent a RAC recommendation and analysis. Additionally, the RAC's recommendation was unanimous, and the action needed to be in place by the beginning of the 2003–04 crop year, which began August 1, 2003. Thus, pursuant to 5 U.S.C. 553, USDA found upon good cause that it was impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this action into effect.

The commenter contends that Oleates should remain a separate varietal type for several reasons. First, the commenter contends that the Oleate varietal type was first created in 1981 through informal rulemaking, and that the rationale for creating the Oleate varietal

type in 1981 is the same as today for maintaining the varietal type (46 FR 39120; July 31, 1981). The commenter also states that changing cultural practices does not justify eliminating the Oleate varietal type today.

As the commenter states, prior to 1981, Oleates were included with the varietal type Dipped and Related Seedless, along with water-dipped and soda-dipped raisins. In 1981, Oleates were considered relatively new to the U.S. industry and were developed to reduce the time required to sun-dry raisins and reduce problems associated with untimely rains. At that time, there was concern that, if Oleate production was substantial, the reserve percentage for Dipped and Related Seedless raisins would be inflated and the water-dipped segment's portion of the free tonnage for that year would be reduced. Thus, in 1981, the RAC recommended, and USDA approved, classifying water-dipped, soda-dipped, and Oleate-dipped raisins on the basis of whether or not they were sun-dried or artificially dried. The rationale for the 1981 change was to provide equity between the sun-dried and artificially dehydrated segments of the raisin industry for purposes of volume regulation.

USDA disagrees with the commenter's contention that the rationale for keeping Oleates as a separate varietal type remains the same today in 2003 as it was in 1981. The raisin industry is dynamic and the marketing order's regulations must often be changed to meet the needs of the industry. Section 989.10 was amended in 1960 to permit changes to the list of varietal types through informal rulemaking so that the RAC could be in a better position to meet changing conditions in the future. USDA has determined that the rationale to combine Oleates with Naturals referenced earlier in this rule—addressing changing cultural practices and reducing a possible means to circumvent volume regulation—justify this action and is consistent with the intent of § 989.10.

The commenter also contends that UDSA's inspection service is capable of proper classification and distinction of Oleate raisins versus Naturals. In this discussion, the commenter references the 1981 informal rule that made Oleates a separate varietal type, and states that the rule correctly recognized that the inspection service was fully capable of making the proper classification.

As defined in 1981, Oleates were raisins produced from "grapes" that had been treated with Oleate or similar drying agent. The problem is that cultural practices have changed since 1981, and Oleate is now applied to grapes or raisins at different times in the drying process.

The commenter also contends that this action cannot be based at all on the research study referenced in the interim final rule because the study's results and methodology were not published or otherwise made available to interested parties. USDA disagrees with the commenter's contention. Dr. Susan Rodriguez and Dr. Roy Thornton at California State University, Fresno, California, conducted the study. Dr. Rodriguez attended a RAC work group meeting on April 29, 2003, and presented their preliminary findings. A final report was prepared for the RAC dated June 27, 2003.

The commenter contends that the recent growth in demand for Oleates provides no evidence to extinguish the varietal type. Further, the commenter states that late season deliveries of Oleates provide no evidence of abuse, but rather is a sign of the industry's response to meet demand.

USDA shares the RAC's concerns with the acquisition data. USDA believes that these concerns warrant combining Oleates with the Natural varietal type.

The commenter contends that the change to § 989.166 regarding the identification of Oleate-treated reserve raisins has no merit. USDA disagrees with the commenter's contention. The change is intended to ensure that Oleate-treated reserve raisins are properly marked, and that they cannot be delivered to the RAC or transferred to another handler without the approval of the RAC or the receiving handler. The commenter also contends that the economic viability of Oleates depends on their remaining free from volume regulation. However, as stated in the interim final rule, if volume regulation were in effect, handlers who have a market for Oleate-treated raisins will have the opportunity to substitute free tonnage non-Oleate treated Naturals for their reserve Oleates to meet their market needs.

Accordingly, no changes will be made to the interim final rule as published in the **Federal Register** on July 21, 2003 (68 FR 42943) based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC, the comment received, and other available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 42943 on July 21, 2003, is adopted as a final rule without change.

Dated: February 5, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–3029 Filed 2–11–04; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1183]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the head office of the Federal Reserve Bank of Richmond and reassign the Federal Reserve routing symbols currently listed under that office to the Federal Reserve Bank of Richmond's Baltimore office and delete the reference to the Omaha check processing office of the Federal Reserve Bank of Kansas City and reassign the Federal Reserve routing symbols currently listed under that office to the Des Moines office of the Federal Reserve Bank of Chicago. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

DATES: The amendment to Appendix A under the Fifth Federal Reserve District (Federal Reserve Bank of Richmond) is effective on April 17, 2004. The amendments to Appendix A under the Seventh and Tenth Federal Reserve Districts (Federal Reserve Banks of Chicago and Kansas City) are effective on April 24, 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for "local" checks are considered "nonlocal."

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.[2] As part of this restructuring process, the head office of the Federal Reserve Bank of Richmond will cease processing checks on April 17, 2004, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the Federal Reserve Bank of Richmond's Baltimore office. The Omaha office of the Federal Reserve Bank of Kansas City will cease processing checks on April 24, 2004, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the Des Moines office of the Federal Reserve Bank of Chicago. As a result of these changes, some checks that are drawn on and deposited at banks located in the affected check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. Also, after April 24, 2004, the restructured Des Moines check processing region will cross Federal Reserve District lines. Banks located in that region therefore no longer will be able to determine that a check is nonlocal solely because the paying bank for that check is located in another Federal Reserve District.

To assist banks in identifying local and nonlocal banks, the Board accordingly is amending the lists of routing symbols associated with the Federal Reserve Banks of Richmond, Kansas City, and Chicago to reflect the transfer of operations (1) from the Federal Reserve Bank of Richmond's head office to that Reserve Bank's Baltimore office and (2) from the Federal Reserve Bank of Kansas City's Omaha office to the Federal Reserve Bank of Chicago's Des Moines office. The amendments affecting the Federal Reserve Bank of Richmond are effective April 17, 2004, and the amendments affecting the Federal Reserve Banks of Kansas City and Chicago are effective April 24, 2004, to coincide with the effective date of the underlying check processing changes. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[3] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the May 2003 **Federal Register** document.

[1] For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] *See* 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *www.frbservices.org*.

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendix are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of "check-processing region." Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will (1) delete the reference to the head office of the Federal Reserve Bank of Richmond and reassign the routing symbols listed under that office to the Baltimore office of the Federal Reserve Bank of Richmond and (2) delete the reference to the Omaha office of the Federal Reserve Bank of Kansas City and reassign the routing symbols listed under that office to the Des Moines office of the Federal Reserve Bank of Chicago. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The Fifth, Seventh, and Tenth Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Fifth Federal Reserve District

[Federal Reserve Bank of Richmond]

Baltimore Branch

0510	2510
0514	2514
0520	2520
0521	2521
0522	2522
0540	2540
0550	2550
0560	2560
0570	2570

Charlotte Branch

0530	2530
0531	2531

Columbia Office

0532	2532
0539	2539

Charleston Office

0515	2515
0519	2519

* * * * *

Seventh Federal Reserve District

[Federal Reserve Bank of Chicago]

Head Office

0710	2710
0711	2711
0712	2712
0719	2719

Detroit Branch

0720	2720
0724	2724

Des Moines Office

0730	2730
0739	2739
1040	3040
1041	3041
1049	3049

Indianapolis Office

0740	2740
0749	2749

Milwaukee Office

0750	2750
0759	2759

* * * * *

Tenth Federal Reserve District

[Federal Reserve Bank of Kansas City]

Head Office

1010	3010
1011	3011
1012	3012
1019	3019

Denver Branch

1020	3020
1021	3021
1022	3022
1023	3023
1070	3070

Oklahoma City Branch

1030	3030
1031	3031
1039	3039

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 6, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–3041 Filed 2–11–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA74

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Appeals and Hearings Procedures, Formal Review

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule makes administrative corrections to the 32 CFR part 199, section 199.10, "Appeal and Hearing Procedures." These corrections include revising § 199.10, adding paragraphs (c)(1) through (c)(5), and making other minor editorial changes.

EFFECTIVE DATE: May 1, 1983.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, Medical Benefits and Reimbursement Systems, TRICARE Management Activity (TMA), telephone (303) 676–3401.

SUPPLEMENTARY INFORMATION:

I. Background

Paragraphs (c)(1) through (c)(5) were inadvertently omitted when the July 1, 1991, edition of the 32 CFR was published. The discovery that the formal review process was missing from § 199.10 occurred at the time that TRICARE was tasked to promulgated an appeal process for TRICARE Claimcheck denials.

The appeals procedures found in this final rule reflect the appeals process as it has continuously existed and been administered by the Department of Defense since its original effective date of May 1, 1983. This final rule is being published solely to reflect the inadvertent omission by the United States Government Printing Office of these procedures in 32 CFR part 199. This correction to § 199.10 is made in an effort to ensure that any party to an initial determination or reconsideration decision who may want to request a formal review is aware of these procedures.

II. Public Comments

We published this rule on March 13, 2003, as an interim final rule, with a 60-day comment period, and received no public comments.

III. Changes in the Final Rule

Additional administrative changes were made to correct designated paragraphs in (a)(8)(ii)(A) through (B). We have redesignated these paragraphs to (a)(8)(ii)(A) through (C).

IV. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action" defined as one, which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule has been designated as a significant rule and has been reviewed by the Office of Management and Budget as required under the provisions of Executive Order 12866. The Department of Defense certifies that this final rule would not have a significant impact on small business entities.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

This rule is being issued as a final rule.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Dental Health, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 1999—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.10 is amended by redesignating both paragraphs (a)(8)(ii)(A) and paragraph (a)(8)(ii)(B) as paragraphs (a)(8)(ii)(A) through (a)(8)(ii)(C), by revising paragraph (b) introductory text, and by republishing paragraph (c) to read as follows:

§ 199.10 Appeals and hearing procedures.

* * * * *

(b) *Reconsideration.* Any party to the initial determination made by the CHAMPUS contractor, or a CHAMPUS peer review organization may request reconsideration.

* * * * *

(c) *Formal review.* Except as explained in this paragraph, any party to an initial determination made by OCHAMPUS, or a reconsideration determination made by the CHAMPUS contractor, may request a formal review by OCHAMPUS if the party is dissatisfied with the initial or reconsideration determination unless the initial or reconsideration determination is final under paragraph (b)(5) of this section; involves the sanctioning of a provider by the exclusion, suspension or termination of authorized provider status; involves a written decision issued pursuant to § 199.9(h)(1)(iv)(A) regarding the temporary suspension of claims processing; or involves a reconsideration determination by a CHAMPUS peer review organization. A hearing, but not a formal review level or appeal, may be available to a party to an initial determination involving the sanctioning of a provider or to a party to a written decision involving a temporary suspension of claims processing. A beneficiary (or an authorized representative of a beneficiary), but not a provider (except as provided in § 199.15), may request a hearing, but not a formal review, of a reconsideration determination made by a CHAMPUS peer review organization.

(1) *Requesting a formal review.* (i) *Written request required.* The request must be in writing, shall state the specific matter in dispute, shall include copies of the written determination (notice of reconsideration determination of OCHAMPUS initial determination) being appealed, and shall include any additional information or documents not submitted previously.

(ii) *Where to file.* The request shall be submitted to the Chief, Office of Appeals and Hearings, TRICARE Management Activity, 16401 East Centredtech Parkway, Aurora, Colorado 80011–9066.

(iii) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the reconsideration determination or OCHAMPUS initial determination being appealed.

(iv) *Official filing date.* A request for a formal review shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(2) *The formal review process.* The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested or at the time of the initial determination, reconsideration, or formal review decision involving a provider request for approval as an authorized CHAMPUS provider. The formal review is performed by the Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information, upon which the initial determination and/or reconsideration determination was based, and any additional information the appealing party may submit or OCHAMPUS may obtain.

(3) *Timeliness of formal review determination.* The Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee normally shall issue the formal review determination no later than 90 days from the date of receipt of the request for formal review by OCHAMPUS.

(4) *Notice of formal review determination.* The Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee shall issue a written notice of the formal review determination to the appealing party at his or her last known address. The notice of the formal review determination must contain the following elements:

(i) A statement of the issue or issues under appeal.

(ii) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(iii) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(iv) Whether the formal review upholds the prior determination or determinations or reverses the prior determination or determinations in whole or in part and the rationale for the action.

(v) A statement of the right to request a hearing in any case when the formal review determination is less than fully favorable, the issue is appealable, and the amount in dispute is $300 or more.

(5) *Effect of formal review determination.* The formal review determination is final if one or more of the following exist:

(i) The issue is not appealable. (*See* paragraph (a)(6) of this section.)

(ii) The amount in dispute is less that $300. (*See* paragraph (a)(7) of this section.)

(iii) Appeal rights have been offered but a request for hearing is not received by OCHAMPUS within 60 days of the date of the notice of the formal review determination.

* * * * *

Dated: February 5, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–3014 Filed 2–11–04; 8:45 am]

BILLING CODE 5001–06–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[WT Docket No. 00–230; DA 04–75]

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: The effective date of various rules adopted in the Secondary Markets Proceeding, WT Docket No. 00–230, that was otherwise scheduled to become effective at an earlier date, has been delayed because this rule has been classified as a major rule subject to congressional review.

DATES: The effective date of the rules published on November 25, 2003 at 68 FR 66252, except for the amendments to §§ 1.913(a), 1.913(a)(3), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e) and 1.9035(e), was delayed from January 26, 2004 to February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Katherine M. Harris, Mobility Division, at 202–418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 04–75, released on January

15, 2004. The full text of the *Public Notice* is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. On October 6, 2003, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking*, 68 FR 66252 (November 25, 2003) in WT Docket No. 00–230, In the Matter of Markets (Secondary Markets Report and Order). A summary of the *Secondary Markets Report and Order* portion of the *Further Notice of Proposed Rulemaking* prescribed that, except for §§ 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules, the various rules adopted in the *Secondary Markets Report and Order* were to be effective January 26, 2004.

2. In order to comply with the requirements of the Congressional Review Act under the Contract with America Advancement Act of 1996, *see* 5 U.S.C. 801(a)(3), the effective date of the rules that otherwise currently were to become effective on January 26, 2004 was delayed to February 2, 2004. The effective dates of §§ 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules are not affected by this extension of the effective date for all other rules adopted in the *Secondary Markets Report and Order*.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Katherine M. Harris,

Deputy Division Chief.

[FR Doc. 04–2640 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 031017264–4034–03; I.D. 100103C]

RIN 0648–AR48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Red Snapper Individual Fishing Quota Program

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

ACTION: Final rule; statement of procedure.

SUMMARY: NMFS issues this final rule to provide information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether an individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether it should subsequently be submitted to the Secretary of Commerce (Secretary) for review. The intended effect of this final rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This final rule is effective February 12, 2004.

ADDRESSES: Copies of supporting documentation for this final rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS, Southeast Regional Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *phil.steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

During the early to mid–1990s, the Council began development of an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. Development of this program involved extensive interaction with the fishing industry, other stakeholders, and the public through numerous workshops, public hearings, and Council meetings. The program was approved by NMFS and was scheduled for implementation in 1996. However, Congressional action in late 1995 prohibited implementation of any new IFQ program in any U.S. fishery, including the Gulf of Mexico red snapper fishery, before October 2000. Subsequent Congressional action, passage of HR5666, incorporated this prohibition and related provisions into the 1996 amendments to the Magnuson-Stevens Act and ultimately extended the prohibition until October 1, 2002. However, HR5666 also provided authority to the Council to develop a profile for any fishery under its jurisdiction that may be considered for a quota management system.

Under section 407(c) of the Magnuson-Stevens Act, the Council is authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery, but only if certain conditions are met. First, the preparation of such a plan amendment and regulations must be approved in a referendum. If the result of the referendum is approval, the Council would be responsible for preparing any such plan amendment and regulations through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. Second, the submission of the plan amendment and regulations to the Secretary for review and approval or disapproval must be approved in a subsequent referendum. Both referendums must be conducted in accordance with Section 407(c)(2). Section 407(c)(2) also specifies that, "Prior to each referendum, the Secretary, in consultation with the Council, shall: (A) identify and notify all such persons

holding permits with red snapper endorsements and all such vessel captains; and (B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program."

On October 27, 2003, NMFS published the original proposed rule to implement the red snapper referendum procedures; comments on the original proposed rule were requested through November 12,2003 (68 FR 61178). Public comment received on that October 27, 2003, proposed rule expressed concern about the vote-weighting procedure and specifically objected to allowing both a qualified lessor and qualified lessee fully weighted votes resulting in double counting of these permits' associated landings. In response to those public comments, NMFS issued a second proposed rule (68 FR 75202, December 30, 2003) to include a broader range of potential options for weighting votes; comments on that proposed rule were requested through January 20, 2004.

Comments and Responses

Following are the public comments that NMFS received on the original proposed rule (68 FR 61178, November 12,2003) and the revised proposed rule (68 FR 75202, December 30, 2003), along with NMFS' responses.

Comment 1: Eight individuals stated that the proposed vote-weighting criterion that allows one vote per qualifying pound to both the lessor and lessee, resulting in double counting of the qualifying poundage by these permit holders, while the other eligible voters will receive only one vote per qualifying pound, was inequitable. Three additional comments were received that supported adoption of Alternative Five in the revised proposed rule.

Response: In response to public comments on the original proposed rule, NMFS revised the proposed rule to include a broader range of potential options for weighting votes. The additional vote-weighting alternatives were published in the **Federal Register** on December 30, 2003 (68 FR 75202). Comments were accepted through January 20, 2004. Based on consideration of public comments and comments received from the Council on the revised proposed rule, NMFS has modified the vote-weighting criteria that applies to eligible voters to address concerns about double counting. Under the original proposed rule, each eligible lessee and lessor would have received one full vote per applicable pound of red snapper landings. To avoid this double counting, the final rule specifies that in cases where more than one eligible voter has eligibility tied to a particular license, e.g., lessee and lessor, or a qualifying vessel captain and a license holder, all eligible voters associated with that license will have their vote weighted equally and their combined vote will equal one vote per pound of landings applicable to that license. For example, if a qualifying captain is eligible based on his/her landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same qualifying captain, then each will get one-half of a vote per pound of landings associated with the license. In this example, should the current holder lease the same license, then each participant will have their vote weighted as one-third of a vote per pound, so their combined vote will equal the total number of pounds associated with the license. In cases where only one eligible voter has eligibility tied to a particular license, all applicable landings associated with that license accrue to that voter and the voter will be assigned a vote-weighting factor of one vote per pound.

Comment 2: Two individuals commented that the general public should be allowed to vote in the red snapper IFQ referendums.

Response: Section 407(c) of the Magnuson-Stevens Act states that "The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996." Accordingly, the general public is precluded from voting in the red snapper IFQ referendum program.

Comment 3: Two comments were received regarding the voting eligibility for lessees and lessors. One individual suggested that either the lessor or lessee be allowed to vote in both referendums, and the other individual stated that lessees of the Class 1 license should not be allowed to vote in the red snapper IFQ referendum. Further, one of these same individuals suggested that the lessor could convey voting rights to the lessee and that a lessee who receives the owner's (lessor's) proxy vote must submit written notice to NMFS within 10 days after publication in the **Federal Register** of the final rule implementing referendum procedures for both referendums.

Response: Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. After careful consideration of those criteria and the practicality and fairness of several possible interpretations, NMFS has determined that the language contained in Section 407(c)(2) of the Magnuson-Stevens Act specifically referring to "any person to whom such permit with such endorsement was transferred," was intended to include both lessors and lessees as permit holders with regard to voting qualifications, thus allowing both to vote in the referendums.

Comment 4: One individual's comments were in support of an IFQ program for the Gulf of Mexico red snapper fishery.

Response: NMFS agrees that an IFQ program is necessary to address a number of problems existing in the Gulf of Mexico red snapper fishery (i.e., derby fishing, harvest capacity, safety-at-sea issues, enforcement).

Comment 5: One individual commented that red snapper Class 2 license holders should be able to vote in the referendums. This individual also suggested that Class 2 permit holders may be eliminated from the IFQ process by Class 1 license holders if Class 2 license holders are not allowed to vote in the referendums.

Response: Section 407(c) of the Magnuson-Stevens Act states that "The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and

endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996." The Class 1 license holders' original license eligibility was based on their historical participation in the red snapper fishery during the years 1990–1992, during which they landed at least 5,000 lb (2,268 kg) of red snapper. Under this qualifying criterion, these fishermen were issued the original red snapper endorsement that subsequently became the Class 1 license. Accordingly, red snapper Class 2 license holders are precluded from voting in the red snapper IFQ referendum program.

However, it should be noted that the procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program will be developed independently by the Council through the normal plan amendment and rulemaking processes that will involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. Further, there is no relation between eligibility to vote in the referendums, as described in this final rule, and any eligibility regarding a subsequent IFQ program.

Comment 6: One individual objected to the timing of the public comment period on the original proposed rule and stated that it coincided with the November 1–10, 2003, commercial red snapper fishing season and did not allow fishermen enough time to respond.

Response: On October 27, 2003, NMFS published the original proposed rule that described procedures and eligibility requirements for participating in referendums regarding a potential IFQ program for the Gulf of Mexico commercial red snapper fishery. Comments were requested through November 12, 2003 (68 FR 61178). In response to those public comments, NMFS revised the proposed rule to include a broader range of potential options for weighting votes. The additional vote-weighting alternatives were published in the **Federal Register** on December 30, 2003 (68 FR 75202). Comments were accepted through January 20, 2004. The agency provided these criteria to the general public, especially those fishing communities that may be affected by the proposed alternatives, in as timely a fashion as possible.

Changes from the Proposed Rule

Based on consideration of public comments and comments received from the Council on the proposed rules, NMFS has modified the vote-weighting procedure that applies to eligible voters to address concerns about double counting of landings. Under the proposed rule, each eligible lessee and lessor would have received one full vote per applicable pound of red snapper landings. To avoid this double counting of landings, the final rule specifies that in cases where more than one eligible voter has eligibility tied to a particular license, all eligible voters associated with that license will have their vote weighted equally such that their combined vote will equal one vote per pound of landings applicable to that license. Wording within the section of the final rule entitled "How Will Votes Be Weighted?" has been revised accordingly.

Purpose of this Final Rule and the Referendums

NMFS, in accordance with the provisions of section 407(c) of the Magnuson-Stevens Act, will conduct referendums to determine, based on the majority vote of eligible voters, whether a plan amendment and regulations to implement an IFQ program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether any subsequently prepared plan amendment and regulations should be submitted to the Secretary for review and approval or disapproval. The primary purpose of this final rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS will use in conducting the referendums. The procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program would be developed independently by the Council through the normal plan amendment and rulemaking processes that would involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. There is no relation between eligibility to vote in the referendums, as described in this final rule, and any eligibility regarding a subsequent IFQ program.

Referendum Processes

Who Will Be Eligible to Vote in the Referendums?

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. Those criteria are subject to various interpretations. After careful consideration of those criteria, the practicality and fairness of several possible interpretations, and public comments, NMFS has determined that the following persons will be eligible to vote in the referendums.

(I) For the initial referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through February 12, 2004;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of February 12, 2004;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of February 12, 2004, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

(II) For the second referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996 through the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

A person will only receive voting eligibility under one of the eligibility criteria, i.e., a person will not receive dual voting eligibility by being both a qualifying vessel captain and a qualifying holder of an endorsement/Class I license.

NMFS has sufficient information in the Southeast Regional Office fisheries permit database to identify those persons who will be eligible to vote in the referendums based on their having held a red snapper endorsement/Class 1 license during the required periods. However, NMFS did not have sufficient information to identify vessel captains whose eligibility would be based on the harvest of red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996. To obtain that information, NMFS prepared and distributed a fishery bulletin that described the general referendum procedures and provided a 20–day period (ending August 18, 2003) for submittal of detailed information by those vessel captains. That fishery bulletin was widely distributed to all Gulf reef fish permitees, including dealers, and to major fishing organizations, state fisheries directors, and others. Information received from that solicitation will be used to identify vessel captains whose eligibility to vote in the referendums is based on the red snapper harvest criterion.

How Will Votes Be Weighted?

Section 407(c)(2) of the Magnuson-Stevens Act requires that NMFS develop a formula to weight votes based on the proportional harvests under each eligible endorsement and by each eligible captain between the period January 1, 1993, and September 1, 1996. NMFS will obtain applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from NMFS' Southeast Regional Office permit database will be used to assign applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain). In cases where only one eligible voter has eligibility tied to a particular license, all applicable landings associated with that license accrue to that voter, and the voter will be assigned a vote-weighting factor of one vote per pound. In cases where more than one eligible voter has eligibility tied to a particular license, e.g., lessee and lessor, or a qualifying vessel captain and a license holder, all eligible voters associated with that license will have their vote weighted equally such that their combined vote will equal one vote per pound of landings applicable to that license. For example, if a qualifying captain is eligible based on his/her landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same qualifying captain, then each would get one-half of a vote per pound of landings associated with the license. In this example, should the current holder lease the same license, then each participant would have their vote weighted as one-third of a vote per pound, so that their combined vote would equal the total number of pounds associated with the license.

The weighting procedure is complicated somewhat by requirements to protect the confidentiality of landings data, when the applicable landings history involves landings by different entities. To address confidentiality concerns, NMFS will establish a series of categories (ranges) of red snapper landings based on 5,000–lb (2,268–kg) intervals, e.g., 0–5,000 lb (0–2,268 kg); 5,001–10,000 lb (2,268–4,536 kg); etc., concluding with the interval that includes the highest documented landings. The total landings between the period January 1, 1993, and September 1, 1996, associated with each license, will be attributed to the appropriate category. The overall average pounds landed attributed to each category will be determined. That average number of pounds will be the base applied to the vote-weighting factor for each eligible voter whose landings fall within that category.

For example, if the overall average number of pounds attributed to the 5,001–10,000–lb (2,268–4,536–kg) category is 8,150 lb (3,697 kg), each eligible voter within that category would receive votes equal to 8,150 multiplied by the applicable vote-weighting factor, e.g. 8,150 X 1.0 = 8,150 votes if only one voter was associated with the license; 8,150 X 0.5 = 4075 votes each for a lessee and lessor associated with the same license; 8,150 X 0.33 = 2,690 votes each for a qualifying vessel captain, lessee, and lessor all associated with the same license.

How Will the Vote Be Conducted?

On or about January 30, 2004, NMFS will mail each eligible voter a ballot that would specify the number of votes (weighting) that that voter is assigned. NMFS will mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for endorsement/Class I license holders and, for vessel captains, to the address provided to NMFS by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to an eligible voter must be cast for the same decision, i.e., either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Ballots for the initial referendum must be received at that address by 4:30 p.m., eastern time, February 27, 2004; ballots received after that deadline will not be considered in determining the outcome of the initial referendum. Although it will not be required, voters may want to consider submitting their ballots by registered mail.

How Will the Outcome of the Referendums Be Determined?

Vote counting will be conducted by NMFS. Approval or disapproval of the referendums will be determined by a majority (i.e., a number greater than half of a total) of the votes cast. NMFS will prepare a fishery bulletin announcing the results of each referendum that is conducted and will distribute the bulletin to all Gulf reef fish permitees, including dealers, and to other interested parties. The results will also be posted on NMFS' Southeast Regional Office's website at *http://caldera.sero.nmfs.gov.*

What Will Happen After the Initial Referendum?

NMFS will present the results of the initial referendum at the March 8–11, 2004, Council meeting in Mobile, AL. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. The plan amendment and

regulations could only be submitted to the Secretary for review and approval or disapproval if in a second referendum approval of the submission was passed by a majority (i.e., a number greater than half of a total) of the votes cast by the eligible voters as described in this final rule. NMFS would announce any required second referendum by publishing a notice in the **Federal Register** that would provide all pertinent information regarding the referendum. Any second referendum would be conducted in conformance with Section 407(c)(2) of the Magnuson-Stevens Act and the provisions outlined in this final rule.

Background Information About a Potential IFQ Program

In anticipation of the October 2002 expiration of the Congressional moratorium on development of IFQ programs, and recognizing that HR5666 provided the Council the authority to develop a profile for any fishery that may be considered for a quota management system, some members of the commercial red snapper fishery requested that the Council develop an IFQ profile for the fishery. Based on that request, the Council convened an Ad Hoc Red Snapper Advisory Panel (AHRSAP), comprised of participants in the commercial red snapper fishery and other individuals knowledgeable about the fishery and/or IFQ programs, to develop a profile. This profile, later referred to as an Individual Transferable Quota (ITQ) Options Paper for the Problems Identified in the Gulf of Mexico Red Snapper Fishery, provides background information about historical management of the red snapper fishery, problems in the fishery, management goals, and issues and management alternatives associated with a potential IFQ/ITQ program. The profile addresses such issues as: ITQ units of measurement (percentage of quota or pounds of red snapper); duration of ITQ rights; set-aside for non-ITQ catches under current commercial quota; actions to be taken if the quota increases or decreases; types of ITQ share certificates; initial allocation of ITQ shares and annual coupons (including eligibility, apportionment, transferability of landings histories, etc.); possible controls on ownership and transfer of ITQ shares; whether to include a "use it or lose it" provision; disposition of unused or sanctioned ITQ shares and coupons; possible landings restrictions; monitoring of ITQ share certificates and annual coupons; quota tracking; an appeals process; and size limit changes.

This profile represents an outline of an IFQ program as envisioned by the AHRSAP, with input from the Council--it does not reflect any final decisions by the Council regarding the structure of a proposed IFQ program for the red snapper commercial fishery. The Council may consider the options in the profile, and perhaps a variety of other options, if it chooses to pursue development of an IFQ program for the fishery. However, for purposes of the initial referendum, the Council intentionally refrained from adopting the profile. Any subsequent development of a proposed IFQ program for the red snapper commercial fishery would be conducted through the normal Council and Federal rulemaking processes that ensure numerous opportunities for review and comment by industry participants and members of the public.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding this certification. As a result, no initial or final regulatory flexibility analysis was prepared. Copies of the RIR and RFAA are available (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for this final rule. A 30–day delayed effectiveness period is unnecessary because there are no associated management measures that would require compliance by the affected public. This final rule describes the procedures for conducting referendums to determine whether an IFQ program should be prepared for the Gulf of Mexico commercial red snapper fishery, and, if so, whether the subsequently prepared IFQ program should be submitted to the Secretary of Commerce for review. These procedures are consistent with the mandates of the Magnuson-Stevens Act. Waiver of the 30–day delayed effectiveness period would not affect the voting rights of eligible participants and merely will require NMFS to conduct the referendum more quickly, which it is fully prepared to do.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. The collection of this information has been approved by the OMB, OMB Control Number 0648–0477. Public reporting burden for this collection of information is estimated to average 10 minutes for a response to an initial referendum regarding preparation of an IFQ program; 20 minutes for a response to a subsequent referendum; and 10 minutes per response for any information request regarding vessel captains, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSEES**).

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

Dated: February 9, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–3081 Filed 2–10–04; 10:55 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 29
Thursday, February 12, 2004

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1728

Specifications and Drawings for 12.47/7.2 kV Line Construction

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to revise its regulations regarding RUS Bulletin 50–3, Specifications and Drawings for 12.5/7.2 kV Line Construction. This bulletin is currently incorporated by reference in RUS regulations and the revised and renumbered RUS Bulletin 1728F–804 would continue to be incorporated by reference. This rule is necessary to provide the latest RUS specifications, materials, equipment, and construction methods for RUS electric borrowers to construct their rural overhead electric distribution systems. RUS proposes to update, renumber and reformat this bulletin in accordance with the agency's new publications and directives system.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than April 12, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: RUSComments@usda.gov.* Include in the subject line of the message "Specifications and Drawings for 12.47/7.2 kV Line Construction." The e-mail must identify, in the text of the message, the name of the individual (and name of the entity if applicable) who is submitting the comment.
- *Mail:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522. Washington, DC 20250–1522.
- *Hand Delivery/Courier:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

RUS requires, in hard copy, a signed original and 3 copies of all written comments (7 CFR 1700.4). Comments will be available for public inspection during normal business hours (7 CFR part 1).

FOR FURTHER INFORMATION CONTACT: Mr. James L. Bohlk, Electric Engineer, Distribution Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–1967. Fax: (202) 720–7491. e-mail: *Jim.Bohlk@usda.gov.*

Electronic (pdf) copies of this proposed rule and the proposed bulletin are available on the RUS Web site at *http://www.usda.gov/rus/electric/regs/index.htm.* Electronic and printed copies of this proposed rule and proposed bulletin are also available from Mr. James Bohlk, at the addresses listed.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is exempted from the Office of Management and Budget (OMB) review for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. *See* the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees from coverage were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before any action against the Department or its agencies.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of the law to publish a notice of proposed rulemaking with request to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

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

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Rural Utilities Service (RUS) is proposing to amend Title 7 CFR

Chapter XVII, Part 1728, Electric Standards and Specification for Materials and Construction, by revising RUS Bulletin 50–3 (D–804), "Specification and Drawings for 12.5/7.2 kV Line Construction". This revised bulletin will be renumbered as RUS Bulletin 1728F–804 and will be re-titled as, "Specification and Drawings for 12.47/7.2 kV Line Construction". RUS maintains a system of bulletins that contains construction standards and specifications for materials and equipment which must be utilized when system facilities are constructed by RUS electric and telecommunication borrowers in accordance with the RUS loan contract. These standards and specifications contain standard construction units, material, and equipment units used in RUS electric and telecommunication borrowers' systems.

RUS Bulletin 50–3 provides standard construction drawings and specification of 12.5/7.2 kV overhead electric distribution lines. RUS is proposing to change the bulletin number from RUS Bulletin 50–3 (Standard D 804) to RUS Bulletin 1728F–804 (D 804). The change in the bulletin number and reformatting is necessary to conform to RUS new publications and directives system. This proposed rule will incorporate the bulletin by reference in 7 CFR 1728.97.

Proposed Changes to RUS Bulletin 50–3 (D 804)

RUS proposes to make the following changes and additions to current Bulletin 50–3 (D–804). It is proposed that it will be replaced with new Bulletin 1728F–804 in these respects:

(1) The new bulletin would contain a total of 303 assemblies. (An assembly is a construction unit which incorporates the description and quantity of material needed to construct the assembly and a dimensioned schematic diagram showing how the material needs to be arranged or assembled to meet RUS specifications.) Bulletin 50–3 currently contains a total of 255 assemblies. In both bulletins, more than one similar assembly is often depicted on one drawing.

(2) Of the 303 total assemblies in the proposed new bulletin, 146 would be new assemblies and 92 of these new assemblies would be new "narrow profile" assemblies. These 146 new assemblies and 24 new guide drawings would be tabulated in Exhibit 4 in the proposed new Bulletin 1728F–804.

(3) Of the 303 total assemblies in the proposed new bulletin, 91 would be previous standard assemblies with no material changes, 38 would be previous standard assemblies with only a change in the number or type of washers, and 28 would be previous standard assemblies with other slight material changes.

(4) The proposed new bulletin would also contain a total of 46 guide drawings. Present Bulletin 50–3 contains a total of 24 guide drawings. (A guide drawing is a dimensioned schematic diagram that shows details of how the material of one or more assemblies needs to be arranged or assembled to meet RUS specifications but does not list the material required for construction.)

(5) Each of the proposed 303 assemblies and 46 guide drawings in the proposed new bulletin would be given a new number in accordance with the assembly numbering format as updated by RUS in 1998. In the updated numbering format, each character in the assembly or drawing number has a functional meaning.

(6) The 157 standard assemblies and 8 guide drawings of present Bulletin 50–3, which would be redrawn, renumbered, and certain ones re-used in proposed new Bulletin 1728F–804 and identified in Exhibit 3. The new Bulletin 1728F–804 would label the new revised assemblies with new numbers and would also show in parentheses the prior numbers as presently labeled in Bulletin 50–3. RUS would allow the borrowers to use either assembly number only for these 165 standard assemblies and guide drawings. The borrower would be required to use the assemblies as depicted.

(7) The proposed new bulletin would be reformatted into 19 separate sections or categories. Each section would contain an index of drawings and also the construction drawings of assemblies designed to perform a similar function. Several sections would contain construction specifications pertaining to the assemblies in that section.

(8) New tables would be added in the proposed new bulletin that define maximum line angles, permitted unbalanced conductor tensions, and soil classification data.

(9) Exhibit 1 would be added at the end of the proposed new bulletin to document the formula and data used to determine the line angles in the tables. Also, Exhibit 2 would be added at the end of the proposed new bulletin to document the formula and data used to determine permitted unbalanced conductor tensions.

(10) Each proposed drawing would be given a new, uniform, shorter, and more descriptive title. Each proposed drawing would have a new, uniform title block that would contain, when applicable, the primary voltage and number of phases of the depicted assemblies.

(11) "Design parameters" which define and usually limit maximum line angles or mechanical loading (tension) would be added, when applicable, to the drawings of the proposed new bulletin.

RUS proposes to discontinue 98 assemblies and 16 guide drawings presently contained in Bulletin 50–3 for one or more of the following reasons:

- They contain material no longer accepted by RUS for use by RUS borrowers,
- The spacing or strength of the material and equipment no longer meets the minimum requirements of RUS or the National Electrical Safety Code (NESC),
- They contain technical errors such as a neutral conductor support that is not coordinated with the primary conductor support,
- They are redundant of other assemblies or for other reasons may no longer be needed, or
- They require so many modifications that they need to be discontinued and subsequently replaced with new assemblies.

The proposed disposition of the 279 assemblies and guide drawings are tabulated in Exhibit 3 in the proposed new bulletin.

RUS also proposes to modify and add to the construction specifications in Bulletin 50–3 and to incorporate these changes and additions in proposed new Bulletin 1728F–804. The proposed significant new modifications and additions include the following:

(1) Compliance and specific references to the NESC,

(2) Definitions of and provisions to use large and extra large conductors,

(3) Permission to lower neutral conductor under specific circumstances,

(4) Requirement to use washers under shoulder of crossarm pins,

(5) Requirement to use 3-inch (minimum) square, curved, washer for primary, neutral and guys deadending on poles,

(6) Requirement to multiply applied loads by appropriate NESC overload factors,

(7) Minimum insulated spacing (wood and fiberglass) between primary conductors and guys,

(8) Choice of arrester location on transformer assemblies,

(9) Requirement that all secondary and service wires be covered conductors,

(10) Permission to use stirrups provided certain given criteria are met, and

(11) New rights-of-ways clearing specifications.

List of Subjects in 7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs-energy, Rural areas.

For reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

1. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; 6941 *et seq.*

2. Section 1728.97 is amended by revising:

A. The second sentence in paragraph (a), and

B. Revising paragraph (b) by removing the entries for Bulletin 50–3 and Bulletin 50–6; and adding to the list of bulletins, in numerical order, the entry for Bulletin 1728F–804.

These revisions are to read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

(a) * * * The bulletins containing construction standards (50–4 and 1728F–803 to 1728F–811), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. * * *

* * * * *

(b) *List of Bulletins.*

* * * * *

Bulletin 1728F–804 (D–804), Specification and Drawings for 12.47/7.2 kV Line Construction ([Month and year of effective date of final rule]).

* * * * *

Dated: January 30, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–3114 Filed 2–11–04; 8:45 am]

BILLING CODE 3410–15–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249, and 274

[Release Nos. 34–49211; IC–26348; File No. S7–19–03]

Security Holder Director Nominations

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On October 14, 2003, the Securities and Exchange Commission proposed rule amendments regarding security holder director nominations. Copies of the proposing release are available on the Commission's Web site at *www.sec.gov*. In connection with the proposed rule amendments, the Commission will host a roundtable discussion regarding the issues raised and questions posed in the proposing release. The roundtable discussion will take place in the William O. Douglas Room of the Commission's headquarters at 450 Fifth Street, NW., Washington, DC on March 10, 2004, from 9 a.m. to 5:15 p.m. The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at *www.sec.gov*. The final agenda and list of participants will be published in a press release prior to the roundtable discussion.

DATES: The roundtable discussion will take place on March 10, 2004. The Commission will accept comments regarding issues addressed in the roundtable discussion and otherwise regarding the proposed rule amendments from March 10, 2004 until March 31, 2004.

ADDRESSES: Any comments should be sent by one method—U.S. mail or electronic mail—only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–19–03. This number should be included in the subject line if sent via electronic mail. Comment letters will be posted on the Commission's Web site at *www.sec.gov*. We do not edit personal information, such as names or electronic mail addresses, from comment letters. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian C. Brown or Andrew Brady, Division of Corporation Finance, at (202) 824–5250, or, with regard to investment companies, John M. Faust, Division of Investment Management, at (202) 942–0721, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549.

SUPPLEMENTARY INFORMATION: The roundtable discussion will concern the Commission's proposed rule amendments regarding security holder director nominations.[1] As more fully described in the proposing release; the proposals would, under certain circumstances, require companies to include in their proxy materials disclosure regarding security holder nominees for election as director. The proposed rules would not provide security holders with the right to nominate directors where prohibited by state law. Instead, the proposed rules would create a mechanism for disclosure regarding nominees of long-term security holders, or groups of long-term security holders, with significant holdings, to be included in company proxy materials where evidence suggests that the company has been unresponsive to security holder concerns as they relate to the proxy process. The proposed rules would enable security holders to engage in limited solicitations to form nominating security holder groups and engage in solicitations in support of their nominees without disseminating a proxy statement. The proposed rules also would establish the filing requirements under the Securities Exchange Act of 1934 for nominating security holders.

Dated: February 9, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3107 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7622–2]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA")

ACTION: Proposed rule—Consistency Update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air

[1] *See* Release No. 34–48626 (October 14, 2003) [68 FR 60784].

regulations that is being updated pertains to the requirements for OCS sources for which the Ventura County Air Pollution Control District (Ventura County APCD) is the designated COA. The intended effect of approving the OCS requirements for the above District is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before March 15, 2004.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXIX, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rules and copies of the document EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXIX. This docket is available for public inspection and copying Monday—Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXIX, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXIX, Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Why Is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by a local air pollution control agency. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What Criteria Were Used To Evaluate Rules Submitted To Update 40 CFR Part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What Rule Revisions Were Submitted To Update 40 CFR Part 55?

1. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the Ventura County APCD is designated as the COA:

Rule No.	Rule name	Adoption date
23	Exemptions from Permit	11/11/03.
56	Open Burning	11/11/03.
74.20	Adhesives and Sealants	09/09/03.
74.6	Surface Cleaning and Degreasing (Now includes Cold Cleaning Operations previously Rule 74.6.1)	11/11/03 (effective 7/1/04).
74.6.1	Batch Loaded Vapor Degreasers—previously 74.6.2 repealed and renamed 74.6.1; (74.6.1 previously named Cold Cleaning Operations is now included in Rule 74.6).	11/11/03 (effective 7/1/04).
74.12	Surface Coating of Metal Parts and Products	11/11/03.
74.24	Marine Coating Operations	11/11/03.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

Rule No.	Rule name	Adoption date
74.30	Wood Products Coatings	11/11/03.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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.*).

C. Regulatory Flexibility Act

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

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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

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

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

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

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 27, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

Title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 5/14/02)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Revised 11/11/03)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 5/14/02)
Rule 26.2 New Source Review—Requirements (Adopted 5/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 5/14/02)
Rule 26.6 New Source Review—Calculations (Adopted 5/14/02)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 5/14/02)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 5/14/02)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter—Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter—Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Burning (Revised 11/11/03)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)

Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Revised 11/11/03—effective 7/1/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 7/1/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/14/00)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 9/9/03)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Revised 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 1/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Revised 11/11/03)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

* * * * *

[FR Doc. 04–3079 Filed 2–11–04; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 29
Thursday, February 12, 2004

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

Privacy Act: Proposed New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of a proposed new privacy system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552(a), the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) is giving notice that it proposes to establish a new system of records: USDA/FNS–11, entitled Information on Persons Identified as Responsible for Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP). This system consists of information on individuals (1) who have been identified by an administering State agency as having responsibility for serious deficiencies in the operation of the CACFP in institutions or sponsored centers which operate the program; (2) who have been proposed for disqualification from participation in the CACFP as a result of having been determined to be responsible for an uncorrected serious deficiency in the operation of the program in a institution or sponsored center; or (3) who have been disqualified from participation in the CACFP as principals of institutions, sponsored centers, or as operators of day care homes, as a result of being determined to be responsible for an uncorrected serious deficiency in the operation of an institution, a sponsored center, or a family day care home that participates in the program. Within the system of records, the records of persons who have been disqualified from participation in the program will be considered to be part of the National Disqualified List, which also includes the names of institutions that have been disqualified from participation in the CACFP.

A *principal* means any individual who holds a management position within, or is an officer of, an institution or a sponsored center participating in the CACFP, including all members of the institution's board of directors or the sponsored center's board of directors. A *day care home* means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

This list will be made available to State agencies and sponsoring organizations that administer and operate the CACFP. For individuals who have been identified as having responsibility for a serious deficiency at an institution or who have been proposed for termination as responsible principals or individuals, the information will include the individual's name, the name of the State agency which identified the individual as responsible for the serious deficiency or proposed the individual to be disqualified, the reason for the serious deficiency or proposed disqualification, the name and address of the institution with which the individual was associated, and the individual's title at that institution. For individuals who have been disqualified as a result of being determined to be responsible for an uncorrected serious deficiency in the operation of an institution or a sponsored center, in addition to the information listed in the preceding sentence, the system will include the individual's mailing address and date of birth, the effective date of the disqualification, and whether the individual owes a debt to the CACFP. For individuals who have been disqualified as a result of being determined to be responsible for an uncorrected serious deficiency as the operator of a family day care home, the information will include name, mailing address, date of birth, reason for the disqualification, effective date of the disqualification, and whether the individual owes a debt to the program.

DATES: Comments must be received on or before March 15, 2004 to be assured of consideration. Comments will also be accepted via e-mail if sent no later than 11:59 p.m. on March 15, 2004. This notice will be effective April 12, 2004 unless modified by a subsequent notice to incorporate comments received by the public.

ADDRESSES: Comments should be addressed to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Room 638, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments will also be accepted via e-mail sent to *CNDPROPOSAL@FNS.USDA.GOV*. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Susan Fouts at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Statutory Basis

Section 243(c) of Public Law 106–224, the Agricultural Risk Protection Act of 2000, amended § 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) requires the USDA to maintain a list of institutions, family day care home providers, and individuals that have been terminated or otherwise disqualified from participation in the CACFP. The law also requires the USDA to make the list available to State agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the program. This statutory mandate has been incorporated into § 226.6(c)(7) of the CACFP regulations.

Background

In order to implement this and other provisions of Public Law 106–243, which was designed to improve the management and integrity of the CACFP, the USDA has published an interim rule entitled, "Child and Adult Care Food Program: Implementing Legislative Reforms to Strengthen Program Integrity" (67 FR 43447, June 27, 2002). As amended by the interim rule, § 226.6(b)(12) of the CACFP regulations prohibits State agencies from approving an institution's application to participate in the program if either the institution or any of its principals is on the National Disqualified List. This section of the regulations also prohibits State agencies from approving an application

submitted by a sponsoring organization on behalf of a facility if the facility or any of its principals is on the National Disqualified List. In addition, sponsoring organizations are prohibited (introductory paragraph of § 226.16(b) and § 226.6(c)(7)(iv)(B)) from submitting an application on behalf of a facility if either the facility or any of its principals is on the National Disqualified List and are prohibited from employing in a principal capacity any individual who is on the National Disqualified List (§§ 226.6(c)(3)(ii)(B), 226.6(c)(6)(ii)(G)(*2*), and 226.6(c)(7)(iv)(A)).

Inclusion of "Responsible Principals" and "Responsible Individuals" of Institutions in the System of Records

An institution that operates the CACFP is disqualified from participation in the program and placed on the National Disqualified List after having been declared seriously deficient; failing to take the required corrective action within the stated period of time; being notified of the State agency's intent to terminate their program agreement; and being offered an administrative review (appeal) of the State agency's proposed termination. When a State agency determines that an institution is seriously deficient, it must also identify the principals or individuals associated with the institution whose actions or conduct led to the institution's serious deficiency, and notify these persons that (1) they have been determined to be a "responsible principal" or a "responsible individual" for the serious deficiency, and (2) the failure to correct the serious deficiencies in the allotted time will result in the State agency's proposed termination of the institution's agreement and proposed disqualification of the institution and the responsible principals and individuals from participation in the program. The State agency must submit a copy of the notification of serious deficiency, including the names of the responsible principals and individuals, to the FNS regional office (FNSRO) that oversees the operation of the CACFP in that State.

If the serious deficiency is not corrected or if the State agency determines that the responsible principal(s) and individual(s) should be proposed for disqualification independently of the disqualification of the institution, it must notify the responsible principals and individuals that the State agency proposes to disqualify them and include them on the National Disqualified List and offer them an administrative review of the State agency's proposed termination. The State agency must provide a copy of the notice of proposed disqualification to the FNSRO.

Section 226.6(k)(8) of the regulations requires that, in most instances, an individual's appeal will be considered as part of an institution's appeal of its proposed termination and disqualification. However, the administrative review officer may separate the appeals of the institution and the responsible principals and/or responsible individuals if (a) the institution does not appeal, but the individual wishes to do so or if (b) either the institution or the individual demonstrates to the administrative review officer's satisfaction that their interests conflict.

If the appeals of the institution and the responsible principal(s) and responsible individual(s) have not been separated by the administrative review officer, when the State agency terminates the institution's program and disqualifies it from participation in the CACFP, it will also disqualify those persons named as "responsible principals" or "responsible individuals," and will submit a copy of the termination notice (including the name(s), birth date(s), and address(es) of responsible principals and responsible individuals) to the FNSRO. If the institution is not terminated and disqualified but the responsible principals and individuals are disqualified, the State agency must notify the individuals of the disqualification and send a copy of the notice to the FNSRO. The FNSRO will transmit information on disqualified institutions and disqualified responsible principals and individuals to FNS Headquarters, which will then include the individual(s) on the National Disqualified List. State agencies are prohibited (§ 226.6(b)(12)) from approving the application of an institution that employs any person on the National Disqualified List in a principal capacity, or of a facility if the facility or any of its principals is on the National Disqualified List. Sponsoring organizations are prohibited (introductory paragraph of § 226.16(b) and § 226.6(c)(7)(iv)(B)) from submitting an application on behalf of a facility if either the facility or any of its principals is on the National Disqualified List and are prohibited from employing in a principal capacity any individual who is on the National Disqualified List (§§ 226.6(c)(3)(ii)(B), 226.6(c)(6)(ii)(G)(2), and 226.6(c)(7)(iv)(A)).

Inclusion of Operators of Family Day Care Homes in the System of Records

The operator of a family day care home will be placed on the National Disqualified List only after having been declared seriously deficient by the operator's sponsoring organization; failing to take the required corrective action within the stated period of time; being notified of the sponsoring organization's intent to terminate the operator's CACFP agreement; and being offered an administrative review of the sponsoring organization's proposed termination. If the operator of the family day care home fails to exercise his/her appeal rights, or if he/she loses the appeal, the sponsoring organization will terminate the operator's program agreement and will submit a copy of the termination notice (including the name, mailing address and date of birth of the family day care home operator, the effective date of the termination, the reasons for the termination, and whether the operator owes a debt to the program) to the State agency. The State agency will forward the information to FNS, which will include the family day care home operator on the National Disqualified List. The National Disqualified List is maintained at FNS Headquarters, and will be shared with other State administering agencies and sponsoring organizations.

Period of Time on the National Disqualified List

Once placed on the National Disqualified List, a responsible principal or individual or the operator of a family day care home will remain on the list for 7 years from the effective date of the disqualification or until acceptable corrective action is taken. Also, no responsible principal or individual or operator of a family day care home can be removed from the list until any debt owed to the program is repaid in full, even if the full 7 years has elapsed.

In order for a responsible principal or individual to be removed from the National Disqualified List, he/she must demonstrate to the satisfaction of both the State agency and FNS that appropriate corrective action has been taken. In order for a family day care home operator to be removed from the National Disqualified List, he/she must demonstrate to the satisfaction of the State agency that appropriate corrective action has been taken.

Purpose of the National Disqualified List

The purpose of maintaining a National Disqualified List and making it

available to State agencies and sponsoring organizations is to provide these entities with a tool for promoting CACFP integrity by preventing several situations from occurring. First, it prevents institutions whose CACFP agreements were terminated for cause in one State from simply moving to another State and reapplying for program participation. Second, it prevents individuals responsible for fraud or serious mismanagement from continuing to be involved in CACFP administration by forming a new corporate entity and entering the program under a different organizational name. Third, it prevents individuals associated with a disqualified institution from re-entering the CACFP as a family day care home provider, as a principal with another institution, or as a principal in a sponsored center. Finally, it prevents family day care home providers terminated for cause by one sponsoring organization from re-entering the CACFP under the auspices of a different sponsoring organization.

Reason for This Notice

Because this system of records contains personal information about individuals (*i.e.*, names, birth dates, and addresses) as well as the nature of the serious deficiency for which they were responsible, the Privacy Act of 1974, as amended, requires publication of a notice in the **Federal Register** announcing the existence and character of the system of records and the routine uses to which it is put. Therefore, FNS is proposing the following routine use for this system of records in order to fully comply with this legislative mandate. This system of records is routinely updated and the data on individuals who have been disqualified from participation in the CACFP is made available to all State agencies and sponsoring organizations administering the program.

A "Report on a New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chair, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Reform, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on or before February 12, 2004.

Dated: February 5, 2004.

Ann M. Veneman,

Secretary.

USDA/FNS–11

SYSTEM NAME:

USDA/FNS–11, Information on Persons Identified as Responsible for Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Special Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. The data on individuals who have been identified or proposed for disqualification because of responsibility for a serious deficiency in an institution or sponsored center which operates the CACFP will be maintained at the FNS Regional Office which oversees the State agency which has made the determination of serious deficiency or proposed the disqualification. The data on individuals who have been disqualified from participation in the CACFP will be maintained in the Child Nutrition Division of the Food and Nutrition Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on individuals that have been determined to be responsible for serious deficiencies, proposed for disqualification, or disqualified from participation in the CACFP. The list will include both individuals disqualified based on responsibility for serious deficiencies in the operation of CACFP independent centers and sponsoring organizations based on regulations in place before July 29, 2002, as well as all individuals that are disqualified from CACFP participation after July 29, 2002.

CATEGORIES OF RECORDS IN THE SYSTEM:

For individuals who have been determined to be responsible for a serious deficiency at an institution or who have been proposed for disqualification as responsible principals or individuals of a seriously deficient institution: individual's name, name and address of the institution, title or position held with institution, reason for determination of serious deficiency or proposed disqualification, name of the State agency making the determination of serious deficiency or proposing disqualification.

For individuals who have been disqualified as responsible principals or individuals: all of the information in the previous paragraph, plus the individual's mailing address, the individual's date of birth, the effective date of the disqualification and whether the individual owes a debt to the CACFP.

For family day care home providers: individual's name, address, date of birth, reason for disqualification, name of the sponsoring organization, state agency imposing disqualification, termination date, and whether any debt is owed to the CACFP.

Since State agencies were not required to collect the mailing addresses or birth date of disqualified responsible principals and individuals and operators of family day care homes prior to July 29, 2002, this information may not be available for individuals disqualified from the CACFP before this date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1766 (d)(5)(E)(i) and (ii), the Richard B. Russell National School Lunch Act.

PURPOSE:

To promote integrity in the CACFP by providing State administering agencies and sponsoring organizations with the names of institutions, family day care home operators and individuals that have been terminated or otherwise disqualified from participating in the CACFP. Once disqualified, these institutions, individuals, and day care home operators will be prohibited from participating in the program for 7 years from the effective date of the disqualification. Institutions and individuals associated with institutions may be removed from the list earlier if the State agency and FNS concur that the serious deficiency that caused their placement on the list has been corrected; operators of family day care homes may be removed earlier if the State agency concurs that the serious deficiency that caused their placement on the list has been corrected. However, no institution, individual, or family day care home operator may be removed from the list if they owe a debt to the CACFP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) USDA/FNS will disclose information from this system of records on individuals who have been disqualified from participation in the CACFP to every agency, whether State or FNS, that administers the CACFP directly in the States or at the Federal level, and to every sponsoring organization participating in the program. The information will be available to the State agency Directors

and staff members who make decisions about application approval or termination from participation in the program or, in the case of sponsoring organizations, make hiring decisions or submit applications for approval of family day care home operators to the State agency.

(2) USDA/FNS may disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(3) USDA/FNS may disclose information from this system of records to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; 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 agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(4) USDA/FNS may disclose information from this system of records when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

(5) USDA/FNS may disclose information from this system of records to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

(6) USDA/FNS may disclose information from this system of records to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer disks, in computer files on the FNS network, and in file folders at FNS Regional offices and at FNS Headquarters; information on individuals who have been disqualified from participation in the CACFP will also be available in a password-protected environment on the Internet.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Access to records is limited to those persons who process the records for the specific routine uses stated above. Computer disks are kept in physically secured rooms or cabinets. Files on the network are only available to persons with authorized access to the network. Paper records are segregated and physically stored in locked cabinets. Internet access will be restricted to those State agency or sponsoring organization staff with a need to know the list's contents and with password access to the list.

RETENTION AND DISPOSAL:

Once placed on the National Disqualified List, a responsible principal or individual or the operator of a family day care home will remain on the list for 7 years from the effective date of the disqualification or until acceptable corrective action is taken. Also, no responsible principal or individual or operator of a family day care home can be removed from the list until any debt owed to the CACFP is repaid in full, even if the full 7 years has elapsed.

SYSTEM MANAGER AND ADDRESS:

Director, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302.

NOTIFICATION PROCEDURE:

Individuals may request from the system manager identified above information regarding this system of records or whether the system contains records pertaining to them. Any individual requesting such information must provide his or her name, birth date, and address.

RECORD ACCESS PROCEDURES:

Individuals may obtain information about records in the system pertaining to them by submitting a written request to the system manager listed above. The envelope and letter should be marked "Privacy Act Request" and must include the name and address of the individual for whom the request is made.

CONTESTING RECORD PROCEDURES:

Before being included in this system of records, operators of day care homes, responsible principals, and responsible individuals have been afforded the right to an administrative review of the findings that led to the action to disqualify them from CACFP participation. Therefore, the procedures set forth in this provision are not intended as an additional method of appeal.

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager listed above. The request should state the reason(s) for contesting the information and provide any available documentation to support the requested action.

RECORD SOURCE CATEGORIES:

Information in this system is provided to FNS by State agencies that administer the CACFP in the States.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–3116 Filed 2–11–04; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–

393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, March 17, 2004, in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on March 17, 2004, 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on March 17, 2004 begins at 10 a.m. at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include looking at project proposals for 2004 and electing a new chairperson.

Dated: February 6, 2004.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 04–3048 Filed 2–11–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Grant Program To Establish a Revolving Fund for Financing Water and Wastewater Projects

AGENCY: Rural Utilities Service (RUS), USDA.

ACTION: Notice of inquiry.

SUMMARY: The Rural Utilities Service is seeking comments from the public in its efforts to implement a new program, "Revolving Funds for Financing Water and Wastewater Projects" as authorized by the 2002 Farm Bill. The purpose of the program is to provide grants to qualified private, non-profit entities to capitalize revolving funds for the purpose of providing loans to eligible entities for pre-development costs or small capital improvement costs. RUS is issuing this notice of inquiry to assess the current interest of eligible entities in pursuing applications for grant funds with the purpose of establishing a revolving loan fund taking into consideration the following:

(1) The ability to accomplish the provisions of the 2002 Farm Bill section utilizing current appropriations;

(2) The level of interest of ultimate recipient for the loan funds.

DATES: Interested parties must submit written comments on or before March 15, 2004.

ADDRESSES: Submit written comments to Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., stop 1522, Washington, DC 20250–1570. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during normal business hours (7 CFR part 1).

FOR FURTHER INFORMATION CONTACT: Susan Loney, Loan Specialist, Water and Environmental Programs, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., stop 1570, Washington, DC 20250–1570. Phone: 202–720–9633. Fax: 202–720–0718. E-mail: *Susan.Loney@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law as Pub. L. 107–171. The Consolidated Farm and Rural Development Act was amended by section 6002 of the Farm Bill, by adding a grant program to establish a revolving loan fund. The Secretary may make grants to qualified, private, non-profit entities. The grant recipients will use the grant funds to establish a revolving loan fund. The loans will be made to eligible entities to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems.

Eligible entities for the revolving loan fund will be the same entities eligible to obtain loans, loan guarantees, or grants from the Rural Utilities Service program. The amount of financing to an eligible entity shall not exceed $100,000 and shall be repaid in a term not to exceed 10 years. The rate shall be determined in the approved grant workplan.

The Act stipulates that, among other provisions, the Administrator of RUS shall prescribe regulations to implement the Act and shall issue and otherwise administer the grant program. No funds were appropriated for the Act for fiscal year (FY) 2002. The appropriations bill for FY 2004 includes $500,000 for the grant program; therefore we are proceeding with the development of a regulation in order to implement the program.

The section also requires the Administrator of RUS to prescribe regulations to implement the provisions. We will be relying heavily on existing regulations within the Rural Development Program in order to develop regulations for this new program. The main referenced regulations will be the following:

(1) Rural Economic Development Loan & Grant Program (REDLG), 7 CFR 1703 Subpart B; *http://www.gpoaccess.gov/cfr/retrieve.html*

(2) Intermediary Lending Program (IRP), RD Instruction 4274–D *http://rdinit.usda.gov/regs/regs_toc.html* and

(3) Rural Housing regulation for the Housing Preservation Grant Program (HPG), RD Instruction 1944, Subpart N. *http://rdinit.usda.gov/regs/regs_toc.html*

RUS encourages interested parties to review the Act in its entirety on the USDA Web site at *http://www.usda.gov/farmbill/.*

Request for Comment

RUS is requesting comment and discussion on the following topics:

(1) RUS is seeking comments on the current lending experience of potential grant applicants;

(2) RUS is also interested in comments regarding a proposed minimum 20 percent matching funds contribution by the grant recipient; in-kind contributions will not be accepted as part of the 20 percent minimum;

(3) RUS is interested in comments regarding the percentage of the grant funds that may be used for administrative or servicing fees;

(4) RUS is seeking comments on the issue of a maximum of 75 percent of the project costs the revolving loan should pay, with the other 25 percent of project costs paid for from non-Federal sources;

(5) RUS is interested in comments regarding the use of the Central Servicing Center for the revolving loans, including processing loan payments, reviewing financial statements, and other responsibilities involved in loan servicing, and

(6) RUS is also seeking comments on the definition of eligible and ineligible projects for the revolving loan funds.

RUS invites interested parties including, but not limited to, financial and lending institutions, non-profit organizations, consumer groups, community organizations, and individuals to comment. Written comments should provide RUS any information or analysis believed to be relevant to the issues discussed in this Notice and to the implementation of the revolving loan program.

Dated: January 8, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–3113 Filed 2–11–04; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Illinois Advisory Committee to the Commission will convene a meeting 1 p.m. until 5 p.m. on Thursday, February 19, 2004, at the James R. Thompson Center, 100 West Randolph Street, Suite 15–500, Chicago, IL 60601. The purpose of the meeting is to discuss civil rights issues of interest and plan future activities.

Persons desiring additional information, should contact James Scales, Committee Chairperson at 618–453–1045 or Constance M. Davis, Director of the Midwestern Regional Office 312–353–8311, (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 5, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–3072 Filed 2–11–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

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.

Bureau: International Trade Administration.

Title: Application for Designation of a Fair.

OMB Number: 0625–0228.

Agency Form Number: ITA–4135P.

Type of Request: Regular Submission.

Burden: 100 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration's Tourism Industries office offers trade fair guidance and assistance to trade fair organizers, trade fair operators, and other travel and trade oriented groups. These fairs open doors to promising travel markets around the world. The "Application for Designation of a Fair" is a questionnaire that is prepared and signed by an organizer to begin the certification process. It asks the fair organizer to provide details as to the date, place, and sponsor of the fair, as well as license, permit, and corporate backers, and countries participating. To apply for the U.S. Department of Commerce sponsorship, the fair organizer must have all of the components of the application in order. Then, with the approval, the organizer is able to bring in their products in accordance with Customs laws. Articles which may be brought in include, but are not limited to, actual exhibit booths, exhibit items, pamphlets, brochures, and explanatory material in reasonable quantities relating to the foreign exhibits at a fair, and material for use in constructing, installing, or maintaining foreign exhibits at a fair.

Affected Public: Business or other for-profit.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; 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: February 9, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–3092 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: International Buyer Program: Application and Exhibitor Data.

Agency Form Number: ITA–4014P and ITA–4102P.

OMB Number: 0625–0151.

Type of Request: Regular submission.

Burden: 1,277 hours.

Number of Respondents: 6,470.

Avg. Hours Per Response: 5 minutes and 3 hours.

Needs and Uses: The International Trade Administration's International Buyer Program (IBP) encourages international buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The program has been successful having substantially increased the number of foreign visitors attending these selected shows as compared to the attendance when not supported by the program. The number of shows selected to the program increased from 10 in Fiscal Year 1986 to 32 in fiscal year 2004. Among the criteria used to select these shows are: export potential, international interest, scope of show, stature of show, exhibitor interest, overseas marketing, logistics, and cooperation of show organizers. Form ITA–4014P, *Exhibitor Data*, is used to determine which U.S. firms are interested in meeting with international business visitors and the overseas business interest of the exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in an IBP domestic trade show and is used to list the firm and its products in an Export Interest Directory, which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of international buyers to attend the show. The Form ITA–4102P, *Application,* is used by a potential show organizer to provide (1) his/her experience, (2) ability to meet the special conditions of the IBP, and (3) information about the domestic trade show such as the number of U.S. exhibitors and the percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by

writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *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: February 9, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–3093 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet March 2, 2004, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Update on pending regulations
4. Update on technology controls
5. Discussion on deemed exports/reports
6. Discussion on encryption controls
7. Discussion on "red flags"
8. Discussion on country group revisions
9. Update on the Automated Export System
10. Status reports from working groups

Closed Session

11. Discussion of matters that would include the disclosure of trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and of matters the premature disclosure of which would be likely to frustrate implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, EA/BIS MS: 1099D, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 5, 2004, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate the implementation of agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2–10(a)1 and 10(a)(3).

The remaining portions of the meeting will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: February 9, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–3124 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-421–807]

Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 2001–2002 administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period May 3, 2001 through October 31, 2002.

EFFECTIVE DATE: February 12, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 8, 2003, we published the preliminary results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands for the period May 3, 2001 through October 31, 2002. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 68341 (December 8, 2003). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), currently the final results of this administrative review are due on April 6, 2004. The Department, however, may extend the deadline for completion of the final results of a review if it determines it is not practicable to complete the final results within the statutory time limit. See 751(a)(3)(A) of the Tariff Act and section 351.213(h)(2) of the Department's regulations. In this case the Department has determined it is not practicable to complete this review within the statutory time limit because of significant issues which require additional time to evaluate. These include: treatment of section 201 tariffs; treatment of entries made during the period October 30, 2001 through November 28, 2001 ("gap period") in the margin calculation; and the calculation of various components of the cost of production (*e.g.*, cost of manufacture and general and administrative expenses). Therefore, the Department is extending the time limit for completion of the final results until June 5, 2004 in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: February 5, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–3105 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Amended Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of new shipper review.

SUMMARY: On December 16, 2003, the Department of Commerce announced the final results of the administrative review of the antidumping duty order on non-frozen apple juice concentrate, from the People's Republic of China for the period June 1, 2002, through November 30, 2002. These final results were published in the **Federal Register** on December 22, 2003.

On December 22, 2003, Yantai Golden Tide Fruits & Vegetable Food Company filed allegations of ministerial errors. Based on these allegations, we made changes to the margin calculation of Yantai Golden Tide Fruits & Vegetable Food Company. The final weighted-average dumping margin for this company is listed below in the section entitled "Amended Final Results."

EFFECTIVE DATE: February 12, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Stephen Cho, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3534 and (202) 482–3798, respectively.

Background

On December 22, 2003, the Department of Commerce ("the Department") published the final results in this administrative review. *See Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Final Results of New Shipper Review,* 68 FR 71065 (December 22, 2003) (*"Final Results"*). The period of review is June 1, 2002, through November 30, 2002.

On December 22, 2003, we received ministerial error allegations, filed pursuant to section 751(h) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 351.224(c)(2), from Yantai Golden Tide Fruits & Vegetable Food Company ("Golden Tide") regarding the Department's final margin calculation. Golden Tide requested that we correct the errors and publish a notice of amended final results in the **Federal Register**, pursuant to section 751(h) of the Act, and 19 CFR 351.224(e).

Scope of Review

The product covered by this order is certain non-frozen apple juice concentrate ("AJC"). Certain AJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Amended Final Results

In its ministerial allegations, Golden Tide disagrees with the Department's calculations of the financial ratios, points out an inconsistency in the margin calculation program, and argues that the Department is double counting an expense in ocean freight and brokerage and handling. After analyzing the record of this review, we have determined, in accordance with section 771(h) of the Act and 19 CFR 351.224, that we made a ministerial error in the margin calculation program for Golden Tide. We do not agree that we made a ministerial error in the calculation of the financial ratios, or ocean freight and brokerage and handling. For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* February 6, 2004 memorandum from team to Jeffrey May, through Susan H. Kuhbach entitled "Ministerial Error Allegation," which is on file in the Department's Central Records Unit located in the main Commerce building in Room B–099.

Therefore, in accordance with section 751(h) of the Act, and 19 CFR 351.224(e) we are amending the *Final Results* of AJC from the People's Republic of China ("PRC") to reflect the corrections noted above. Based on these revisions, we determine that the following weighted-average dumping margin exists for the period June 1, 2002, through November 30, 2002:

Exporter/manufacturer	Revised weighted-average margin percentage
Yantai Golden Tide Fruit & Vegetable Food Company	6.34

Cash Deposit Rates

Bonding will no longer be permitted to fulfill security requirements for shipments from Golden Tide of non-frozen apple juice concentrate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the amended final results of this new shipper review.

The following deposit rates will be effective upon publication of these amended final results for all shipments of AJC from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) and (a)(2)(B) of the Act: (1) The cash deposit rate for Golden Tide (*i.e.*, for subject merchandise manufactured and exported by Golden Tide) will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity and for subject merchandise exported by Golden Tide but not manufactured by them will continue to be the PRC-wide rate (*i.e.*, 51.74 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of these amended final results of review.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 6, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–3103 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 2002–2003 administrative review of the antidumping duty orderon stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2002 through June 30, 2003.

EFFECTIVE DATE: February 12, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 22, 2003, in response to requests from the respondent, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox), and Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Organization, Inc., and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners), we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750 (August 22, 2003). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 1, 2004 for the preliminary results and July 30, 2004 for the final results. The Department, however, may extend the deadline for completion of the preliminary results of a review if it determines it is not practicable to complete the preliminary results within the statutory time limit. *See* 751(a)(3)(A) of the Tariff Act and section 351.213(h)(2) of the Department's regulations. In this case the Department has determined it is not practicable to complete this review within the statutory time limit because of significant case issues which require additional time to evaluate. These include: the reporting of downstream sales; a buyback of Thyssen Krupp AG's (Mexinox's parent company) shares from the Government of Iran; and major inputs purchased from affiliated suppliers. Therefore, the Department is extending the time limit for completion of the preliminary results until July 30, 2004 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 U.S.C. 1675 (a)(3)(A) (2001)).

Dated: February 4, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–3104 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–853]

Notice of Postponement of Final Antidumping Duty Determination: Wax and Wax/Resin Thermal Transfer Ribbons from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Postponement of Final Antidumping Duty Determination.

EFFECTIVE DATE: February 12, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Enforcement Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2924 or (202) 482–0649, respectively.

SUMMARY: The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of Wax and Wax/Resin Thermal Transfer Ribbons from the Republic of Korea from February 29, 2004 to March 22, 2004.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2003, the Department published its *Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons From the Republic of Korea* (68 FR 71078). The preliminary determination was negative. The notice stated that the Department would issue its final determination no later than 75 days after the date of the preliminary determination (December 16, 2003).

Section 19 CFR 351.210(b)(2)(i) allows for a postponement of the final determination until not later than 135 days after the date of publication of the preliminary determination at the request of the petitioner, when the preliminary determination was negative.

Postponement of Final Determination

On January 23, 2004, the Department received a request from the petitioner, International Imaging Materials, Inc. (IIMAK), that the Department postpone the final determination until March 22, 2004. IIMAK made this request under section 19 CFR 351.210(b)(2)(i), which as noted above allows the petitioner to request a postponement of the final determination if the preliminary determination was negative. There are no compelling reasons for the Department to deny petitioner's request. Therefore, pursuant to section 19 CFR 351.210(b)(2)(i), the Department is postponing the deadline for issuing the final determination until March 22, 2004.

This notice of postponement is in accordance with section 735(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(b)(2).

Dated: February 5, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–3106 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Approval of Amendment No. 3 to the New Hampshire Coastal Program

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service (NOS), National Oceanic and

Atmospheric Administration (NOAA), DOC.

ACTION: Approval of the amendment to the New Hampshire Coastal Program.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) received a request from the State of New Hampshire to revise the New Hampshire Coastal Program (NHCP) inland coastal boundary. The State's request was made pursuant to section 306(d) of the Coastal Zone Management Act (CZMA) of 1972, as amended and OCRM's regulations (15 CFR part 923, subpart H). The expanded NHCP inland coastal boundary includes the full geographic jurisdiction of the State's 17 coastal municipalities. The NHCP boundary revision expands the State's coastal management boundary from its current, narrower delineation of a two-tier geographical system related to distance from the coastal water body features, to encompassing the entire jurisdiction of the 17 coastal municipalities.

Notice is hereby given that the Chief of the Coastal Programs Division (CPD) has reviewed the amendment request and has made a determination that the NHCP as amended will still constitute an approvable program and that the procedural requirements of section 306(d) of the CZMA have been met.

On November 7, 2002, the State published in the *Portsmouth Herald* a notice proposing to amend the NHCP inland coastal boundary and the date of the public hearing. Interested parties had until February 11, 2003, to submit comments to CPD. No comments were received. The State responded to all comments received at the public hearing and on March 7, 2003, OCRM received the State's response to comments with the amendment.

Notice of availability of the draft environmental assessment (EA) and proposed Finding of No Significant Impact (FONSI) was published in the **Federal Register** on Thursday, October 23, 2003 (volume 68, number 205), and interested parties had until November 24, 2003, to submit comments. The draft EA and proposed FONSI was made available on the NOAA Web or upon request. No comments were received and final findings of approvability were approved by the Assistant Administrator. This amendment is now officially part of the federally-approved New Hampshire Coastal Program.

FOR FURTHER INFORMATION CONTACT: Mr. William O'Beirne, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, N/ORM3, 11th Floor, Silver Spring, MD 20910, 301–713–3155, extension 160, or e-mail at *bill.o'beirne@noaa.gov*.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.)

Dated: February 6, 2004.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 04–3046 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–4026–06; I.D. 061703A]

RIN 0648–ZB55

Availability of Grant Funds for Fiscal Year 2004

AGENCY: National Oceanic and Atmospheric Administration (NOAA),

ACTION: Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2004.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces a third availability of grant funds for Fiscal Year 2004. This notice provides the general public program and application information related to the Agency's competitive grant offerings, and it containsthe information about those programs required to be published in the **Federal Register**. It should be noted that additional program initiatives unanticipated at the time of the publication of thisnotice may be announced through both subsequent **Federal Register** notices and the NOAA website: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML*.

DATES: Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section for each program.

FOR FURTHER INFORMATION CONTACT: For a copy of the full funding opportunity announcement and/or application kit, please contact the person listed as the information contactunder each program or access it via NOAA's website:*http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML*.

SUPPLEMENTARY INFORMATION: NOAA published its first omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarships/internships for Fiscal Year 2004 in the **Federal Register** on June 30, 2003 (68 FR 38678). The evaluation criteria and selection procedures contained in the June 30, 2003 omnibus notice are applicable to this solicitation. For a copy of the June 30, 2003 omnibus notice, please go to: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML*.

Electronic Access

The full funding announcement for each program is available via website:*http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML* or by contacting the program official identified below. These announcements will also be available through FedGrants at *http://www.fedgrants.gov*.

NOAA Project Competitions

This third omnibus notice describes funding opportunities for the following NOAA discretionary grant programs:

National Marine Fisheries Service

1. Right Whale Research Grants Program (RWRGP)

Summary Description: The North Atlantic right whale is among the world's most endangered cetaceans. The population is believed to number only about 300 individuals and appears to be declining. The lack of recovery is due in part to high mortality from human sources, notably fishing gear entanglements and vessel collisions. A Recovery Plan is in effect, and conservationof this species is a high priority for NOAA Fisheries. Research directed at facilitating such conservation or to provide monitoring of the population's status and health, is also a high priority for the agency. The RWRGP is conducted by NOAA to provide Federal assistance to eligibleresearchers for: (1) detection and tracking of right whales; (2) behavior of right whales in relation to ships; (3) relationships between vessel speed, size or design with whale collisions; (4) modeling of ship traffic along the Atlantic coast; (5) population monitoring and assessment studies; (6)reproduction, health and genetic studies; (7) development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) habitat quality studies including food quality and pollutantlevels; and (9) any other work relevant to the recovery of North Atlantic right whales.

Funding Availability:

This solicitation announces that a maximum of $2.0M may be available for

distribution under the FY 2004 RWRGP, in award amounts to be determined by the proposals and available funds. Applicants are hereby given notice that funds have not yet been appropriated for this program. There is no guarantee that sufficient funds will be available to make awards for all qualifiedprojects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. There is no set minimum or maximum amount for any award, and there is no limit on the number of applicationsthat can be submitted by the same researcher during the 2004 competitive grant cycle. However, there are insufficient funds to award financial assistance to every applicant. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years.

Statutory Authority: 16 U.S.C. 1380

CFDA: 11.472, Unallied Science Programs

Application Deadline: Proposals must be postmarked by 5 p.m. eastern time on April 12, 2004.

Address for submitting Proposals: NOAA Fisheries Right Whale Grants Program, Protected Species Branch, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495–2316.

Information Contact(s): Dr Phillip J. Clapham, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495–2316, email *rightwhalegrants@noaa.gov*.

Eligibility: Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, foreign governments, organizations under the jurisdiction of foreign governments, and state, local and Indian tribal governments. Federal agencies, or employees of Federal agencies are not eligible to apply.

Cost Sharing Requirementste:*http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML* or by contacting the program official identified below. These announcements will also be available through FedGrants at *http://www.fedgrants.gov*.

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Statutory Authority: 33 U.S.C. 883d, 15 U.S.C. 1540

CFDA: 11.473, Coastal Services Center.

Application Deadline: Proposals must be received by 5 p.m. Pacific time on March 29, 2004.

Address for submitting Proposals: Monterey Bay National Marine Sanctuary Office; 299 Foam Street, Monterey, CA 93940. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

Information Contact: Seaberry Nachbar, phone 831–647–4201, fax 831–647–4250, internet at *seaberry.nachbar@noaa.gov*.

Eligibility: Eligible applicants for both areas of interest ("Meaningful Outdoor Experiences" and Professional Development in the Area of Environmental Education for Teachers) are K-through–12 public and independent schools and school systems, institutions of highereducation, commercial and nonprofit organizations, state or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

Cost Sharing Requirements: No cost sharing is required under this program, however, the Pacific Services Center strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken intoconsideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. Bay Watershed Education & Training (B-WET) Program, Monterey Bay Watershed

Summary Description: The B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the Monterey Bay watershed. Funded projects provide "meaningful" outdoor experiences forstudents and professional development opportunities for teachers in the area of environmental education.

Funding Availability: This solicitation announces that approximately $475,000 may be available in FY 2004 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 15 grants will be awarded with these funds. About $250,000 will be for proposals that provide opportunities for students to participate in a "Meaningful"Outdoor Experience. About $225,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers. Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12–month awardperiod and any renewal of the award period will depend on submission of a successful proposal subject to technical and panel reviews, adequate progress on previous award(s), and available funding to renew the award. The NMSP may renew the grants funded under this announcement pending submission of successful proposals subject to technical and panel reviews, adequateprogress on previous award(s) and/or site visits, and available funding.

Statutory Authority: 16 U.S.C. 1440

CFDA: 11.429, Marine Sanctuary Program.

Application Deadline: Proposals must be received by 5 p.m. Pacific time on March 29, 2004.

Address for submitting Proposals: Monterey Bay National Marine Sanctuary Office; 299 Foam Street, Monterey, CA 93940. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

Information Contact: Seaberry Nachbar, phone 831–647–4201, fax 831–647–4250, internet at *seaberry.nachbar@noaa.gov.*

Eligibility: Eligible applicants for both areas of interest ("Meaningful Outdoor Experiences" and Professional Development in the Area of Environmental Education for Teachers) are K-through–12 public and independent schools and school systems, institutions of highereducation, commercial and nonprofit organizations, state or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

Cost Sharing Requirements: No cost sharing is required under this program, however, the National Marine Sanctuary Program strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds willbe taken into consideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

3. FY2004 Coastal Services Center Technical Assistance for Coastal Managers Program

Summary Description: The Technical Assistance for Coastal Managers program represents an NOAA/CSC effort to improve the use of monitoring data and geospatial information and technology in coastal management through collaborative work with members of the coastal management community that have expertise in community planning and resource management.

These activities will engage coastal managers from multiple organizations and levels of government and improve the management of coastal resources by applying geospatial knowledge, practices, and principles to new approaches for managing coastal resources. The Technical Assistance for Coastal Managers program contributes to other efforts at the NOAA/CSC and is designed to complement those efforts. Five program priorities will be targeted as a result of this announcement. They are:

(1) Increasing coordination and planning between local land trusts, state agencies, and regional planning agencies within New England.

(2) Development of a nationally consistent inventory system for geospatial data at the state level.

(3) Increasing education and research opportunities in the application of GIS and remote sensing technologies to coastal resource management, with emphasis on recruiting under-represented minorities.

(4) Incorporation of seagrass into the monitoring of the health of special management areas.

(5) Pilot projects supporting the Data Management and Communications component of the Integrated Ocean Observing System.

NOAA/CSC will give sole attention to individual proposals that address one or more of the program priorities described above. Proposals must clearly specify which program priority is being addressed. A proposal must contain tasks that address each element listed for the priority chosen. All awards will be in the form of a cooperative agreement, which allows the NOAA/CSC to have substantial involvement in the projects in addition to providing funds. Applicants must propose a role for the NOAA/CSC that constitutes the substantial involvement listed for that priority.

The names, affiliations, and phone numbers of relevant NOAA/CSC personnel are provided below. Prospective applicants should communicate with these focal points to ensure the role specified for the NOAA/CSC is practicable. Focal points cannot assist in the conceptual design of the project nor can they help with the design of specific elements included in a proposal.

Funding Availability for FY2004: This funding opportunity announces that approximately $1,750,000 will be available through this announcement for fiscal year 2004 for cooperative agreements. Proposals should be prepared assuming a total budget of no more than $500,000 for priorities (1) and (4) and $125,000 for priorities (2),(3) and (5). It is expected that one award willbe made for priority areas (1) through (4) and up to three awards for priority (5), depending on availability of funds.

Statutory Authority: 16 USC 1456c and 33 USC 1442

CFDA: 11.473, Coastal Services Center.

Application Deadline: Applicants applying for federal assistance under the Technical Assistance for Coastal Managers Program, must submit their applications by 5 p.m. local time March 15, 2004.

Address for submitting Proposals: Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413 to the attention of Violet Legette, room 218.

Information Contact(s): For administrative questions on all five program priorities. contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405–2413, or by phone at 843–740–1222, or by fax 843–740–1232, or via internet at *Violet.Legette@noaa.gov.* For technical questions on program priorities (1), (2), and (3), contact Hamilton Smillie, NOAA CSC; 2234 South Hobson Avenue, Room 153; Charleston, South Carolina 29405–2413, or by phone at 843–740–1192, or by fax 843–740–1315, or via internet at *Hamilton.Smillie@noaa.gov.* For technical questions on program priority (4), contact Pace Wilber, NOAA CSC; 2234 South Hobson Avenue, Room 234B; Charleston, South Carolina 29405–2413, or by phone at 843–740–1235, or by fax 843–740–1315, or via internet at *Pace.Wilber@noaa.gov.* For technical questions on program priority (5), contact Anne Ball, NOAA CSC; 2234 South Hobson Avenue, Room 211; Charleston, South Carolina 29405–2413, orby phone at 843–740–1229, or by fax 843–740–1315, or via internet at *Anne.Ball@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Office of Oceanic and Atmospheric Research

1. NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

Summary Description: The goal of the National Oceanic and Atmospheric Administration Educational Partnership Program with Minority Serving Institutions (EPP/MSI) is to strengthen the capacity of Minority Serving Institutions to foster student careers, entrepreneurship opportunities and advanced academic degrees in sciences directly related to NOAA's mission.The Environmental Entrepreneurship Program is designed to support education and training programs to engage students in applying the necessary skills, tools, methods and technologies is sciences directly related to NOAA's mission. This includes fostering educational opportunities in coastal, oceanic, atmospheric, environmental sciences, and remote sensing technology, coupled with training in economics, marketing, product development, and services to create jobs,businesses and economic development opportunities. The Environmental Entrepreneurship Program promotes partnerships with MSIs, NOAA and the public-private sector.

Funding Availability: Subject to appropriations, approximately $3 million will be available for the Environmental Entrepreneurship Program competition in 2004. Proposals are limited to a total of $500,000 for a maximum of three years and approximately six proposals will be funded.

Statutory Authority: 15 U.S.C. 1540.

CFDA: 11.481 Educational Partnership Program with Minority Serving Institutions.

Application Deadline: Proposals must be received by 5 p.m. Eastern time on March 15, 2004.

Address for submitting Applications: NOAA EPP/MSI: Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 10725, SSMC3, 1315 East-West Highway, Silver Spring, MD 20910. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

Information Contact: Jewel G. Linzey, Program Manager, Environmental Entrepreneurship Program, (301) 713–9437 ext. 118, facsimile (301) 713–9465, e-mail *Jewel.Griffin-Linzey@noaa.gov*

Eligibility: Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as:

(i) Historically Black Colleges and Universities,

(ii) Hispanic-Serving Institutions,

(iii) Tribal Colleges and Universities,

(iv) Alaska Native or Native Hawaiian Serving Institutions on the most recent "2003 United States Department of Education Accredited Post-Secondary Minority Institutions" list: *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.*

Cost Sharing Requirements: There is no cost-sharing requirement.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities.

Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations,*http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*).

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding anyother provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are

inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: February 5, 2004.

John J. Kelly, Jr.,

Deputy Under Secretary of Commerce for Oceans and Atmosphere

[FR Doc. 04–3083 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011206293–3182–02; I.D. 020504A]

Pacific Halibut Fishery; Guideline Harvest Levels for the Guided Recreational Halibut Fishery

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

ACTION: Notice of guideline harvest level.

SUMMARY: NMFS provides notice of the guideline harvest level (GHL) for the guided sport halibut fishery (charter fishery) in the International Pacific Halibut Commission (IPHC) regulatory area 2C of 1,432,000 pounds (649.5 mt), and a GHL in the IPHC regulatory area 3A of 3,650,000 pounds (1,655.6 mt).

DATES: The GHL is effective beginning 1200 hrs, Alaska local time (A.l.t.), February 1, 2004, and will close on 2359 hours, A.l.t., December 31, 2004. This period is specified by the IPHC as the sport fishing season in all waters of Alaska.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228, or email at *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS implemented a final rule to establish GHLs in IPHC regulatory areas 2C and 3A for the harvest of Pacific halibut (*Hippoglosses stenolepis*) by the charter fishery on August 8, 2003 (68 FR 47256). The GHL is intended to serve as a benchmark for participants in the charter fishery.

This announcement is consistent with § 300.65(i)(2), which requires that GHLs for IPHC regulatory areas 2C and 3A be specified by NMFS and announced by publication in the **Federal Register** no later than 30 days after receiving information from the IPHC which establishes the constant exploitation yield (CEY) for halibut in IPHC regulatory areas 2C and 3A for that year. Based on the regulations at § 300.65(i)(1), the CEY established by the IPHC in 2004 in regulatory area 2C results in a GHL of 1,432,000 pounds (649.5 mt), and, in regulatory area 3A, results in a GHL of 3,650,000 pounds (1,655.6 mt).

This notice does not require any regulatory action by NMFS and is intended to serve as an announcement of the GHL in Areas 2C and 3A for 2004. If a GHL is exceeded in 2004, based on information received from the Alaska Department of Fish and Game, NMFS will notify the North Pacific Fishery Management Council (Council) in writing within 30 days pursuant to regulations at § 300.65(i)(3). The Council is not required to take action, but may recommend additional management measures after receiving notification that a GHL has been exceeded.

Classification

This action does not require any additional regulatory action by NMFS and does not impose any additional restrictions on harvests by the charter fishery. If the GHL is exceeded in any year, the Council would be notified, but no action would be required to be taken. This process of notification is intended to provide the Council an indication of the level of harvests by the charter fishery in a given year and could be used to prompt future action.

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

Dated: February 10, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–3261 Filed 2–10–04; 2:55 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121903B]

Marine Mammals; File No. 764–1703–00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the National Museum of Natural History, Smithsonian Institution, Washington, D.C. 20008–2598 (Principal Investigator: Charles Potter), has been issued a permit to obtain, collect, and import/export specimens of marine mammals of the Orders Cetacea and Pinnipedia (except walrus) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s): See **SUPPLEMENTARY INFORMATION** for addresses.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Skidmore 301/713–2289.

SUPPLEMENTARY INFORMATION: On October 9, 2003, notice was published in the **Federal Register** (68 FR 58316) that a request for a scientific research permit to collect, obtain, and import/export samples taken from marine mammals of the Orders Pinnipedia (except walrus) and Cetacea had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing endangered and threatened fish and wildlife (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Documents are available in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Assistant Regional Administrator for Protected Resources, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7235; fax (907) 586–7012;

Assistant Regional Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4020; fax (562) 980–4027;

Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508) 281–9346; fax (508) 281–9371; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive

North, St. Petersburg, FL 33702–2432; phone (813) 570–5301; fax (813) 570–5517.

Dated: February 5, 2004.

Jennifer Skidmore,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–3084 Filed 2–11–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Corporation requested that OMB review and approve its emergency request by February 11, 2004, for a period of six (6) months. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, Ms. Shelly Ryan, (202) 606–5000, Ext. 549, or by e-mail at *sryan@cns.gov*.

Type of Review: Emergency request.

Agency: Corporation for National and Community Service.

Title: Peer Reviewer Application.

OMB Number: None.

Agency Number: None.

Affected Public: Citizens of the United States.

Total Respondents: 10,000.

Frequency: One time.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 7,500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The Corporation advertises grant competitions in AmeriCorps, Learn and Serve America, and Senior Corps. As part of its review process, the Corporation uses peer reviewers to determine the quality of the applications we receive.

The information collected will be used by the Corporation to select peer reviewers for each grant competition. All individuals interested in applying as peer reviewers or facilitators of the peer review panels will be required to complete a short electronic survey. Those selected as a peer reviewer will be required to complete part two of the electronic application.

Because the recently enacted budget calls for a major increase in AmeriCorps funding, the Corporation must immediately find a large number of peer reviewers to assist in peer reviews beginning in March, 2004. Therefore, there was not enough time for an initial public comment period prior to submitting this request to OMB. However, if OMB approves the emergency request for six (6) months, the Corporation will issue another Notice that will afford the public 60-days to provide its comments.

Dated: February 6, 2004.

Marlene Zakai,

Senior Policy Advisor on Grants Management.

[FR Doc. 04–3073 Filed 2–11–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Extension of a Currently Approved Collection; Comment Request

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy Under Secretary of Defense (Installations and Environment), Office of Economic Adjustment announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 12, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Director, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal, please write to the above address, or call the Director, Office of Economic Adjustment at (703) 604–6020.

Title and OMB Number: Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Number 0790–0004.

Needs and Uses: The information collection requirement is necessary to verify that Local Redevelopment Authority (LRA) recipients of no-cost Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest proceeds from the use of EDC property for seven years.

Affected Public: State, local or tribal governments; and Not-for-profit institutions.

Annual Burden Hours: 3,160.

Number of Respondents: 79.

Responses Per Respondent: 1.

Average Burden Per Response: 40 hours.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are LRAs that have executed no-cost EDC agreements with a Military Department that transferred property from a closed military installation. As provided by section 2821(a)(3)(B)(i) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65), such agreements require that the LRA reinvest the proceeds from any sale, lease or equivalent use of EDC property (or any portion thereof) during at least the first seven years after the date of the initial transfer of the property to support the economic redevelopment of, or related to, the installation. The Secretary of Defense may recoup from the LRA such portion of these proceeds not used to support the economic redevelopment of, or related to, the installation. LRA's are subject to this same seven-year reinvestment requirement if their EDC agreement is modified to reduce the debt owed to the Federal Government. Military Departments monitor LRA compliance with this provision by requiring an annual financial statement certified by an independent Certified Public Accountant. No specific form is required.

Dated: February 5, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–3017 Filed 2–11–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1300, Thursday, February 26, 2004 and 0800 Friday February 27, 2004.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on microwave technology, microelectronics, electro-optics, and electronics materials.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 6, 2004.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–3037 Filed 2–11–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Meeting

AGENCY: DoD Medicare-Eligible Retiree Health Care Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 56, Title 10, United States Code (10 U.S.C. 1114). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries. Persons desiring to: (1) Attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting, or (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Bill Klunk at (703) 696–7404 by May 3, 2004.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: May 26, 2004, 1:30 p.m.–5 p.m.

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Bill Klunk, DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203, (703) 696–7404.

Dated: February 6, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–3016 Filed 2–11–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States

AGENCY: Department of Defense (DoD).

ACTION: Final selection criteria.

SUMMARY: The Secretary of Defense, in accordance with section 2913(a) of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, 10 U.S.C. 2687 note, is required to publish the final selection criteria to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States.

EFFECTIVE DATE: February 12, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Mike McAndrew, Base Realignment and Closure Office, ODUSD(I&E), (703) 614–5356.

SUPPLEMENTARY INFORMATION:

A. Final Selection Criteria

The final criteria to be used by the Department of Defense to make recommendations for the closure or realignment of military installations inside the United States under the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, 10 U.S.C. 2687 note, are as follows:

In selecting military installations for closure or realignment, the Department of Defense, giving priority consideration to military value (the first four criteria below), will consider:

Military Value

1. The current and future mission capabilities and the impact on operational readiness of the Department of Defense's total force, including the impact on joint warfighting, training, and readiness.

2. The availability and condition of land, facilities and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.

3. The ability to accommodate contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.

4. The cost of operations and the manpower implications.

Other Considerations

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

6. The economic impact on existing communities in the vicinity of military installations.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel.

8. The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

B. Analysis of Public Comments

The Department of Defense (DoD) received a variety of comments from the public, members of Congress, and other elected officials in response to the

proposed DoD selection criteria for closing and realigning military installations inside the United States. The Department also received a number of letters from members of Congress regarding BRAC selection criteria before publication of the draft criteria for comment. The Department has treated those letters as comments on the draft criteria and included the points raised therein in our assessment of public comments. The comments can be grouped into three categories: general, military value, and other considerations. The following is an analysis of these comments.

(1) General Comments

(a) Numerous commentors expressed support for the draft criteria without suggesting changes and used the opportunity to provide information on their particular installations. DoD understands and greatly appreciates the high value that communities place on the installations in their area and the relationships that have emerged between the Department and local communities. Both the BRAC legislation and DoD's implementation of it ensure that all installations will be treated equally in the base realignment and closure process.

(b) Several commentors gave various reasons why a particular installation, type of installation, or installations designated by Congress as unique assets or strategic ports, should be eliminated from any closure or realignment evaluation. Public Law 101–510 directs DoD to evaluate all installations equally. The Department has issued guidance to all DoD Components instructing them to treat all installations equally.

(c) Some commentors indicated the selection criteria should reflect the statutory requirement of section 2464 of title 10, United States Code, to maintain a core logistics capability, and the statutory limitation of Section 2466 that the Department spend no more than 50% of its depot-level maintenance and repair funds to contract for the performance of such workload. Consistent with the development and application of the criteria used in all previous rounds, it is inappropriate to include any statutory constraints in the selection criteria because they are too varied and numerous and could preclude evaluation of all installations equally. The absence of these requirements in the text of the criteria, however, should not be construed as an indication that the Department will ignore these or any other statutory requirements or limitations in making its final recommendations.

(d) The Department did not receive any requests from local governments that a particular installation be closed or realigned pursuant to section 2914(b)(2) of Public Law 101–510, which states that the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the local government would approve of the closure or realignment of the installation. A few private citizens, however, asked that a particular installation be closed or that operations be restricted to limit noise or other community impacts.

(e) A few commentors expressed concern over the broad nature of the criteria and requested greater detail, including in some cases requests for definitions, specificity regarding select functions, and explanations of when a closure as opposed to a realignment was appropriate. While the Department appreciates a desire for detail, the inherent mission diversity of the Military Departments and Defense Agencies makes it impossible for DoD to specify detailed criteria that could be applied to all installations and functions within the Department. Broad criteria allow flexibility of application across a wide range of functions within the Department.

(f) A few commentors recommended assigning specific weights to individual criteria and applying those criteria uniformly across the Department. It would be impossible for DoD to specify weights for each criterion that could be applied uniformly to all installations and functions because of the inherent mission diversity within the Department. Other than the requirement to give the military value criteria priority consideration, the numbering reflected in the listing of the criteria are not intended to assign an order of precedence to an individual criterion.

(g) One commentor suggested that section 2687 of title 10, United States Code, requires the Department to exclude military installations with less than 300 authorized civilian positions from consideration for closure or realignment under BRAC. While section 2687 allows the Department to close or realign such installations outside the BRAC process, it does not preclude their consideration within BRAC. In order for the Department to reconfigure its current infrastructure into one in which operational capacity maximizes both warfighting capability and efficiency, it must undertake an analysis of the totality of its infrastructure, not just those with 300 or more authorized civilian positions.

(h) Some commentors were concerned that BRAC would be used as a "back door" method of privatizing civilian positions. DoD's civil service employees are an integral part of successful accomplishment of defense missions. Section 2904 specifically limits the ability of the Secretary of Defense to carry out a privatization in place of a military installation recommended for closure or realignment to situations where that option is specified in the recommendations of the Commission and determined by the Commission to be the most cost-effective method of implementation of the recommendation. Therefore, if any closure or realignment recommendation includes privatization, it will be clearly stated in the recommendation.

(i) One commentor suggested that the Department needed to conduct a comprehensive study of U.S. military installations abroad and assess whether the existing U.S. base infrastructure meets the needs of current and future missions. The BRAC statute applies to military installations inside the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States. As a parallel action, the Secretary of Defense has already undertaken a comprehensive study of global basing and presence—the Integrated Global Presence and Basing Strategy (IGPBS). BRAC will accommodate any decisions from that study that relocate forces to the U.S. DoD will incorporate our global basing strategy into a comprehensive BRAC analysis, thereby ensuring that any overseas redeployment decisions inform our recommendations to the BRAC Commission.

(j) A few commentors cautioned the Department against using the authority provided by section 2914(c) to close and retain installations in inactive status because of the negative effect such action might have on the relevant local community. The Department recognizes that job creation gained through the economic reuse of facilities is critically important to mitigate the negative impact of BRAC recommendations. As such, the Department will exercise the utmost caution and consideration when exercising its authority to retain installations in an inactive status. It should be noted that the Department has always had this authority, even though its appearance in the authorizing legislation for the 2005 round would indicate it is a new authority. As such, the Department's actions in the four previous base closure rounds demonstrate that it will be exercised judiciously.

(k) A few commentors asked the Department to give priority to relocating activities within the same state or local community. The Department recognizes that the economic impact of BRAC reductions can be lessened by moving functions to geographically proximate locations. As specified in the BRAC legislation, however, military value must be the primary consideration when making these decisions. Specifically, those factors that are set out in criteria one through four are the most important considerations when selecting receiving locations.

(2) Military Value Comments

(a) A majority of comments received dealt with the military value criteria. In the aggregate, military value refers to the collection of attributes that determine how well an installation supports force structure, functions, and or missions.

(b) One commentor was concerned that the Department would lose sight of the value of service-unique functions when applying criteria that include reference to jointness. The Department recognizes the distinct military value provided by both service-unique functions and those functions that are performed by more than one service. Accordingly, the Secretary established a process wherein the Military Departments are responsible for analyzing their service-unique functions, while Joint Cross-Service Groups, which include representatives from each of the military services, analyze the common business-oriented support functions.

(c) A few commentors were concerned that criterion two, which captures the legislative requirements set out in Section 2913(b)(1)–(3), did not recite verbatim the language in the BRAC statute. They urged incorporation of "Preservation of" into the final criteria to ensure that the 2005 BRAC round preserve the infrastructure necessary to support future military requirements. Selection criteria must facilitate discriminating among various military installations, assessing the value of each and comparing them against each other to see which installations offer the greatest value to the Department. Criteria one through three compare the respective assets of different military installations against each other, valuing those with more of those assets more highly than those without those assets. By valuing the installations with more of these assets higher, the Department "preserves" these valuable assets set out in the criteria. If the Department were to modify the criteria to include "preservation," as suggested in the comment, we would be forced to assess how an installation "preserves" something rather than whether an installation possesses the assets worthy of preservation, potentially undercutting the statutory factors rather than furthering those factors. While the criteria proposed by the Secretary do not recite the statutory language verbatim, they do fully reflect the nine factors set out in the statute, and as such are legally sufficient. Additionally, the Department does not agree with the assertion that the criteria must contain the word "preservation" in order to comply with congressional intent. The report of the Committee of Conference to accompany S. 1438, the National Defense Authorization Act for Fiscal Year 2002, refers to the preceding list of requirements as "factors that must be evaluated and incorporated in the Secretary's final list of criteria." The BRAC statute does not require, as a matter of law, a verbatim recitation of the factors set out in Section 2913. On the contrary, a requirement for a verbatim recitation is inconsistent with the requirements for publication of draft criteria, an extensive public comment period, and finalization of criteria only after reviewing public comments. If the Secretary were bound to adopt the statutory language as his criteria, the detailed publication process required by Congress would be meaningless.

(d) A few commentors stressed the importance of maintaining a surge capacity. Surge requirements can arise for any number of reasons, including contingencies, mobilizations, or extended changes in force levels. Criteria one and three capture the concept of surge capacity as they are currently drafted. As was the case with the criteria used in the past three rounds of BRAC, criterion one requires the Department to consider "current and *future*" mission capabilities and criterion three assesses the "ability to accommodate *contingency, mobilization and future total force requirements*". In 1999, after three rounds of BRAC using these criteria (and similar criteria used in the first round of BRAC), the Department looked closely at its ability to accommodate increased requirements and found that even after four rounds of base realignments and closures it could accommodate the reconstitution of 1987 force structure—a significantly more robust force than exists today—which is a more demanding scenario than a short term mobilization. Further, as required by Section 2822 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136), the Secretary, as part of his assessment of probable threats to national security, will determine the "potential, prudent, surge requirements to meet those threats."

(e) Numerous commentors stated that previous BRAC rounds failed to evaluate research, development, test and evaluation, engineering, procurement, and technical facilities accurately, because of the lack of effective criteria to consider the features essential to their performance. They noted that the criteria applied to such facilities in previous rounds were largely the same criteria that were applied to operations, training and maintenance facilities serving very different functions. DoD highly values its research, development, test and evaluation, engineering, procurement, and technical facilities. Research, development, engineering, procurement and other technical capabilities are elements of military value captured within criteria one through four. The Department will consider military value in a way that incorporates these elements.

(f) Several commentors also raised concerns that the criteria did not take into account the availability of intellectual capital, critical trade skills, a highly trained work force, allied presence, and the synergy among nearby installations and between DoD facilities and nearby industrial clusters and academic institutions. DoD appreciates the importance of having an available pool of intellectual capital and critical trade skills that make up, and allow us to recruit and retain, a highly trained and experienced work force, as well as the synergy provided by nearby facilities. To the extent that the availability of highly skilled civilian or contractor work forces and relationships with local institutions and other installations influence our ability to accomplish the mission, they are captured in criteria one, three and seven.

(g) Some commentors urged DoD to consider strategic location and irreplaceable properties and facilities as part of military value. The availability and condition of land and facilities are an integral part of military value, specifically covered under criterion two. Furthermore, the strategic location of DoD facilities informs criteria one and three.

(h) Some commentors said that an installation's demonstrated ability to transform, streamline business operations, and manage successful programs should be considered as part of military value. In some instances commentors praised the outstanding work of a particular installation or group of installations. DoD recognizes and appreciates the outstanding work done by its installations. Criteria one

and three capture both the ability to perform a mission and the quality of that work—both of which, in turn, capture the willingness to transform and streamline.

(i) Some commentors recommended that DoD consider an installation's role in homeland defense, security, domestic preparedness, and the war on terrorism as a part of military value. Some suggested that an installation's proximity to and ability to protect vital national assets, transportation facilities, major urban centers and international borders was a key consideration, while others indicated that geographic diversity or complete isolation should be the real objective in order to enhance security. The security of our nation, whether expressed as homeland defense, domestic preparedness, or fighting the war on terrorism, is an important DoD mission. Both the BRAC legislation and DoD's implementation of it ensure that homeland defense and security are considered in the BRAC process. Specifically, criterion two requires DoD Components to consider "[t]he availability and condition of land, facilities and associated airspace * * * as staging areas for the use of the Armed Forces in homeland defense missions." Additionally, as a mission of DoD, all of these issues are captured by the requirements of criteria one and three.

(j) Some commentors noted that, in some areas of the country, expanding civilian use of adjacent lands is encroaching upon military properties and has impacted critical training requirements and preparations for deployments. Some said that installations located in rural regions with access to large areas of operational airspace over land and water as well as direct ingress/egress routes from water to land will be key to future military operational and training requirements. The issue of encroachment is captured by criterion two which requires the Department to consider the availability and condition of land, facilities and associated airspace.

(k) Some commentors recommended that DoD consider the difficulty of relocating missions and functions requiring federal nuclear licenses or environmental permits, as part of military value. DoD recognizes the importance of federal licenses and permits. The ability to accommodate current and future force requirements, which includes Federal licensing and permitting requirements, is covered under criteria one, two and three. Furthermore, the impact of environmental compliance activities (*i.e.*, permits and licenses) is also specifically captured in criterion eight.

(l) A few commentors were concerned that the "cost of operations" language in criterion four would not be a meaningful measure of military value because it would appear to encourage the closure or realignment of an installation in a high cost of living area, despite important strategic reasons for retaining that installation. Because DoD operates in a resource constrained environment, all resources—land, facilities, personnel, and financial—have value. Monetary resources are an inextricable component of military value because all equipment, services, and military salaries are dependent on the availability of this resource. Therefore, the extent to which one installation can be operated at less cost than another is worthy of consideration, particularly for business operations, although the importance of this will vary depending on the function involved.

(3) Other Considerations

(a) Criteria five through eight deal with other considerations, such as costs and savings and economic, community, and environmental impacts.

(b) Some commentors recommended a standardized interpretation of the cost criteria. The Department agrees that costs and savings must be calculated uniformly. To that end, we are improving the Cost of Base Realignment Actions (COBRA) model used successfully in previous BRAC rounds to address issues of uniformity and will provide it to the Military Departments and the Joint Cross-Service Groups for calculation of costs, savings, and return on investment in accordance with criterion five.

(c) Several commentors stated that total mission support costs associated with reestablishing or realigning a military activity should be considered, including such things as the costs of reestablishing intellectual capital and relationships with nearby businesses and academic institutions, the costs associated with mission disruption, the costs of contractor relocations, and the availability and reliability of raw materials and supplies. DoD has improved the Cost of Base Realignment Actions (COBRA) model used in prior BRAC rounds to more accurately and appropriately reflect the variety of costs of base realignment and closure actions. DoD will provide it to the Military Departments and the Joint Cross-Service Groups for calculation of costs, savings, and return on investment in accordance with criterion five.

(d) A few commentors stated DoD should consider the total resource impact of a recommendation to the Federal Government and reflect both costs and savings. The Department understands the decision making value of comprehensive consideration of costs. In accordance with Section 2913(d), the Department's application of its cost and savings criterion will "take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations." The Department will issue guidance to the Military Departments and the Joint Cross Service Groups that incorporates this requirement in the application of criterion five.

(e) Some commentors asked that DoD consider the impact of closing or realigning an installation on the local community and on military retirees in the area who rely on the installation's medical facilities, commissary, and other activities. While military value criteria must be the primary consideration, the impact of a closure or realignment on the local community, including military retirees residing therein, will be considered through criteria five, six, and seven. The DoD Components will calculate economic impact on existing communities by measuring the effects on direct and indirect employment for each recommended closure or realignment. These effects will be determined by using statistical information obtained from the Departments of Labor and Commerce. This is consistent with the methodology used in prior BRAC rounds to measure economic impact.

(f) Some commentors asked that DoD recognize that their state, facility or community was affected by closures and realignments in prior BRAC rounds and that it, therefore, be protected in this round. These and other commentors suggested that the Department view economic impact cumulatively or take into account the need of a community for an economic boost. Still others suggested that the current BRAC round respect decisions made in prior BRAC rounds—and not take any action inconsistent with a prior recommendation. DoD recognizes the impact that BRAC can have on local communities, and makes every effort in the implementation phase of BRAC to soften the effect of closures and realignments on local communities. The BRAC statute, however, specifically requires the Secretary to consider all military installations in the United States equally, without regard to whether that installation has previously

been considered for closure or realignment.

(g) The United States General Accounting Office (GAO) stated that the draft criteria, if adopted, would add an element of consistency and continuity in approach with those of the past three BRAC rounds. It noted that its analysis of lessons learned from prior BRAC rounds affirmed the soundness of these basic criteria and generally endorsed their retention for the future, while recognizing the potential for improving the process by which the criteria are used in decision-making. It suggested that DoD clarify two issues: (1) The Department's intention to consider potential costs to other DoD activities or federal agencies that may be affected by a proposed closure or realignment recommendation under the criterion related to cost and savings, and (2) the extent to which the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities will be included in cost and savings analyses of individual BRAC recommendations.

As discussed above, DoD recognizes that the BRAC legislation required it to consider cost impacts to other DoD entities and Federal agencies in its BRAC decision-making and will issue implementing guidance to ensure that such costs are considered under criterion five.

On the second point raised by GAO, which was echoed by a few other commentors, DoD policy guidance has historically stipulated that environmental restoration costs were not to be factored into analyses of costs and savings when examining potential installations for realignment and closure, since DoD was obligated to restore contaminated sites on military installations regardless of whether or not they were closed. DoD concurs with GAO that determining such costs could be problematic in advance of a closure decision, since reuse plans for BRAC properties would not yet be determined and studies to identify restoration requirements would not yet be completed. As suggested, DoD will issue guidance to clarify consideration of environmental costs.

(h) A few commentors suggested that criterion seven—the ability of both the existing and potential receiving communities" infrastructure to support forces, missions, and personnel "be included in military value and receive priority consideration. DoD has demonstrated in previous BRAC rounds that factors falling within this criterion can be applied within the military value criteria if they directly relate to the elements of criteria one through four.

(i) A few commentors asked the Department to consider the social as well as the economic impact on existing communities. The Department recognizes that its installations can be key components of the social fabric of the communities in which they are located, in both a positive or negative sense. For instance, the BRAC statute requires that the Department consider any notice received from a local government in the vicinity of a military installation that it would approve of the closure or realignment of the installation. Additionally, because social impact is an intangible factor that would be difficult for the Department to quantify and measure fairly, issues of social impact are best addressed to the BRAC Commission during its process of receiving public input.

(j) A few commentors wanted to ensure that, as the Department considers the ability of community infrastructure to support the military, DoD view that ability as evolving, and consider the willingness and capacity of the community to make additional investments. The infrastructure provided by the communities surrounding our installations is a key component in their efficient and effective operation. As the BRAC legislation has established a stringent timetable for the Secretary to arrive at recommendations, the Department must focus on the existing, demonstrated ability of a community to support its installation, especially as potential investment actions may not translate into reality.

(k) One commentor requested clarification that criterion eight " environmental impact "includes consideration of the impact of the closure or realignment on historic properties. As has been the case in prior rounds of base closure, the Department will consider historic properties as a part of criterion eight.

(l) Several commentors stated that the criteria should consider the effect of closures and realignments on the quality of life and morale of military personnel and their families. The Department agrees that the quality of life provided to its military personnel and their families significantly contributes to the Department's ability to recruit and retain quality personnel. Military personnel are better able to perform their missions when they feel comfortable that their needs and those of their families are taken care of. Quality of life is captured throughout the criteria, particularly criterion seven.

C. Previous Federal Register References

1. 55 FR 49678, November 30, 1990: Draft selection criteria and request for comments.
2. 55 FR 53586, December 31, 1990: Extend comment period on draft selection criteria.
3. 56 FR 6374, February 15, 1991: Final selection criteria and analysis of comments.
4. 57 FR 59334, December 15, 1992: Final selection criteria.
5. 59 FR 63769, December 9, 1994: Final selection criteria
6. 68 FR 74221, December 23, 2003: Draft selection criteria and request for comments.
7. 69 FR 3335, January 23, 2004: Extend comment period on draft selection criteria.

Dated: February 10, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–3247 Filed 2–10–04; 2:04 pm]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; William F. Goodling Even Start Family Literacy Programs: Grants for Indian Tribes and Tribal Organizations; Notice Inviting Applications for New Awards for Fiscal Years (FY) 2003 and 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.258.

DATES: Applications Available: February 12, 2004.

Deadline for Transmittal of Applications: April 2, 2004.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations. Applicable definitions of the terms "Indian tribe" and "tribal organization" are in section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b.

Estimated Available Funds: $4,370,000. This is the combined estimate from both FY 2003 and FY 2004 funds. We are inviting applications at this time for new awards for both FY 2003 and for FY 2004 to make the most efficient use of competition resources. The Department may use the funding slate resulting from this competition as the basis for future years' awards.

Estimated Range of Awards: $150,000–$250,000 per year.

Estimated Average Size of Awards: $200,000 per year.

Estimated Number of Awards: 17–29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The William F. Goodling Even Start Family Literacy Programs (Even Start), including the grants for Indian tribes and tribal organizations, are intended to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations. These programs are implemented through cooperative activities that: Build on high-quality existing community resources to create a new range of educational services for most-in-need families; promote the academic achievement of children and adults; assist children from low-income families to meet challenging State content and student achievement standards; and use instructional programs that are based on scientifically based reading research and on the prevention of reading difficulties for children and adults, to the extent such research is available. A description of the required fifteen program elements for which funds must be used is included in the application package.

Priority: We are establishing this priority for the combined FY 2003 and FY 2004 grant competition and any future awards made on the basis of the funding slate from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA).

Absolute Priority: For this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Early Childhood Education Services in a Group Setting

A project must offer some center-based early childhood education services.

The research in early childhood education shows that educational services for young children that are provided in a center are more likely to be intensive and therefore result in significant learning outcomes than non-center based services. The Third National Even Start Evaluation showed that children who participated more intensively in early childhood education scored higher on standardized literacy skills. A center is defined, for the purpose of this competition, as a place where early childhood educational services can be provided to a group of children from multiple households.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, section 437(d)(1) of GEPA (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority. This is the first competition for this program under the No Child Left Behind Act, Public Law 107–110, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the rule in this notice under section 437(d)(1) of GEPA. These rules will apply to the FY 2003 and FY 2004 combined grant competition only.

Program Authority: 20 U.S.C. 6381a(a)(1)(C).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $4,370,000. This is the combined estimate from both FY 2003 and FY 2004 funds. We are inviting applications at this time for new awards for both FY 2003 and for FY 2004 to make the most efficient use of competition resources. The Department may use the funding slate resulting from this competition as the basis for future years' awards.

Estimated Range of Awards: $150,000–$250,000 per year.

Estimated Average Size of Awards: $200,000 per year.

Estimated Number of Awards: 17–29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Federally recognized Indian tribes and tribal organizations. Applicable definitions of the terms "Indian tribe" and "tribal organization" are in section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b.

2. *Cost Sharing or Matching:* Cost sharing requirements for these grants are detailed in section 1234(b) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA).

3. *Other:* In general, a family is eligible to participate in an Even Start project for Indian tribes and tribal organizations if they qualify under the following requirements: (a) The parent(s) is eligible to participate in adult education and literacy activities under the Adult Education and Family Literacy Act, the parent(s) is within the State's compulsory school attendance age range (in which case a local educational agency must provide or ensure the availability of the basic education component), or the parent(s) is attending secondary school; and (b) the child (or children) is younger than eight years of age. More specific information on family eligibility is contained in section 1236 of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.258. You also may obtain a copy of the application package on the Department's website at the following address: *http://www.ed.gov/programs/evenstartindian/applicant.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program competition. Page and Appendices Limits: The application narrative (Part III of the application) is where you, the applicant, address the absolute priority and the selection criteria that reviewers use to evaluate your application. In addition, the budget narrative is where you provide an itemized budget breakdown, by project year, for each

budget category listed in sections A and B of Budget Form 524. You must limit your application narrative (Part III of the application) to the equivalent of no more than 25 typed pages and limit the budget narrative to the equivalent of no more than 3 typed pages, using the following standards.

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application and budget narratives, including titles, headings, footnotes, quotations, references, and captions. You may single space information in tables, charts, or graphs, and you may single space the Appendices.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). You may use other point fonts for any tables, charts, graphs, and the Appendices, but those tables, charts, graphs and Appendices should be in a font size that is easily readable by the reviewers of your application.
- Any tables, charts, or graphs are included in the application narrative and budget narrative page limits.
- You must limit the Appendices to the curriculum vitae or position descriptions of no more than 5 people (including key contract personnel and consultants) and endnote citations to no more than 2 pages for the scientifically based reading research upon which your instructional programs are based.
- Other application materials are limited to the specific materials indicated in the application package, and may not include any video or other non-print materials.
- Our reviewers will not read any pages of your application that—
- Exceed the page limits if you apply these standards; or
- Exceed the equivalent of the page limits if you apply other standards.

In addition, our reviewers will not read or view any Appendices or enclosures (including non-print materials such as videotapes or CDs) other than those described in this notice and the application package.

3. *Submission Dates and Times:*

Applications Available: February 12, 2004.

Deadline for Transmittal of Applications: April 2, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program competition.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Recipients of an Even Start Indian tribe and tribal organization grant may not use funds awarded under this competition for the indirect costs of a project, or claim indirect costs as part of the local project share. (section 1234(b)(3) of the ESEA.) Grant recipients may request that the Secretary waive this requirement, however. To obtain a waiver, a recipient must demonstrate to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start program. (section 1234(b)(2) of the ESEA.) Information about requesting a waiver is in the application package. We reference regulations outlining additional funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Even Start grants for Indian Tribes and Tribal Organizations—CFDA Number: 84.258 is one of the programs included in the pilot project. If you are an applicant under Even Start grants for Indian Tribes and Tribal Organizations, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for Even Start grants for Indian Tribes and Tribal Organizations and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed in section VII of this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Even Start grants for Indian Tribes and Tribal Organizations at: *http://e-grants.ed.gov/.*

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are in section 75.210 of EDGAR, 34 CFR 75.210. Further information about each of these selection criteria is in the application package. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Quality of the project design.* (30 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(3) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(b) *Quality of project services.* (25 points) The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(2) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(c) *Quality of project personnel.* (10 points) The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources.* (10 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(2) The extent to which the budget is adequate to support the proposed project.

(e) *Quality of the management plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factor:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of project evaluation.* (15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements:

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs to assess their performance and effectiveness. The Department has established a set of indicators to assess the effectiveness of

the Even Start program, which Tribal Even Start projects will use to measure increases in the: (1) Percentages and numbers of adults achieving significant learning gains on measures of literacy and mathematics, and percentages and numbers of limited English proficient (LEP) adults who achieve significant learning gains on measures of English language acquisition; (2) percentages and numbers of Even Start school-age parents who earn a high school diploma, and percentages and numbers of Even Start non-school-age parents who earn a high school diploma or a General Equivalency Diploma (GED); and (3) percentages and numbers of Even Start children entering kindergarten who achieve significant learning gains on measures of language development and reading readiness. All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Doris Sligh, U.S. Department of Education, 400 Maryland Avenue SW., room 3W246, Washington, DC 20202–6132. Telephone: (202) 260–0999, or by e-mail: *Doris.Sligh@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: February 6, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–3123 Filed 2–11–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42064 entitled "Mining Industry of the Future Grand Challenge Technology Concepts for the Mining Industry." NETL, on behalf of the Energy Efficiency Renewable Energy (EERE)–ITP Industrial Technologies Program (ITP), is seeking cost-shared research and development applications for technologies which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic mining industry.

DATES: The draft funding opportunity announcement will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about February 9, 2004. The final funding opportunity announcement will also be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about March 1, 2004. Applicants can also obtain access to the draft and final funding opportunity announcements through DOE/NETL's Web site at *http://www.netl.doe.gov/business*. Questions and comments regarding the content of the announcement should be submitted through the "Submit Question" feature of IIPS at *http://e-center.doe.gov*. Locate the announcement on IIPS and then click on the "Submit Question" button. You will receive an electronic notification that your question has been answered. Responses to questions may be viewed through the "View Questions" feature. If no questions have been answered, a statement to that effect will appear. You should periodically check "View Questions" for new questions and answers.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880/3610 Collins Ferry Road, E-mail Address: *crystal.sharp@netl.doe.gov*, Telephone Number: 304–285–4442.

SUPPLEMENTARY INFORMATION: While the mining industry uses many of the latest evolutionary technologies in their operations, further revolutionary energy efficient processes and technological advances in extraction, materials handling, and beneficiation/processing are needed to enable the mining industry to remain competitive. The objective of the targeted announcement is to support the stated national interests by funding research and development (R&D) projects that address technology needs presented at the Grand Challenge workshops in 2003 as well as those described in the Energy Analysis. The Energy Analysis is a presentation showing the results of an energy analysis study to demonstrate where the largest energy saving opportunities are in mining and is located at *http://www.oit.doe.gov/mining/pdfs/energyanalysis.pdf*. The Grand Challenge Technology Concepts for the Mining Industry "focuses on developing revolutionary energy efficiency improvements in the areas of extraction, materials handling, and beneficiation/processing in the mining industry." The three key industry-identified research areas are the Energy Efficient Alternatives to Current Technologies in Extraction. Materials Handling, and Beneficiation/Processing that offer the largest opportunities for energy savings presented in the Energy Analysis. The areas of interest are activities in the mining industry that is integral to the operations of Surface Mining, Underground Mining, and Mineral Processing. Surface Mining, also called strip mining, placer mining, trench mining, opencast, opencut mining, and/or open pit mining is done at or near the surface where the overburden can be removed without too much expense. Interests include but are not limited to: solution mining, materials handling, systems integration and automation/robotics for all mining at or near the surface where overburden can be economically removed. Underground Mining is generally done where the valuable mineral is located deep enough where it is not economically viable to be removed by surface mining. Interests include but are not limited to: Near face (such as intelligent or remote controlled robotics), ancillary (activities not directly involved in ore mining such as ventilation and improved health conditions). Maintenance operations and technical services are also of

interest. Mineral and Coal Processing encompasses unit processes required to size, separate, and process for eventual use. These processes include comminution (crushing and grinding), sizing (screening or classifying), separation (physical or chemical), dewatering (thickening, filtration, or drying), and hydrometallurgical or chemical processing. The Energy Analysis forms the basis of this announcement and characterizes the three interest areas as follows:

Area of Interest 1: Energy Efficient Alternatives to Current Technologies in Extraction—Extraction is the removal of ore from surface or underground mines. This involves excavating activities such as digging, blasting, breaking, loading and hauling. Interests include revolutionary energy alternatives to mineral processes using equipment or processes to mine and process ore.

Area of Interest 2: Energy Efficient Alternatives to Material Handling—Materials handling is the use of any equipment or process to transport ore and waste. Interests include revolutionary energy alternatives with regard to energy used per unit of output to current technologies involving the use of equipment or processes to handle and transport ore and waste.

Area of Interest 3: Energy Efficient Alternatives to Current Technologies in Beneficiation and Processing—Beneficiation and Processing is the use of equipment or processes to crush, grind, concentrate and/or separating the ore from the unwanted material. Interests include revolutionary energy alternatives with regard to energy use per unit of output to current technologies using equipment or processes to crush, grind, concentrate and/or separating the ore from the unwanted material.

Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The funding opportunity announcement will only be made available in IIPS, no hard (paper) copies of the funding opportunity announcement and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the funding opportunity announcement will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the announcement.

Issued in Pittsburgh, PA, on February 4, 2004.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 04–3095 Filed 2–11–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–152–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 4, 2004.

Take notice that on January 30, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective March 1, 2004.

MRT states that the purpose of this filing is to revise its tariff to remove an obsolete rate schedule (Rate Schedule USAS) and to make certain changes primarily of a housekeeping nature.

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. E4–260 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–302–001]

Cheyenne Plains Gas Pipeline Company, LLC; Notice of Application

November 17, 2003.

On November 6, 2003, Cheyenne Plains Gas Pipeline Company, LLC (Cheyenne Plains), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–302–001, a Petition to Amend the Order Issuing a Preliminary Determination on Non-Environmental Issues (Order), pursuant to Section 7 of the Natural Gas Act (NGA), as amended, and Part 157 and 284 of the regulations of the Federal Energy Regulatory Commission (Commission). Specifically, Cheyenne Plains is seeking to amend the Order to modify the originally proposed design of the Cheyenne Plains Project by: (1) Increasing the diameter of the proposed mainline; and (2) decreasing the total amount of compression to be installed at the Cheyenne Hub. Cheyenne Plains states it is also finalizing the amine gas treatment facilities design. Although Cheyenne Plains is proposing to modify the size of the pipeline and the amount of compressor horsepower, these changes will not change the 560,000 Dth per day design capacity of the Project. Further, in this filing Cheyenne Plains is also providing updated information on its financing proposals, including the conversion of Cheyenne Plains from a "C" corporation to an LLC, all as more fully set forth in the petition which is on file with the Commission and open to public inspection. 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" 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.

In its Petition to Amend Order, Cheyenne Plains states that since the filing of its initial application, it has now determined that the pipeline and

compressor facilities constituting the core of Cheyenne Plains' interstate pipeline system should be modified in concert with recent supply and market events that have combined to define an immediate need for a larger size pipeline system with a commensurate reduction in horsepower. Cheyenne Plains states that these amended facilities, when placed into service, will support the initial design capacity of 560,000 Dth per day for the 14 original shippers and, at the same time, will allow for future expansions of the system in an expeditious manner with a minimum of environmental impacts and minimal landowner impacts.

Any questions concerning this Petition to Amend Order may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Cheyenne Plains Gas Pipeline Company, LLC, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 667–7534; or to Judy A. Heineman, Vice President and General Counsel, Cheyenne Plains Gas Pipeline Company, LLC, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–4829 or fax (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests, comments 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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 17, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–262 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–054]

Dominion Transmission, Inc.; Notice of Negotiated Rates

February 4, 2004.

Take notice that on January 30, 2004, DTI submitted for filing Fifth Revised Sheet No. 1400, for disclosure of a recently negotiated transaction with Sithe Energy Marketing, LP.

DTI states that the tariff sheet relates to a specific negotiated rate transaction between DTI and Sithe Energy Marketing, LP. DTI requests an effective date of February 1, 2004 for its proposed tariff sheet.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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. E4–253 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–363–009]

North Baja Pipeline, LLC; Notice of Negotiated Rates

February 4, 2004.

Take notice that on January 30, 2004, North Baja Pipeline, LLC (NBP) tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 7, to be effective September 1, 2002.

NBP states that this sheet is being filed to correctly reflect an amendment to a negotiated rate agreement with Gasoducto Rosarito, S. de R.L. de C.V. that was executed prior to commencement of service.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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. E4–258 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–50–002]

Old Dominion Electric Cooperative; Notice of Application

January 29, 2004.

Take notice that on January 22, 2004, the Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to Section 204 of the Federal Power Act that requests an amendment to its prior authorization, issued by a letter order on October 1, 2002, to permit Old Dominion to issue unsecured debt under that authorization in the amount of $50 million.

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 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: February 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–256 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–150–000]

Panther Interstate Pipeline Energy, L.L.C. ; Notice of Tariff Filing

February 4, 2004.

Take notice that on January 30, 2004, Panther Interstate Pipeline Energy, L.L.C. (Panther Interstate) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of February 1, 2004.

Panther Interstate states that the purpose of the filing is to comply with the Commission(s Order issued on December 24, 2003 in Docket Nos. CP03–337–000 and CP03–338–000.

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. E4–259 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–354–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

February 4, 2004.

Take notice that on January 27, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Twenty-Second Revised Sheet No. 1 and First Revised Sheet No. 1018 with an effective date of December 23, 2003. Transco states that the filing is being made in compliance with the Commission's Order issued December 23, 2003 in the referenced docket.

Transco states that the above sheets reflect the termination of Transco's Rate Schedule X–118 from Transco's Original Volume No. 2 FERC Gas Tariff, and their associated deletion from the Table of Contents in Transco's Volume No. 2.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. E4–254 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–3–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

February 4, 2004.

Take notice that on January 27, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Twelfth Revised Sheet No. 1–A.1 and First Revised Sheet No. 2694, to be effective December 23, 2003.

Transco states that the filing is being filed in compliance with the Commission's Order issued December 23, 2003 in the referenced docket. Transco states that the above sheets reflect the termination of Transco's Rate Schedule X–258 from Transco's FERC Gas Tariff, Original Volume No. 2, and their associated deletion from the Table of Contents in Transco's Volume No. 2.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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. E4–255 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–60–000, et al.]

Minnesota Power, et al.; Electric Rate and Corporate Filings

February 4, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Minnesota Power Split Rock Energy LLC

[Docket No. EC04–60–000]

Take notice that on February 2, 2004, Minnesota Power (MP) and Split Rock Energy LLC (Split Rock) tendered for filing pursuant to section 203 of the Federal Power Act, a joint application for authorization for MP to transfer its membership interest in Split Rock to Great River Energy.

Comment Date: February 23, 2004.

2. Alliant Energy Corporate Services, Inc.

[Docket No. EC04–61–000]

Take notice that on February 2, 2004, Alliant Energy Corporate Services, Inc. (Alliant), filed with the Federal Energy Regulatory Commission and application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Interstate Power and Light Company to purchase by cash a portion of Northwest Iowa Power Cooperative's undivided interest in the transmission assets of the George Neal Generating Station.

Alliant states that a copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, and the Iowa Utilities Board

Comment Date: February 23, 2004.

3. Black River Power, LLC Carlyle/Riverstone Global Energy and Power Fund II, L.P.

[Docket No. EC04–62–000]

Take notice that on February 3, 2004, Black River Power, LLC (Black River) and Carlyle/Riverstone Global Energy and Power Fund II, L.P., filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33, for authorization of a disposition of certain jurisdictional facilities held by Black River.

Black River states that a copy of the application was served upon the Public Service Commission of New York.

Comment Date: February 24, 2004.

4. KES Kingsburg, L.P.

[Docket Nos. EL04–33–000 and QF86–155–004]

Take notice that on January 30, 2004, KES Kingsburg, L.P. filed a response to an informal data request concerning its Petition for Temporary Waiver to the QF Efficiency Standard, which is before the Commission in the above-captioned dockets.

Comment Date: February 13, 2004.

5. East Texas Electric Cooperative, Inc.

[Docket No. EL04–63–000]

Take notice that on January 20, 2004, East Texas Electric Cooperative, Inc. filed a request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

6. North West Rural Electric Cooperative

[Docket No. EL04–64–000]

Take notice that on January 20, 2004, North West Rural Electric Cooperative filed a request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

7. Citizens Communications Company

[Docket No. EL04–65–000]

Take notice that on January 20, 2004, Citizens Communications Company (Citizens) tendered for filing a request that the Commission to delay the effective date of the Order No. 2003 interconnection tariff provisions for Citizens until April 19, 2004.

Comment Date: February 10, 2004.

8. Vermont Electric Cooperative, Inc.

[Docket No. EL04–66–000]

Take notice that on January 20, 2004, Vermont Electric Cooperative, Inc. tendered for filing a request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

9. Oregon Trail Electric Consumers Cooperative, Inc.

[Docket No. EL04–67–000]

Take notice that on January 20, 2004, Oregon Trail Electric Consumers Cooperative, Inc. tendered for filing a

request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

10. Bridger Valley Electric Association, Inc.

[Docket No. EL04–68–000]

Take notice that on January 20, 2004, Bridger Valley Electric Association, Inc. tendered for filing a request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

11. Wayne-White Counties Electric Cooperative

[Docket No. EL04–69–000]

Take notice that on January 12, 2004, Wayne White Counties Electric Cooperative tendered for filing a request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

12. Westar Energy, Inc., and Kansas Gas and Electric Company

[Docket No. EL04–70–000]

Take notice that on January 20, 2004, Westar Energy, Inc. and its wholly owned subsidiary, Kansas Gas and Electric Company tendered for filing a request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

13. The Empire District Electric Company

[Docket No. EL04–71–000]

Take notice that on January 20, 2004, The Empire District Electric Company submitted a filing concerning its plans for implementation of Order No. 2003.

Comment Date: February 10, 2004.

14. Oklahoma Gas and Electric Company

[Docket No. EL04–72–000]

Take notice that on January 20, 2004, Oklahoma Gas and Electric Company submitted a filing concerning the implementation of Order No. 2003.

Comment Date February 10, 2004.

15. Xcel Energy Services Inc.

[Docket No. ER01–205–004]

Take notice that on January 30, 2004, Xcel Energy Services Inc. (XES) on behalf of itself and the Xcel Energy Operating Companies (Northern States Power Company, Northern States Power Company, (Wisconsin) Public Service Company of Colorado, and Southwestern Public Service Company) submitted a triennial updated market power analysis for the Xcel Energy Operating Companies' systems.

Comment Date: February 20, 2004.

16. Cottonwood Energy Company LP

[Docket No. ER01–642–001]

Take notice that on January 30, 2004, Cottonwood Energy Company LP, (Cottonwood), tendered for filing with the Federal Energy Regulatory Commission its triennial updated market analysis and certain revisions to its FERC Electric Tariff, Original Volume. No. 1 pursuant to the Market Behavior Rules set forth in the Commission's November 17, 2003, Order in Docket Nos. EL01–11–000 and EL01–118–001, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

Comment Date: February 20, 2004.

17. Acadia Power Partners, LLC

[Docket Nos. ER03–1372–002 and ER02–1406–001]

Take notice that on January 30, 2004, Acadia Power Partners, LLC filed with the Commission a request for withdrawal of the December 17, 2003, and December 31, 2003, filings made in compliance with FERC's Order Amending Market-Based Rate Tariffs and Authorizations issued November 17, 2003, in Docket Nos. EL01–118–000 and EL01–118–001, 105 FERC ¶ (61,218. Acadia states that these filings contain the Market Behavior Rules and notification of reporting status regarding reporting of transactions to publishers of electricity or natural gas price indices as prescribed in the Commission's order. Acadia also states that these filings are duplicative of other filings made on behalf of Acadia Power Partners, LLC in compliance with the Commission's order and should be withdrawn.

Comment Date: February 20, 2004.

18. Cleco Power LLC

[Docket No. ER03–1386–001]

Take notice that on December 18, 2003, Cleco Power LLC (Cleco) tendered for filing tariff sheets for the FERC Electric Tariff, Original Volume No. 1 revised in compliance with the Commission's Order issued in Docket No. ER03–1386–000 on November 18, 2003.

Comment Date: February 17, 2004.

19. South Carolina Electric & Gas Company

[Docket No. ER03–1398–002]

Take notice that on January 22, 2004, South Carolina Electric & Gas Company (SCE&G), tendered a response to Commission's requests for additional information relating to SCE&G's interconnection agreement with Columbia Energy LLC.

Comment Date: February 12, 2004.

20. Portland General Electric Company

[Docket No. ER98–1643–006]

Take notice that on January 30, 2004, Portland General Electric Company (PGE) tendered a compliance filing pursuant to the terms of its market based rate tariff approved by the Commission in Docket No. ER98–1643 and the Commission' s Order on November 17, 2003, in Docket No. EL01–118, Amending Market Based Rate Tariffs and Authorizations, 105 FERC ¶ 61,218, requiring that all market based rate tariffs incorporate certain market behavior rules. The PGE submission includes (1) a triennial updated market analysis and (2) revised tariff sheets incorporating the new market behavior rules.

Comment Date: February 20, 2004.

21. Northern Indiana Public Service Company

[Docket No. ER04–6–001]

Take notice that on December 16, 2003, Northern Indiana Public Service Company (NIPSCO) tendered a filing in compliance with the Letter Order issued by the Commission on November 25, 2003, in Docket No. ER04–6–000.

Comment Date: February 17, 2004.

22. Conectiv Bethlehem, LLC

[Docket No. ER04–231–001]

Take notice that on January 30, 2004, Conectiv Bethlehem, LLC (CBLLC), filed an amendment to its cost support for its Rate Schedule FERC No. 1, a rate schedule for compensation for Reactive Supply and Voltage Control from Generation Sources Service provided by its 885 MW generating station located in Bethlehem, Pennsylvania, pursuant to section 205 of the Federal Power Act and in response to a deficiency letter from FERC Staff dated January 23, 2004. CBLLC seeks an effective date of April 1, 2004.

CBLLC states that copies of the filing were served upon the official service list in this proceeding.

Comment Date: February 20, 2004.

23. New England Power Pool

[Docket No. ER04–498–000]

Take notice that on January 30, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include Black Oak Energy, LLC (Black Oak); Milford Power Company, LLC (Milford), and Susquehanna Energy Products, LLC (Susquehanna); and (2) to terminate the memberships of ANP Marketing Company (ANP Marketing), Aquila Merchant Services, Inc. (Aquila), Marquette Energy Partners, LP

(Marquette) and Outback Power Marketing, Inc. (Outback). The Participants Committee requests that the following effective dates: January 1, 2004, for the termination of ANP Marketing, Aquila, Marquette, and Outback; February 1, 2004, for the commencement of participation in NEPOOL by Black Oak and Milford; and April 1, 2004, for commencement of participation in NEPOOL by Susquehanna.

Comment Date: February 20, 2004.

24. American Electric Power Service Corporation

[Docket No. ER04–499–000]

Take notice that on January 30, 2004, the American Electric Power Service Corporation (AEPSC), tendered for filing a new Network Integration Service Agreement (NITSA) for Old Dominion Electric Cooperative, and a Fourth Revised NITSA for American Municipal Power—Ohio, Inc., issued pursuant to the AEP Companies' Open Access Transmission Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff , Third Revised Volume No. 6. AEPSC requests waiver of notice to permit the new Service Agreements to be effective on and after January 1, 2004.

AEPSC states that a copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment Date: February 20, 2004.

25. American Transmission Systems, Incorporated

[Docket No. ER04–501–000]

Take notice that on January 30, 2004, American Transmission Systems, Incorporated (ATSI) tendered for filing Service Agreement No. 346 a Construction Agreement for the Borough of Ellwood City. ATSI requests an effective date of January 31, 2004, for the Construction Agreement.

ATSI states that copies of this filing were served on the representatives of the Borough of Ellwood City, American Municipal Power-Ohio, Inc., Midwest ISO, and the Pennsylvania Public Utility Commission.

Comment Date: February 20, 2004.

26. Automated Power Exchange, Inc.

[Docket No. ER04–502–000]

Take notice that on January 30, 2004, Automated Power Exchange, Inc. (APX) tendered for filing an annual report for 2003 pursuant to the Commission's Order issued March 25, 1988, in the Docket No. 1033–000, 82 FERC 61,287.

Comment Date: February 20, 2004.

27. Idaho Power Company

[Docket No. ER04–503–000]

Take notice that on January 30, 2004, Idaho Power Company (Idaho Power) tendered a Notice of Cancellation of FERC Electric Tariff First Revised Volume No. 5, Service Agreement No. 147, which was accepted by order issued December 23, 2002, in Docket No. ER03–92–000 issued on October 29, 2002.

Idaho Power states that it served a copy of the Notice of Cancellation on Arizona Public Service Company.

Comment Date: February 20, 2004.

28. Elkem Metals Company

[Docket No. ER04–504–000]

Take notice that on January 30, 2004, Elkem Metals Company, L.P. (Elkem Metals) filed a Notice of Cancellation with the Federal Energy Regulatory Commission pursuant to sections 35.15 and 131.53 of the Commission's rules and regulations, 18 CFR. 35.15 and 131.53. Elkem Metals seeks to cancel its rate schedule for power sales at market-based rates, designated as FERC Electric Tariff No. 1, and Rate Schedule No. 5, as Supplemented. Elkem Metals requests that the cancellation be made effective as of February 1, 2004.

Comment Date: February 20, 2004.

29. Hawkeye Energy Greenport, LLC

[Docket No. ER04–505–000]

Take notice that on January 30, 2004, Hawkeye Energy Greenport, LLC (Hawkeye) tendered for filing a Notice of Succession, pursuant to Sections 35.16 and 131.51 of the Commission's regulations. Hawkeye states that Global Common Greenport, LLC (GCG) changed its name to Hawkeye, accordingly Hawkeye is successor to GCG's market-based rate Schedule on file with the Commission and the agreements entered into thereunder.

Comment Date: February 20, 2004.

30. Duke Energy Corporation

[Docket No. ER04–506–000]

Take notice that on January 30, 2004, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a revised Service Agreement for Network Integration Transmission Service (NITSA) between Duke and North Carolina Electric Membership Corporation. Duke seeks an effective date for the revised NITSA of January 1, 2004.

Comment Date: February 20, 2004.

31. New England Power Pool

[Docket No. ER04–507–000]

Take notice that on January 30, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Solaro Energy Marketing Corporation (Solaro). The Participants Committee requests a February 1, 2004 effective date for commencement of participation in NEPOOL by Solaro.

NEPOOL states that copies of these materials were sent to the New England State governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: February 20, 2004.

32. Southern California Edison Company

[Docket No. ER04–508–000]

Take notice that January 30, 2004, Southern California Edison (SCE) tendered for filing a Notice of Cancellation of its First Revised Rate Schedule FERC No. 382, between SCE and the City of Banning. SCE is requesting an effective date of January 1, 2003.

Comment Date: February 20, 2004.

33. Delmarva Power & Light Company

[Docket No. ER04–509–000]

Take notice that on January 30, 2004, Delmarva Power & Light Company (Delmarva) tendered for filing Notices of Cancellation and Order No. 614 compliant canceled rate schedule sheets (collectively referred to as Cancellation Documents) terminating rate schedules between Delmarva and each of following: the City of Seaford, Delaware, the City of Milford, Delaware, the City of Newark, Delaware, the City of New Castle, Delaware, the Town of Middletown, Delaware, the Town of Clayton, Delaware, the Town of Smyrna, Delaware (collectively, the Municipalities), and the Delaware Municipal Electric Corporation. Delmarva also tendered unexecuted Interconnection Agreements with each of the Municipalities. Delmarva requests that the Commission allow the Cancellation Documents to become effective on December 31, 2003, and allow the Interconnection Agreements to become effective on January 1, 2004.

Delmarva states that copies of the filing were served upon the Municipalities, DEMEC and the Delaware Public Service Commission.

Comment Date: February 20, 2004.

34. Central Vermont Public Service Corporation

[Docket No. ER04–510–000]

Take notice that on January 30, 2004, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an unexecuted Interconnection Agreement with North Hartland, LLC (North Hartland) in compliance with the Commission's December 30, 2003, Order in Docket No. EL03–51–002.

Central Vermont states that copies of the filing were served upon North Hartland, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment Date: February 18, 2004.

35. Minnesota Power and Split Rock Energy LLC

[Docket No. ER04–511–000]

Take notice that on January 30, 2004, Minnesota Power (MP) and Split Rock Energy LLC (SRE) filed revised Wholesale Power Coordination and Dispatch Operating Agreements.

Comment Date: February 20, 2004.

36. Idaho Power Company

[Docket No. ER04–512–000]

Take notice that on January 30, 2004, Idaho Power Company (Idaho Power) tendered for filing Third Revised Service Agreement No. 153, FERC Electric Tariff First Revised Volume No. 5 and Third Revised Service Agreement No. 156, FERC Electric Tariff First Revised Volume No. 5 for Network Integration Transmission Service (NITSA) between Idaho Power and Bonneville Power Administration. Idaho Power also tendered for filing Second Revised Service Agreement No. 158, FERC Electric Tariff First Revised Volume No. 5 for NITSA service between Idaho Power and Idaho Power-Power Supply. Idaho Power seeks an effective date of January 1, 2004.

Comment Date: February 20, 2004.

37. Central Vermont Public Service Corporation

[Docket No. ER04–515–000]

Take notice that on January 30, 2004, Central Vermont Public Service Corporation (Central Vermont) tendered for filing revised Network Integration Transmission Service Agreements and Network Operating Agreements (S&O Agreements) under Central Vermont's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 7 (OATT) between Central Vermont and each of nine customers: Public Service Company of New Hampshire; Vermont Electric Cooperative, Inc.; New Hampshire Electric Cooperative, Inc.; Village of Johnson Water and Light Department; Village of Ludlow Electric Light Department; Lyndonville Electric Department; Village of Hyde Park Water and Light Department; Woodsville Fire District Water and Light Department; and Rochester Electric Light and Power Company. Central Vermont requests that the Commission allow all the S&O Agreements to become effective on January 1, 2004.

Central Vermont states that copies of the filing were served upon Central Vermont's jurisdictional customers, the Vermont Public Service Board, the New Hampshire Public Utilities Commission and the Vermont Department of Public Service.

Comment Date: February 20, 2004.

38. American Transmission Systems, Incorporated

[Docket No. ER04–516–000]

Take notice that on January 30, 2004, American Transmission Systems, Incorporated (ATSI) tendered for filing a revised Generator Interconnection and Operating Agreement between ATSI and Fremont Energy Center, L.L.C. (Fremont), designated as Second Revised Service Agreement No. 312 under the ATSI Open Access Transmission Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

ATSI states that copies of this filing have been served on regulators in Ohio and Pennsylvania, the Midwest Independent System Operator, Inc. and Fremont.

Comment Date: February 20, 2004.

39. CalPeak Power—El Cajon, LLC

[Docket No. ER04–517–000]

Take notice that on January 30, 2004, CalPeak Power LLC, on behalf of CalPeak Power—El Cajon, LLC (El Cajon), tendered for filing, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (2000) and part 35 of the Commission's regulations, 18 CFR part 35 (2003), an unexecuted Must-Run Service Agreement and accompanying schedules between El Cajon and the California Independent System Operator Corporation.

Comment Date: February 20, 2004.

40. AmeriGas Propane, L.P., CHS Inc., ConocoPhillips Company, Dynegy Liquids Marketing and Trade, Ferrellgas, L.P. and National Propane Gas Association, Complainants, v. Mid-America Pipeline Company, LLC, Respondent

[Docket No. OR04–1–000]

Take notice that on February 3, 2004, AmeriGas Propane, L.P., CHS Inc., ConocoPhillips Company, Dynegy Liquids Marketing and Trade, Ferrellgas, L.P. and the National Propane Gas Association (Complainants) tendered for filing a Complaint Requesting Fast Track Processing against Mid-America Pipeline Company, LLC (MAPCO).

Complainants state that they are shippers and customers of shippers of propane and the trade association representing shippers of propane on MAPCO's Conway North interstate propane pipeline. Complainants state that MAPCO's Propane Supply Assurance Program (ASAP) and applicable Premium Service Fee are unjust and unreasonable because they have failed to remedy the problems associated with supply shortages on MAPCO's system. Complainants request that the Commission require MAPCO to delete the PSAP from its tariff and pay reparations.

Comment Date: February 17, 2004.

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. E4–263 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–32–000, et al.]

Black River Generation, LLC, *et al.*; Electric Rate and Corporate Filings

February 5, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Black River Generation, LLC

[Docket No. EG04–32–000]

Take notice that on February 3, 2004, Black River Generation, LLC (Applicant), a New York limited liability company, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant states that it will lease and operate the Fort Drum Project (the Facility), which is located at the Fort Drum Army Base near Watertown, New York. The Facility is a topping-cycle electric generation project with a net electrical capacity of approximately 52 MW. Applicant further states that the Facility is interconnected with Niagara Mohawk Power Corporation's transmission grid and Applicant will have day-to-day operational responsibility and control of the Facility and will make all sales of electric energy, capacity and ancillary services generated by the Facility.

Applicant states that copies of the application have been served upon the New York Public Service Commission and the Securities and Exchange Commission.

Comment Date: February 24, 2004.

2. Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C., Complainants, v. Nevada Power Company, Respondent

[Docket No. EL04–73–000]

Take notice that on February 3, 2004, Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. tendered for filing with the Federal Energy Regulatory Commission, a Complaint Requesting Fast Track Processing against Nevada Power Company pursuant to Section 206 of the Federal Power Act, 16 U.S.C. 824e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

Comment Date: February 25, 2004.

3. New England Electric Transmission Corporation, New England Hydro Transmission Corporation, New England Hydro-Transmission Electric Company, Inc.

[Docket No. EL04–74–000]

Take notice that on January 20, 2004, New England Electric Transmission Corporation, New England Hydro Transmission Corporation and New England Hydro-Transmission Electric Company, Inc., tendered for filing a request for waiver of the requirements of Order No. 2003.

Comment Date: February 10, 2004.

4. ISO New England Inc.

[Docket No. ER02–2330–021]

Take notice that on December 16, 2003, ISO New England Inc. submitted a compliance filing providing a status report on the implementations of Standard Market Design in New England.

Comment Date: February 17, 2004.

5. The Allegheny Power System Operating Companies: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, All Doing Business as Allegheny Power; The PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.

[Docket No. ER04–156–003]

Take notice that on February 2, 2004, The Allegheny Power System Operating Companies: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power; The PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc. (Transmission Owners) filed revised carrying charge rates and tariff sheets under Schedule 12A of the PJM Open Access Transmission Tariff in compliance with the Federal Energy Regulatory Commission's January 2, 2004 order, *Allegheny Power System Operating Companies, et al.*, 106 FERC ¶ 61,003.

Transmission Owners state that copies of the filing were served upon PJM and each state public utility commission in the PJM region. In addition, the Transmission Owners requested that PJM post the filing on its Web site, *www.PJM.com.*

Comment Date: February 23, 2004.

6. Citigroup Energy Inc.

[Docket No. ER04–208–002]

Take notice that on February 2, 2004, Citigroup Energy Inc. (CEI) tendered for filing an amendment to its market-based rate schedule reflecting the Market Behavior Rules adopted by the Commission in the Order issued November 17, 2003, in Docket Nos. EL01–118–000 and 001.

Comment Date: February 23, 2004.

7. Xcel Energy Service, Inc.

[Docket No. ER04–243–001]

Take notice that on January 26, 2004, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSC), tendered a filing for a Commission Order 614 complaint version of the Notice of Cancellation of a Power Purchase Agreement with the City of Glenwood Springs (City), effective January 1, 2000.

XES states that copies of this filing are being mailed to the affected state regulatory commissions and to the last known address of City.

Comment Date: February 17, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–297–001]

Take notice that on February 2, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed substitute interconnection service agreement (ISA) among PJM, Conectiv Energy Supply, Inc., and Delmarva Power & Light Company d/b/a Conectiv Power Delivery that includes language, requested by Commission staff, regarding disclosure of confidential information to the Commission or its staff. PJM requests a waiver of the Commission's 60-day notice requirement to permit a November 17, 2003 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements, the state regulatory commissions within the PJM region, and the official service list complied by the Secretary in this proceeding.

Comment Date: February 23, 2004.

9. New York State Electric & Gas Corporation

[Docket No. ER04–518–000]

Take notice that on February 2, 2004, New York State Electric & Gas Corporation (NYSEG) submitted for filing revised retail access tariff leaves and a Joint Proposal related to standby service, as approved by Order of the New York State Public Service Commission (NYPSC) in NYSPSC Case 02–E–0779. NYSEG requests that the Joint Proposal and the SC–11 tariff leaves be made effective as of the dates authorized by the NYPSC.

NYSEG states that a copy of the submission was mailed to the NYPSC and to the customers that have entered into such individually-negotiated agreements as of the date of the filing.

Comment Date: February 23, 2004.

10. Southern California Edison Company

[Docket No. ER04–513–000]

Take notice that on February 2, 2004, Southern California Edison Company (SCE) tendered for filing revised rate sheets to the Amended and Restated Coolwater Generating Station Radial Lines Agreement between SCE and Reliant Energy Coolwater, L.L.C. (Reliant). SCE requests an effective date of February 3, 2004.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Reliant.

Comment Date: February 23, 2004.

11. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER04–514–000]

Take notice that on February 2, 2004, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (NSP Companies) jointly tendered for filing revised tariffs sheets to NSP Electric Rate Schedule FERC No. 2, contained in Xcel Energy Operating Companies FERC Electric Tariff, Original Volume Number 3. The NSP Companies request an effective date of January 1, 2004.

The NSP Companies state that a copy of the filing has been served upon the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment Date: February 23, 2004.

12. Vermont Electric Cooperative, Inc.

[Docket No. ER04–519–000]

Take notice that on February 2, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing its proposed Rate Schedule FERC No. 10 for jurisdictional service. VEC states that each of the customers under the rate schedule, Citizens, the Vermont Public Service Board, and the Vermont Department of Public Service were mailed copies of the filing.

Comment Date: February 23, 2004.

13. Florida Power & Light Company

[Docket No. ER04–520–000]

Take notice that on February 2, 2004, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission a Letter Agreement and a revised Service Agreement for Network Integration Transmission between FPL and Seminole Electric Cooperative, Inc. (Seminole) that provides for a credit offset to reduce Seminole's network service charge.

FPL states that a copy of this filing has been served on Seminole and Lee County Electric Cooperative, Inc. (LCEC).

Comment Date: February 23, 2004.

14. Citizens Communications Company

[Docket No. ER04–522–000]

Take notice that on February 2, 2004, Citizens Communications Company (Citizens) filed with the Federal Energy Regulatory Commission Notices of Cancellation FERC Rate Schedule Nos. 21, 22, 37, 43 and Citizens' FERC Electric Tariff Revised Volume No. 2.

Comment Date: February 23, 2004.

15. Citizens Communications Company

[Docket No. ER04–523–000]

Take notice that on February 2, 2004, Citizens Communications Company (Citizens) filed with the Federal Energy Regulatory Commission Notices of Cancellation of the FERC Rate Schedule Nos. 1 and 46.

Comment Date: February 23, 2004.

16. First Electric Cooperative Corp.

[Docket No. ER04–524–00]

Take notice that on January 30, 2004, First Electric Cooperative Corporation (First Electric) tendered for filing a Notice of Cancellation of First Electric's Rate Schedule No. 1 (Formula for Compensation for Non-Investment Credit Facilities Associated with Wheeling) and Supplement No. 1 to Rate Schedule No. 1 (Calculation of Compensation for Non-Investment Credit Facilities Associated with Wheeling), effective January 22, 2004. First Electric also requests certain waivers of the Commission's Regulations.

Comment Date: February 20, 2004.

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. E4–265 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–75–000, et al.]

Kansas City Power & Light Company, et al.; Electric Rate and Corporate Filings

February 6, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Kansas City Power & Light Company

[Docket No. EL04–75–000]

Take notice that on January 21, 2004, Kansas City Power & Light Company, submitted a filing concerning its plans for implementation of Order No. 2003.

Comment Date: February 17, 2004.

2. Big Rivers Electric Corporation

[Docket No. EL04–76–000]

Take notice that on January 20, 2004, Big Rivers Electric Corporation,

submitted a filing concerning its plans for implementation of Order No. 2003.

Comment Date: February 13, 2004.

3. Southwest Transmission Cooperative, Inc.

[Docket No. EL04–77–000]

Take notice that on January 20, 2004, Southwest Transmission Cooperative, Inc., submitted a filing concerning its plans for implementation of Order No. 2003.

Comment Date: February 13, 2004.

4. Midwest ISO Transmission Owners

[Docket No. EL04–78–000]

Take notice that on January 20, 2004, Midwest ISO Transmission Owners submitted a filing concerning its plans for implementation of Order No. 2003.

Comment Date: February 13, 2004.

5. Midwest Stand-Alone Transmission Companies

[Docket No. EL04–79–000]

Take notice that on January 20, 2004, the Midwest Stand Alone Transmission Companies submitted a filing regarding their plan for implementation of Order No. 2003.

Comment Date: February 13, 2004.

6. Midwest Energy, Inc.

[Docket No. EL04–80–000]

Take notice that on January 22, 2004, Midwest Energy, Inc. submitted a filing regarding its plan for implementation of Order No. 2003.

Comment Date: February 17, 2004.

7. Midwest Energy, Inc.

[Docket No. ER96–2027–003]

Take notice that on February 5, 2004, Midwest Energy, Inc. (Midwest Energy), submitted a notification of a change in status with respect to its market-based rate tariff.

Comment Date: February 26, 2004.

8. ISO New England Inc.

[Docket No. ER01–316–010]

Take notice that on February 3, 2004, ISO New England Inc. filed its Index of Customers for the fourth quarter of 2003 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: February 24, 2004.

9. Xcel Energy Services, Inc.

[Docket No. ER04–201–001]

Take notice that on January 20, 2004, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSC), submitted for filing a Commission Order 614 complaint version of the Notice of Cancellation of a Master Power Purchase and Sale Agreement with the City of Glendale, effective January 27, 2000.

Comment Date: February 13, 2004.

10. Orion Power MidWest, L.P.

[Docket No. ER04–500–000]

Take notice that on January 30, 2004, Orion Power MidWest, L.P. (OPMW) tendered for filing an Agreement For Sharing Revenue From Reactive Supply and Voltage Control From Generation Sources Within The FirstEnergy Control Area between OPMW and FirstEnergy Solutions Corp. OPMW request an effective date of October 1, 2003.

Comment Date: February 20, 2004.

11. Virginia Electric and Power Company

[Docket No. ER04–525–000]

Take notice that on February 3, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Service Agreement for Network Integration Transmission Service (Retail) and Network Operating Agreement between Dominion Virginia Power and Pepco Energy Services, Inc., designated as Service Agreement Number 378, Virginia Electric and Power Company FERC Electric Tariff, Second Revised Volume No. 5.

Dominion Virginia Power requests a waiver of the Commission's regulations to permit an effective date of January 1, 2004.

Comment Date: February 24, 2004.

12. Black River Generation, LLC

[Docket No. ER04–526–000]

Take notice that on February 3, 2004, Black River Generation, LLC (Black River Generation) tendered for filing an application for authorization to sell energy, capacity, and ancillary services and to provide asset management services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: February 24, 2004.

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. E4–266 Filed 2–11–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Change in Procedures for the Selection of Third-Party Contractors for Hydropower Licensing

February 4, 2004.

Section 2403(a) of the Energy Policy Act of 1992 affirmed the Federal Energy Regulatory Commission's (Commission) authority to use qualified third-party contractors, paid for by the applicant, to prepare environmental impact statements (EISs) required by the National Environmental Policy Act (NEPA) for applications for licensing hydropower projects.

In April 1999, the Commission solicited qualification statements from contractors seeking status to prepare EISs under the third-party contracting provisions of section 2403(a). On October 9, 1999, the Commission issued a notice listing the names of 28 qualified third-party contractors.

The Commission has decided to change its procedures for selecting third-party contractors for the preparation of EISs required for proposals for licensing hydropower projects. Effective immediately, the Commission will no longer maintain a list of qualified third-party contractors. Instead, applicants electing to use a third-party contractor to assist the Commission in meeting its responsibilities under NEPA would issue a Request for Proposals for potential third-party contractors, evaluate the responses, and submit the three best proposals to the Commission staff for selection. This approach for

selecting third-party contractors will now be consistent with the approach currently used for applications for certification of natural gas facilities. The attached document provides an overview for starting the process. Additional information is available on the Commission's Web site at *http://www.ferc.gov/industries/hydropower/enviro/third-party/tpc.asp.*

Magalie R. Salas,
Secretary.

Office of Energy Projects; Third-Party Contracting Program

The Office of Energy Project's voluntary "third-party contracting" (3–PC) program enables applicants seeking certificates for natural gas facilities or licenses for hydroelectric power projects to fund a third-party contractor to assist the Commission in meeting its responsibilities under the National Environmental Policy Act of 1969.

The 3–PC program involves the use of independent contractors to assist Commission staff in its environmental review and preparation of environmental documents. A third-party contractor is selected by, and works under the direct supervision and control of Commission staff, and is paid for by the applicant. Prospective applicants considering participation in this 3–PC program should meet with Commission staff to discuss their proposals, and to answer any questions they might have relative to the program itself.

Applicants electing to participate in the 3–PC program will be required to prepare a draft Request for Proposal (RFP) for review and approval by the Commission staff before it is issued. The RFP will be required to include screening criteria, and an explanation of how the criteria will be used to select among the contractors who respond to the RFP. Subsequently, applicants would issue the approved RFP and screen all proposals received for technical adequacy and Organizational Conflict of Interest (OCI). The applicant is responsible for reviewing carefully all OCI materials (submitted for the prime and each proposed subcontractor as part of each proposal) to determine whether the candidate is capable of impartially performing the environmental services required under the third-party contract. The applicant will then submit to Commission staff the technical and cost proposals and OCI statements of their three best qualified candidates.

Final contractor selection will be made by Commission staff based on an evaluation of the technical, managerial, and personnel aspects of the candidates' proposals as well as OCI considerations. While bid fees will not necessarily be the controlling factor in the selection of the third-party contractor, relative cost levels will be considered. Commission staff will send the applicant an approval letter clarifying any details and/or resolving any issues that remain outstanding following review of the selected third-party contractor's proposal.

As soon as practical, the applicant will award a contract to the third-party contractor identified in the Commission staff's approval letter. The applicant and the contractor will determine the appropriate form of agreement for payment of the contractor by the applicant. Because the applicant will actually award the contract to the third-party contractor, it will be the applicant's responsibility to answer questions from candidates not selected.

The information provided above is intended to give a quick overview of the 3–PC program and how to get started. Detailed guidance specific to the gas and hydro process will be available soon. In the interim, applicants with specific questions about the 3–PC program can contact the following Commission staff:

Gas Certificate 3–PC program: Richard R. Hoffmann, Director, Division of Gas—Environment and Engineering, telephone (202) 502–8066, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; *http://www.ferc.gov/industries/gas/enviro/third-party/tpc.asp.*

Hydropower Licensing 3–PC program: Ann F. Miles, Director, Division of Hydropower—Environment and Engineering, telephone (202) 502–6769, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; *http://www.ferc.gov/industries/hydropower/enviro/third-party/tpc.asp.*

Inquiries regarding OCI should be directed to: David R. Dickey, Staff Attorney, General and Administrative Law (GC–13), telephone (202) 502–8527, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Inquiries regarding ex parte *should be directed to:* Carol C. Johnson, Staff Attorney, General and Administrative Law (GC–13), telephone (202) 502–8521, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

[FR Doc. E4–257 Filed 2–11–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–51–000]

Paiute Pipeline Company; Notice of Rescheduling of Technical Conference

February 4, 2004.

In its Order issued December 4, 2003,[1] the Commission directed that a technical conference be held to better understand several aspects of Paiute Pipeline Company's November 7, 2003 tariff filing pertaining to segmentation and backhaul transportation.

Take notice that the technical conference has been rescheduled for Wednesday, February 25, 2004 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and staff are permitted to attend. Parties that wish to participate by phone should contact Sharon Dameron at (202) 502–8410 or at *sharon.dameron@ferc.gov* no later than Wednesday, February 18, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E4–261 Filed 2–11–04; 8:45 am]
BILLING CODE 6717–01–P

[1] Paiute Pipeline Company, 105 FERC ¶ 61,271

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Record of Decision: Final Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project, Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE), National Nuclear Security Administration (NNSA) is issuing this record of decision on the proposed replacement of the existing Chemistry and Metallurgy (CMR) Building at Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico. This record of decision is based upon the information contained in the "Environmental Impact Statement for the Proposed Chemistry and Metallurgy Research Building Replacement Project, Los Alamos National Laboratory, Los Alamos, New Mexico", DOE/EIS–0350 (CMRR EIS), and other factors, including the programmatic and technical risk, construction requirements, and cost. NNSA has decided to implement the preferred alternative, alternative 1, which is the construction of a new CMR Replacement (CMRR) facility at LANL's Technical Area 55 (TA–55). The new CMRR facility would include a single, above-ground, consolidated special nuclear material-capable, Hazard Category 2 laboratory building (construction option 3) with a separate administrative office and support functions building. The existing CMR building at LANL would be decontaminated, decommissioned, and demolished in its entirety (disposition option 3). The preferred alternative includes the construction of the new CMRR facility, and the movement of operations from the existing CMR

building into the new CMRR facility, with operations expected to continue in the new facility over the next 50 years.

FOR FURTHER INFORMATION CONTACT: For further information on the CMRR EIS or record of decision, or to receive a copy of this EIS or record of decision, contact: Elizabeth Withers, Document Manager, U.S. Department of Energy, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544, (505) 667–8690. For information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The NNSA prepared this record of decision pursuant to the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR parts 1500–1508) and DOE's NEPA implementing procedures (10 CFR part 1021). This record of decision is based, in part, on information provided in the CMRR EIS.

LANL is located in north-central New Mexico, about 60 miles (97 kilometers) north-northeast of Albuquerque, and about 25 miles (40 kilometers) northwest of Santa Fe. LANL occupies an area of approximately 25,600 acres (10,360 hectares), or approximately 40 square miles (104 square kilometers). NNSA is responsible for the administration of LANL as one of three National Security Laboratories. LANL provides both the NNSA and DOE with mission support capabilities through its activities and operations, particularly in the area of national security.

Work at LANL includes operations that focus on the safety and reliability of the nation's nuclear weapons stockpile and on programs that reduce global nuclear proliferation. LANL's main role in NNSA mission objectives includes a wide range of scientific and technological capabilities that support nuclear materials handling, processing and fabrication; stockpile management; materials and manufacturing technologies; nonproliferation programs; and waste management activities. LANL supports actinide (any of a series of elements with atomic numbers ranging from actinium-89 through lawrencium-103) science missions ranging from the plutonium-238 heat source program undertaken for the National Aeronautics and Space Administration (NASA) to arms control and technology development.

The capabilities needed to execute NNSA mission activities require facilities at LANL that can be used to handle actinide and other radioactive materials in a safe and secure manner. Of primary importance are the facilities located within the CMR building and the plutonium facility (located in TAs 3 and 55, respectively). Most of the LANL mission support functions require analytical chemistry (AC) and materials characterization (MC), and actinide research and development support capabilities and capacities that currently exist within facilities at the CMR building and that are not available elsewhere. Other unique capabilities are located within the plutonium facility. Work is sometimes moved between the CMR building and the plutonium facility to make use of the full suite of capabilities they provide.

The CMR building is over 50 years old and many of its utility systems and structural components are deteriorating. Studies conducted in the late 1990s identified a seismic fault trace located beneath one of the wings of the CMR building that increases the level of structural integrity required to meet current structural seismic code requirements for a Hazard Category 2 nuclear facility (a Hazard Category 2 nuclear facility is one in which the hazard analysis identifies the potential for significant onsite consequences). Correcting the CMR building's defects by performing repairs and upgrades would be difficult and costly. NNSA cannot continue to operate the assigned LANL mission-critical CMR support capabilities in the existing CMR building at an acceptable level of risk to public and worker health and safety without operational restrictions. These operational restrictions preclude the full implementation of the level of operation DOE decided upon through its 1999 record of decision for the "Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory" (DOE/EIS–0238) (LANL SWEIS). Mission-critical CMR capabilities at LANL support NNSA's stockpile stewardship and management strategic objectives; these capabilities are necessary to support the current and future directed stockpile work and campaign activities conducted at LANL. The CMR building is near the end of its useful life and action is required now by NNSA to assess alternatives for continuing these activities for the next 50 years. NNSA needs to act now to provide the physical means for accommodating continuation of the CMR building's functional, mission-critical CMR capabilities beyond 2010 in a safe, secure, and environmentally sound manner.

Alternatives Considered

NNSA evaluated the environmental impacts associated with the proposed relocation of LANL AC and MC, and associated research and development capabilities that currently exist primarily at the CMR building, to a newly constructed facility, and the continued performance of those operations and activities at the new facility for the next 50 years. The CMRR EIS analyzed four action alternatives: (1) The construction and operation of a complete new CMRR facility at TA–55; (2) the construction of the same at a "greenfield" location within TA–6; (3) and a "hybrid" alternative maintaining administrative offices and support functions at the existing CMR building with a new Hazard Category 2 laboratory facility built at TA–55, and, (4) a "hybrid" alternative with the laboratory facility being constructed at TA–6. The CMRR EIS also analyzed the no action alternative. These alternatives are described in greater detail below.

Alternative 1 is to construct a new CMRR facility consisting of two or three new buildings within TA–55 at LANL to house AC and MC capabilities and their attendant support capabilities that currently reside primarily in the existing CMR building, at the operational level identified by the expanded operations alternative for LANL operations in the 1999 LANL SWEIS. Alternative 1 would also involve construction of a parking areas(s), tunnels, vault area(s), and other infrastructure support needs. AC and MC activities would be conducted in either two separate laboratories (constructed either both above ground (construction option 1) or one above and one below ground (construction option 2)) or in one new laboratory (constructed either above ground (construction option 3) or below ground (construction option 4)). An administrative office and support functions building would be constructed separately.

Alternative 2 would construct the same new CMRR facility within TA–6; the TA–6 site is a relatively undeveloped, forested area with some prior disturbance in limited areas that is referred to as a "greenfield" site.

Alternatives 3 and 4 are "hybrid" alternatives in which the existing CMR building would continue to house administrative offices and support functions for AC and MC capabilities (including research and development) and no new administrative support

building would be constructed. Structural and systems upgrades and repairs to portions of the existing CMR building would need to be performed and some portions of the building might be dispositioned. New laboratory facilities (as described for alternative 1) would be constructed either at TA–55 (alternative 3) or at TA–6 (alternative 4).

Under any of the alternatives, disposition of the existing CMR building could include a range of options from no demolition (disposition option 1), to partial demolition (disposition option 2), to demolition of the entire building (disposition option 3).

The no action alternative would involve the continued use of the existing CMR building with some minimal necessary structural and systems upgrades and repairs. Under this alternative, AC and MC capabilities (including research and development), as well as administrative offices and support activities, would remain in the existing CMR building. No new building construction would be undertaken. AC and MC operational levels would continue to be restricted and would not meet the level of operations determined necessary for the foreseeable future at LANL in the 1999 SWEIS record of decision.

Preferred Alternative

In both the draft and the final CMRR EIS, the preferred alternative for the replacement of the existing CMR building is identified as alternative 1 (construct a new CMRR facility at TA–55). The preferred construction option would be the construction of a single consolidated special nuclear material (SNM) capable, Hazard Category 2 laboratory with a separate administrative offices and support functions building (construction option 3). (Special nuclear materials include actinides such as plutonium, uranium enriched in the isotope 233 or 235, and any other material that the U.S. Nuclear Regulatory Commission determines to be special nuclear material.) NNSA's preferred option for the disposition of the existing CMR building is to decontaminate, decommission and demolish the entire structure (disposition option 3). Based on the CMRR EIS, the environmental impacts of the preferred alternative, although minimal, would be expected to be greater than those of the no action alternative. Construction option 3 would have less impact on the environment that implementing construction options 1 or 2; and disposition option 3 would have the greatest environmental impact of the disposition options analyzed.

Environmentally Preferable Alternative

The Council on Environmental Quality (CEQ), in its "Forty Most Asked Questions Concerning CEQ's NEPA Regulations" (46 FR 18026, 2/23/81) with regard to 40 CFR 1505.2, defined the "environmentally preferable alternative" as the alternative "that will promote the national environmental policy as expressed in NEPA's section 101". Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources. The CMRR EIS impact analysis indicates that there would be very little difference in the environmental impacts among the action alternatives analyzed and also that the impacts of these action alternatives would be small. After considering impacts to each resource area by alternative, NNSA has identified the no action alternative as the environmentally preferable alternative. The no action alternative was identified as having the fewest direct impacts to the physical environment and to cultural and historic resources. This is because no construction-related disturbances would exist and none of the CMR building would be demolished, as would be the case under any of the action alternatives analyzed for the proposed action, including the preferred alternative. Therefore, the no action alternative would have the fewest impacts.

Environmental Impacts of Alternatives

NNSA analyzed the potential impacts that might occur if any of the four action alternatives or the no action alternative were implemented for land use and visual resources; site infrastructure; air quality and noise; geology and soils; surface and groundwater quality; ecological resources; cultural and paleontological resources; socioeconomics; human health impacts; environmental justice; waste management and pollution prevention. NNSA considered the impacts that might occur from potential accidents associated with the four action alternatives, and the no action alternative as well, on LANL worker and area residential populations. NNSA considered the impacts of each alternative regarding the irreversible or irretrievable commitments of resources, and the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity. The CMRR EIS analyses identified minor differences in potential environmental impacts among the action alternatives including: Differences in the amount of land disturbed long term for construction and operations, ranging between about 27 and 23 acres disturbed during construction and between 10 and 15 acres disturbed permanently during operations; and differences in the potential to indirectly affect (but not adversely affect) potential habitat for a federally-listed threatened species and the potential to have no affect on sensitive habitat areas; differences in the potential to affect human health during normal operations and during accident events; differences in waste volumes generated and managed; and differences in transportation accident dose possibilities. A comparison of impacts is discussed in the following paragraphs.

Construction Impacts

Alternative 1 (Construct New CMRR Facility at TA–55; Preferred Alternative): The construction of a new SNM-capable Hazard Category 2 laboratory, an administrative offices and support functions building, SNM vaults and other utility and security structures, and a parking lot at TA–55 would affect 26.75 acres (10.8 hectares) of mostly disturbed land, but would not change the area's current land use designation. The existing infrastructure resources (natural gas, water, electricity) would adequately support construction activities. Construction activities would result in temporary increases in air quality impacts, but resulting criteria pollutant concentrations would be below ambient air quality standards. Construction activities would not impact water, visual resources, geology and soils, or cultural and paleontological resources. Minor indirect effects on potential Mexican spotted owl habitat could result from the removal of a small amount of habitat area, increased site activities, and nighttime lighting near the remaining Mexican spotted owl habitat areas. The socioeconomic impacts associated with construction would not cause any major changes to employment, housing, or public finance in the region of influence. Waste generated during construction would be adequately managed by the existing LANL management and disposal capabilities.

Alternative 2 (TA–6 Greenfield Alternative): The construction of new SNM-capable Hazard Category 2 and 3 buildings, the construction of an administrative offices and support functions facility, SNM vaults and other utility and security structures, and a parking lot at TA–6 would affect 26.75 acres (10.8 hectares) of undisturbed

land, and would change the area's current land use designation to nuclear material research and development, similar to that of TA–55. Infrastructure resources (natural gas, water, electricity) would need to be extended or expanded to TA–6 to support construction activities. Construction activities would result in temporary increases in air quality impacts, but resulting criteria pollutant concentrations would be below ambient air quality standards. It would alter the existing visual character of the central portion of TA–6 from that of a largely natural woodland to an industrial site. Once completed, the new CMRR facility would result in a change in the visual resource contrast rating of TA–6 from Class III (undeveloped land where management activities do not dominate the view) to Class IV (developed land where management activities dominate the view). Construction activities would not impact water, biotic resources (including threatened and endangered species), geology and soils, or cultural and paleontological resources. The socioeconomic impacts associated with construction would not cause any major changes to employment, housing, or public finance in the region of influence. Waste generated during construction would be adequately managed by the existing LANL capabilities for handling waste. In addition, a radioactive liquid waste pipeline might also be constructed across Two Mile Canyon to tie in with an existing pipeline to the Radioactive Liquid Waste Treatment Facility (RLWTF) in TA–50.

Alternative 3 (Hybrid Alternative at TA–55): The construction of new Hazard Category 2 and 3 buildings, the construction of SNM vaults and utility and security structures, and the construction of a parking lot at TA–55 would affect 22.75 acres (9.2 hectares) of mostly disturbed land, but would not change the area's current land use designation. The existing infrastructure would adequately support construction activities. Construction activities would result in temporary increases in air quality impacts, but resulting criteria pollutant concentrations would be below ambient air quality standards. Construction activities would not impact water, visual resources, geology and soils, or cultural and paleontological resources. Minor indirect effects on Mexican spotted owl habitat could result from the removal of a small amount of habitat area, increased site activities, and night-time lighting near the remaining Mexican spotted owl habitat areas. The socioeconomic impacts associated with construction would not cause any major changes to employment, housing, or public finance in the region of influence. Waste generated during construction would be adequately managed by the existing LANL capabilities for handling waste.

Alternative 4 (Hybrid Alternative at TA–6): The construction of new Hazard Category 2 and 3 buildings, the construction of SNM vaults and utility and security structures, and the construction of a parking lot at TA–6 would affect 22.75 acres (9.2 hectares) of undisturbed land, and would change the area's current land use designation to nuclear material research and development, similar to that of TA–55. Infrastructure resources (natural gas, water, electricity) would need to be extended or expanded at TA–6 to support construction activities. Construction activities would result in temporary increases in air quality impacts, but would be below ambient air quality standards. The existing visual character of the central portion of TA–6 would be altered from that of a largely natural woodland to that of an industrial site. Once completed, the new CMRR facility would result in a change in the visual resource contrast rating of TA–6 from Class III to Class IV. Construction activities would not impact water, visual resources, biotic resources (including threatened and endangered species), geology and soils, or cultural and paleontological resources. The socioeconomic impacts associated with construction would not cause any major changes to employment, housing, or public finance in the socioeconomic region of influence. Waste generated during construction would be adequately managed by the existing LANL capabilities for handling waste. In addition, a radioactive liquid waste pipeline may also be constructed across Two Mile Canyon to tie in with an existing pipeline to the RLWTF at TA–50.

Impacts During the Transition From the CMR Building to the New CMRR Facility Under the Action Alternatives

During a 4-year transition period, CMR operations at the existing CMR building would be moved to the new CMRR facility. During this time, both CMR facilities would be operating, although at reduced levels. At the existing CMR building, where restrictions would remain in effect, operations would decrease as CMR operations move to the new CMRR facility. At the new CMRR facility, levels of CMR operations would increase as the facility becomes fully operational. In addition, the transport of routine onsite shipment of AC and MC samples would continue to take place while both facilities are operating. With both facilities operating at reduced levels at the same time, the combined demand for electricity, and manpower to support transition activities during this period might be higher than would be required by the separate facilities. Nevertheless, the combined total impacts during this transition phase from both these facilities would be expected to be less than the impacts attributed to the expanded operations alternative and the level of CMR operations analyzed in the LANL SWEIS.

Also during the transition phase, the risk of accidents would be changing at both the existing CMR building and the new CMRR facility. At the existing CMR building, the radiological material at risk and associated operations and storage would decline as material and equipment are transferred to the new CMRR facility. This material movement would have the positive effect of reducing the risk of accidents at the CMR building. Conversely, at the new CMRR facility, as the amount of radioactive material at risk and associated operations increases to full operations, the risk of accidents would also increase. However, the improvements in design and technology at the new CMRR facility would also have a positive effect of reducing overall accident risks when compared to the accident risks at the existing CMR building. The expected net effect of both of these facilities operating at the same time during the transition period would be for the risk of accidents to be lower than the accident risks at either the existing CMR building or the fully operational new CMRR facility.

Action Alternatives—Operations Impacts

Relocating CMR operations to a new CMRR facility located at either TA–55 or TA–6 within LANL would require similar facilities, infrastructure support procedures, resources, and numbers of workers during operations. For most environmental areas of concern, operational differences would be minor. There would not be any perceivable differences in impact between the action alternatives for land use and visual resources, air and water quality, biotic resources (including threatened and endangered species), geology and soils, cultural and paleontological resources, power usage, and socioeconomics. Additionally, the new CMRR facility would use existing waste management

facilities to treat, store, and dispose of waste materials generated by CMR operations. All impacts would be within regulated limits and would comply with Federal, State, and local laws and regulations. Any transuranic (TRU) waste generated by CMRR facility operations would be treated and packaged in accordance with the Waste Isolation Pilot Plant (WIPP) waste acceptance criteria and transported to WIPP or a similar type facility for disposition by DOE.

Routine operations for each of the action alternatives would increase the amount of radiological releases as compared to current restricted CMR building operations. Current operations at the CMR building do not support the levels of activity described for the expanded operations alternative in the LANL SWEIS. There would be small differences in potential radiological impacts to the public, depending on the location of the new CMRR facility. However, radiation exposure to the public would be small and well below regulatory limits and limits imposed by DOE Orders. The maximally exposed offsite individual would receive a dose of less than or equal to 0.35 millirem per year, which translates to 2.1×10^{-7} latent cancer fatalities per year from routine operational activities at the new CMRR facility. Statistically, this translates into a risk of one chance in 5 million of a fatal cancer for the maximally exposed offsite individual due to these operations. The total dose to the population within 50 miles (80 kilometers) would be a maximum of 2.0 person-rem per year, which translates to 0.0012 latent cancer fatalities per year in the entire population from routine operations at the new CMRR facility. Statistically, this would equate to a chance of one additional fatal cancer among the exposed population every 1,000 years.

Using DOE-approved computer models and analysis techniques, estimates were made of worker and public health and safety risks that could result from potential accidents for each alternative. For all CMRR facility alternatives, the results indicate that statistically there would be no chance of a latent cancer fatality for a worker or member of the public. The CMRR facility accident with the highest risk is a facility-wide spill of radioactive material caused by a severe earthquake that exceeds the design capability of the CMRR facility under Alternative 1. The risk for the entire population for this accident was estimated to be 0.0005 latent cancer fatalities per year.

This value is statistically equivalent to stating that there would be no chance of a latent cancer fatality for an average individual in the population during the lifetime of the facility. Continued operation of the CMR building under the no action alternative would carry a higher risk because of the building's location and greater vulnerability to earthquakes. The risk for the entire population associated with an earthquake at the CMR building would be 0.0024 latent cancer fatalities per year, which is also statistically equivalent to no chance of a latent cancer fatality for an average individual during the lifetime of the facility.

As previously noted, overall CMR operational characteristics at LANL would not change regardless of the ultimate location of the replacement facility and the action alternative implemented. Sampling methods and mission operations in support of AC and MC would not change and, therefore, would not result in any additional environmental or health and safety impacts to LANL. Each of the action alternatives would generally have the same amount of operational impacts. All of the action alternatives would produce equivalent amounts of emissions and radioactive releases into the environment, infrastructure requirements would be the same, and each action alternative would generate the same amount of radioactive and non-radioactive waste, regardless of the ultimate location of the new CMRR facility at LANL. Other impacts that would be common to each of the action alternatives include transportation impacts and CMR building and CMRR facility disposition impacts. Transportation impacts could result from: (1) The one-time movement of SNM, equipment, and other materials during the transition from the existing CMR building to the new CMRR facility; and (2) the routine onsite shipment of AC and MC samples between the plutonium facility at TA–55 and the new CMRR facility. Impacts from the disposition of the existing CMR building and the CMRR facility would result from the decontamination and demolition of the buildings and the transport and disposal of radiological and non-radiological waste materials. All action alternatives would require the relocation and one-time transport of SNM equipment and materials. Transport of SNM, equipment, and other materials currently located at the CMR building to the new CMRR facility at TA–55 or TA–6 would occur over a period of two to four years. The public would not be expected to receive any measurable exposure from the one-time movement of radiological materials associated with this action. Impacts of potential handling and transport accidents during the one-time movement of SNM, equipment, and other materials during the transition from the existing CMR building to the new CMRR facility would be bounded by other facility accidents for each alternative. For all alternatives, the environmental impacts and potential risks of transportation would be small.

Under each action alternative, routine onsite shipments of AC and MC samples consisting of small quantities of radioactive materials and SNM samples would be shipped from the plutonium facility at TA–55 to the new CMRR facility at either TA–55 or TA–6. The public would not be expected to receive any additional measurable exposure from the normal movement of small quantities of radioactive materials and SNM samples between these facilities. The potential risk to a maximally exposed individual (MEI) member of the public from a transportation accident involving routine onsite shipments of AC and MC samples between the plutonium facility and CMRR facility was estimated to be very small (3.7x10–10), or approximately 1 chance in 3 billion. For all action alternatives, the overall environmental impacts and potential risks of transporting AC and MC samples would be small.

Action Alternatives—CMR Building and CMRR Facility Disposition Impacts

All action alternatives would require some level of decontamination and demolition of the existing CMR building. Operations experience at the CMR building indicates some surface contamination has resulted from the conduct of various activities over the last 50 years. Impacts associated with decontamination and demolition of the CMR building are expected to be limited to the creation of waste within LANL site waste management capabilities. This would not be a discriminating factor among the alternatives.

Decontamination, and demolition of the new CMRR facility would also be considered at the end of its designed lifetime operation of at least 50 years. Impacts from the disposition of the CMRR facility would be expected to be similar to those for the existing CMR building.

No Action Alternative: Under the no action alternative there would be no new construction and minimal necessary structural and systems upgrades and repairs. Accordingly, there would be no potential environmental impacts resulting from new construction for this alternative. Operational impacts of continuing CMR

operations at the CMR building would be less than those identified under the expanded operations alterative analyzed in the 1999 LANL SWEIS due to the operating constraints imposed on radiological operations at the CMR building.

Comments on the Final Environmental Impact Statement

NNSA distributed approximately 400 copies of the final EIS to Congressional members and committees, the State of New Mexico, various American Indian tribal governments and organizations, local governments, other Federal agencies, and the general public. NNSA received one comment letter from the Pueblo of San Ildefonso regarding NNSA's responses to Pueblo concerns related to the draft CMRR EIS that focused primarily on the spread of contamination present in the canyons around LANL onto land owned by the Pueblo. This issue is beyond the scope of the CMRR EIS but will be addressed by NNSA through other means already established for LANL, such as the environmental restoration project, rather than through the NEPA compliance process.

Decision Factors

NNSA's decisions are based on its mission responsibilities and the ability to continue to perform mission-critical AC and MC operations at LANL in an environmentally sound, timely and fiscally prudent manner. Other key factors in the decision-making process include programmatic impacts and overall program risk, and construction and operational costs.

LANL's CMR operations support a wide range of scientific and technological capabilities that support, in turn, NNSA's national security mission assignments. Most of the LANL mission support functions require AC and MC, and actinide research and development support capabilities and capacities that currently exist within the CMR building. NNSA will continue to need CMR capabilities now and into the foreseeable future, much as these capabilities have been needed at LANL over the past 60 years. Programmatic risks are high if LANL CMR operations continue at the curtailed operational level now appropriate at the aging CMR building. CMR operations at LANL need to continue seamlessly in an uninterrupted fashion, and the level of overall CMR operations needs to be flexible enough to accommodate the work load variations inherent in NNSA's mission support assignments and the general increase in the level of operations currently seen as necessary to support future national security requirements.

The CMR building was initially designed and constructed to comply with the Uniform Buildings Codes in effect at the time. The CMR building's wing 4 location over a seismic trace would require very extensive and costly structural changes that would be of marginal operational return. Construction costs are estimated to be less for building and operating a new CMRR facility over the long term than the cost estimated for making changes to the aging CMR building so that the building could be operated as a nuclear facility at the level of operations required by the expanded operations alternative selected for LANL in the 1999 LANL SWEIS ROD over the next 50 years. Life cycle costs of operating a new CMRR facility at TA–55 are less than the costs would be of operating a totally upgraded CMR building over the next 50 years. Reduced general occupation costs of maintaining the new CMRR facility (such as heating and cooling the building to maintain comfortable personnel working conditions) given the reduction in occupied building square footage over that of the existing CMR building, and reduced security costs (for maintaining Perimeter Intrusion Detection Alarm Systems (PIDAS) and guard personnel) due to the co-location of the CMRR facility within the existing security perimeter of the plutonium facility thereby eliminating the need for maintaining a separate duplicative security system at the CMR building both would significantly reduce general operating costs for the new facility.

Mitigation Measures

Based on the analyses of impacts provided in the CMRR EIS, no mitigation measures were identified as being necessary since all potential environmental impacts would be substantially below acceptable levels of promulgated standards. Activities associated with the proposed construction of the new CMRR facility would follow standard procedures for minimizing construction impacts, as would demolition activities.

Decisions

NNSA has decided to implement the preferred alternative, alternative 1, which is the construction and operation of a new CMRR facility within TA–55 at LANL. The new CMRR facility would include two buildings (one building for administrative and support functions, and one building for Hazard Category 2 SNM laboratory operations), both of which would be constructed at above ground locations (construction option 3). The existing CMR building would be decontaminated, decommissioned and demolished in its entirety (disposition option 3). However, the actual implementation of these decisions is dependent on DOE funding levels and allocations of the DOE budget across competing priorities.

Issued in Washington, DC, this 3rd day of February, 2004.

Linton Brooks,

Administrator, National Nuclear Security Administration.

[FR Doc. 04–3096 Filed 2–11–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0059; FRL–7621–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal), EPA ICR Number 0282.13, OMB Control Number 2060–0048

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on 1/31/2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 15, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0059, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA,

725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9264; fax number: (202) 343–2804; e-mail address: *reyes-morales.nydia@epa.gov.*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 26, 2003 (68 FR 66412), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OAR–2003–0059, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material. CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal).

Abstract: Per sections 207(c)(1) and 213 of the Clean Air Act (CAA), when emission testing shows that a substantial number of properly maintained and used engines produced by a manufacturer do not conform to emission standards, the manufacturer is required to recall the engines. Manufacturers are also required to submit Defect Information Reports (DIRs) to alert EPA of the existence of emission-related defects on certain classes of engines that may cause the engines' emissions to exceed the standards and ultimately may lead to a recall. EPA uses these reports to target potentially nonconforming classes of engines for future testing, to monitor compliance with applicable regulations and to order a recall, if necessary. Manufacturers can also initiate a recall voluntarily by submitting a Voluntary Emission Recall Report (VERR). VERRs and VERR updates allow EPA to determine whether the manufacturer conducting the recall is acting in accordance with the CAA and to examine and monitor the effectiveness of the recall campaign.

The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information submitted by manufacturers is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 260 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of on-highway heavy-duty trucks, non-road compression-ignition engines, non-road spark-ignition engines, marine engines, locomotives and locomotive engines.

Estimated Number of Respondents: 17.

Frequency of Response: On occasion and quarterly.

Estimated Total Annual Hour Burden: 4,417.

Estimated Total Annual Cost: $265,971 includes $0 annualized capital/startup costs, $413 annual O&M costs and $265,558 annual labor costs.

Changes in the Estimates: There is a decrease of 508 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the correction of a mistake made in the original calculations. The decrease in burden is, therefore, due to an adjustment to the estimates.

Dated: January 27, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–3080 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0032; FRL–7621–5]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Wood Furniture Manufacturing Operations, EPA ICR Number 1716.04, OMB Control Number 2060–0324

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this

document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 15, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0032, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Compliance Assessment and Media Programs Division, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number: (202) 564–0050; e-mail address: *marshall.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003, EPA published a notice in the **Federal Register** (68 FR 27059), seeking comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0032, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comment, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NESHAP for Wood Furniture Manufacturing Operations (40 CFR part 63, subpart JJ).

Abstract: Respondents to this information collection request are the owners and operators of both new and existing wood furniture manufacturing operations that are sources of hazardous air pollutants. Major sources are required to perform recordkeeping activities and submit both initial and semiannual/quarterly compliance reports. Incidental wood furniture manufacturers and area sources must keep records to show that they are not major sources. The information is used to determine that all sources subject to the rule are complying with the standards. The information to be collected is mandatory under the rule.

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, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 45 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Wood Furniture Manufacturers.

Estimated Number of Respondents: 750.

Frequency of Response: Semiannually, quarterly and initially.

Estimated Total Annual Hour Burden: 47,190 hours.

Estimated Total Annual Costs: $3,003,109, which includes zero annualized capital/startup costs, $18,000 annual O&M costs, and $2,985,109 respondents' labor costs.

Changes in the Estimates: There is a decrease of 44,881 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of a more accurate characterization of the sources affected by the standard.

Dated: January 22, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–3085 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0023; FRL–7621–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Magnetic Tape Coating Facilities (40 CFR Part 60, Subpart SSS) (Renewal), EPA ICR Number 1135.08, OMB Control Number 2060–0171

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 15, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0023, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0023, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NSPS for Magnetic Tape Coating Facilities (40 CFR Part 60, Subpart SSS)

Abstract: The New Source Performance Standards (NSPS) for Magnetic Tape Coating Facilities were proposed on January 22, 1986, and promulgated on October 3, 1988. These standards apply to each coating operation and each piece of coating mix preparation equipment for which construction, modification or reconstruction commenced after January 22, 1986. Volatile organic compounds (VOC) are the pollutants regulated under the standards.

Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to these magnetic tape operations consist mainly of VOC measurements, including monthly records of VOC content of all coatings applied, total amount and percent VOC recovered, and the total amount of coating applied. In addition, facilities utilizing less solvent annually than the applicable cutoff shall make semiannual estimates of projected annual amount of solvent use and maintain records of actual solvent use.

Each owner or operator of an affected magnetic tape coating operation shall install, calibrate, maintain, and operate a monitoring device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream. Certain facilities will also be required to continuously measure and record either the combustion temperature of the incinerator (for those facilities controlled by a thermal incinerator) or the condenser exhaust temperature (for those facilities controlled by a condensation system).

Responses to the collection of information are mandatory (40 CFR Part 60, Subpart SSS, NSPS for Magnetic Tape Coating Facilities). The required information has been determined not to be confidential. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 88 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of magnetic tape coating facilities.

Estimated Number of Respondents: 6.

Frequency of Response: Initial, quarterly, semiannually.

Estimated Total Annual Hour Burden: 2,017 hours.

Estimated Total Cost: $216,000, which includes $34,000 annualized capital/startup costs, $53,000 annual O&M costs and $129,000 labor costs.

Changes in the Estimates: There is a decrease of 1,874 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of sources affected by the standard.

Dated: January 22, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–3086 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0017; FRL–7621–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Voluntary Cover Sheet for TSCA Submissions, EPA ICR No. 1780.03, OMB No. 2070–0156

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Voluntary Cover Sheet for TSCA Submission (EPA ICR #1780.03; OMB #2070–0156). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated cost.

DATES: Additional comments may be submitted on or before March 15, 2004.

ADDRESSES: Submit your comments, referencing docket ID Number OPPT–2003–0017, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 18, 2003, EPA sought comments on this renewal ICR (68 FR 19203). EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment and has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2003–0017, which is available for public viewing at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Voluntary Cover Sheet for TSCA Submissions.

Abstract: The Toxic Substances Control Act (TSCA) requires industry to submit information and studies for existing chemical substances under sections 4, 6, and 8. Under normal reporting conditions, EPA receives thousands of submissions each year; each submission represents on average three studies. In addition, specific data call-ins can be imposed on industry.

As a follow-up to industry experience with a 1994 TSCA data call-in, the Chemical Manufacturers Association (CMA, now known as the American Chemistry Council (ACC)), the Specialty Organics Chemical Manufacturers Association (SOCMA), and the Chemical Industry Data Exchange (CIDX), in cooperation with EPA, took an interest in pursuing electronic transfer of TSCA summary data and of full submissions to EPA. In particular, ACC developed a standardized cover sheet for voluntary use by industry as a first step to an electronic future and to begin familiarizing companies with standard requirements and concepts of electronic transfer.

This form is designed for voluntary use as a cover sheet for submissions of information under TSCA sections 4, 8(d) and 8(e). The cover sheet facilitates submission of information by displaying certain basic data elements, permitting

EPA more easily to identify, log, track, distribute, review and index submissions, and to make information publicly available more rapidly and at reduced cost, to the mutual benefit of both the respondents and EPA.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hour per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Companies that manufacture, process, use, import or distribute in commerce chemical substances that are subject to reporting requirements under sections 4, 8(d) or 8(e) of TSCA.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 964.

Estimated Total Annual Burden on Respondents: 9,136 hours.

Estimated Total Annual Costs: $703,435.

Changes in Burden Estimates: There is an increase of 8,221 hours (from 915 hours to 9,136 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change reflects a net increase in the estimated number of submissions under TSCA sections 4, 8(d) and 8(e) for which the Voluntary TSCA Cover Sheet could be used, in particular a substantial increase in the estimated number of TSCA section 4 submissions. Since the use of the Voluntary TSCA Cover Sheet is a direct reflection of the number of submissions received under TSCA sections 4, 8(d) and 8(e), any change in the estimated numbers of submissions under those requirements will result in a parallel change in the burden hours associated with this information collection. This increase represents an adjustment.

Dated: January 22, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–3087 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7621–7]

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 Utility Air Regulatory Group in the U.S. Court of Appeals for the District of Columbia: *Utility Air Regulatory Group* v. *EPA*, No. 03–1168 (D.C. Cir.). Petitioners challenge EPA's final rule entitled "Revision of the Guidance on Air Quality Models: Adoption of a Preferred Long Range Transportation Model and Other Revisions," published at 68 FR 18444 (April 5, 2003), adopting the CALPUFF modeling system as an additional air quality model under the Guideline on Air Quality Models, 40 CFR part 51. Under the terms of the proposed settlement agreement, EPA would issue three documents if, after review of public comments received in response to this Notice, it elects to proceed with the settlement agreement.

DATES: Written comments on the proposed settlement agreement must be received by March 15, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2004–0001, 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.

FOR FURTHER INFORMATION CONTACT: Roland Dubois, Office of General Counsel (2333A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. telephone: (202) 564–5626.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

Petitioners raise issues concerning: (1) The adequacy of CALPUFF air dispersion model to address certain instances of long range transport, (2) the availability of EPA-approved version of CALPUFF model on model developer's website potentially allowing model developer to make unauthorized changes to the model, and (3) the potential for misinterpretation of statements in preamble to April 5, 2003, final rule (68 FR 18444) discussing the role of federal land managers in evaluating air quality related values impacts.

Under the Settlement Agreement, EPA would issue three documents: (1) A guidance document for using CALPUFF to model long range pollutant transport, (2) a letter to the CALPUFF model developer describing procedures for EPA approval of changes to the EPA-approved version of the CALPUFF model, and (3) a letter to Petitioner's counsel clarifying EPA's statement in the preamble to the rule regarding the role of federal land managers in evaluating air quality related values impacts.

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 to the litigation in question. The Agency will review and consider comments received, and will then: (1) Consent to the proposed settlement, (2) make any modifications deemed necessary or appropriate prior to consenting to the proposed settlement, or (3) withhold consent to the proposed settlement.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get a Copy of the Settlement Agreement?

EPA has established an official public docket for this action under Docket ID No. OGC–2004–0001 which contains a copy of the settlement agreement and the three documents EPA would sign pursuant to the settlement agreement. 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 on 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 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: February 4, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–3088 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7622–3]

Notice of Request for Initial Proposals (IP) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 6 is soliciting Initial Proposals (IP) from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the Clean Water Act (CWA), interested in applying for Federal assistance for Water Quality Cooperative Agreements under the CWA section 104(b)(3) in the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. Region 6 EPA intends to award an estimated $1 million to eligible applicants through assistance agreements ranging in size, on average, from $40,000 up to $200,000 (Federal) for innovative projects/demonstrations/studies that can be used as models relating to the prevention, reduction, and elimination of water pollution. From the IPs received, EPA estimates up to 8 to 10 projects may be selected to submit full applications. The Agency reserves the right to reject all IPs and make no awards. A Request for Proposals for Tribal governments will be issued under a separate notice.

DATES: EPA will consider all proposals received on or before 5 p.m. central standard time April 12, 2004. IPs received after the due date will not be considered for funding.

ADDRESSES: IPs should be mailed to: Terry Mendiola (6WQ–AT), U.S. Environmental Protection Agency, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight Delivery may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

Required Overview Content:

Federal Agency Name—Environmental Protection Agency, Water Quality Division, State Tribal Programs Section.

Funding Opportunity Title—Water Quality Cooperative Agreements.

Announcement Type—Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number—CFDA

66.463—Water Quality Cooperative Agreements

Dates—April 12, 2004—Proposals due to EPA.

June 11, 2004—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

EPA Region 6's Water Quality Protection Division is requesting proposals from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA for unique and innovative projects that address the National Pollutant Discharge Elimination System (NPDES) program with special emphasis on concentrated animal feeding operations (CAFO) permitting, watershed integration through NPDES, and homeland security, as well as, water quality studies relating to water quality standards, monitoring and assessment, ecoregion and subregion delineation, harmful algal blooms, and biological criteria.

Funding is authorized under the provisions of the CWA section 104(b)(3), 33 U.S.C.1254(b)(3). The regulations governing the award and administration of Water Quality Cooperative Agreements are in 40 CFR part 30 (for institutions of higher learning, hospitals, and other nonprofit organizations) and 40 CFR part 31 (for States, local governments, and interstate agencies).

An organization whose IP is selected for possible Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, *see* 40 CFR 30.12 and 31.10).

High Priority Areas for Funding Consideration

WQCAs awarded under section 104(b)(3) may only be used to conduct and promote the coordination and acceleration of activities such as research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, "demonstrations" are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. A project that is accomplished though the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge, however worthwhile the project may be, is not a demonstration. Research projects may include the application of the practices when they contribute to learning about an environmental concept or problem.

EPA will award WQCAs for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution in the following subject areas:

CAFO Permitting Support

Demonstration of treatment/reuse/disposal technologies and controls that are designed to reduce CAFO-based nutrients in watersheds, with a demonstration of amount of loading reductions from those technologies, *e.g.*, handling phosphorus-rich poultry litter in northwest Arkansas/northeast Oklahoma; efficacy of wetlands to polish runoff or overflow from ponds and/or land application processes.

Demonstration of nutrient indicator tracing in CAFO dominated, nutrient impaired watersheds, *e.g.*, ribo-typing study to determine source of bacteria and pathogens, or nitrogen-ion study to determine source of nitrogen in waters, or hormone or antibiotic study to determine sources of excreted waste material.

Watershed Integration of Water Programs Under the CWA Through NPDES

Development of innovative permit tool(s) supporting watershed-based permitting activities for specific parameters. Establish a technique for identifying all dischargers and their respective contribution levels for parameter(s) of concern within an impaired watershed. Should determine the overall impact of point and non-point dischargers on receiving waters. Pollutant data for water quality parameters, such as nutrients, dissolved oxygen, fecal coliform, etc., could be used in the development of a model (such as self-implementing general permits) for permitting activities. The model may incorporate unique permitting approaches including effluent trading scenarios (in accordance with the Water Quality Trading Policy, January 13, 2003), which may be implemented in the general permit for specific water quality parameters.

Homeland Security for NPDES

Studies of ability of conventional or innovative wastewater treatment plant processes to effectively treat, remove, or render harmless biological, chemical, or radiological agents, which could be introduced into the collection or treatment system.

Development of models for hardening of collection systems, lift stations, and wastewater treatment plant processes to prevent introduction of harmful biological, chemical, or radiological agents.

Characterization of Ecological Condition

Estimation of the extent of waters attaining designated beneficial uses, and determination of causes of impairment, based on a core set of indicators of ecological condition and environmental stressors. Biological measures should form the primary basis for assessing attainment of the aquatic life use with chemical, physical, and watershed measurements used to assess and rank the relative importance of stressors.

Nutrient Criteria

Development of effects based nutrient criteria and assessment methods, based on the relationship(s) between evidence of impairment of biological integrity, and/or other response indicators, and instream nutrient concentrations observed at reference waterbodies. Priority consideration will be given to proposals that also address criteria development and refinement for other naturally occurring water quality constituents.

Ecoregion and Subregion Delineation

Ecoregion and subregion delineation providing an improved basis for waterbody classification, supporting definition of water quality management goals and expectations, development of water quality standards, and water quality monitoring and assessment.

Harmful Algal Blooms

Critical research, monitoring necessary to characterize spacial and temporal extent of blooms, and implementation of measures to manage and control harmful algal blooms (HABs) in fresh or marine waters using innovative, cost effective watershed based approaches. HABs include golden alga (Pyrmnesium parvum), red tide, blue-green algae and brown algae. Of particular concern is the golden alga, which has established in numerous river basins in west Texas and New Mexico and has the potential to spread to other states.

Development of Biological Criteria for Large Rivers

Development of attainable conditions for biological integrity in large rivers, where conventional reference waterbody approaches are not feasible, based on historical aquatic assemblage data from the same or similar waterbodies, habitat-modeling techniques, or other innovative approaches.

II. Award Information

Region 6 EPA intends to award an estimated $1 million to eligible applicants through assistance agreements ranging in size, on average, from $40,000 up to $200,000 (Federal) for innovative projects/demonstrations/studies that can be used as models relating to the prevention, reduction, and elimination of water pollution. From the IPs received, EPA estimates up to 8 to 10 projects may be selected to submit full applications. The average size of an award is anticipated to be approximately $100,000. Awards will be made in the summer of 2004. Typically, the project and budget period for these awards is one to two years, with an average of about two years. Organizations who have an existing agreement under this program are eligible to compete for new awards, including supplementation to existing projects.

It is expected that all the awards under this program will be cooperative agreements. States and interstate agencies meeting the requirements in 40 CFR 35.504 may include the funds for WQCA in a Performance Partnership Grant (PPG) in accordance with the regulations governing PPGs in 40 CFR part 35, subparts A and B. For states and interstate agencies that choose to do so, the regulations provide that the workplan commitments that would have been included in the WQCA must be included in the PPG workplan.

A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the CWA are State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA in the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. IPs received for projects outside of Region 6 will not be considered.

2. Cost Sharing or Matching

A minimum match of five percent will be required for all approved projects and should be included in the total funding requested for each proposal submitted.

3. Other

The specific criteria listed in the *Criteria* section of *V. Application Review Information* can also be considered eligibility criteria. The IPs will be evaluated by Region 6 in a two phased approach. Initially, each IP will be evaluated against the specific criteria listed under the priority area for which it was submitted. In order for the IP to be considered in the second evaluation phase, it must address, at a minimum, ALL the specific criteria listed under the priority area. Once it is determined that all the specific criteria has been addressed, proposals will be evaluated on how well they address the specific criteria. Eligible proposals will then be evaluated in the second phase of the review process.

IV. Application and Submission Information

1. Address To Request Application Package

Full application packages should not be submitted at this time; Region 6 is only requesting initial proposals. Initial proposal format and content is included below. Upon notification of final selections, applicants will be instructed how financial assistance application packages can be obtained.

2. Proposal Format and Contents

IPs should be no more than three pages with a minimum font size of 10 pitch in Wordperfect/Word or equivalent. Failure to follow the format or to include all requested information could result in the IP not being considered for funding. It is recommended that confidential information not be included in this IP. The following format should be used for all IPs:

Name of Project:

Priority Area Addressed: Only one priority area should be listed. If more than one addressed, select best. (*i.e.*, CAFO Permitting Support, Homeland Security for NPDES, Nutrient Criteria, *etc.*):

Point of Contact: (Individual and Agency/Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the status of the current grant or cooperative agreement):

Proposed Federal Amount:

Proposed Non-Federal Match (minimum of 5%): The match is based on the total project cost not the Federal amount. To determine a proposed minimum match of 5%, use the following example:

Federal amount = $25,000

Total Project Cost = T

The Federal amount is 95% of T, therefore:

$25,000 = T × 0.95

$25,000/0.95 = T

$26,316 = T (round the decimal)

If the total project cost is $26,316, then:

$26,316 × 0.05 = $1,316 non-Federal match

Proposed Total Award Amount:

Description of General Budget Proposed To Support Project:

Project Description: (Should not exceed two pages of single-spaced text)

Expected Accomplishments or Product, With Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Environmental Results and Outcomes:

Describe How the Project Meets the Evaluation Criteria Specified in Section V. Application Review Information:

3. Submission Dates and Times

This is the estimated schedule of activities for submission, review of proposals and notification of selections:

April 12, 2004—Proposals due to EPA.

June 11, 2004—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package.

4. Intergovernmental Review

Applicants requested to submit a full application will be required to comply with *Intergovernmental Review* requirements (40 CFR part 29).

5. Funding Restrictions

The following information should be considered in developing proposal(s):

- Construction projects, except for the construction required to carry out a demonstration project, and acquisition of land are not eligible for funding under this program.
- New or on-going programs to implement routine environmental controls are not eligible for funding under this program.
- Although proposals may meet more than one of the priority areas listed in *Section I. Funding Opportunity Description*, select only one and identify that priority area in the proposal format.
- It is encouraged that indirect cost be limited to 15 percent.

6. Other Submission Requirements

Applicants may submit IPs only in hard copy. EPA will consider all proposals received on or before 5 p.m. central standard time April 12, 2004. IPs received after the due date will not be considered for funding. IPs should be mailed to: Terry Mendiola (6WQ–AT), U.S. Environmental Protection Agency, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight Delivery may be sent to the same address. Please mail three copies of the IP(s).

V. Application Review Information

1. Criteria

EPA Region 6 will award WQCA on a competitive basis and evaluate IPs based on specific and general criteria. EPA Region 6 has identified several subject areas for priority consideration. To be eligible to compete for funding, *all specific criteria must be addressed/met* for the priority area in which it was submitted (refer to Section III. Eligibility Information # 3).

The following *specific criteria* will be used to evaluate the subject priority area:

CAFO Permitting Support, specifically, the demonstration of treatment/reuse/disposal technologies and controls that are designed to reduce CAFO-based nutrients in watersheds, with a demonstration of amount of loading reductions from those technologies, *etc.* The following specific criteria will be used to evaluate this priority area:

- Demonstrate treatment/reuse/disposal technologies and controls through testing and/or modeling.
- Report on the efficiencies.

CAFO Permitting Support, specifically, the demonstration of nutrient indicator tracing in CAFO dominated, nutrient impaired watersheds, etc. The following specific criteria will be used to evaluate this priority area:

- Demonstrate nutrient indicator tracing in CAFO dominated, nutrient impaired watersheds, with identification and differentiation of sources of animal/CAFO wastes from human wastes.

Watershed Integration of Water Programs Under the CWA Through NPDES, specifically, the development of innovative permit tool(s) supporting watershed-based permitting activities for specific parameters, etc. The following specific criteria will be used to evaluate this priority area:

- Include consideration of all waterbodies in a watershed.
- Include consideration of all point sources.
- Consider net contribution of non-point sources in aggregate effects.
- Provide aggregate water quality modeling which determines aggregate effects in the watershed.

Homeland Security for NPDES, specifically, studies of ability of conventional or innovative wastewater treatment plant processes to effectively treat, remove, or render harmless biological, chemical, or radiological agents, which could be introduced into the collection or treatment system, etc. The following specific criteria will be used to evaluate this priority area:

- Actual performance data of processes vs. technical predictions of performance.
- Enhanced security procedure models and development of model emergency operating plans.

Characterization of Ecological Condition, specifically, the estimation of the extent of waters attaining designated beneficial uses, and determination of causes of impairment, based on a core set of indicators of ecological condition and environmental stressors, etc. The following specific criteria will be used to evaluate this priority area:

- Mechanisms to evaluate the interrelationships between biological assemblages, ambient water chemistry, fish tissue contaminants, physical habitat, and/or watershed characteristics.
- Potential to improve a state's approaches to make decisions about whether or not water quality standards are being attained.
- Apply a probabilistic approach to site selection to support estimates of conditions across an entire study area.
- Result in the ability to compare environmental indicator data across state and regional boundaries for ambient and reference conditions.
- Offers the potential to improve a state's approach to estimate the extent of waterbody impairment statewide.
- Results integrated into State 305(b) report.
- All data entered into EPA STORET database.

Nutrient Criteria, specifically, the development of effects based nutrient criteria and assessment methods, based on the relationship(s) between evidence of impairment of biological integrity, and/or other response indicators, and instream nutrient concentrations observed at reference waterbodies. Priority consideration will be given to proposals that also address criteria development and refinement for other naturally occurring water quality constituents. The following specific criteria will be used to evaluate this priority area:

- Demonstrate approaches or provide tools that may be applied in other areas.
- Apply the latest scientific approaches or innovative techniques to establish and validate the relationship(s) between elevated nutrient concentrations and indicator response.
- Result in recommendations for numeric water quality criteria standards or criteria that can be applied to a class of waters (rather than individual waters).
- Include mechanisms for technology transfer.
- All data entered into EPA's STORET database.

Ecoregion and Subregion Delineation, specifically, ecoregion and subregion delineation providing an improved basis for waterbody classification, supporting definition of water quality management goals and expectations, development of water quality standards, and water quality monitoring and assessment. The following specific criteria will be used to evaluate this priority area:

- Conducted in New Mexico.
- High degree of coordination among natural resource and environmental management agency scientists.
- Result in completion of ecoregion and subregion boundaries and descriptions for an entire state.
- Conducted using methods comparable to those employed in other states by the EPA Office of Research and Development, National Health and Environmental Effects Research Laboratory, to achieve level IV subregionalization.
- Result in a nationally consistent set of subregion management units.

Harmful Algal Blooms. specifically, critical research, monitoring necessary to characterize spacial and temporal extent of blooms, and implementation of measures to manage and control harmful algal blooms (HABs) in fresh or marine waters using innovative, cost effective watershed based approaches, etc. The following specific criteria will be used to evaluate this priority area:

- Represent a significant step(s) of critical importance in understanding factors causing algal blooms.
- Incorporates both sound proven scientific methods and innovative approaches in managing and controlling HABs.
- Use of monitoring to assess geographic extent and temporal patterns resulting in a more targeted strategy to manage and control HABs.

Development of Biological Criteria for Large Rivers, specifically, the development of attainable conditions for biological integrity in large rivers, where

conventional reference waterbody approaches are not feasible, based on historical aquatic assemblage data from the same or similar waterbodies, habitat-modeling techniques, or other innovative approaches. The following specific criteria will be used to evaluate this priority area:

- Results in the development of assessment methods for narrative water quality standards biocriteria or the adoption of numeric biocriteria for one or more aquatic assemblages.
- Based on sound scientific methods, waterbody classification approaches, and conventional collection methods that are practical for use by state environmental agencies.
- Yields comparable assessments to those conducted across state lines and other geopolitical boundaries.

The following *general criteria* will be used to evaluate each eligible proposal:

- Adequacy of proposal, including the relationship of the proposed project to the priorities identified in this notice, innovation of project proposal and level of multi-organizational support, if needed. (10 points)
- Compliance with proposal format/guidance, including how well the proposal follows the solicitation notice, clearly defined milestones/schedule and clearly identified deliverables. (5 points)
- Cost effectiveness/likelihood of success of the proposal, including adequacy of resources committed to project/realistic budget, realistic implementation schedule and clearly defined measures of success that are reasonably attainable. (5 points)
- Applicant's past performance, if applicable. (minus (−) 3 points max.)

2. Review and Selection Process

The IPs will be evaluated by regional staff in a two phased approach. Initially, each IP will be evaluated against the specific criteria listed under the priority area for which it was submitted. In order for the IP to be considered in the second evaluation phase, it must address, at a minimum, ALL the specific criteria listed under the priority area. Once it is determined that all the specific criteria has been addressed, proposals will be evaluated on how well they address the specific criteria for a possible total score of 10 points.

In the second phase, each IP will be evaluated against the general criteria listed above for a possible total score of 20. Points will be taken away for poor past performance if knowledge of applicant's past performance is available to EPA. Points from Phase 1 and 2 will be added together for a possible total score of 30 points.

Final selection of IPs will be made by the Director of Water Quality Protection Division, EPA Region 6.

VI. Award Administration Information

1. Award Notices

Selected organizations will be notified in writing and requested to submit full applications. Applications, including workplans, are subject to EPA review and approval. It is expected that unsuccessful applicants will be notified in writing.

2. Administrative and National Policy Requirements

Applicants whose proposals contemplate contracting for services or products must comply with applicable regulations relating to competitive procurement and preparation of cost or price analyses in accordance with 40 CFR 30.40 through 30.48 (for institutions of higher learning, hospitals, and other nonprofit organizations) and 40 CFR 31.36 (for States, local governments, and interstate agencies). Identifying a contractor in a proposal does not exempt the applicant from these requirements. Applicants requested to submit a full application will be required to confirm compliance with competitive procurement procedures.

Additionally, applicants requested to submit a full application will be required to comply with the *Quality Assurance* requirements (40 CFR 30.54 and 31.45) if projects involve environmentally related measurements or data generation. Prior to award, a Quality Management Plan must be submitted and approved by EPA.

Applicants must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number with the full application. Organizations may obtain the number by calling, toll free, 1–866–705–5711.

Applicants requested to submit a full application may incur pre-award costs 90 calendar days prior to award provided such costs are included in the application, the costs meet the definition of pre-award costs and are approved by EPA. Pre-award costs are those costs incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance and are in conformance with the appropriate statute and cost principles. The approval of pre-award costs should be reflected in the budget period on the assistance agreement and if applicable, under a term and condition of the assistance agreement. Recipients incur pre-award costs at their own risk (*i.e.*, EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

Procedures for dispute resolution process are located in 40 CFR 30.63 and 31.70 apply.

It is encouraged that indirect cost be limited to 15 percent or less.

3. Reporting

Post award reporting requirements include, at a minimum, submission of semi-annual project status reports with submission of a final report prior to the end of the budget/project period. Means of submission and report format will be negotiated in the workplan.

VII. Agency Contacts

Point of Contact: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov*.

VIII. Other Information

A list of selected projects will be posted on the Region 6 Water Quality Protection Division, Assistance Programs Branch Web site *http://www.epa.gov/earth1r6/6wq/at/sttribal.htm*. This Web site may also contain additional information about this request. Deadline extensions, if any, will be posted on this Web site and not in the **Federal Register**.

Dated: February 4, 2004.

James R. Brown,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 04–3091 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7621–8]

Notice of Open Meeting; Environmental Financial Advisory Board; March 9–10, 2004

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in Washington, DC on March 9–10, 2004. The meeting will be held at the National Press Club, 13th Floor in the Holeman Lounge, 14th and F Street, NW., Washington, DC. The Tuesday, March 9 session will run from 8:30 a.m. to 5 p.m. and the Wednesday, March 10 session will begin at 8:30 a.m. and end at approximately 11 a.m.

EFAB is chartered with providing analysis and advice to the EPA Administrator and program offices on environmental finance. The purpose of this meeting is to hear from informed speakers on environmental finance issues, proposed legislation and Agency priorities and to discuss progress with work products under EFAB's current strategic action agenda. Environmental financing topics expected to be discussed include: Joint Operations of the State Revolving Fund Programs; Non-Point Source Financing; Affordability; Innovative Financing Tools; Preventing Future Non-Funded Abandoned Sites; and Useful Life Financing of Water Facilities.

The meeting is open to the public, but seating is limited. To confirm your participation or get further information, please contact Alecia Crichlow, EFAB Meeting Coordinator, U.S. EPA on (202) 564–5188.

Dated: February 3, 2004.

Joseph Dillon,

Director, Office of Enterprise, Technology and Innovation.

[FR Doc. 04–3089 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7622–5]

Notice of Peer-Review Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene a panel of experts and organize and conduct a peer consultation workshop to discuss neurotoxicity issues using the external review draft document titled, Neurotoxicity of Tetrachloroethylene (Perchloroethylene): Discussion Paper (EPA/600/P–03/005A) as background material. On December 30, 2003 (68 FR 75241), the EPA announced, via a **Federal Register** notice, a sixty-day public comment period for the draft paper. The paper was prepared by the EPA's National Center for Environmental Assessment-Washington Office (NCEA–W) within the Office of Research and Development. NCEA will consider both the peer consultation advice from this meeting and public comment submissions in the preparation of an IRIS Toxicological Review document on tetrachloroethylene.

DATES: The one-day peer-review workshop will be held on February 25, 2004, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The peer consultation workshop will be held at the Marriott Crystal City Hotel, 1999 Jefferson Davis Highway, Arlington, VA, 22202. Versar, Inc., an EPA contractor, is organizing, convening, and conducting the peer consultation workshop. To attend the workshop as an observer, register by February 23, 2004, by sending an e-mail to Ms. Traci Brody of Versar at *tbrody@versar.com*. You can also call Ms. Brody at (703) 750–3000 extension 449, or send a facsimile to (703) 642–6954.

The availability of the draft discussion paper and the procedures for submitting comments on the paper were announced in the December 30, 2003 **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: The purpose of the workshop is to elicit comments from the expert panelists on the charge to the peer consultation panel, which is reproduced below. There will be limited time on the agenda for observers to make comments.

For workshop information, registration, and logistics, contact Ms. Traci Brody of Versar, Inc., at *tbrody@versar.com*. You can also call (703) 750–3000 extension 449, or send a facsimile to (703) 642–6954.

For information on the public comment period, contact Dr. Robert McGaughy; telephone: (202) 564–3244; facsimile: (202) 565–0079; or e-mail: *mcgaughy.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Workshop Information

The purpose of the workshop is to elicit comments from the expert panelists on the charge to the peer consultation panel, which is reproduced below.

(a) What are the relative strengths and limitations of the existing human studies of the neurological effects of perc (*e.g.* sample size, statistical power, potential biases, biological or clinical relevance of the findings, degree of consistency)? Do the EPA materials adequately evaluate these issues?

(b) How consistent are the visual contrast sensitivity effects seen in one residential study (with two exposed groups) with findings of other visual effects seen in other occupational and residential studies (where visual contrast sensitivity was not tested)?

(c) Table 1 of the EPA materials provides a summary of types of neurological tests that have been conducted measuring different effects with different populations exposed to perc. What is the biological and or clinical significance of the measured endpoints in these different studies?

(d) What weight should be attached to reported findings of neurological effects in residential populations at exposure levels below those seen in the occupational studies?

(e) Do the epidemiology studies identify susceptible populations, and in particular do the residential data indicate that children and elderly people may be more susceptible to the effects of perc?

(f) Do the studies reporting decrements in neurological function (including vision) in people exposed to organic solvents add support to conclusions about the hazards of perc?

(g) Can an association be made in the separate studies and in all studies collectively between perc exposure and observed neurotoxicity? Does the set of studies as a whole indicate that perc exposure to the general population presents a potential health hazard?

(h) Are there any published studies or data relevant to the neurotoxic risk which are not included in the discussion paper?

As part of your review, please comment on the use of secondary data in the document. The term "secondary data" for the purpose of this review refers to the use of published or unpublished data in the development of the Agency's assessment of the neurotoxic effects of tetrachloroethylene (perchloroethylene) in humans. Please comment on the Agency's use of secondary data in the discussion paper, relative to the data validity in the context of the use in this assessment.

Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public in the afternoon. If you wish to make comments during the workshop, contact Versar, Inc. at least one week in advance of the meeting. Space is limited, and reservations will be accepted on a first-come, first-served basis.

II. How To Get a Copy of the Document and Submit Technical Comments

EPA has established an official public docket for this action under Docket ID No. ORD–2003–0014. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, 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; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket.

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

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

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." Late comments may be considered if time permits.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. ORD2003–0014. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD2003–0014. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Dated: February 6, 2004.

David A. Bussard,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 04–3219 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7620–8]

RIN 2040–ACXX

Extension of Comment Period for the Preliminary Effluent Guidelines Program Plan for 2004/2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: The Environmental Protection Agency is extending the comment period for the Preliminary Effluent Guidelines Program Plan for 2004/2005, published on December 31, 2003 (68 FR 75515). The preliminary plan describes the effluent guidelines program and the Agency's current effluent guidelines development efforts. In response to requests from stakeholders, this action extends the comment period for 30 days.

DATES: Comments on the preliminary plan will be accepted through March 18, 2004. Comments provided electronically will be considered timely if they are submitted by 11:59 p.m. Eastern Time on March 18, 2004.

ADDRESSES: Submit written comments to the Water Docket, U.S. Environmental

Protection Agency, Mail Code: 4101 T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0074; or submit them electronically to *http://www.epa.gov/edocket/*. If you have questions, consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Carey Johnston at (202) 566–1014 or at the following e-mail address: *johnston.carey@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On December 31, 2003 (68 FR 75515), EPA published its preliminary Effluent Guidelines Program Plan for 2004/2005. The preliminary plan describes the current status of EPA's planning for the effluent guidelines program, presents the results of EPA's annual review of the effluent guidelines it has already promulgated for industrial categories, and identifies industrial categories that EPA expects to investigate further for the possible development or revision of effluent limitations guidelines.

The original comment deadline was February 17, 2004. Numerous stakeholders have requested an extension to the comment period in order to adequately understand and comment on the preliminary plan. This action extends the comment period for 30 days.

B. How and Where To Submit Comments

EPA established the public record for the preliminary plan under docket number OW–2003–0074. The record is available for inspection at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, 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 Water Docket is (202) 566–2426.

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit C of the **SUPPLEMENTARY INFORMATION** section of the December 31, 2003 **Federal Register** notice. EPA requests an original and three copies of any December 31, 2003 **Federal Register** notice. EPA requests an original and three copies of any written comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. If you have questions, consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: February 6, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator for Water.

[FR Doc. 04–3090 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

February 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments April 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0286.

Title: Section 80.302, Notice of Discontinuance, Reduction, or Impairment of Service Involving a Distress Watch.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and State, local, or tribal government.

Number of Respondents: 160.

Estimated Time Per Response: 1 hour.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 160 hours.

Annual Cost Burden: N/A.

Needs and Uses: The reporting requirement contained in section 80.302 is necessary to ensure that the U.S. Coast Guard is timely notified when a coast station, which is responsible for maintaining a listening watch on a designated marine distress and safety frequency discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate the Coast Guard may file a petition to deny any application. The Commission is seeking extension (no change) for this collection and all collections listed below for which we are seeking the full three year OMB clearance.

OMB Control No.: 3060–0308.

Title: Section 90.505, Developmental Operation, Showing Required.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 200 hours.
Annual Cost Burden: N/A.
Needs and Uses: Section 90.505 requires applicants proposing developmental operations to submit supplemental information showing why the authorization is necessary and what its use will be. This requirement will be used by Commission staff in evaluating the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

OMB Control No.: 3060–0490.
Title: Section 74.902, Frequency Assignments.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities, not-for-profit institutions, and State, local or tribal government.
Number of Respondents: 5.
Estimated Time Per Response: .50 hours.
Frequency of Response: On occasion reporting requirement and third party disclosure requirement.
Total Annual Burden: 3 hours.
Annual Cost Burden: N/A.
Needs and Uses: Section 74.902 dictates that when a point-to-point ITFS station on the E and F MDS channels is involuntarily displaced by an MDS applicant, the MDS applicant must file the appropriate application for suitable alternative spectrum. The applications used would be FCC Form 327 (3060–0055) and FCC Form 330 (3060–0062). Section 74.902(i) requires that a copy of this application be served on the ITFS licensee to be moved. The data will be used by the ITFS licensee to oppose the involuntary migration if the proposal would not provide comparable ITFS service and would not serve the public interest.

OMB Control No.: 3060–0491.
Title: Section 74.991, Wireless Cable Application Procedures.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 100.
Estimated Time Per Response: 4.5 hours (.5 respondent/4 hours attorney).
Frequency of Response: On occasion reporting requirement and third party disclosure requirement.
Total Annual Burden: 50 hours.
Annual Cost Burden: $116,240.
Needs and Uses: Section 74.991 requires that a wireless cable application be filed on FCC Form 330 (3060–0062), sections I and V, with a complete FCC Form 304 (3060–0654) appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. The applicant must also, within 30 days of filing its application, give local public notice in a daily newspaper of general circulation published in the community in which the proposed station will be located. The specific data that must be included in the newspaper publication is contained in section 74.991(c). The notice must be published twice a week for two consecutive weeks. The data is used by FCC staff to ensure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use. The data is also used to insure that applicants are qualified to become a Commission licensee and that proposals do not cause interference.

OMB Control No.: 3060–0492.
Title: Section 74.992, Access to Channels Licensed to Wireless Cable Entities.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities and State, local or tribal government.
Number of Respondents: 10.
Estimated Time Per Response: 3.5 hours (1.5 respondent/2 hours contractor).
Frequency of Response: On occasion reporting requirement and third party disclosure requirement.
Total Annual Burden: 15 hours.
Annual Cost Burden: $4,000.
Needs and Uses: Section 74.992(a) requires that requests by ITFS entities for access to wireless cable facilities licensed on ITFS frequencies be made by filing FCC Form 330 (3060–0062), section I, II , III and IV. The application must include a cover letter clearly indicating that the application is for ITFS access to a wireless cable entity's facilities on ITFS channels. Section 74.992(d) requires an ITFS user to provide a wireless cable licensee with its planned schedule of use four months in advance of accessing the channels. This notice is completed before the filing of the application. The data is used by FCC staff to determine eligibility of an educational institution or entity demanding access for ITFS use on a wireless cable facility. The four month advance notice is used by the wireless cable licensee to allow it to move programming to other channels.

OMB Control No.: 3060–0493.
Title: Section 74.986, Involuntary ITFS Station Modifications.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities and State, local or tribal government.
Number of Respondents: 25.
Estimated Time Per Response: 5 hours (1 hour respondent/4 hours contractor).
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 25 hours.
Annual Cost Burden: $16,250.
Needs and Uses: Section 74.986 requires that an application for involuntary modification of an ITFS station be filed on FCC Form 330 (3060–0062) but need not fill out section II (legal qualifications). The application must include a cover letter clearly indicating that the modification is involuntary and identify the parties involved. The data is used by FCC staff to insure that proposals to modify facilities of ITFS licensees/permittees would provide comparable ITFS service and would otherwise serve the public interest in promoting the MMDS service.

OMB Control No.: 3060–0494.
Title: Section 74.990, Use of Available Instruction Television Fixed Service Frequencies by Wireless Cable Entities.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities and State, local or tribal government.
Number of Respondents: 100.
Estimated Time Per Response: .33–2 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 42 hours.
Annual Cost Burden: $11,250.
Needs and Uses: Section 74.990(c) requires applicants to confirm their unopposed status after the period for filing competing applications and petitions to deny has passed. This confirmation is accomplished through the filing of a letter with the Commission. Section 74.990(d) requires a wireless cable applicant to show that there are no multipoint distribution service (MDS) or multichannel multipoint distribution service (MMDS) channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service (ITFS) frequencies applied for. The data provided in the showing will be used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Control No.: 3060–0966.

Title: Sections 80.385, 80.475, and 90.303, Automated Maritime Telecommunications Service (AMTS).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households and business or other for-profit entities.

Number of Respondents: 20.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 10 hours.

Annual Cost Burden: N/A.

Needs and Uses: The reporting requirements are necessary to require licensees of Automated Maritime Telecommunications System (AMTS) stations to notify TV stations and two organizations (the American Radio Relay League (ARRL), and Interactive Systems, Inc.) that maintain databases of AMTS locations for the benefit of amateur radio operators of the location of AMTS fill-in stations. Amateur radio operators use some of the same frequencies (219 -220 MHz) as AMTS stations on a secondary, non-interference basis for digital message forwarding systems. Reporting requirements are necessary to require amateurs proposing to operate within close proximity of an AMTS station to notify the AMTS licensee as well as the ARRL. The information is used to update databases concerning AMTS locations for the benefit of amateur radio operators. If the collection of information was not conducted, the database would become inaccurate and the ability to avoid interference problems would deteriorate.

OMB Control No.: 3060–0970.

Title: Section 90.621(e)(2), Selection and Assignment of Frequencies.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, local or tribal government.

Number of Respondents: 1,000.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Annual Cost Burden: N/A.

Needs and Uses: Section 90.621 requires applicants proposing to modify operations to use channels for commercial purposes in certain frequency bands in 800 MHz to provide written notice of the modification to all Public Safety licensees within 70 miles of the site of the channels for which the authorization for commercial use is sought that operate within 25 kHz of the center of those channels. This requirement seeks to avoid the potential of interference that could result from the modification of a Private Land Mobile radio facility to commercial use. If the information were not available, there would be an increased risk of interference in this band.

OMB Control No.: 3060–0261.

Title: Section 90.215, Transmitter Measurements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 20,075.

Estimated Time Per Response: .33 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 663 hours.

Annual Cost Burden: N/A.

Needs and Uses: This rule requires licensees to measure carrier frequency, output power, and modulation of each transmitter authorized to operate with power in excess of two watts when the transmitter is initially installed and when any changes are made which would likely affect such parameters. Such measurements, which help ensure proper operation of transmitters, are required to be retained in the station records. The information is normally used by the licensee to ensure that equipment is operating within prescribed tolerances. Prior technical operation of transmitters helps limit interference to other users and provides the licensee with the maximum possible utilization of equipment.

OMB Control No.: 3060–0691.

Title: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside of the Designated Filing Areas in the 896–901 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order for the 900 MHz Specialized Mobile Radio Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households and business or other for-profit entities.

Number of Respondents: 135.

Estimated Time Per Response: .50—2 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 274 hours.

Annual Cost Burden: $55,200.

Needs and Uses: This information collection is used to verify construction requirements that will be used by the Commission to determine whether the licensee has met the 900 MHz MTA construction requirements. The information is filed electronically on the FCC Form 601.

OMB Control No.: 3060–0281.

Title: Section 90.651, Supplemental Reports Required of Licensees Authorized Under this Subpart.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and State, local or tribal government.

Number of Respondents: 16,408.

Estimated Time Per Response: .166 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,724 hours.

Annual Cost Burden: N/A.

Needs and Uses: This rule section specifies the timeframe for reporting the number of mobile units placed in operation from eight months to 12 months. The radio facilities addressed in this subpart are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. The various subparts of this rule apply to different categories of licensees and define exactly what reports are required of each category. The Commission uses the information to maintain an accurate database of frequency users.

OMB Control No.: 3060–0914.

Title: Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or in the Alternative, for a Declaratory Ruling.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Federal government, and State, local or tribal government.

Number of Respondents: 30.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 240 hours.

Annual Cost Burden: N/A.

Needs and Uses: The Commission has reset an Order it adopted on December

24, 1998, that grants conditionally AirCell's waiver request of section 22.925. The waiver permits AirCell, Inc., and a number of cellular licensees, which jointly entered into resale agreements with AirCell, Inc., to furnish system capacity for the provision of cellular service on a secondary, conditional basis to airborne terminal units using technology developed by AirCell, Inc. The waiver also gives AirCell the authority to operate a specially-designed mobile cellular telecommunications unit for use aboard general aviation aircraft. The AirCell system gives the public greater access to safety-related data and wireless telephone services for general aviation and equips pilots with a transmission facility that can provide a method of receiving real-time information about changing weather conditions, navigation, telemetry, and aircraft operations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3051 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

January 16, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0634.

Title: Section 73.691, Visual Modulation Monitoring.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions.

Number of Respondents: 20.

Estimated Hours per Response: 1.0 hours (2 notifications/6 letters).

Frequency of Response: Recordkeeping; on occasion reporting requirements.

Total Annual Burden: 46 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR 73.691(b) requires TV stations to enter into the station log the date and time of the initial technical problems that make it impossible to operate a TV station in accordance with the timing and carrier level tolerance requirements. If this operation at variance is expected to exceed 10 consecutive days, a notification must be sent to the FCC. The licensee must also notify the FCC upon restoration of normal operations. Furthermore, a licensee must send a written request to the FCC if causes beyond the control of the licensee prevent restoration of normal operations within 30 days. The FCC staff use the data to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3052 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 13, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 15, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les

Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0340.

Title: Section 73.51, Determining Operating Power.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,867.

Estimated Time per Response: 0.25 to 3.0 hours.

Frequency of Response: Recordkeeping.

Total annual burden: 1,448 hours.

Total annual costs: None.

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power might be used on a temporary basis. 47 CFR 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. 47 CFR 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. FCC staff use this information in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. Station personnel use the value F (efficiency factor) in the event that measurement by the indirect method of power is necessary.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3053 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form Number: FCC 301.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 3,370.

Estimated Time per Response: 2 to 4 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 7,427 hours.

Total Annual Cost: $35,485,300.

Needs and Uses: On September 3, 2003, the United States Court of Appeals for the Third Circuit issued an Order staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003. (Report and Order, MB Docket 02–277 and MM Dockets 01–235, 01–317, and 00–244, and Notice of Proposed Rulemaking, *In The Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.*) 68 FR 46285, August 5, 2003. The Court ordered "that the prior ownership rules remain in effect pending resolution of these proceedings." Prometheus Radio Project v. FCC, No. 03–3388 (3d Cir. Sept. 3, 2003) (*per curiam*). The Court's Order requires that the Commission process broadcast station applications under the prior ownership rules.

FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station, or to make changes in existing facilities of such a station. In addition, FM licensees or permittees may request, by application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class and downgrades to adjacent channels without first submitting a petition for rulemaking. All applicants using this one-step process must demonstrate that a suitable site exists which would comply with allotment standards with respect to minimum distance separation and city-grade coverage and which would be suitable for tower construction. To receive authorization for commencement of Digital Television ("DTV") operation, commercial broadcast licensees must file FCC Form 301 for a construction permit. This application may be filed anytime after receiving the initial DTV allotment but must be filed before mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applications will not have to supply full legal or financial qualification information.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License.

Form Number: FCC 314.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 2,546 hours.

Total Annual cost: $12,237,878.

Needs and Uses: On September 3, 2003, the United States Court of Appeals for the Third Circuit issued an Order staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003. (Report and Order, MB Docket 02–277 and MM Dockets 01–235, 01–317, and 00–244, and Notice of Proposed Rulemaking, *In The Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.*) 68 FR 46285, August 5, 2003. The Court ordered "that the prior ownership rules remain in effect pending resolution of these proceedings." *Prometheus Radio Project* v. *FCC,* No. 03–3388 (3d Cir. Sept. 3, 2003) (*per curiam*). The Court's Order requires that the Commission process broadcast station applications under the prior ownership rules.

FCC Form 314 and applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

This collection also includes the third party disclosure requirement of 47 CFR 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for assignment of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for assignment of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

On April 4, 2000, the Commission adopted a Report and Order in MM Docket No. 95–31 in the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants. This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast channels. The new procedures will use points to compare objective characteristics whenever there are competing applications for full-service radio or television channels reserved for NCE use. The new procedure established a four-year holding period of on-air operations for licenses approved as a result of evaluation in a point system. The FCC 314 has been revised to reflect the new policy and to require stations authorized under the point system who have not operated for a four-year period to submit with their applications an exhibit demonstrating compliance with 47 CFR 73.7005. The data is used by the FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

OMB Control Number: 3060–0032.

Title: Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License.

Form Number: FCC 315.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure.

Total Annual Burden: 2,546 hours.

Total Annual Cost: $12,237,878.

Needs and Uses: On September 3, 2003, the United States Court of appeals for the Third Circuit issued an Order staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003. (Report and Order, MB Docket 02–277 and MM Dockets 01–235, 01–317, and 00–244, and Notice of Proposed Rulemaking, *In The Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.*) 68 FR 46285, August 5, 2003. The Court ordered "that the prior ownership rules remain in effect pending resolution of these proceedings." Prometheus Radio Project v. FCC, No. 03–3388 (3d Cir. Sept. 3, 2003) (*per curiam*). The Court's Order requires that the Commission process broadcast station applications under the prior ownership rules.

FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of a corporation holding an AM, FM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

This collection also includes the third party disclosure requirement of 47 CFR 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for transfer of control of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for transfer of control of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

On April 4, 2000, the Commission adopted a Report and Order in MM Docket No. 95–31, *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants.* This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast channels. The new procedures will use points to compare objective characteristics whenever there are competing applications for full-service radio or television channels reserved for NCE use. The new procedure established a four-year holding period of on-air operations for licenses approved as a result of evaluation in a point system. The FCC 315 has been revised to reflect the new policy and to require stations authorized under the point system who have not operated for a four-year period to submit with their applications an exhibit demonstrating compliance with 47 CFR 73.7005. The data are used by the FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

OMB Control Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC 349.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions.

Number of respondents: 1,050.

Estimated Hours per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,750 hours.

Total Annual Cost: $2,689,500.

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. To satisfy the third party requirements under 47 CFR 73.3580, applicants must give notice of their applications for new or major changes in facilities in a local newspaper within 30 days, and copy of both the notice and the application must be placed in the public inspection. In addition, all mutually exclusive NCE proposals for the reserved band currently on file with the FCC are required to supplement their applications with portions of the revised FCC Form 349 necessary to make a selection under the new point system. The FCC will issue a public notice announcing the procedures to be used in this process. The data help the FCC to determine whether an applicant meets basic statutory requirements and will not cause interference to other licensed broadcast services. Where there are mutually exclusive, qualified applicants, the information is used to determine which proposal best serves the public interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3054 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–10–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 29, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 15, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0865.

Title: Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure Requirements.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 61,340.

Estimated Time Per Response: .166–4 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 83,939 hours.

Total Annual Cost: N/A.

Needs and Uses: The purpose of this collection is to streamline the set of rules which minimize filing requirements via the Universal Licensing System (ULS); to eliminate redundant and unnecessary submission requirements; and to assure ongoing collection of reliable licensing and ownership data. The recordkeeping and third party disclosure requirements, along with certifications which made via the ULS FCC Form 601 are two ways the Commission reduced the filing burdens in the industry. However, applicants must maintain records to document compliance with the requirements for which they provide certification. In some instances third party coordination's are required.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3055 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 14, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 15, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room

10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0551.

Title: Sections 76.1002 and 76.1004, Specific Unfair Practices Prohibited.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents: 20.

Estimated Time per Response: 1–25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 260 hours.

Total Annual Cost: $50,000.

Needs and Uses: On June 28, 2002, the FCC released a Report and Order (R&O), *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act, Sunset of Exclusive Contract Prohibition,* CS Docket No. 01–290, FCC 02–176. The R&O modified 47 CFR 76.1002(c)(6)—to extend the term of the prohibition on exclusive agreements between cable operators and vertically integrated programmers. The prohibition will expire on October 5, 2007 unless circumstances in the video programming marketplace indicate the prohibition continues to be necessary. FCC staff will use this information to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of Section 19 of the 1992 Cable Television Consumer Protection and Competition Act and Section 628 of the Communications Act of 1934, as amended. Section 301(j) of the 1996 Telecommunications Act amends the restrictions of Section 628 to include common carriers and their affiliates that provide video programming.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3056 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 29, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 15, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.

Title: Cable Television Annual Employment Report, FCC Form 395–A.

Type of Review: Extension of currently approved collection.

Form Number: FCC 395–A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 1,950.

Estimated Time per Response: 0.166 to 2.417 hrs.

Frequency of Response: Recordkeeping; Annual and five year reporting requirements.

Total Annual Burden: 3,302 hours.

Total Annual Cost: None.

Needs and Uses: Following the D.C. Circuit's decision in *MD/DC/DE Broadcasters Association* v. *FCC ("Association")* in January 2001, vacating the FCC's broadcast EEO rules for recruitment, on January 31, 2001, the Commission suspended its EEO program requirements for both broadcasters and Multichannel Video Programming Distributors (MVPD's), including the requirement to file FCC Forms 395–A, and 395–M. The FCC is now revising Form 395–A, Annual Employment Report, to incorporate FCC Form 395–M. The new FCC Form 395–A is a data collection device used to report industry trends. The report identifies employees by gender, race, and ethnicity in fifteen job categories. The FCC Form 395–A contains a grid which collects data on full and part-time employees and requests a list of employees by job title, indicating the job category and full or part-time status of the position. However, Form 395–A omits the old EEO program report section, which is now in the new FCC Form 396–C, OMB Control No. 3060–1033.

OMB Control Number: 3060–0390.

Title: Broadcast Station Annual Employment Report, FCC Form 395–B.

Form Number: FCC Form 395–B.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 14,000.

Estimated Time per Response: 0.88 hours.

Frequency of Response: Annual reporting requirement.

Total annual burden: 12,320 hours.

Total Annual Costs: None.

Needs and Uses: FCC Form 395–B is used to compile statistics on the workforce employed by broadcast licensees/permittees. It is filed by all AM, FM, TV, international and low power TV broadcast licensees/permittees that employ five or more full-time employees. The FCC staff use the data to compile a report showing the five-year employment trends of the broadcast industry.

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Home Wiring Provisions.

Form Number: N/A.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 30,500.

Estimated Time per Response: 5 mins (0.083 hrs) to 20 hrs.

Frequency of Response: Recordkeeping; Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 46,114 hours.

Total Annual Cost: None.

Needs and Uses: On January 29, 2003, the Commission issued a First Order on Reconsideration and Second Report and Order, FCC 03–9, which grants in part and denies in part the petitions for reconsideration filed in response to the Report and Order. The Commission's home run wiring rules were modified in the First Order on Reconsideration to provide that in the event of sale, the home run wiring be made available to the MDU owner or alternative provider during the 24-hour period prior to actual service termination by the incumbent and that home run wiring located behind sheet rock is physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring. In the Second Report and Order, the Commission adopted a limited exemption for small non-cable MVPDs from the signal leakage reporting requirements and concluded that the cable and home run wiring rules should apply to all MVPDs in the same manner that they apply to cable operators. The Commission declined to restrict exclusive contracts or ban perpetual contracts. The Commission also declined to allow MDU owners to require sharing of incumbent-owned cable wiring.

OMB Control Number: 3060–1034.

Title: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 2.0 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 400 hours.

Total Annual Costs: None.

Needs and Uses: In October 2002, the Commission released the *First Report and Order ("Order"), Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* FCC 02–286, MM Docket 99–325, (67 FR 78193). Pursuant to this Order, the Commission selected in-band, on-channel (IBOC) as the technology that permits AM and FM radio broadcasters to introduce digital operations efficiently and rapidly. In addition, provisions of the Order required radio station licensees to provide information relative to implementation of interim hybrid digital operations. Implementation of hybrid digital operations is entirely voluntary. Commercial and noncommercial AM and FM radio stations that choose to begin hybrid digital transmissions shall notify the Commission within 10 days of the commencement of digital operations. The "notification letter" shall certify that the digital operations conform to applicable rules and standards. Furthermore, implementation of the notification letter eliminates both the need for the FCC staff to issue an STA to the broadcaster and for the broadcaster to file and pay the initial and any subsequent filing fees.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3057 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 3, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1033.

Title: Multi-channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

Form Number: FCC 396–C.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,200.

Estimated Hours per Response: 0.166 to 2.5 hours.

Frequency of Response: Recordkeeping; Annual and five-year reporting requirements.

Total Annual Burden: 3,188 hours.

Total Annual Cost: None.

Needs and Uses: The FCC Form 396–C is a collection device used to assess compliance with the Equal Employment Opportunity (EEO) program requirements by Multi-channel Video programming Distributors (MPVDs). It is publicly filed to allow interested parties to monitor a MPVD's compliance with the commission's EEO requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3058 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–10–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 3, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at Judith-*B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0621.

Title: Rules and Requirements for C & F Block Broadband PCS Licenses.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 3,000.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 14,044 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission's rules require applicants to file information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and to determine whether applicants claiming different eligibility status are entitled to certain benefits.

OMB Control No.: 3060–0779.

Title: Amendment to Part 90 of the Commission's Rules to Provide for Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 27,062 respondents; 31,467 responses.

Estimated Time Per Response: 1–50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 112,450 hours.

Total Annual Cost: $28,490,000.

Needs and Uses: This collection includes rules which govern the operation and licensing of the 220–222 MHz band (220 MHz service). In establishing this licensing plan, the FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminate unnecessary regulatory burdens and enhance the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for radio service, a certain number of regulatory and informational burdens are necessary to verify licensee compliance with FCC rules.

OMB Control No.: 3060–0897.

Title: MDS and ITFS Two-Way Transmissions.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 130,888.

Estimated Time Per Response: .083–40 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 223,618 hours.

Total Annual Cost: $5,431,000.

Needs and Uses: This information collection includes rules that collectively form the Multipoint Distribution Service (MDS) and Instruction Television Fixed Service (ITFS) two-way services. The Commission's rules for two-way transmissions for MDS and ITFS will allow two-way licensing and provide greater flexibility in the use of the allotted spectrum to licensees. The rules will further eliminate market entry barriers for small entities. The Commission will use this information to ensure that MDS and ITFS applicants, conditional licensees, and licensees have considered properly under the FCC's rules the potential for harmful interference from their facilities.

OMB Control No.: 3060–0926.

Title: The Transfer of the Bands from Federal Government Use: Notice of Proposed Rulemaking (NPRM).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and Federal Government.

Number of Respondents: 200 respondents; 1,200 responses.

Estimated Time Per Response: 1–20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 22,600 hours.

Total Annual Cost: N/A.

Needs and Uses: The various information reporting and verification requirements, and the prospective coordination requirement (third party disclosure requirement) will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

OMB Control No.: 3060–0963.

Title: Section 101.527, Construction Requirements for 24 GHz Operations, and Section 101.529, Renewal

Expectancy Criteria for 24 GHz Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 952.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: Once every 10 years reporting requirement.

Total Annual Burden: 14,399 hours.

Total Annual Cost: $952,000.

Needs and Uses: The information required by these rule sections is used to determine whether a renewal applicant of a 24 GHz service system has complied with the requirement to provide substantial service by the end of the ten-year initial license term. The FCC uses this information to determine whether an applicant's license will be renewed at the end of the license period.

OMB Control No.: 3060–0950.

Title: Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99–266.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 3,844.

Estimated Time Per Response: 10 hours for recordkeeping requirement; 190 hours to obtain tribal consent and to file the necessary certifications and waivers.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 768,800 hours.

Total Annual Cost: N/A.

Needs and Uses: This information collection implemented bidding credits for federally-recognized tribal areas that have a telephone service penetration rate below seventy percent to ensure that these tribal communities have access to wireless telecommunications services equivalent to that of the nation.

OMB Control No.: 3060–1058.

Title: Promoting Efficient Use of Spectrum Through the Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00–230.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,770.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 7,813 hours.

Total Annual Cost: $1,222,040.

Needs and Uses: The required notifications and applications will provide the Commission with useful information about spectrum usage and helps to ensure that licensees and lessees are complying with Commission interference and non-interference related policies and rules. Similar information and verification requirements have been used in the past for licensees operating under authorizations, and such requirements will serve to minimize interference, verify lessees are legally and technically qualified to hold licenses, and ensure compliance with Commission rules. The Commission obtained emergency approval of this information collection on January 29, 2004. The Commission is now seeking extension (no change to the information collection requirements) to obtain the full three year OMB clearance.

OMB Control No.: 3060–XXXX.

Title: Allocations and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands, WT Docket No. 02–146, Report and Order.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 1,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission issued a *Report and Order* in CC Docket No. 96–128, FCC 03–235, in which final service rules were adopted for the 71–76 GHz, 81–86 GHz and 92–95 GHz bands. The *Report and Order* provided that sharing and coordination among non-Federal Government links and between non-Federal Government and Federal Governments would occur according to the registration and coordination standards and procedures generally adopted in the *Report and Order* and as further detailed in subsequent implementation public notices issued consistent with that Order. The Commission is now seeking OMB approval of those final rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3059 Filed 2–11–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, February 17, 2004, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Notice of Proposed Rulemaking: Part 324—Transactions with Affiliates, and Part 303—Filing Procedures.

The meeting will be held in the Board Room on the sixth floor of the FDIC building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: February 10, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman

Executive Secretary.

[FR Doc. 04–3186 Filed 2–10–04; 10:44 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act; Notice of Meetings

DATE AND TIME: Wednesday, February 18, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and approval of minutes.

Continuation of draft Advisory Opinion 2003–37: Americans for a Better Country by Keith A. Davis, Treasurer.

Routine administrative matters.

* * * * *

DATE AND TIME: Tuesday, February 24, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Acting Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–3185 Filed 2–10–04; 10:44 am]

BILLING CODE 6715–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Publication of final Fiscal Year 2004 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 2004 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This Solicitation contains changes in eligibility requirement, specifically, that applicants who have not received funding under this program in the past 6 years are eligible to re-apply.

The International Association of Fire Chiefs (IAFC) submitted comments in response to the draft filing which was published in the **Federal Register** on December 17, 2003. Although having been awarded a grant, the IAFC was required to decline it due to FMCS regulations. Their comments involve those regulations. First, IAFC has requested that FMCS allow indirect expenses as part of the grantee's budget. Next, IAFC would like existing full-time staff to be considered as an expense or match contribution. Finally, IAFC requests that FMCS waive its bi-monthly labor-management committee-meeting requirement. We appreciate these comments, and certainly understand that implementation of the changes requested would increase the likelihood of grant acceptance. At this time, FMCS is not inclined to adopt the requested changes due to OMB regulations and the Labor Management Relations Act.

FOR FURTHER INFORMATION CONTACT: Linda E. Stubbs, 202–606–8181.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY 2004

A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 2004 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the fore mentioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction.

An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, State,

regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or State government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2004, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, etc.)

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *why* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *what* the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *how* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by the name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.*, members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to pay for existing employees; an assurance that grant funds will not be used to pay for existing employees;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *when* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 2004, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applicants must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for awards:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the

goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Successful grantees *will* be bound by OMB circular 110, *i.e.* "contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be *excluded* (emphasis added) from competing for such procurements."

Applicants who received funding under this program in the last 6 years for committee operations are not eligible to re-apply. The only exception will be made for grantees that seek funds on behalf of an entirely different committee whose efforts are totally outside of the scope of the original grant.

D. Allocations

The FY 2004 appropriation for this program *anticipated* to be $1,491,028 of which at least $1,000,000 available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), provided that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition, to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

FMCS reserves the right to retain up to five percent of the FY 2004 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within the specific period, these grants may be extended for up to six months. The dollar range of awards is as follows:

- Up to $65,000 over a period of up to 18 months for company/plant committees or single department public sector applicants;
- Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures *represent maximum Federal funds only*. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs in cash. Matching funds may come from State or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It is the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/State government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2004 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

G. Application Submission and Review Process

The Application for Federal Assistance (SF–424) form must be signed by *both* a labor and management representative. In lieu of signing the SF–424 form representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. Applications must be postmarked no later than June 30, 2004. No applications or supplementary materials will be accepted after the deadline. It is the responsibility of the applicant to ensure that the U.S. Postal Service or other carrier correctly

postmarks the application. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Labor-Management Grants Program will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available between June and September of 2004.

All FY2004 grant applicants will be notified of results and all grant awards will be made before October 1, 2004. Applications submitted after the June 30 deadline date or fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants Program.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS Web site (*www.fmcs.gov*) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

John J. Toner,

Chief of Staff, Federal Mediation and Conciliation Service.

[FR Doc. 04–3033 Filed 2–11–04; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

Forstrom Bancorporation, Inc., Clara City, Minnesota; to acquire 100 percent of the voting shares of First State Agency of Lake Lillian, Inc., Lake Lillian, Minnesota, and thereby indirectly acquire First State Bank, Lake Lillian, Lake Lillian, Minnesota.

Board of Governors of the Federal Reserve System, February 6, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–3042 Filed 2–11–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 2004.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to acquire GA Financial, Inc., Pittsburgh, Pennsylvania, and thereby indirectly acquire voting shares of Great American Federal Savings Association, Pittsburgh, Pennsylvania, and thereby engage in operating a savings bank, pursuant to section 225.28(b)(4) of Regulation Y, GA Financial Strategies, Pittsburgh, Pennsylvania, and thereby engage in investment advisory activities, pursuant to section 225.28(b)(6)(v) and in brokerage activities executing the sale of securities solely as an agent for the account of customers, pursuant to section 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, February 6, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.04–3043 Filed 2–11–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04071]

International Programs To Prevent and Control Micronutrient Malnutrition; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to work with partners to contribute CDC skills and resources to the global effort to eliminate vitamin and mineral deficiencies in developing countries, particularly iodine, iron, vitamin A, and folic acid deficiencies. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the United Nations Children's Fund (UNICEF) for component 1 and World Health Organization (WHO) for component 2. UNICEF has an extensive network of country and regional offices and formal ties with host governments. These ties give UNICEF the unique capability to develop and implement micronutrient malnutrition activities on a broad scale. WHO is the United Nations specialized agency for health, and has developed close relationships with ministries of health in countries throughout the world. In the area of micronutrient malnutrition, WHO has issued norms and standards that serve as reference points for member countries, particularly developing countries. CDC is currently collaborating with WHO in a one year agreement for the development of standardized methods for the assessment of iron deficiency and conducting workshops to train regional and country representatives in standardized approaches to perform country-based micronutrient assessments and communication planning. No other organization has the international recognition and acceptance to assist us in achieving the goals of this program for component 2.

C. Funding

Approximately $1,300,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146; telephone: 770–488–2700.

For technical questions about this program, contact: Dan Sadler, CDC National Center for Chronic Disease Prevention and Health Promotion, Division of Nutrition and Physical Activity, 4770 Buford Hwy, NE., Mailstop K–24, Atlanta, GA 30341; telephone: 770–488–6042.

Dated: February 5, 2004.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–3045 Filed 2–11–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 2004

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 2004, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM, FOR PRESS RELEASE

[From 01/01/2004–01/31/2004]

Subject name	Address	Effective date
PROGRAM-RELATED CONVICTIONS		
ALAMSHARYAN, KAREN	GLENDALE, CA	2/19/2004
ALTUNYAN, OGANES	LONG BEACH, CA	2/19/2004
BANKS, LANCE	RIDGELAND, MS	2/19/2004
BEASLEY, HARVEY	JACKSON, MS	2/19/2004
CHAVEZ, JOHN	COLORADO SPRINGS, CO	2/19/2004
CHEHEBAR, VICTOR	ROSLYN HARBOR, NY	2/19/2004
DEBBI, SHAUL	GREAT NECK, NY	2/19/2004
DIGIORGIO, DAWN	WESTVIEW, NJ	2/19/2004
DOOLEY'S DRUGS, INC	HARRISVILLE, NY	2/19/2004
DOOLEY, ARTHUR	HARRISVILLE, NY	2/19/2004
FLORES, FERNANDO	SALT LAKE CITY, UT	2/19/2004
HARDRICT, RONALD	LAKEVILLE, MN	2/19/2004
I & I INVALID COACH, INC	CLIFTON, NJ	2/19/2004
JACQUEZ, MARISELA	PORTLAND, OR	2/19/2004
JAMES, SANDRA	JACKSON, MS	2/19/2004
KHAIR, IMADELIN	PATERSON, NJ	2/19/2004
NURSES BY SARA, INC	ALBUQUERQUE, NM	2/19/2004

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM, FOR PRESS RELEASE—Continued

[From 01/01/2004–01/31/2004]

Subject name	Address	Effective date
PICHARDO, RAMON	BROOKLYN, NY	2/19/2004
PITRE, CAROLYN	WIGGINS, MS	2/19/2004
RUBIN, MELISSA	ONEONTA, NY	2/19/2004
SADATI, KAZEM	MIAMI LAKES, FL	2/19/2004
SHAH, NATHUBHAI	LOCUST VALLEY, NY	2/19/2004
SHIPLEY, MARK	MORGANTOWN, WV	2/19/2004
SMITH, PENDLETON	SALEM, VA	2/19/2004
TURLEY, WENDY	PEORIA, AZ	2/19/2004
VAUGHN, DEBRA	VENICE, FL	2/19/2004
ZIERING, WILLIAM	FRESNO, CA	2/19/2004
FELONY CONVICTION FOR HEALTH CARE FRAUD		
ALDEN, ARTHUR	FLORENCE, CO	2/19/2004
BECK, SANDRA	IVINS, UT	2/19/2004
BOAL, CHRISTOPHER	RANCHO PALOS VERDES, CA	2/19/2004
CICERO, STEVEN	KANSAS CITY, MO	2/19/2004
CLEVELAND, TAMARA	WASHINGTON, DC	2/19/2004
FIGUEROA, AGUSTINA	HOLLYWOOD, CA	2/19/2004
KATH, KIRM	ROCHESTER, MN	2/19/2004
RAVIN, JOHN	TORRANCE, CA	2/19/2004
REECE, KEITH	LITTLETON, CO	2/19/2004
WELKER, GLENN	BARRE, VT	2/19/2004
FELONY CONTROLLED SUBSTANCE CONVICTION		
AGRESTA, RUDOLPH	TRENTON, NJ	2/19/2004
BLEVINS, ROXANNA	TALLAHASSEE, FL	2/19/2004
COLLINS, BILLY	MORRISTOWN, TN	2/19/2004
COOK, STEVEN	CEDAR RAPIDS, IA	2/19/2004
DAVISON, STEPHANIE	MITCHELLVILLE, IA	2/19/2004
FIGHTMASTER, MELISSA	GEORGETOWN, KY	2/19/2004
GLICKMAN, LORRAINE	PHILADELPHIA, PA	2/19/2004
GRIFFITH, CHRISTINE	WEST JORDAN, UT	2/19/2004
HARMON, DAVID	PHILADELPLHIA, PA	2/19/2004
HILBERT, DANA	PASCO, WA	2/19/2004
HOLLAND, KENNETH	DOYLESTWON, PA	2/19/2004
JARDINE, JON	TUCSON, AZ	2/19/2004
LAUGHERY, JENNY	BILLINGS, MT	2/19/2004
MOCKOVIAK, PATRICIA	EDISON, NJ	2/19/2004
MOTTO, KAREN	BETHPAGE, NY	2/19/2004
PISTELLO, MICHAEL	LAFOLLETTE, TN	2/19/2004
PRUETT, ROBERT	DULUTH, MN	2/19/2004
STANSILL, ASHLEA	SPRING, TX	2/19/2004
STILWELL, MELISSA	SOMERVILLE, NJ	2/19/2004
YOUNG, DIANE	ROSE CITY, MI	2/19/2004
PATIENT ABUSE/NEGLECT CONVICTONS		
BELL, APRIL	BATON ROUGE, LA	2/19/2004
CAINE, STEVEN	GREENVILLE, TN	2/19/2004
DAVIS, GEORGE	SAINT PAUL, MN	2/19/2004
DOOLEY, LESLIE	OSKALOOSA, KS	2/19/2004
ESTRADA, ERICA	WASHINGTON, OK	2/19/2004
FULLER, JOHN	STANTON, MI	2/19/2004
GAGE, MITCHELL	GULFPORT, MS	2/19/2004
GRECO, JOSEPH	FLORISSANT, MO	2/19/2004
HARRIS, DESHAWN	JACKSON, TN	2/19/2004
JENKINS, ASHANTAY	PONTIAC, MI	2/19/2004
MEBANE,PHILLIP	ORLANDO, FL	2/19/2004
MOORE, MICHAEL	LANSING, KS	2/19/2004
ORTEGA, CRYSTAL	CLIFTON, CO	2/19/2004
PERZANOWSKI, REJEANA	WALLINGFORD, VT	2/19/2004
ROBBINS, RICHARD	SHORT HILLS, NJ	2/19/2004
SAINE, SAIHOU	PAWTUCKET, RI	2/19/2004
SAUNDERS, MICHAEL	MOBERLY, MO	2/19/2004
WARNOCK, ELIZABETH	MIDDLEBURGH, NY	2/19/2004
WORLEY, DOROTHY	PHOENIX, AZ	2/19/2004

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM, FOR PRESS RELEASE—Continued

[From 01/01/2004–01/31/2004]

Subject name	Address	Effective date
CONTROLLED SUBSTANCE CONVICTIONS		
SERAI, KANWALJIT	TALLAHASSEE, FL	2/19/2004
LICENSE REVOCATION/SUSPENSION/SURRENDERED		
ADAMS, SUZETTE	ROMOLAND, CA	2/19/2004
AGBAEZE, TAMMY	HENDERSONVILLE, NC	2/19/2004
ALLAR, CHERYL	TRENTON, NC	2/19/2004
ALLEN, CASSANDRA	TULSA, OK	2/19/2004
ALNOR, WARREN	ROZEL, KS	2/19/2004
ALVAREZ, ABEL	SAN LORENZO, CA	2/19/2004
AMARAL, SHIRLEEN	RED SPRINGS, NC	2/19/2004
ANTOL, ALEXIS	PHOENIX, AZ	2/19/2004
AUDETTE, LAURA	RIDGE, NY	2/19/2004
BALL, CRYSTAL	WICHITA, KS	2/19/2004
BARELA, PATRICIA	TUCSON, AZ	2/19/2004
BARREDA, CAROL	TUCSON, AZ	2/19/2004
BELT, PAMELA	EDDYVILLE, KY	2/19/2004
BENCOMO, RAYMOND	TUCSON, AZ	2/19/2004
BENSON, KAREN	CENTRAL CITY, KY	2/19/2004
BISHOP, DONNA	ARDEN, NC	2/19/2004
BISSONNETTE, ROSEMARIE	OCEANSIDE, CA	2/19/2004
BOOTH, SABRINA	BIRMINGHAM, AL	2/19/2004
BORNSTEIN, KATHLEEN	N BERGEN, NJ	2/19/2004
BOSTON, CHARSEE	WEST PALM BEACH, FL	2/19/2004
BOWMAN, ELIZABETH	MESA, AZ	2/19/2004
BRENNAN, RHONDA	NASHVILLE, TN	2/19/2004
BROOKS, AMALIA	LEXINGTON, NC	2/19/2004
BROUILLET, OPAL	MIDLAND, MI	2/19/2004
BROWN, LORNA	ELLICOTT CITY, MD	2/19/2004
BRUNGER, MICHAEL	RICEVILLE, TN	2/19/2004
BUCKALLEW, TERRI	WATERLOO, IA	2/19/2004
BURNS, BRIAN	PHOENIX, AZ	2/19/2004
BYLAS, ELENA	BYLAS, AZ	2/19/2004
CARNES, BARTON	TEHACHAPI, CA	2/19/2004
CASE, KATHLEEN	OCEANSIDE, CA	2/19/2004
CHAPPLE, RINA	ORLANDO, FL	2/19/2004
CHASE, NEVENA	MESA, AZ	2/19/2004
CHOWDHRY, SALIM	LOS ANGELES, CA	2/19/2004
CLEWIS, JESSICA	HAMLET, NC	2/19/2004
COLLINS, SANDRA	HARRISON, AR	2/19/2004
COMLY, JILL	CASA GRANDE, AZ	2/19/2004
CONTOIS, NANCY	S BURLINGTON, VT	2/19/2004
COOPER, GEORGE	CONOVER, NC	2/19/2004
COYNE, JOSEPH	SHARON, PA	2/19/2004
CRAIN, ADAM	PHILIPSBURG, PA	2/19/2004
CRAVEN, LISHA	LEXINGTON, NC	2/19/2004
DAVID, SANDRA	GILBERT, AZ	2/19/2004
DEATHERAGE, EMILY	EVERETT, WA	2/19/2004
DEBENPORT, NANCY	BATON ROUGE, LA	2/19/2004
DIAZ, LUCIO	PETALUMA, CA	2/19/2004
DITOLLA, JAMES	LINDENHURST, NY	2/19/2004
DOSS, LISA	SANTA ROSA, CA	2/19/2004
EBY, JUDITH	HARRISBURG, PA	2/19/2004
EPPINETTE, KRYSTAL	OAK RIDGE, LA	2/19/2004
ESPINOZA, SHEILA	KINGMAN, AZ	2/19/2004
ESSEX, MARY	CAMBRIDGE, IA	2/19/2004
EVIG, SHANNON	YUMA, CO	2/19/2004
FARLESS, TINA	ROCK SPRINGS, WY	2/19/2004
FILASETA, BART	TUCSON, AZ	2/19/2004
FORTE, THURMAN	DURHAM, NC	2/19/2004
FOSTER, MELANIE	ADDIS, LA	2/19/2004
FREARSON, MICHELLE	PERRYVILLE, MD	2/19/2004
GERARD, NICHOLAS	EDWARDS, CO	2/19/2004
GHINASSI, KELLY	DONORA, PA	2/19/2004
GILLILAND, NATHAN	TUCSON, AZ	2/19/2004
GLOVER, DANNY	DES MOINES, IA	2/19/2004
GORDON, ROGER	ORLANDO, FL	2/19/2004
GRABER, YVONNE	ROLETTE, ND	2/19/2004

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM, FOR PRESS RELEASE—Continued

[From 01/01/2004–01/31/2004]

Subject name	Address	Effective date
GRAVES, MELISSA	MINDEN, LA	2/19/2004
GRIFFITH, GEORGE	ATLANTA, GA	2/19/2004
GUDERJOHN, BONNIE	COLVILLE, WA	2/19/2004
GUTIERREZ, JESUS	LA HABRA, CA	2/19/2004
GWILLIAM, ALFRED	CULVER CITY, CA	2/19/2004
HARRIS, VICTORIA	BENBROOK, TX	2/19/2004
HEINRICHS, BETHANY	PEMBINA, ND	2/19/2004
HENRY, RHONDA	MONTGOMERY, NY	2/19/2004
HIGHTOWER, PHYLLIS	CORINTH, MS	2/19/2004
HILL, SHEILA	FAIRFIELD, CA	2/19/2004
HOSKINS, VICKY	TUCSON, AZ	2/19/2004
IOZIA, MARK	TUCSON, AZ	2/19/2004
JEWETT, BRUCE	GRANITEVILLE, VT	2/19/2004
JOCQUE, MONICA	FOUNTAIN HILLS, AZ	2/19/2004
JOHNSON, BEVERLY	LOOMIS, CA	2/19/2004
JONES, APRIL	LAKESIDE, CA	2/19/2004
JONES, MICHELLE	PULASKI, TN	2/19/2004
JOSHI, DHARMI	JOHNSON CITY, TN	2/19/2004
KELLY, JUDY	PHOENIX, AZ	2/19/2004
KENDALL, STORMIE	MIDVALE, UT	2/19/2004
KERR, KRISTIN	APACHE JUNCTION, AZ	2/19/2004
KIM, CHEOL	HUNTINGTON BEACH, CA	2/19/2004
KINDBLOM, DEBRA	BRISTOL, CT	2/19/2004
KING, VANDON	PHOENIX, AZ	2/19/2004
KIRKWOOD, KRISTINE	PHOENIX, AZ	2/19/2004
KLENTZMAN, MARC	EASTPORT, ME	2/19/2004
KLINKHAMMER, LAURA	MESA, AZ	2/19/2004
KUTIN, LEANN	CAMARILLO, CA	2/19/2004
LANAZCA, KATTY	VENTURA, CA	2/19/2004
LARIMER, CHRISTOPHER	SHREVEPORT, LA	2/19/2004
LEE, YUN	GARDENA, CA	2/19/2004
LONG, TAMARA	LONGMONT, CO	2/19/2004
LOPEZ, BRIAN	PHOENIX, AZ	2/19/2004
LUCCHESI, GAIL	BRUNSWICK, GA	2/19/2004
MANDY'S STUDIO OF MASSAGE	ORLANDO, FL	2/19/2004
MANN, STEVEN	MACON, GA	2/19/2004
MANUEL, JERMAINE	PHOENIX, AZ	2/19/2004
MARSHALL, PATRICIA	HENDERSONVILLE, NC	2/19/2004
MASONER, SUSAN	NEW BRAUNFELS, TX	2/19/2004
MAYO, JORGE	PETALUMA, CA	2/19/2004
MAYS, TINA	HOMOSASSA SPRINGS, FL	2/19/2004
MCCRAY, SAMANTHA	BENNINGTON, VT	2/19/2004
MCGIRK, FREDERIC	LAKE ST LOUIS, MO	2/19/2004
MICKENS, CRYSTAL	EL CAJON, CA	2/19/2004
MILEY, FRANCINA	GLEN MILLS, PA	2/19/2004
MILLER, BONNIE	N SAFETY HARBOR, FL	2/19/2004
MILLER, EDITH	JONESBOROUGH, TN	2/19/2004
MORSE, EDWARD	ASHEVILLE, NC	2/19/2004
MULLIN, GUY	MIAMI, OK	2/19/2004
MUNOZ, RACHEL	BAKERSFIELD, CA	2/19/2004
NEELEY, MICHAEL	MENIFEE, CA	2/19/2004
NEW, BRENDA	MIDDLEBURY, VT	2/19/2004
NIELSEN, DARRI	CLEARFIELD, UT	2/19/2004
NING, JOHN	LEESVILLE, LA	2/19/2004
ORDONIA, CARMELITA	HOLLYWOOD, CA	2/19/2004
OROZCO, GEORGE	TUCSON, AZ	2/19/2004
OSTERGAARD, MARY	SALT LAKE CITY, UT	2/19/2004
OZMENT, DAVID	MONTGOMERY, AL	2/19/2004
PALMER, CHARLES	NORTH HAVEN, CT	2/19/2004
PARRISH, JOANNE	RANDLETT, UT	2/19/2004
PEARSON, JOLENE	NASHVILLE, TN	2/19/2004
PECORARO, ANGELA	PHOENIX, AZ	2/19/2004
PICKERING, JOANNE	TUCSON, AZ	2/19/2004
PITTMAN, MARIA	SAN DIEGO, CA	2/19/2004
PLUNK, CARRIE	MURFREESBORO, AR	2/19/2004
POLANEN, MARY	FORT MILL, SC	2/19/2004
PRUD'HOMME, ANNE	COLORADO SPRINGS, CO	2/19/2004
QUINN, LINDA	OLD HICKORY, TN	2/19/2004
RAY, DEBRA	HAWTHORNE, NJ	2/19/2004

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM, FOR PRESS RELEASE—Continued

[From 01/01/2004–01/31/2004]

Subject name	Address	Effective date
ROBINSON, CYNTHIA	VIRGINIA BEACH, VA	2/19/2004
RODRIGUEZ, ARMANDO	TUCSON, AZ	2/19/2004
ROEMER, LAWRENCE	GALENA, IL	2/19/2004
ROGERS, LISA	PONTE VERDA, FL	2/19/2004
ROMSEY, DEANNA	DELTONA, FL	2/19/2004
ROSE, TIMOTHY	GREENVILLE, NC	2/19/2004
ROSSIGNOL, RONALD	KENNEBUNKPORT, ME	2/19/2004
ROY, SHANDA	JACKSONVILLE, AR	2/19/2004
RUANO, KATHY	TREVOR, WI	2/19/2004
RUIZ, HENRY	LAWNDALE, CA	2/19/2004
RYAN, DEBORA	MESA, AZ	2/19/2004
SAIMO, CYBELE	CORNVILLE, AZ	2/19/2004
SALAZAR, ALEJANDRO	OXNARD, CA	2/19/2004
SAMPSON, CECILIA	CHANDLER, AZ	2/19/2004
SANDERS, KHRISTIE	MANSURA, LA	2/19/2004
SANTIAGO, DIANE	MADERA, CA	2/19/2004
SCHMIDT, WILLIAM	ESTES PARK, CO	2/19/2004
SENGBUSCH, DONNA	TUCSON, AZ	2/19/2004
SMITH, BRENDA	INDIANAPOLIS, IN	2/19/2004
SMITH, CAROL	FAIRWAY, KS	2/19/2004
SMITH, CAROL	MORENO VALLEY, CA	2/19/2004
SORBELLO, TANYA	GLASSBORO, NJ	2/19/2004
SPANIER, CYNTHIA	PITTSBURGH, PA	2/19/2004
SPRINGER, YVONNE	PRESCOTT VALLEY, AZ	2/19/2004
SPRINKLE, JANE	GREENEVILLE, TN	2/19/2004
STAGG, DAVID	SAN DIEGO, CA	2/19/2004
STASKIEL, VICTORIA	STONY BROOK, NY	2/19/2004
STEADMAN, CAROL	AURORA, CO	2/19/2004
STOCKMYER, SCOTT	UNIVERSITY PLACE, WA	2/19/2004
STOUT, DONNA	HAMPTONVILLE, NC	2/19/2004
STRACKBINE, BRAD	JAMUL, CA	2/19/2004
STRAUCH, DAVID	ST PAULS, NC	2/19/2004
STRAWDER, TIA	LAKE CHARLES, LA	2/19/2004
TALON, ALEXI	SCHENECTADY, NY	2/19/2004
TINAZA, RICHARD	STOCKTON, CA	2/19/2004
TODD, DEANNA	GASTONIA, NC	2/19/2004
TRAVIS-LASHER, ALLISON	HOUSTON, TX	2/19/2004
TULEY, JOHN	YORK, PA	2/19/2004
TURNER, HAYLEY	OLYMPIA, WA	2/19/2004
VANGESEN, ADAM	BEAVER DAMS, NY	2/19/2004
VENANGO, CHARLES	PHILADELPHIA, PA	2/19/2004
VLACH, VICTORIA	CASPER, WY	2/19/2004
WADE, CATHERINE	DERRY, NH	2/19/2004
WAGNER, JOANNA	MONROEVILLE, PA	2/19/2004
WALLS-SMITH, SONDRA	COLUMBUS, IN	2/19/2004
WARD, JENNIFER	VIDALIA, LA	2/19/2004
WARRICK, KATHLEEN	MOSCOW, PA	2/19/2004
WATKINS, STEVEN	BRENTWOOD, TN	2/19/2004
WEBB, GERRY	BRIGHTON, CO	2/19/2004
WILLIAMS, JASON	LONG BEACH, CA	2/19/2004
WILLIAMS, TRACI	IDAHO FALLS, ID	2/19/2004
WILMOT, LISA	POCATELLO, ID	2/19/2004
WILSON, ERICA	TUCSON, AZ	2/19/2004
WOTEN, JAYNE	SIOUX CITY, IA	2/19/2004
ZEBROWSKI, JOSEPH	ENFIELD, CT	2/19/2004
ZHANG, CHUN	IRVINE, CA	2/19/2004
FEDERAL/STATE EXCLUSION/SUSPENSION		
Williams, Jesse	Columbus, MS	2/19/2004
OWNED/CONTROLLED BY CONVICTED ENTITIES		
CAPITOL MED, INC	TALLAHASSEE, FL	2/19/2004
PLEASANT RUN PODIATRY, INC	CINCINNATI, OH	2/19/2004
SERRANO PHARMACY DISCOUNT, INC	MIAMI, FL	2/19/2004
VENICE MEDICAL & SUPPLY, INC	VENICE, FL	2/19/2004

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM, FOR PRESS RELEASE—Continued

[From 01/01/2004–01/31/2004]

Subject name	Address	Effective date
DEFAULT ON HEAL LOAN		
ABELLA, FRANCISCO	PALM BEACH, FL	2/19/2004
ARGUETA, MIGUEL	MIAMI, FL	2/19/2004
CHEN, SYNG-FU	PALOS VERDES PENINSULA, CA	2/19/2004
HAGEN, WILLIAM	FORT MYERS, FL	12/10/2003
HARRIS, DONA	RIDGELAND, MS	12/16/2003
KAPLAN, DAVID	CHELSEA, MA	12/10/2003
SHEPHERD, STUART	PHILADELPHIA, PA	11/20/2003
SPHEERIS, ELENI	MILWAUKEE, WI	2/19/2004

Dated: January 5, 2004.

Kathleen Pettit,

Acting Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 04–3097 Filed 2–11–04; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: February 17, 2004.

Time: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mohan Viswanathan, PhD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: February 18, 2004.

Time: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mohan Viswanathan, PhD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: February 19, 2004.

Time: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mohan Viswanathan, PhD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: February 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3039 Filed 2–11–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Cooperative Agreement Review 1.

Date: February 17, 2004.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientists Development Award for Clinicians, and Research Scientists Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–3040 Filed 2–11–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Evaluation of the Buprenorphine Waiver Program—Survey of Physicians with Waivers—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies, (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823(g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C. 823(g)(2)), the Waiver Program permits qualified physicians to dispense or prescribe schedule III, IV, and V narcotic drugs or combinations of such drugs approved by the Food and Drug Administration (FDA) for the treatment of addiction to opiates. Subutex and Suboxone, two formulations of buprenorphine, a schedule III narcotic drug, were approved by the FDA in October, 2002, for the treatment of opiate addiction and are now being used under the Waiver Program. The Drug Abuse Treatment Act (DATA) also specifies that the Secretary of the Department of Health and Human Services may make determinations concerning whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. This Evaluation will provide data to: inform the determinations listed in DATA; describe the impact of the Waiver-based treatment on the existing treatment system; guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and inform future research and policy concerning the mainstreaming of addiction treatment.

The evaluation by SAMHSA/CSAT of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first survey, now completed, is a mail survey of addiction-specialist physicians from the American Society of Addiction Medicine (ASAM), the American Academy of Addiction Psychiatry (AAAP), and the American Osteopathic Academy of Addiction Medicine (AOAAM). The survey provided early data about the availability, effectiveness, and public health consequences associated with buprenorphine treatment under the Waiver Program. A second longitudinal telephone study, now in review by the Office of Management and Budget, focuses on patient responses to buprenorphine, including its effectiveness and availability.

The third survey, the subject of this **Federal Register** Notice, focuses on the clinical experience of waivered physicians who are currently prescribing buprenorphine and who represent a range of medical specialties. The survey is designed to identify broad clinical issues in providing buprenorphine treatment, particularly whether physicians (1) perceive it to be an effective treatment and (2) are aware of important moderators of treatment effectiveness, such as specific clinical subpopulations or particular clinical practices (*e.g.* detoxification appearing to be more effective than long-term maintenance). The survey is also designed to identify issues related to treatment availability and possible adverse public health consequences associated with the drug.

All Waivered physicians will first be screened using a postcard mailing to determine what individuals are actually prescribing the medication. The screening card will be sent to all physicians who have submitted a notification for a Waiver, estimated at about 2,800 individuals. The full survey instrument will then be sent to a sample of 1,000 individuals that are known to be prescribing or whose prescribing status is unknown (due to nonresponse on the screening card).

The estimated response burden over a period of one year is summarized below.

Respondents	Number of respondents	Responses per respondent	Hours per response	Total hour burden
All Physicians Who Have Submitted a Waiver	2,800	1	.05	140 hrs.
Sample of Prescribing Physicians	1,000	1	.50	500 hrs.
Total	3,800			640 hrs.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 5, 2004.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–3049 Filed 2–11–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30–Day notice of information collection under review: Application for USAccess; Form I–293.

The Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The request for an extension of this information collection was previously published in the **Federal Register** on September 30, 2003, at 68 FR 56302, allowing for public review and comment for a period of 60 days. The CBP has received no public comment on this proposed information collection and is therefore seeking OMB approval on the new information collection for a period of three years.

The purpose of this notice is to notify the public of the agency request to extend this information collection and to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 15, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Application for USAccess.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–923, Bureau of Customs and Border Protection, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by the DHS to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application of readmission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 66 minutes (1.10 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: February 6, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Customs and Border Protection.

[FR Doc. 04–3038 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on March 2–3, 2004, is to convene the full Advisory Committee; and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 8:30 a.m., Tuesday, March 2, 2004; and 8:30 a.m., Wednesday, March 3, 2004.

ADDRESSES: Hilton Hawaiian Village, 2005 Kalia Road, Honolulu, HI 96815. Meetings on both days will be held in the Honolulu Suite, Rooms 1 & 2.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: February 6, 2004.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 04–3098 Filed 2–11–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–ET; F–14895]

Public Land Order No. 7596; Withdrawal of Public Lands for Mekoryuk Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 12,155 acres of public land located within the Yukon Delta National Wildlife Refuge from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the land for selection by the NIMA Corporation, the village corporation for Mekoryuk. This withdrawal is for a period of 120 days; however, any land selected shall remain withdrawn by this order until it is conveyed. Any land described herein that is not selected by the corporation will remain withdrawn as part of the Yukon Delta National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, or will be subject to the terms and conditions of any other withdrawal or segregation of record.

EFFECTIVE DATE: February 12, 2004.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public land, located within the Yukon Delta National Wildlife Refuge, is hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and is hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (2000), by the NIMA Corporation, the village corporation for Mekoryuk:

Seward Meridian

T. 1 N., R. 81 W., (unsurveyed)
Secs. 5 to 8, inclusive;
Secs. 17 to 36, inclusive, excepting therefrom Native Allotment Certificate 50–95–0444.
The area described contains approximately 12,155 acres.

2. Prior to conveyance of any of the land withdrawn by this order, the land shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and her authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (2000), to make lands available for selection by the NIMA Corporation, to fulfill the entitlement for the village of Mekoryuk, under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (2000).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any land selected shall remain withdrawn pursuant to this order until conveyed. Any land described in this order not selected by the corporation shall remain withdrawn as part of the Yukon Delta National Wildlife Refuge, pursuant to Section 303(7) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (2000); or will be subject to the terms and conditions of any other withdrawal or segregation of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c)(2000) and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (2000), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (2000).

Dated: January 15, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–3102 Filed 2–11–04; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–65607]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for an equestrian park.

Mount Diablo Meridian

T. 19S., R. 60E.,
Sec. 12
Government Lot 1 (E½NE¼ and the S½ of Government Lot 1)
Containing 25 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. All valid and existing rights.

2. Those rights for public utility purposes which have been granted to Nevada Power Company by permit No. N–77002, City of Las Vegas by permit No. N–75903, and Southern Nevada Water Authority by permit No. N–74577, all issued under the Act of October 21, 1976 (FLPMA).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field

Manager, Las Vegas Field Office, Las Vegas, Nevada 89130.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an equestrian park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: December 16, 2003.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 04–3099 Filed 2–11–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1430–ES; N–75269–01]

Notice of Realty Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

FOR FURTHER INFORMATION CONTACT: Anna Wharton, Supervisory Realty Specialist, (702) 515–5095.

SUPPLEMENTARY INFORMATION: The following described public land in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et.seq.*).

The Clark County School District proposes to use the land for an elementary school site.

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E., MDM,
Sec. 25: S½NE¼NE¼NW¼, N½SE¼NE¼NW¼SW¼SE¼NE¼ NW¼.
Containing 12.5 acres, more or less.

The land is not required for any Federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease/conveyance will be subject to all valid and existing rights. The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV, or by calling (702) 515–5000.

On February 12, 2004, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws. You should submit your comments regarding the proposed conveyance for classification of the lands on or before March 29, 2004, to: Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for an elementary school site. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective on April 12, 2004. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: December 22, 2003.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 04–3100 Filed 2–11–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–65865]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a public park.

Mount Diablo Meridian

T. 20S., R. 60E.,
Sec. 7
Government Lots, 5, 7, 10–15, 17–19 SW¼NE¼NW¼, W½SE¼NW¼
Containing 90.50 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance

is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. All valid and existing rights.

2. Those rights for public utility purposes which have been granted to Nevada Power Company by Permit No's. N–74321 and N–74688, Las Vegas Valley Water District by permit No's. N–62751, N–66455 and N–74455, Clark County by permit No's. N–55256, N–59722 and N–60491, Central Telephone by permit No's. N–66793 and N–75654, and the City of Las Vegas by permit No's. N–59242, N–62195 and N–52803 under the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

Those rights for natural gas pipeline purposes which have been granted to Southwest Gas Corporation by permit No's. N–59960, and N–76706, and Kern River by permit No. N–42581 under Sec. 28 of the Mineral Leasing Act of 1920.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89130.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 28, 2003.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 04–3101 Filed 2–11–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Central Gulf of Mexico (GOM), Oil and Gas Lease Sale 190

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale (FNOS) 190.

SUMMARY: On March 17, 2004, MMS will open and publicly announce bids received for blocks offered in Central GOM Oil and Gas Lease Sale 190, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356), as amended, and the regulations issued thereunder (30 CFR part 256).

The final Notice of Sale 190 Package (FNOS 190 Package) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package. Bidders should note changes between the proposed notice of sale and this final notice of sale regarding shallow water deep gas royalty relief provisions. The shallow water deep gas royalty relief provisions specified in the new final rule at 30 CFR 203.41 through 203.47 apply to leases in water depths of less than 200 meters issued as a result of Sale 190.

DATES: Public bid reading will begin at 9 a.m., Wednesday, March 17, 2004, in Grand Ballroom C (5th floor) at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans times, unless otherwise specified.

ADDRESSES: Bidders can obtain a FNOS 190 Package containing this notice of sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF.

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, and from 8 a.m. to the bid submission deadline of 10 a.m. on Tuesday, March 16, 2004. If bids are mailed, please address the envelope containing all of the sealed bids as follows: Attention: Supervisor, Sales and Support Unit (MS 5422), Leasing Activities Section, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394; Contains Sealed Bids for Oil and Gas Lease Sale 190.

If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. on Tuesday, March 16, 2004. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico region may extend the bid submission deadline. Bidders may call (504) 736–0557 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all blocks and partial blocks listed in the document "Blocks Available for Leasing in Central GOM Oil and Gas Lease Sale 190" included in the FNOS 190 Package. All of these blocks are shown on the following leasing maps and official protraction diagrams (which may be purchased from the MMS Gulf of Mexico region public information unit):

Outer Continental Shelf Leasing Maps—Louisiana Map Numbers 1 Through 12

(These 30 maps sell for $2.00 each.)

LA1 West Cameron Area (revised November 1, 2000)
LA1A West Cameron Area, West Addition (revised November 1, 2000)
LA1B West Cameron Area, South Addition (revised November 1, 2000)
LA2 East Cameron Area (revised November 1, 2000)
LA2A East Cameron Area, South Addition (revised November 1, 2000)
LA3 Vermilion Area (revised November 1, 2000)
LA3A South Marsh Island Area (revised November 1, 2000)
LA3B Vermilion Area, South Addition (revised November 1, 2000)
LA3C South Marsh Island Area, South Addition (revised November 1, 2000)
LA3D South Marsh Island Area, North Addition (revised November 1, 2000)
LA4 Eugene Island Area (revised November 1, 2000)
LA4A Eugene Island Area, South Addition (revised November 1, 2000)
LA5 Ship Shoal Area (revised November 1, 2000)
LA5A Ship Shoal Area, South Addition (revised November 1, 2000)
LA6 South Timbalier Area (revised November 1, 2000)
LA6A South Timbalier Area, South Addition (revised November 1, 2000)
LA6B South Pelto Area (revised November 1, 2000)
LA6C Bay Marchand Area (revised November 1, 2000)
LA7 Grand Isle Area (revised November 1, 2000)
LA7A Grand Isle Area, South Addition (revised November 1, 2000)
LA8 West Delta Area (revised November 1, 2000)
LA8A West Delta Area, South Addition (revised November 1, 2000)
LA9 South Pass Area (revised November 1, 2000)
LA9A South Pass Area, South and East Addition (revised November 1, 2000)
LA10 Main Pass Area (revised November 1, 2000)
LA10A Main Pass Area, South and East Addition (revised November 1, 2000)
LA10B Breton Sound Area (revised November 1, 2000)
LA11 Chandeleur Area (revised November 1, 2000)
LA11A Chandeleur Area, East Addition (revised November 1, 2000)
LA12 Sabine Pass Area (revised November 1, 2000)

Outer Continental Shelf Official Protraction Diagrams

(These 10 diagrams sell for $2.00 each.)

NG15–03 Green Canyon (revised November 1, 2000)
NG15–06 Walker Ridge (revised November 1, 2000)
NG15–09 Amery Terrace (revised October 25, 2000)
NG16–01 Atwater Valley (revised November 1, 2000)
NG16–04 Lund (revised November 1, 2000)
NG16–07 Lund South (revised November 1, 2000)
NH15–12 Ewing Bank (revised November 1, 2000)
NH16–04 Mobile (revised November 1, 2000)
NH16–07 Viosca Knoll (revised November 1, 2000)
NH16–10 Mississippi Canyon (revised November 1, 2000)

Note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) format) containing all of the GOM leasing maps and official protraction diagrams, except for those not yet converted to digital format, is available from the MMS Gulf of Mexico region public information unit for a price of $15.00. The leasing maps and official protraction diagrams are also available via the Internet. The current status of all Central GOM leasing maps and official protraction diagrams was published in the **Federal Register** at 66 FR 28002 on May 21, 2001. In addition, supplemental official OCS block diagrams (SOBDs) for these blocks are available for blocks which contain the "U.S. 200 Nautical Mile Limit" line and the "U.S.-Mexico Maritime Boundary" line. These SOBDs are also available from the MMS Gulf of Mexico region public information unit and via the Internet. For additional information, please call Mr. Charles Hill (504) 736–2795.

All blocks are shown on these leasing maps and official protraction diagrams. The available Federal acreage of all whole and partial blocks in this lease sale is shown in the document "List of Blocks Available for Leasing in Lease Sale 190" included in the FNOS 190 Package. Some of these blocks may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Also, information on the unleased portions of such blocks is found in the document "Central Gulf of Mexico Lease Sale 190—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred" included in the FNOS 190 Package.

Areas Not Available for Leasing: The following whole and partial blocks are not offered for lease in this lease sale:

- *Vermilion (Area LA3)*

Blocks: 139 and 140.

- Blocks which are beyond the United States Exclusive Economic Zone in the area known as the northern portion of the eastern gap:

Lund South (Area NG16–07)

Blocks: 172 and 173; 213 through 217; 252 through 261; 296 through 305; 349.

- Whole and partial blocks which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

Amery Terrace (Area NG15–09)

Whole Blocks: 280 and 281; 318 through 320; 355 through 359.

Partial Blocks: 235 through 238; 273 through 279; 309 through 317.

Statutes and Regulations: Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 *et seq.*, as amended, (92 Stat. 629), hereinafter called "the Act"; all regulations issued pursuant to the Act and in existence upon the effective date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: Initial period, extensions of initial period, minimum bonus bid amount, rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map "Lease Terms and Economic Conditions, Lease Sale 190, Final" for leases resulting from this lease sale:

Initial Period: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in water depths of 800 meters or deeper;

Extensions of Initial Period: Extensions may be granted for eligible leases on blocks in water depths less than 400 meters as specified in "Notice To Lessees and Operators 2000–G22," effective December 22, 2000;

Minimum Bonus Bid Amount: A bonus bid amount of $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and a bonus bid amount of $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper;

Rental Rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty Rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month during which the production is obtained;

Minimum Royalty: After the start of royalty-bearing production: $5 per acre or fraction thereof per year for blocks in

water depths of less than 200 meters and $7.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due;

Royalty Suspension Areas: Royalty suspension, subject to gas price thresholds, will apply to blocks in water depths less than 200 meters where new deep gas (15,000 feet or greater subsea) is drilled and commences production before March 1, 2009. In addition, subject to both oil and gas price thresholds, royalty suspension will apply in water depths of 400 meters or deeper; *see* the map "Lease Terms and Economic Conditions, Lease Sale 190, Final" for specific areas and the "Royalty Suspension Provisions, Lease Sale 190, Final" document contained in the FNOS 190 Package for specific details regarding royalty suspension eligibility, applicable price thresholds and implementation.

Lease Stipulations: One or more of eight lease stipulations apply: (1) Topographic features; (2) live bottoms; (3) military areas; (4) blocks south of Baldwin County, Alabama; (5) law of the sea convention royalty payment; (6) protected species; (7) below seabed operations on Mississippi Canyon Block 474; and (8) sand dredging operations; limitation on use of leased area. Please see the "Stipulations and Deferred Blocks, Lease Sale 190, Final" map. The texts of the lease stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 190, Final" included in the FNOS 190 Package.

Information to Lessees: The FNOS 190 Package contains an "Information To Lessees" document which provides detailed information on certain specific issues pertaining to this oil and gas lease sale.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 190, not to be opened until 9 a.m., Wednesday, March 17, 2004." The total amount of the bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the FNOS 190 Package.

The MMS published a list of restricted joint bidders, which applies to this lease sale, at 68 FR 58705 on October 10, 2003. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must include on the bid form the proportionate interest of each participating bidder, stated as a percentage, using a maximum of five decimal places, *e.g.*, 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the FNOS 190 Package).

Rounding: The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty: Round up to the next whole dollar amount if the calculation results in a decimal figure (*see* next paragraph).

Note: The minimum bonus bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing in Lease Sale 190" included in the FNOS 190 Package.

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Lease Sale 190, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the FNOS 190 Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 1 p.m. eastern time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Note: Certain bid submitters (*i.e.*, those that are NOT currently an OCS mineral lease record title holder or designated operator OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) amend development bond coverage; (3) provide a letter of credit; or (4) provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this notice, including the documents contained in the associated FNOS 190 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted which does not conform to the requirements of this notice, the Act, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the government receives a fair return for the conveyance of lease rights for this lease sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of current procedures, "Modifications to the Bid Adequacy Procedures" at 64 FR 37560 on July 12, 1999, can be obtained from the MMS Gulf of Mexico region public information unit via the Internet.

Successful Bidders: As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR part 256, subpart I, as amended. Each bidder in a successful high bid must have on file in the MMS Gulf of Mexico Region Adjudication Unit a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal

nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR part 12, subpart D. A copy of the Debarment Certification Form is contained in the FNOS 190 Package.

Affirmative Action: The MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the MMS Gulf of Mexico region adjudication unit. This certification is required by 41 CFR part 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the MMS Gulf of Mexico region adjudication unit.

Geophysical Data and Information Statement: Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS. Every bidder submitting a bid on a block in Sale 190, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement identifying any processed or reprocessed pre- and post-stack depth migrated geophysical data and information in its possession or control and used in the evaluation of that block. The existence, extent (*i.e.*, number of line miles for 2D or number of blocks for 3D) and type of such data and information must be clearly identified. The statement must include the name and phone number of a contact person, and an alternate, knowledgeable about the depth data sets (that were processed or reprocessed to correct for depth) used in evaluating the block. In the event such data and information includes data sets from different timeframes, you should identify only the most recent data set used for block evaluations.

The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such depth data and information.

Every bidder must submit a separate Geophysical Data and Information Statement in a sealed envelope. The envelope should be labeled "Geophysical Data and Information Statement for Oil and Gas Lease Sale 190" and the bidder's name and qualification number must be clearly identified on the outside of the envelope. This statement must be submitted to the MMS at the Gulf of Mexico Regional Office, Attention: Resource Evaluation (1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394) by 10 a.m. on Tuesday, March 16, 2004. The statement may be submitted in conjunction with the bids or separately. Do not include this statement in the same envelope containing a bid. These statements will not be opened until after the public bid reading at Lease Sale 190 and will be kept confidential. An example of preferred format for the geophysical data and information statement is included in the FNOS 190 Package.

Please refer to NTL No. 2003–G05 for more detail concerning submission of the geophysical data and information statement, making the data available to the MMS following the lease sale, preferred format, reimbursement for costs, and confidentiality.

Dated: February 5, 2004.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 04–3028 Filed 2–11–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Open SystemC Initiative ("OSCI")

Notice is hereby given that, on January 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301 *et seq.* ("the Act"), Open SystemC Initiative ("OSCI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Prosilog SA, Cergy-Prefecture, France; Panasonic, Secaucus, NJ; and Summit Design, Inc., Burlington, MA have been added as parties to this venture. Also, Future Design Automation, Tokyo, Japan has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notification disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on April 22, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26649).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–3065 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on January 6, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Media Technology Co., Ltd., Seongnam-City, Republic of Korea; AMX Corporation, Richardson, TX; Conexant Systems, Inc., San Diego, CA; DCM, Digital Communication Media AB, Kista, Sweden; Digipack Optical Disc, SA, Beriain, Spain; Eastern Asia Technology Limited, Singapore, Singapore; Ellion Digital Inc., Kyonggi-do, Republic of Korea; Pinnacale Systems, GmbH, Braunschweig, Germany; OSM LLC, Rochester, NY; Sandmartin Zhongshan Electronic Co., Ltd., Guangdong, People's Republic of China; SoundMax Electronics Ltd., Hong Kong, Hong Kong-China; and WIS Technologies, Inc., San Jose, CA have been added as parties to this venture.

Also, ATL Electronics (M)Sdn. Bhd., Kedah, Malaysia; and ViXS Systems In.,

Toronto, Ontario, Canada have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April, 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on October 8, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 2003 (68 FR 64124).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–3064 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—USB Flash Drive Allowance ("UFDA")

Notice is hereby given that, on January 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), USB Flash Drive Alliance ("UFDA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Phison, Hsinchu, Taiwan; AddOn Technology Co., Ltd., Taipei, Taiwan; Alcor Micro Corp., Taipei, Taiwan; DataFab Systems, Inc., Taipei, Taiwan; and GlobalWare Solutions, Inc., Redwood City, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UFDA intends to file additional written notification disclosing all changes in membership.

On November 12, 2003, UFDA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 12, 2003 (68 FR 69423).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–3066 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ernesto A. Cantu, M.D., Revocation of Registration

On January 9, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ernesto A. Cantu, M.D. (Dr. Cantu). Dr. Cantu was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AC9115660, under 21 U.S.C. 824(a)(3), (a)(4), and 823(f), for reason that his continued registration would be inconsistent with the public interest. The order also notified Dr. Cantu that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Cantu at his registered location in San Antonio, Texas, but was subsequently returned to DEA with a post office notation "Returned to Sender—Unclaimed" stamped to the mailing envelope. According to the investigative file, a second copy of the Order to Show Cause was sent by facsimile machine on February 11, 2003, to Dr. Cantu's attorney who accepted service on behalf of his client. Nevertheless, DEA has not received a request for hearing or any other reply from Dr. Cantu or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at Dr. Cantu's registered address, (2) the Order to Show Cause having been returned and DEA's unsuccessful attempts at redelivery of the same, and (3) no request for hearing having been received, concludes that Dr. Cantu is deemed to have waived his hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on December 7, 2001, Dr. Cantu entered into an Agreed Order with the Texas State Board of Medical Examiners (Board). One finding of the Agreed Order was that Dr. Cantu entered into a financial relationship with Pill Box Pharmacy (Pill Box), a drug-store-pharmacy concern located in San Antonio, Texas, to provide controlled substances to individuals over the internet. The Agreed Order recounted that Pill Box ran an internet site which provided controlled substances and dangerous drugs to individuals in Texas and throughout the United States. The Agreed Order also found that Dr. Cantu agreed to provide consultations on behalf of the pharmacy in exchange for financial compensation.

The Board's Agreed Order also found that between January 1, 2000 and July 2001, Dr. Cantu issued "well over 10,000 prescriptions" for controlled substances and dangerous drugs through Pill Box, without establishing a proper physician-patient relationship or performing a mental or physical exam. The Agreed Order further recounted instances where Dr. Cantu permitted his girl friend to represent herself as a doctor and provide telephone consultations with patients in connection with the internet prescribing of controlled substances. The Agreed Order further found that Dr. Cantu issued numerous prescriptions for controlled substances to individuals he had never met or examined, and in some instances, Dr. Cantu's prescribing to these customers furthered their addictions to drugs. Dr. Cantu was also found to have issued a fictitious prescription for injectable Demerol, a Schedule II controlled substance, in the name of a patient that never received the prescription or the drug, and the Board also found probable cause to believe that Dr. Cantu and his girlfriend were abusing Demerol.

As part of the Agreed Order, the Board ordered the suspension of Dr. Cantu's medical license for no less than one year until such time as Dr. Cantu requests in writing to have the suspension stayed or lifted and personally appears before the Board to demonstrate his fitness to practice medicine. There is no evidence before the Acting Deputy Administrator however, that Dr. Cantu's license to practice medicine in the State of Texas has been reinstated.

Pursuant to 21 U.S.C. 824(a), the Acting Deputy Administrator may

revoke a DEA Certificate of Registration if she finds that the registrant has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pelkowski, D.D.S.*, 57 FR 28538 (1992). Despite the Board's findings regarding Dr. Cantu's inappropriate handling of controlled substances, and notwithstanding the other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of Dr. Cantu's state authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Joseph Thomas Allevi, M.D.*, 67 FR 35581 (2002); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Cantu's medical license has been suspended, and as a result, he is not licensed to handle controlled substances in Texas where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state. Because Dr. Cantu lacks state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Samuel Silas Jackson, D.D.S.*, 67 FR 65145 (2002); *Nathaniel-Aikens-Afful, M.D.*, 62 FR 16871 (1997); *Sam F. Moore. D.V.M.*, 58 FR 14428 (1993).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AC9115660, issued to Ernesto A. Cantu, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective March 15, 2004.

Dated: January 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–3128 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Donald W. Kreutzer, M.D.; Revocation of Registration

On October 7, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald W. Kreutzer, M.D. (Dr. Kreutzer) of Clarksville, Missouri, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AK5325914 under 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Kreutzer is not currently authorized to practice medicine or handle controlled substances in Missouri, his state of registration and practice. The order also notified Dr. Kreutzer that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Kreutzer at his address of record at 14713 Pike County Road 245, Clarksville, Missouri 63336. According to the return receipt, the Order was accepted by Dr. Kreutzer on or around October 16, 2003. DEA has not received a request for hearing or any other reply from Dr. Kreutzer or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Kreutzer is deemed to have waived his hearing right. *See Samuel S. Jackson, D.D.S.* 67 FR 65145 (2002); *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Kreutzer possesses DEA Certificate of Registration AK5325914, which expires on December 31, 2004. The Acting Deputy Administrator further finds that on or about April 16, 2003, in *State of Illinois* v. *Donald Kreutzer*, Case No. 99–CF–57 in the Circuit Court of Gallatin County, State of Illinois, Dr. Kreutzer was convicted of fourteen felony counts of Delivery of a Controlled Substance and one felony count of Public Aid Vendor Fraud.

On July 18, 2003, the Missouri State Board of Registration for the Healing Arts (the Board) conducted a hearing pursuant to a Complaint filed against Dr. Kreutzer, alleging inter alia, that he had been convicted of the above felony counts and that his Missouri medical license was subject to automatic revocation. Dr. Kreutzer appeared at the hearing and on August 8, 2003, the Board issued its Findings of Fact, Conclusions of Law and Disciplinary Order sustaining the accusations and revoking Dr. Kreutzer's license to practice medicine in the State of Missouri for a period of five years.

The investigative file contains no evidence that the Board's Order has been stayed or that Dr. Kreutzer's medical license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Kreutzer is not currently authorized to practice medicine in the State of Missouri. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Kreutzer's medical license has been revoked and he is not licensed to handle controlled substances in Missouri, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AK53225914, issued to Donald W. Kreutzer, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 15, 2004.

Dated: January 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–3126 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–24]

Karen A. Kruger, M.D.; Grant of Restricted Registration

On January 4, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Karen A. Kruger, M.D. (Respondent), proposing to deny her application for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f).

By letter dated April 9, 2002, the Respondent through her legal counsel requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held on December 10, 2002, in Chicago, Illinois. At the hearing, both parties called witnesses to testify, and the Respondent also testified on her behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted written proposed findings of fact, conclusions of law, and argument.

On April 23, 2003, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion and Recommended Ruling), recommending that Respondent's application for registration be granted subject to certain conditions. Neither party filed exceptions to Judge Bittner's opinion, and on May 28, 2003, Judge Bittner transmitted the record of these proceedings to the then-Acting Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts in full the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues, or conclusions herein, or of any failure to mention a matter of fact or law.

The record before the Acting Deputy Administrator shows that the Respondent received her medical degree from the Medical College of Wisconsin and is board certified in internal medicine and anesthesiology and board eligible in critical care medicine. The Respondent testified during the DEA hearing that she practiced as an anesthesiologist from 1986 until September 1999, and that during that period, there were no medical malpractice actions brought against her, nor did she lose staff privileges at any hospital.

The Respondent testified that in the early 1980s, she began taking diethylpropion, prescribing the drug to herself. Diethylpropion, a Schedule IV controlled substance, is used primarily for weight loss. Specifically, the Respondent testified that she called prescriptions into pharmacies under fictitious names, went to the pharmacies pretending to be the persons in whose names she had issued the prescriptions, and paid cash for and picked up the prescriptions. The Respondent further testified that while the recommended dosage for Tenuate (a brand name product containing diethylpropion) is one 75 mg. tablet daily, she developed a tolerance to the drug and eventually increased her use of the drug to as many as fifty tablets per day. The Respondent testified that she initially took Tenuate for weight control, but then began using it also for its properties as a stimulant.

The Government presented the testimony of a medical investigator and controlled substances inspector for the Illinois Department of Professional Regulation (IDPR). The inspector testified that an investigation of the Respondent was initiated in December 1999 as a result of information received from DEA regarding a pharmacist's concern over the Respondent's apparent prescribing of diethylpropion to three individuals at the same address.

In response to the above information, the IDPR inspector and a DEA diversion investigator interviewed the Respondent at her residence in Chicago on December 14, 1999. When informed of allegations that she had improperly prescribed controlled substances, the Respondent replied that as an anesthesiologist she rarely had occasion to prescribe, but she had prescribed Tenuate to six to ten friends. When asked by the IDPR inspector to identify these persons, the Respondent admitted that she had not prescribed to friends for about the last year, and instead, had issued prescriptions in fictitious names and then picked up the medications from the dispensing pharmacies herself.

During the interview, the Respondent also admitted during the interview that she telephoned bogus prescriptions to many chain and independent pharmacies in Chicago and its suburbs, using approximately forty different names, and that she took as many as 40 to 60 tablets per day for purposes of weight loss and to maintain alertness. The Respondent further admitted that she was probably psychologically addicted to diethylpropion, but willing to accept treatment for her addiction. The Respondent was then provided contact information for a physician involved with Illinois' Physician Assistance Program.

As part of its investigation of Respondent, DEA obtained from the Walgreens Company a printout of prescriptions that the Respondent called into various Walgreens pharmacies in the Chicago area. That printout, along with additional evidence presented at the hearing, revealed that between September 19, 1998 and September 4, 1999, Chicago-area Walgreens pharmacies filled more than 170 prescriptions that Respondent authorized for diethylpropion 75 mg. These unlawfully issued prescriptions resulted in the aggregate dispensing of approximately 5,500 dosage units of the controlled substance. The Respondent testified during the hearing that she also acquired diethylpropion from other area pharmacies.

On August 2, 2000, Respondent, represented by counsel, appeared at an Informal Conference with representatives of the IDPR. Following the conference, Respondent and the IDPR entered into a Consent Order, which the Director of the IDPR approved on March 22, 2001. The Consent Order specified, in substance, that Respondent's Illinois Controlled Substance License would be placed on probation for six months; she would comply with the terms of an aftercare agreement into which she entered on August 31, 2000, with the Illinois Professionals Health Program; Respondent would abstain from the use of alcohol and/or mood altering or psychoactive drugs except as prescribed by her primary care or treating physician; Respondent would attend Alcoholics Anonymous and/or Narcotics Anonymous meetings and Caduceus meetings at least twice per week; Respondent would undergo monitored random urine screens at least once per month within twenty-four hours of a request by the Illinois Professionals Health Program; and Respondent would continue therapy with her psychiatrist. The Consent Order further required various reports and provided that violation of any of its terms by the Respondent would constitute grounds for the IDPR to file

a complaint to revoke her medical license.

At the DEA hearing, the Respondent called as a witness the Chief of Investigations for IDPR's probation section. The witness testified that the probation on Respondent's Illinois controlled substance license terminated in compliance, i.e., that during the course of the probation the IDPR did not become aware of any violations of the terms of the March 22, 2001, Consent Order. The witness acknowledged however that although he recalled receiving required reports from the Respondent's aftercare program, he did not recall reviewing them. The Respondent later testified that her case manager and physician monitor were responsible for the quarterly reports, but that copies were not provided to her. Respondent also testified that she had brought to the hearing prepared quarterly reports of drug screens; however, these reports were not made a part of the record by either party.

The Respondent testified that she has not taken diethylpropion and has not written any controlled substance prescriptions at all since December 14, 1999. She also testified that she contacted her monitoring physician, who referred her to Elmhurst Medical Guidance Services in Elmhurst, Illinois, a suburb of Chicago, and that she underwent "partial inpatient" treatment there from August 2000 until January 2001. The Respondent further testified that she has continued to attend meetings at Elmhurst Medical Guidance Services on Wednesday nights.

On the date of the hearing in this proceeding, the Respondent's medical license and controlled substance license were "non-renewed" status. Subsequently, counsel for Respondent advised counsel for the Government and Judge Bittner that Respondent's licenses had been renewed and provided copies of the licenses. Finally, the Respondent testified that she intends to resume the practice of anesthesiology and needs a DEA registration in order to do so, and that if her application for registration is granted, she is willing to accept such conditions as submitting to drug screens, limiting her prescribing to drugs used in anesthesiology, and a prohibition on handling diet drugs.

Pursuant to 21 U.S.C. 823(f), the Acting Deputy Administrator may deny an application for a DEA Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, the Acting Deputy Administrator finds that while the Respondent's Illinois Controlled Substance License was placed on a six month period of probation pursuant to a consent order with the IDPR, the record in this proceeding demonstrates that the Respondent has satisfactorily complied with the terms of her probation. In addition, the Respondent is fully licensed as a physician and surgeon in Illinois with controlled substance handling privileges in that state. The Acting Deputy Administrator agrees with Judge Bittner's finding that while the Respondent's licensures to practice medicine and to handle controlled substances are not determinative in this proceeding, the Respondent's successful completion of probation and the renewal of her state professional licenses weigh in favor of granting her application for DEA registration.

Factors two and four, Respondent's experience in handling controlled substances and her compliance with applicable controlled substance laws, are also relevant in determining the public interest in this mater. Evidence was presented at the DEA hearing that the Respondent has prescribed diethylpropion to herself since the early 1980s. The record further established that these prescriptions were issued in the names of fictitious individuals.

In addition, the Respondent's use of fictitious names on the face of prescriptions was in violation of 21 CFR 1306.04 and 1306.05, in that these prescriptions were not issued for a legitimate medical purpose nor did the prescriptions bear the full name and address of a patient. As noted in Judge Bittner's Opinion and Recommended Ruling, the Respondent's use of fictitious prescriptions was also in violation of Illinois law prohibiting the acquiring or obtaining possession of controlled substances by misrepresentation, deception, or subterfuge. Like Judge Bittner, the Acting Deputy Administrator finds the Respondent's personal illicit use of controlled substances relevant under factors two and four, and weighs in favor of a finding that the Respondent's registration would be inconsistent with the public interest.

Factor three, the applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances, is not relevant for consideration here, since there is no evidence that the Respondent has ever been convicted of any crime related to controlled substances.

With respect to factor five, other conduct that may threaten the public health and safety, the Acting Deputy Administrator finds this factor relevant to the lack of detail surrounding the Respondent's rehabilitation, and the Respondent's conduct in unlawfully obtaining controlled substances. The Acting Deputy Administrator shares the concern of the Government regarding the scant nature of evidence involving the Respondent's recovery from drug abuse. The Acting Deputy Administrator is also deeply disturbed by the apparent long duration the Respondent's drug use, as well as her dishonest conduct in obtaining controlled substances. Therefore, the Acting Deputy Administrator finds the Respondent's history of drug abuse relevant under factor five, and further weighs in favor of a finding that the grant of her application for registration would be inconsistent with the public interest.

Based on the foregoing, adequate grounds exist for the denial of the Respondent's pending application for DEA registration. Having concluded that there is a lawful basis upon which to deny the Respondent's application, the question remains as to whether the Deputy Administrator should, in the exercise of his discretion, grant or deny the application. Ray Roya, 46 FR 45842 (1981). Like Judge Bittner, the Acting Deputy Administrator concludes that it would not be in the public interest to deny the Respondent's pending application.

The Acting Deputy Administrator finds significant the Respondent's ready willingness to cooperate with law enforcement authorities when

questioned about allegations of her improperly prescribing. During a December 1999 interview with DEA and IDPR investigators, the Respondent admitted that he used fictitious names on prescriptions to acquire controlled drugs and that she abused controlled substances for several years. With respect to the above referenced interview, the Acting Deputy Administrator also finds significant the Respondent's stated willingness to seek treatment for her drug abuse. It appears from the record that the Respondent demonstrated the same openness and resolve in confronting her problems with drug abuse during her testimony at the administrative hearing.

The Acting Deputy Administrator also finds significant the Respondent's participation in inpatient drug treatment and her continued participation in meetings at the Elmhurst Medical Guidance Services. The Respondent has also successfully completed the probationary terms imposed upon her state controlled substance license. There is no evidence in the record of any misuse of controlled substances by the Respondent since 1999, nor is there evidence of any further disciplinary action brought against the Respondent with respect to her handling of controlled substances. It appears from these positive developments that the Respondent has acknowledged her past problems with drug abuse and is willing to take steps to further insure her recovery.

However, given the concerns about the Respondent's past mishandling of controlled substances, a restricted registration is warranted. This will allow the Respondent to demonstrate that she can responsibly handle controlled substances. Accordingly, the Acting Deputy Administrator adopts the following restrictions upon the Respondent's DEA registration as recommended by Judge Bittner:

1. Respondent's controlled substance handling authority shall be limited to the administering and prescribing of controlled substances used in the practice of anesthesiology;

2. Respondent shall not write any prescriptions for herself, and shall not obtain or possess for her use any controlled substance except upon the written prescription of another licensed medical professional. In the event that another licensed medical professional prescribes a controlled substance for the Respondent, Respondent shall immediately notify the Special Agent in Charge of the DEA's nearest office, or his designee; (a) that she is about to obtain a specified controlled substance for her personal use, and (b) the reasons the controlled substance is being prescribed.

3. For at least two years from the date of the entry of a final order in this proceeding, Respondent shall continue to submit to random drug testing under the auspices of the Illinois Department of Professional Regulation or its designee and shall continue to participate in meetings at Elmhurst Medical Guidance Services or in an equivalent program.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for DEA Certificate of Registration submitted by Karen A. Kruger, M.D. be, and it hereby is, granted, subject to the above described restrictions. This order is effective March 15, 2004.

Dated: January 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–3129 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mark Wade, M.D.; Revocation of Registration

On October 4, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mark Wade, M.D. (Respondent) at his registered location in Memphis, Tennessee. The Order to Show Cause notified the Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AW1747166, and deny any pending applications for modification or renewal of that registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for reason that the Respondent's registration was inconsistent with the public interest.

The Acting Deputy Administrator's review of the investigative file reveals that the Order to Show Cause was received on behalf of the Respondent on October 17, 2002. By letter dated October 28, 2002, the Respondent directed a letter to the Hearing Clerk of the Office of Administrative Law Judges notifying of his desire to waive his right to a hearing in the matter. The Respondent also requested that the DEA Administrator forgo revocation proceedings based on the anticipated surrender of his DEA Certificate of Registration as part of a sentencing proceeding in Federal court scheduled for January 9, 2003. There is however, no information in the investigative file that the Respondent has surrendered his DEA registration.

Therefore, finding that the Respondent has requested the waiver of his right to a hearing and after considering material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(e) and 1301.46.

A review of the investigative file reveals that on or about September 19, 1995, the Tennessee Board of Medical Examiners (Tennessee Board) adopted a policy statement titled, "Management of Prescribing with Emphasis on Addictive and Dependence-Producing Drugs." Step One advises: "First and foremost, before [prescribing any drug], start with a diagnosis which is supported by history and physical findings, and by the results of any appropriate tests" and "do a workup sufficient to support a diagnosis including all necessary tests." Step Three of the policy statement specifies that "Before beginning a regimen of controlled drugs, [a determination should be made] through trial or a documented history that non-addictive modalities are not appropriate or they do not work." Step Four of the policy statement cautions prescribing physicians to make sure they "are not dealing with a drug-seeking patient."

On September 13, 2000, the Tennessee Board adopted a Position Statement titled, "Prerequisites to Prescribing Drugs In Person, Electronically, Or Over the Internet." In its adoption of the position statement, the Board outlined its interpretation of Tennessee Code Annotated, Sections 63–6–214(b)(1), (4), and (12). The Tennessee Board's statement posits in relevant part, that "it shall be a prima facie violation of T.C.A. 63–6–214(b)(1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

(a) Performed an appropriate history and physical examination;

(b) Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and

(c) Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatment options, a part of which might

be the prescription or dispensing drug, with the patient; and

(d) Insured the availability of the physician or coverage for the patient for follow-up care."

The Acting Deputy Administrator's review of the investigative file reveals that William Stallknecht (Mr. Stallknecht), a pharmacist, was part owner and operator of Pill Box Pharmacy (hereinafter referred to as Pill Box), a drug store concern with two locations in San Antonio, Texas. Included among the business operations of Pill Box was a Web-based pharmacy with an Internet address of "thepillbox.com," as well as a related Web-based physician referral service which operated under a separate Internet address.

DEA's investigation further revealed that following launch of his Internet Web sites, Mr. Stallknecht then contracted with various physicians around the country to conduct customer consultations. A review of the investigative file further reveals that by 1998 or 1999, Pill Box extended its Internet service to controlled substances. Customers reportedly logged on to "thepillbox.com" Web site and requested a physician consultation. Customers were then provided questionnaires to complete and could request a physician consultation via e-mail from the linked Web site, PHYSICIAN REFERRAL 2000, or by a direct phone call to Pill Box employee, Brian Hildebrand (Mr. Hildebrand). The customer would then be given a physician's telephone number and instructed to contact the physician at a specific time and date. The patient would telephonically contact the physician who in turn would prescribe controlled substances for the customer after a brief telephonic conversation, usually lasting ten (10) minutes or less. These consultations did not include face-to-face physician-patient interaction, a physical exam or any medical tests. Following these brief consultations, the requested drug(s) would then be dispensed and shipped to the customer by Pill Box.

DEA's investigation further revealed that when a Pill Box contracting physician received a customer questionnaire, he would issue prescriptions, generally for hydrocodone or a brand of hydrocodone, as well as diazepam. In most cases, the Pill Box contracting physician issued 100 dosage units of hydrocodone with three refills, lesser amounts of Valium (with three refills), propoxyphene (both Schedule IV controlled substances), or a similar drug.

The contracting physician would then send the prescriptions by facsimile to the Pill Box location and the pharmacy would dispense the drugs by overnight mail pursuant to the contracting physician's prescription. Payment for the physician consultation, prescription drugs, and shipping costs were all collected by the Pill Box via credit card, money order, cash, or C.O.D. from the customer. DEA's investigation further revealed that Pill Box collected approximately $100.00 in physician consultation fees from each customer and the pharmacy in turn made payments (or rebates as they were also called) to contracting physicians based upon the number of prescriptions authorized by the physician.

The Acting Deputy Administrator finds that the Respondent has been registered as a practitioner with DEA since 1986, and has practiced medicine in California (1986–1988), Louisiana (1988–1992), Florida (1992–1995), and Arizona (1995–1999). The Respondent is currently registered with DEA at a location in Memphis, Tennessee, and is also licensed to practice medicine in that State. At the time of DEA's investigation, the Respondent was a salaried employee at a cardiology practice located in Memphis, where he earned a gross salary of roughly $300,000 per year.

In response to information regarding the possible unlawful distribution of controlled substances by Pill Box, on June 12, 2001, law enforcement officers executed a Federal search of one of the pharmacy's San Antonio locations. Computer records seized from the pharmacy revealed that from January 1, 2000 through June 12, 2001, the Respondent authorized a total of approximately 21,199 prescriptions through Pill Box's Internet referral operation. Approximately 14,029 of those prescriptions were for brand name Schedule III controlled substances, including, Lorcet, Lortab, Vicodin and Zydone, as well as generic hydrocodone products. Approximately 1,113 of those prescriptions were for Valium.

In furtherance of its investigations of Pill Box and the Respondent, on September 12, 2001, the Respondent was interviewed in San Antonio, Texas by a representative of the United States Attorney's Office, agents from the Criminal Investigation Unit of the Internal Revenue Service (IRS) and DEA Diversion Investigators. During the course of the interview, the Respondent disclosed that in 1999, he, along with his family (wife and child) moved from Phoenix, Arizona to Memphis, Tennessee. The Respondent stated that the move was prompted in part by an unsuccessful and financially strapped medical practice group in Phoenix (that later went bankrupt), and the Respondent's desire to improve the financial situation of he and his family. DEA's investigation revealed that at the time the Respondent moved to Memphis, he was in debt to the IRS for about $131,000, and he had also incurred substantial credit card debt.

The Respondent further disclosed that in or around September or October of 1999, he found the Pill Box Web site and his attention was drawn to the pharmacy's solicitation of physicians to conduct consultations for customers. The Respondent subsequently responded to the request, and a few months later, he was contacted by Mr. Hildebrand concerning customer consultations for Pill Box. Following a discussion regarding the pharmacy's consultation procedure, the Respondent decided to join Pill Box as a consulting physician.

The Respondent further disclosed during the September 12, 2002, interview with law enforcement personnel that he saw his association with Pill Box as a "moonlighting" opportunity, and that he hoped thereby to be able to pay off the indebtedness he had incurred. Although he indicated his then understanding that the practice was legal, DEA's investigation revealed that the Respondent nevertheless did not consult with anyone, including the Tennessee Medical Board, with questions about the legality of Internet consultations or prescribing for Internet-based pharmacies.

Sometime within the first week of January, 2000, the Respondent conducted his first telephone consultation on behalf of Pill Box. The consultations were carried out at his residence, where Respondent had a separate telephone line installed for that purpose. The Respondent typically conducted consultations during the evenings after working during the day at his cardiology practice. Shortly thereafter, the Respondent began issuing prescriptions for controlled substances to Internet customers.

During the September 12, 2002, interview, the Respondent admitted being aware that a high percentage of the prescriptions he authorized were for hydrocodone products, but added however, that the people for whom the prescriptions were issued were "between doctors or insurance", and he thought that they had a genuine need for these drugs. The Respondent further added that he turned down a number of people he thought were "bogus."

The Respondent further disclosed to law enforcement personnel that he first

became aware of possible "problems" in the operation of Pill Box in early 2001: He recalled hearing from Mr. Hildebrand that another Internet referring physician for Pill Box was being investigated. The investigative file however does not disclose the source of the purported investigation. The Respondent also voiced concerns that stemmed from complaints that he received from customers who stated that they had not received the drugs he had prescribed and his suspicion that Mr. Hildebrand was using Respondent's name for other prescriptions not authorized by the Respondent. The Respondent informed law enforcement personnel that he terminated his relationship with Pill Box on February 5, 2001.

The Respondent further divulged that following the termination of his business relationship with Pill Box, he went on to perform paid consultations for three other Web-based pharmacies located in Florida, Oklahoma, and Alabama. Each of the referenced pharmacies, like Pill Box, facilitated the purchase of various drugs over the Internet by visitors to their respective Web sites. With respect to the Oklahoma-based Internet site, the Respondent told law enforcement authorities that the pharmacist at that location agreed to accept faxed prescriptions from the Respondent. However the arrangement was discontinued in March 2001, when the Respondent was informed by the pharmacist that the latter was under investigation.

DEA's investigation further revealed that the Respondent did not perform an examination of any of the patients to whom he authorized controlled substances through Pill Box, or any of the other online pharmacies for which he provided consultations. Conversely, the Respondent stated during his September 2001 interview with law enforcement personnel that he typically spent thirty to forty-five minutes with a new patient in his cardiology practice, excluding time spent by office personnel taking a patient's weight, blood pressure, and pulse. The Respondent added that a typical visit with an established cardiology patient would be fifteen to twenty minutes. The Respondent further contrasted his practice of cardiology with Internet prescribing in that the services he provided to the internet customers was meant only to be an interim measure.

The Respondent further informed law personnel that he once told Mr. Hildebrand that he did not want consultations scheduled with customers from Memphis, Tennessee because the Internet practice would be in conflict with the Respondent's regular medical practice. The Respondent further requested that Mr. Hildebrand not schedule the Respondent's consultations with any customers in the State of Tennessee so as to reduce his chance of "getting into trouble" with the state's medical board.

The investigative file further reveals that in or around May 2000, the Respondent was notified by an investigator for the Illinois Medical Board that it was illegal for the Respondent to prescribe drugs to patients in Illinois since the Respondent was not licensed to practice medicine there. The Respondent later sent a letter to the Illinois Medical Board stating that he would refrain from prescribing to patients in that State. The investigative file further reveals that the Respondent was informed by Mr. Hildebrand that other States such as Kansas were "cracking down," apparently on Internet-based prescribing practices. As a result, the Respondent included Kansas as a State from which he would not accept customer consultations on behalf of online pharmacies.

On March 25, 2002, DEA's San Antonio District Office received a written complaint statement and other documents regarding the Respondent and Pill Box Pharmacy from "NH", an individual apparently recovering from drug addiction. NHG informed DEA that she and her daughter, "AB" had obtained via the Internet and telephonic consultations, controlled substances (specifically Lortab) from the Respondent and other Pill Box contracting physicians. NH further divulged that appointments for physician consultations were arranged by Mr. Hildebrand and prescriptions were then dispensed by Pill Box. With respect to repayment arrangements for requested medications, NH wrote: "In the beginning[,] you could use Visa, MasterCard, etc., but later patients were told that this created a paper trail, therefore [Mr. Hildebrand] could no longer accept anything but money orders." DEA received further information that NH and AB have since undergone a drug rehabilitation program after becoming addicted to the controlled substances, including those received from Pill Box.

By letter dated December 20, 2001, the DEA San Antonio District Office was informed by "NB" that her son "PB" had received more than 100 dosage units of hydrocodone (Lortab) with two refills from a prescription authorized by "Dr. William Dale", and the prescriptions were filled by Pill Box. At the time PB received the prescription in question, he resided in Birmingham, Alabama. There is no information in the investigative file that the Respondent was either licensed to practice medicine in Alabama or treated patients from that State. The letter of NB went on to generally describe PB's resulting drug addiction requiring hospitalization in an intensive care unit, and subsequent care at a mental care facility. The letter further disclosed that controlled substances received by PB eventually led to his overdose of the drugs, and NB described PB as having "damaged brain cells" and an "uncertain prognosis." A review of prescription information obtained by DEA from Pill Box revealed that on three separate occasions from January to March 2001, the Respondent authorized prescriptions for PB, each for 100 tablets of Lortab. These controlled substances were subsequently delivered to PB by Pill Box.

The investigative file contains several additional instances where individuals contacted DEA regarding difficulties they experienced (*i.e.*, drug abuse, dependency and addition) after obtaining controlled substances authorized by the Respondent, and other Internet referring physicians affiliated with Pill Box.

The Acting Deputy Administrator's review of the investigative file further reveals a copy of a plea agreement listing the Respondent as a defendant in a criminal action before the United States District Court for the Western District of Texas. The plea agreement, which was signed by the Respondent on October 4, 2002, set forth certain stipulations of fact agreed upon by the parties, including findings that in 2000, the Respondent began prescribing controlled substances for Pill Box' Internet referral customers, who lived throughout the continental United States and abroad, with "no face-to-face contact with these customers"; and, that in the course of a conspiracy with Pill Box and William Stallknecht, and in relation to illegal prescriptions which were filled by the pharmacy, the Respondent received a sum in excess of $27,858.30 which constituted proceeds of the illegal dispensing of 42,750 dosages units of diazepam.

The plea agreement further referenced the Respondent's agreement to waive indictment, and plead guilty to a charge set forth in a criminal information, specifically, conspiracy to dispense Schedule IV controlled substances in violation of 21 U.S.C., sections 846, 841(a)(1) and 841(b)(1)(D)(2). The Respondent also agreed to forfeit and surrender is DEA Certificate of Registration at the time of sentencing on the above referenced charge. However,

there is no information in the investigative file regarding the imposition of any sentence upon the Respondent.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Acting Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

In this case, the Acting Deputy Administrator finds factors two, three, four and five relevant to a determination of whether the Respondent's continued registration remains consistent with the public interest.

With regard to factor one, the recommendation of the appropriate State licensing board or professional disciplinary authority, there is no evidence in the investigative file that the Respondent has been the subject of a State disciplinary proceeding, nor is there evidence demonstrating that Respondent's medical license or State controlled substance authority are currently restricted in any form. Nevertheless, State licensure is a necessary, but no sufficient condition for registration, and therefore, this factor is not dispositive. *See e.g., Wesley G. Harline, M.D.*, 65 FR 5665 (2000) *James C. LaJevic, D.M.D.*, 64 FR 55962 (1999).

With regard to factors two and four, the Acting Deputy Administrator finds that the primary conduct at issue in this proceeding (*i.e.*, the unlawful authorization of controlled substance prescriptions for use by Internet customers) relates to both the Respondent's experience in dispensing controlled substances, as well as his compliance with applicable State, Federal, or local laws relating to controlled substances. Therefore, the Acting Deputy Administrator combines these factors under 21 u.S.C. 823(f)(2) and (4). *See, Service Pharmacy, Inc.*, 61 FR 10791, 10795 (1996).

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. *Paul J. Caragine, Jr.*, 63 FR 51592, 51600 (1998). Legally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. *See Floyd A. Santner, M.D.*, 55 FR 37581 (1990).

Factors two and four are relevant to the Respondent's authorization of more than 14,000 prescriptions for Schedule III and IV controlled substances from January 1, 2000 through June 12, 2001. The Acting Deputy Administrator concludes from a review of the recor4d that the Respondent did not establish a valid physician-patient relationship with internet customers to whom he prescribed controlled substances. *See, Abel J. Sands, M.D.*, 59 FR 781 (1994). DEA has previously found that prescriptions issued through a pharmacy Internet Web site are not considered as having been issued in the usual course of medical practice, in violation of 21 CFR 1306.04. *Rick Joe Nelson*, 66 FR 30752 (2001). The Acting Deputy Administrator also finds that the Respondent's actions in this regard were not in compliance with State law as his issuance of controlled substance prescriptions to internet customers violated Tennessee State law. T.C.A. 63–6–214(b)(1), (4) and (12).

In the instant case, the Respondent conducted scant consultations (some lasting as little as five minutes) on behalf of a pharmacy that offered access to controlled substances over the Internet. These prescriptions were authorized without the benefit of face-to-face physician-patient contact, physical exam or medical test. There is no information in the investigative file demonstrating that the Respondent even took the time corroborate responses to questionnaires that were submitted by Pill Box's customers. Most, if not all of these customers were outside of the area where the Respondent's primary medical practice was located. Here, it is clear that the issuance of controlled substance prescriptions to persons whom the prescribing physician has not established a valid physician-patient relationship is a radical departure from the normal course of professional practice.

With regard to factor three, applicant's conviction record under Federal or State laws relating to the dispensing of controlled substances, the record reveals that the Respondent has been convicted of a felony related to controlled substances. On October 4, 2002, the Respondent entered into a plea agreement on a Federal charge of conspiracy to dispense Schedule IV controlled substances in violation of 21 U.S.C. 846, 841(a)(1) and 841(b)(1)(D)(2). DEA has previously held that guilty pleas to charges related to unlawful handling of controlled substances are applicable to a finding under factor three. *Trudy J. Nelson, M.D.*, 66 FR 52941 (2001); *John C. Turley, III, M.D.*, 62 FR 14948 (1997); *Yu-To Hsu, M.D.*, 62 FR 12840 (1997).

Regarding factor five, such other conduct which may threaten the public health or safety, the Acting Deputy Administrator finds this factor relevant to the Respondent's continued prescribing to Internet customers, at a time when the Tennessee Medical Board adopted a policy statement and a position statement designed to assist licensed practitioners in the proper prescribing of dangerous controlled drugs. Ironically, the Respondent is currently licensed to practice medicine in a jurisdiction which sought to specifically address the proper procedures for the issuance of prescriptions through electronic means (*i.e.*, via the Internet). While the record is unclear as to whether the Tennessee Board's position statements on proper prescribing practices were ever disseminated to the State's licensed physicians, the Respondent demonstrated clearly that he possessed some knowledge of the possible unlawful nature of his conduct, as evidenced by his statements to law enforcement authorities of his desire to avoid legal entanglements with the Tennessee Board. Factor five is further relevant to the Respondent's continued authorization of prescriptions for Internet customers even while receiving warnings from authorities in Illinois and Kansas that the practice may be subject to restriction in those jurisdictions. Factor five is also relevant to Respondent's continued Internet consultations despite receiving information that another Pill Box consulting physician as well as a

pharmacist in Oklahoma were under investigation for participating in Internet drug distribution ventures. Despite the Respondent's demonstrated awareness of the legal prohibitions surrounding his prescribing on behalf of online pharmacies, there is no evidence in the record that he ever sought guidance from the Tennessee Board or from any law enforcement entity regarding the appropriateness of such prescribing.

The Acting Deputy Administrator is deeply concerned about the increased risk of diversion which accompanies Internet controlled substance transactions. Given the nascent practice of cyber-distribution of controlled drugs to faceless individuals, where interaction between individuals is limited to information on a computer screen or credit card, it is virtually impossible to insure that these highly addictive, and sometimes dangerous products will reach the intended recipient, and if so, whether the person purchasing these products has an actual need for them. It is against this backdrop that the Acting Deputy Administrator finds factor five relevant to complaints received by the Respondent that Pill Box customers had not received drugs that he authorized, and relevant to information received by the Respondent that a Pill Box employee may have used the Respondent's name for prescriptions not authorized.

Factor five is further relevant to the Respondent's apparent role in exacerbating drug abuse and addition on the part of customers that received controlled substances through Internet consultations. As noted above, DEA received letters on behalf of individuals who became severely impaired by controlled substances authorized by the Respondent and distributed by Pill Box. The ramifications of obtaining dangerous and highly addictive drugs with the ease of logging on to a computer and the use of a credit card are disturbing and immense, particularly when one considers the growing problem of the abuse of prescription drugs in the United States.

In a 2001 report, the National Clearinghouse for Alcohol and Drug Information estimated that 4 million Americans ages 12 and older had acknowledged misusing prescription drugs. That accounts for 2% to 4% of the population—a rate of abuse that has quadrupled since 1980. Prescription drug abuse—typically of painkillers, sedatives and mood-altering drugs—accounts for one-third of all illicit drug use in the United States. *Article by Melissa Healy, The Los Angeles Times, December 1, 2003.*

The Acting Deputy Administrator finds that with respect to Internet transactions involving controlled substances, the horrific untold stories of drug abuse, addiction and treatment are the unintended, but foreseeable consequence of providing highly addictive drugs to the public without oversight. The closed system of distribution, brought about by the enactment of the Controlled Substances Act, is completely compromised when individuals can easily acquire controlled substances without regard to age or health status. Such lack of oversight describes Pill Box's practice of distributing controlled substances to indistinct Internet customers, and the Respondent's authorization of those drugs on behalf of the pharmacy. Therefore, the Respondent's actions in contributing to the abuse of controlled substances by customers of Pill Box is relevant under factor five and further supports the revocation of his DEA Certificate of Registration.

Factor five is further relevant to the Respondent's participation in pharmacy Internet business ventures after terminating his business relationship with Pill Box. As noted above, the Respondent demonstrated some knowledge that his prescribing on behalf of Internet pharmacies was unlawful. Nevertheless, following the termination of his business relationship with Pill Box, the Respondent actively sought to associate himself with other similar ventures, and admitted to providing consultations to Internet referral customers on behalf of online pharmacies in Florida, Oklahoma and Alabama.

It appears that the Respondent's actions in this regard were motivated purely by profit. In his selfish pursuit of financial gain, the Respondent demonstrated a cavalier disregard for controlled substance laws and regulations and a disturbing indifference to the health and safety of customers who purchased dangerous drugs through the Internet. Such demonstrated lack of character and adherence to the responsibilities inherent in a DEA registration show in no uncertain terms that the Respondent's continued registration with DEA would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AW174166, previously issued to Mark Wade, M.D., be, and it hereby is, revoked. This order is effective March 15, 2004.

Dated: January 20, 2004.

Michelle M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–3127 Filed 2–11–04; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL INDIAN GAMING COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement and of a Scoping Meeting for the Federated Indians of Graton Rancheria Casino and Hotel Project, Sonoma County, CA

AGENCY: National Indian Gaming Commission.

ACTION: Notice of intent.

SUMMARY: The notice advises the public that the National Indian Gaming Commission (NIGC), in cooperation with the Federated Indians of Graton Rancheria and the Bureau of Indian Affairs (BIA), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed casino project to be located in Sonoma County, California. The purpose of the proposed action is to help address the socio-economic needs of the Federated Indians of Graton Rancheria. Details of the proposed action and location are provided below in the Supplemental Information section. The scoping process will include notifying the general public and federal, state, local, and tribal agencies of the proposed action. This notice also announces a public scoping meeting that will be held for the proposed action. The purpose of scoping is to identify public and agency concerns, and alternatives to be considered in the EIS.

DATES: Written comments on the scope of the EIS should arrive by April 1, 2004. The public hearing will be held on March 10, 2004, from 7 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: Written comments on the scope of the EIS should be addressed to: Christine Nagle, NEPA Coordinator, National Indian Gaming Commission, 1441 L Street, NW., 9th Floor, Washington, DC 20005, telephone (202) 632–7003. Please include your name, return address, and the caption: "DEIS Scoping Comments, Graton Rancheria Casino Project", on the first page of your written comments.

The public hearing will be co-hosted by the NIGC, BIA, and the Federated Indians of Graton Rancheria. The

meeting location is the: Luther Burbank Center for the Arts, Ruth Finley Person Theater, 50 Mark West Spring Road, Santa Rosa, CA 95403.

FOR FURTHER INFORMATION CONTACT: For general information on NEPA review procedures or status of the NEPA review, contact Christine Nagle, NIGC NEPA Coordinator, 202–632–7003.

SUPPLEMENTARY INFORMATION: The proposed federal action is the approval of a gaming management contract between the Federated Indians of Graton Rancheria and SC Sonoma Management LLC. The approval of the gaming management contract would result in the development of a resort hotel, casino, and supporting facilities. The facility will be managed by SC Sonoma Management LLC on behalf of the Federated Indians of Graton Rancheria, pursuant to the terms of a gaming management contract. The proposed development would take place on up to 450 acres (the project site) that will be taken into trust on behalf of the Federated Indians of Graton Rancheria. The project site is located immediately west of the City of Rohnert Park in Sonoma County, and within one mile of U.S. Highway 101. Nearby land uses include agricultural uses such as livestock grazing and dairy operations, rural residential uses, a mobile home park, industrial and commercial development, and open space. In addition to the proposed action, a reasonable range of alternatives, including a no action alternative will be analyzed in the EIS.

The Federated Indians of Graton Rancheria consists of approximately 999 members. It is governed by a tribal council, consisting of seven members, under a constitution that was passed by vote of the members on December 14, 2002, and approved by the Secretary of the Interior on December 23, 2002. The Federated Indians of Graton Rancheria presently has no land in trust with the U.S. Government and is eligible to acquire land for reservation purposes to be placed in trust.

The NIGC will serve as lead agency for compliance with the National Environmental Policy Act (NEPA). The BIA will be a Cooperating Agency.

Public Comment Solicitation: Written comments pertaining to the proposed action will be accepted throughout the EIS planning process. However, to ensure proper consideration in preparation of the draft EIS, scoping comments should be received by April 1, 2004. The draft EIS is planned for publication and distribution in the second half of 2004.

Individual commenters may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. Anonymous comments will not, however, be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority: This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR, part 1500 through 1508 implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371 *et seq.*)), and the NIGC NEPA Procedures Manual.

Dated: February 3, 2004.

Philip N. Hogen,

Chairman.

[FR Doc. 04–3044 Filed 2–11–04; 8:45 am]

BILLING CODE 7545–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–46 issued to Nebraska Public Power District (NPPD or the licensee) for operation of the Cooper Nuclear Station (CNS) located in Nemaha County, NE.

The proposed amendment would revise the CNS Technical Specifications (TSs) by adding a temporary note to allow a one-time extension of a limited number of TS Surveillance Requirements (SRs). The temporary note states that the next required performance of the SR may be delayed until the current cycle refueling outage, but no later than February 2, 2005, and it expires upon startup from the refueling outage. With the exception of one SR, the period of additional time requested occurs during the next planned refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The requested action is a one-time extension of the performance of a limited number of TS SRs. The performance of these surveillances, or the failure to perform these surveillances, is not a precursor to an accident. Performing these surveillances or failing to perform these surveillances does not affect the probability of an accident. Therefore, the proposed delay in performance of the SRs in this amendment request does not increase the probability of an accident previously evaluated.

In general a delay in performing these surveillances does not result in a system being unable to perform its required function. In the case of this one-time extension request the relatively short period of additional time that the systems and components will be in service prior to the next performance of the SRs associated with this amendment request will not impact the ability of those systems to operate. Therefore, the systems required to mitigate accidents will remain capable of performing their required function. Additionally, the more frequent TS channel functional tests and surveillances performed on the systems associated with the requested surveillance extensions provide assurance that these systems are capable of performing their functions. No new failures are introduced as a result of this action and the consequences remain consistent with previously evaluated accidents. Therefore, the proposed delay in performance of the SRs in this amendment request does not involve a significant increase in the consequences of an accident.

Based on the above NPPD concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The requested action is a one-time extension of the performance of a limited number of TS SRs. This action does not involve the addition of any new plant structure, system, or component (SSC), a modification in any existing SSC, nor a change in how any existing SSC is operated.

Based on the above NPPD concludes that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed change is a one-time extension of the performance of a limited number of TS SRs. Extending these SRs does not involve a modification of any TS Limiting Conditions for Operation. Extending these SRs does not involve a change to any limit on accident consequences specified in the license or regulations. Extending these SRs does not involve a change to how accidents are mitigated or a significant increase in the consequences of an accident. Extending these SRs does not involve a change in a methodology used to evaluate consequences of an accident. Extending these SRs does not involve a change in any operating procedure or process.

The instrumentation and components exhibit reliable operation based on the three most recent performances of the 18-month SRs being successful, and the successful performance of related SRs with a shorter surveillance interval.

Based on the minimal additional period of time that the systems and components will be in service before the surveillances are next performed, as well as the fact that surveillances are typically successful when performed, it is reasonable to conclude that the margins of safety associated with these SRs are not affected by the requested extension.

Based on the above NPPD concludes that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 15, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, 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 petition for leave to intervene and request for hearing 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 United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 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. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 30, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of February, 2004.

For The Nuclear Regulatory Commission.

Michelle C. Honcharik,

Project Manager, Section I, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E4–264 Filed 2–11–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Best Practices To Establish and Maintain a Safety Conscious Work Environment; Request for Comments and Announcement of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments and announcement of public meeting.

SUMMARY: The 1996 NRC Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," provides the agency's broad expectations with respect to licensees establishing and maintaining a Safety Conscious Work Environment (SCWE); that is, an environment in which employees are encouraged to raise safety concerns both to their own management and to the NRC without fear of retaliation. In a March 26, 2003 Staff Requirements Memorandum, the Commission directed the staff to develop further guidance, in consultation with stakeholders, that identifies "best practices" to encourage a SCWE. The NRC staff is now proceeding to develop that guidance.

As an initial step, the NRC will be holding a public workshop on February 19, 2004, at One White Flint North, 11555 Rockville Pike, O–1G16, Rockville, Maryland from 9 a.m.–4 p.m. to discuss multiple issues. These issues include: (1) The format such guidance should take; (2) Effective ways to encourage employees to raise safety concerns; (3) Effective processes to review and respond to concerns; (4) The scope of training on SCWE principles; (5) Tools to measure the health of the SCWE; (6) The role of the contractor; and, (7) The role of senior management in preventing claims of retaliation. To stimulate stakeholder's thinking and encourage a dialogue at the public meeting, the NRC has prepared for comment an outline of a "Best Practices" document. This document can be found on the NRC's Web site at *www.nrc.gov* by selecting What We Do, Allegations, and then Best Practices to Establish and Maintain a Safety Conscious Work Environment. This document is also available in ADAMS at ML040350487. In preparing this document, the staff reviewed the existing guidance provided in the 1996 Policy Statement, including the elements and attributes described therein of a healthy SCWE, and created a draft "Best Practices" outline that expands that guidance or adds new guidance where additional information would help describe best practices to meet the intent of each SCWE attribute.

The NRC's 1996 Policy Statement was directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. Hence, any further "Best Practices" guidance will also apply to this broad audience. It is important to note that the best practices outlined in this document may not be practical or necessary for all employers. Rather, the purpose of this guidance is to outline what has worked best at some larger licensees to maintain or improve a work environment and ensure its employees feel free to raise safety concerns.

DATES: The workshop will be held on February 19, 2004. The comment period expires on March 19, 2004.

ADDRESSES: The workshop will be held on One White Flint North, 11555 Rockville Pike, O–1G16, Rockville, Maryland from 9 a.m.–4 p.m. You may submit comments by any of the following methods. Comments submitted in writing or in electronic format will be made available to the public in their entirety on the NRC Web

site. Personal information will not be removed from your comments. Mail comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may comment at NRC's Web site at *http://www.nrc.gov/what-we-do/regulatory/allegations/practices-outline.html*, or by e-mail to: *NRCREP@nrc.gov*. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Fax comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission at (301) 415–5144. Publicly available documents related to this action may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Lisamarie Jarriel, Agency Allegations Advisor, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8529, e-mail *LLJ@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of February, 2004.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 04–3063 Filed 2–9–04; 11:16 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Utah: NRC Staff Draft Assessment of a Proposed Amendment to Agreement Between the Nuclear Regulatory Commission and the State of Utah

AGENCY: Nuclear Regulatory Commission.

ACTION: First notice of a proposed amendment to the Agreement with the State of Utah; request for comment.

SUMMARY: By letter dated January 2, 2003, Governor Michael O. Leavitt of Utah requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an amendment to the Agreement with Utah (the Agreement) as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed amendment to the Agreement, the Commission would relinquish, and Utah would assume, an additional portion of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed amendment to the Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the portion of the regulatory program Utah would assume. Comments are requested on the proposed amendment to the Agreement and the staff's draft assessment, which finds the program to be adequate to protect public health and safety and compatible with NRC's program for regulation of 11e.(2) byproduct material.

The proposed amendment to the Agreement would release (exempt) persons who possess or use certain radioactive materials in Utah from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires March 15, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following phrase, Utah Amendment, in the subject line of your comments. Comments will be made available to the public in their entirety. Personal information will not be removed from your comments.

Mail comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov*.

Fax comments to: Chief, Rules and Directives Branch, at (301) 415–5144.

Publicly available documents related to this notice, including public comments received, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/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. 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*.

Documents available in ADAMS include: The request for an amended Agreement by the Governor of Utah including all information and documentation submitted in support of the request (ML030280380); NRC comments on the request (ML031810623), Utah's response to NRC comments (ML032060090); Utah's additional clarification (ML033640565), and the full text of the NRC Staff Draft Assessment (ML040370585).

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2819 or e-mail *DMS4@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States. The Agreement States currently regulate approximately 16,850 material licenses, while NRC regulates approximately 4550 licenses. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274. Under the proposed amendment to the Agreement, four NRC licenses will transfer to Utah.

Section 274e requires that the terms of the proposed amendment to the Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This first notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority from the NRC over

certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated January 2, 2003, Governor Leavitt certified that the State of Utah has a program for the control of radiation hazards that is adequate to protect public health and safety within Utah for the materials and activities specified in the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Utah requests authority over are: the possession and use of byproduct material as defined in section 11e.(2) of the Act and the facilities that generate such material (uranium mill tailings and uranium mills). Included with the letter was the text of the proposed amendment to the Agreement, which has been edited and is shown in Appendix A to this notice.

(b) The proposed amendment to the Agreement modifies the articles of the Agreement that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority; and
- Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed amendment to the Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the amendment to the Agreement, with the effective date, will be published after the amendment to the Agreement is approved by the Commission and signed by the Chairman of the Commission and the Governor of Utah.

(c) Utah currently regulates all radioactive materials covered under the Act, except for conducting sealed source and device evaluations which will remain under NRC jurisdiction, and the possession and use of 11e.(2) byproduct material, which would be assumed by Utah under the proposed amendment to their Agreement. Section 19–3–113 of the Utah code provides the authority for the Governor to enter into an Agreement with the Commission. Section 19–3–113 also contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Utah licenses until the licenses expire or are replaced by State issued licenses. The regulatory program including 11e.(2) byproduct materials is authorized by law in section 19–3–104.

(d) The NRC staff draft assessment finds that the Utah program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of 11e.(2) byproduct material and the facilities that generate such material.

II. Summary of the NRC Staff Draft Assessment of the Utah Program for the Control of 11e.(2) Byproduct Materials

The NRC staff has examined Utah's request for an amendment to the Agreement with respect to the ability of the Utah radiation control program to regulate 11e.(2) byproduct material. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," referred to herein as the "NRC criteria" (46 FR 7540, January 23, 1981, as amended by policy statements published at 46 FR 36969, July 16, 1981, and at 48 FR 33376, July 21, 1983).

(a) *Organization and Personnel.* The 11e.(2) byproduct material program will be located within the existing Division of Radiation Control (Program) of the Utah Department of Environmental Quality. The Program will be responsible for all regulatory activities related to the proposed amendment to the Agreement.

The Program performed an analysis of the expected Program workload under the proposed amendment to the Agreement and determined that a level of three technical and one administrative staff would be needed to implement the 11e.(2) byproduct material authority. The distribution of the qualifications of the individual technical staff members will be balanced with the technical expertise needed for 11e.(2) byproduct material (*i.e.*, health physics, hydrology, engineering). The Program currently has and intends to initially use existing qualified staff to conduct the 11e.(2) byproduct materials activities. At least two staff are qualified in each of the three technical areas identified in the Criteria: health physics, engineering, and hydrology.

The educational requirements for the 11e.(2) byproduct material program staff members are specified in the Utah State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection.

The Program also plans to hire three new staff into the program to supplement the existing staff (two professional/technical and one administrative). New staff hired into the Program will be qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

Based on the NRC staff review of the State's need analysis, current staff qualifications, and the current staff assignments for the 11e.(2) byproduct material program, the NRC staff concludes that Utah will have an adequate number of qualified staff assigned to regulate the 11e.(2) byproduct material workload of the Program under the terms of the amendment to the Agreement.

(b) *Legislation and Regulations.* The Utah Department of Environmental Quality (Department) is designated by law to be the implementing agency. The law establishes a Radiation Control Board (Board) that has the authority to issue regulations and has delegated the authority to the Executive Secretary the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. The Executive Secretary is the director of the Division of Radiation Control in the Department. Licensees are required to provide access to inspectors. The law requires the Board to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent. Utah has adopted R313–24 Utah Administrative Code that incorporates NRC uranium milling regulations by reference, with a few exceptions, and other regulatory changes needed for the 11e.(2) byproduct material program. The NRC staff reviewed and forwarded comments on these regulations to the Utah staff. The final regulations were sent to NRC for review. The NRC staff review verified that, with the one exception of the alternative groundwater standards, the Utah rules contain all of the provisions that are necessary in order to be compatible with the regulations of

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

the NRC on the effective date of the Agreement between the State and the Commission. The alternative groundwater standards were addressed in a separate Commission action (*see* 68 FR 51516, August 27, 2003, and 68 FR 60885, October 24, 2003) and will be resolved prior to the Commission's final approval of an amendment to the Agreement with Utah. The NRC staff also concludes that Utah will not attempt to enforce regulatory matters reserved to the Commission.

(c) *Evaluation of License Applications.* Utah has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use 11e.(2) byproduct material. Utah will use its general licensing procedures, along with the additional requirements in R313–24 specific to 11e.(2) byproduct material. Utah will use the NRC regulatory guides as guidance in conducting its licensing reviews.

(d) *Inspections and Enforcement.* The Utah radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Utah Revised Statutes, procedures for the enforcement of regulatory requirements.

(e) *Regulatory Administration.* The Utah Department of Environmental Quality is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Utah law prescribes standards of ethical conduct for State employees.

(f) *Cooperation with Other Agencies.* Utah law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Utah. The law provides that these former NRC licenses will expire either 90 days after receipt from the Department of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. Utah also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Utah meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

NRC will continue the formal processing of the proposed amendment to the Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

Dated in Rockville, Maryland, this 6th day of February, 2004.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Appendix A—Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement on March 29, 1984 (hereinafter referred to the Agreement of March 29, 1984) with the State of Utah under section 274 of the Atomic Energy Act of 1954, as amended (hereafter referred to the Act) which became effective on April 1, 1984, providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8 and section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended) pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and

Whereas, the Governor requested, and the Commission agreed, that the Commission reassert Commission authority for the evaluation of radiation safety information for sealed sources or devices containing byproduct, source or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission; and

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated 19–3–113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and

Whereas, the Governor of the State of Utah has requested this amendment in accordance with section 274 of the Act by certifying on January 2, 2003, that the State of Utah has a program for the control of radiological and non-radiological hazards adequate to protect the public health and safety and the environment with respect to byproduct material as defined in section 11e.(2) of the Act and facilities that generate this material and that the State desires to assume regulatory responsibility for such material; and

Whereas, the Commission found on [date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of byproduct material as defined in section 11e.(2) and is adequate to protect public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and the Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, this amendment to the Agreement of March 29, 1984, as amended, is entered into pursuant to the provisions of the Act.

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B and renumbering paragraphs B through D as C through E. Paragraph B will read as follows:

"B. Byproduct materials as defined in Section 11e.(2) of the Act;"

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

"E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission."

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as A by placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as 1 through 5. After the current amended language, the following new section B is added to read:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Utah at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment.

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States."

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

"**Article IX**

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in the production of such byproduct material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation and or long-term surveillance and maintenance of such byproduct material:

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site."

This amendment shall become effective on [date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done in Rockville, Maryland, in triplicate, this [day] day of [month, year].

For the United States Nuclear Regulatory Commission.

[insert Chairman's name], *Chairman.*

Done in Salt Lake City, Utah, in triplicate, this [day] day of [month, year].

For the State of Utah.

Olene S. Walker, *Governor.*

[FR Doc. 04–3060 Filed 2–11–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49198; File No. 4–429]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Intermarket Linkage Plan To Add Boston Stock Exchange, Inc., as a Participant

February 5, 2004.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on February 5, 2004, the Boston Stock Exchange, Inc. ("BSE") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Options Intermarket Linkage Plan ("Linkage Plan").[3] The amendment proposes to add the BSE as a Participant[4] to the Linkage Plan. The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan amendment.

I. Description and Purpose of the Amendment

The current Participants in the Linkage Plan are Amex, CBOE, ISE, Phlx, and PCX. The proposed amendment to the Linkage Plan would add the BSE as a Participant in the Linkage Plan. The BSE has submitted a signed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding new Participants. Section 4(c) of the Linkage Plan provides for the admission of new Participants.

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved the Linkage Plan, which was proposed by the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE") and the International Securities Exchange LLC ("ISE"). *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, on September 20, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Exchange, Inc. ("PCX") were added as participants in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43311, 65 FR 58584 (September 29, 2000) and 43310, 65 FR 58583 (September 29, 2000) (temporary approval orders); *see also* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (final approval orders).

[4] The term "Participant" is defined as an Eligible Exchange whose participation has become effective pursuant to Section 4(c) of the Linkage Plan.

Specifically an Eligible Exchange[5] may become a Participant in the Linkage Plan by: (i) Executing a copy of the Linkage Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Linkage Plan, (iii) effecting an amendment to the Linkage Plan, as specified in Section 5(c)(ii) of the Linkage Plan; and (iv) paying the applicable new Participant fee.[6]

Section 5(c)(ii) of the Linkage Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Linkage Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Linkage Plan with the only change being the addition of the new participant's name in Section 4(a) of the Linkage Plan, (b) submit the executed Linkage Plan to the Commission, (c) and pay the then current new participant fee.[7] The Linkage Plan then provides that such an amendment will be effective at the later of either the amendment being approved by the Commission or otherwise becoming effective pursuant to Section 11A of the Act and the payment of the new Participant fee.

II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Linkage Plan amendment has become effective pursuant to Rule 11Aa3–2(c)(3)(iii)[8] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraphs (b)(1) and (c)(2) of Rule 11Aa3–2,[9] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. 4–429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed amendment 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 BSE. All submissions should refer to File No. 4–429 and should be submitted by March 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3022 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

[5] The Linkage Plan defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is (a) a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII) and (b) a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1). The Commission has granted BSE an exemption from satisfying the requirements to be a Participant Exchange in OCC and a party to OPRA to be considered an Eligible Exchange. *See* Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to George W. Mann, Jr., Executive Vice President and General Counsel, BSE, dated February 4, 2004 ("Exemption Letter").

[6] The Commission has granted BSE a temporary exemption from the new Participant fee requirement. *See* Exemption Letter.

[7] *Id.*

[8] 17 CFR 240.11Aa3–2(c)(3)(iii).

[9] 17 CFR 240.11Aa3–2(b)(1) and (c)(2).

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49199; File No. 4–443]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the OLPP to Add Boston Stock Exchange, Inc., as a Plan Sponsor

February 5, 2004.

Pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on February 5, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") an amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("OLPP").[3] The amendment proposes to add the BSE as a Plan Sponsor[4] of the OLPP. The Commission is publishing this notice to solicit comments from interested persons on the proposed OLPP amendment.

I. Description and Purpose of the Amendment

The proposed amendment to the OLPP would add the BSE as a Plan Sponsor to the OLPP. Section 7 of the OLPP provides that Eligible Exchanges[5] may be admitted as new Plan Sponsors by: (a) Executing a copy of the OLPP; (b) providing each then-current Plan Sponsor with a copy of such executed OLPP; and (c) effecting an amendment to the OLPP by submitting such executed OLPP to the Commission. To become a Plan Sponsor, an amendment to the OLPP may be effected by a new Eligible Exchange executing a copy of the OLPP, as then in effect, (with the only change being the addition of the new Plan Sponsor's name in section 9) and submitting such executed OLPP to the SEC. Such amendment will be effective when it has been approved by

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 240.11Aa3–2.

[3] On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), International Securities Exchange LLC ("ISE"), Options Clearing Corporation ("OCC"), Philadelphia Stock Exchange, Inc. ("Phlx"), and Pacific Exchange, Inc. ("PCX"). *See* Securities Exchange Act Release No. 34–44521, 66 FR 36809 (July 13, 2001).

[4] A national securities exchange may become a Plan Sponsor if it satisfies the requirements of Section 7 of the OLPP. The current Plan Sponsors are Amex, CBOE, ISE, OCC, Phlx, and PCX.

[5] The OLPP defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to section 6(a) of the Act, 15 U.S.C. 78f(a), that has effective rules for the trading option contracts issued and cleared by the OCC approved in accordance with the provisions of the Act and the rules and regulations thereunder and is a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information. The Commission has granted BSE an exemption from these requirements for qualifying as an Eligible Exchange. *See* Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to George W. Mann, Jr., Executive Vice President and General Counsel, BSE, dated February 4, 2004.

the SEC or otherwise becomes effective pursuant to section 11A of the Act and Rule 11Aa3–2. The BSE has submitted a signed copy of the OLPP to the Commission in accordance with the procedures set forth in the OLPP regarding new Plan Sponsors.

II. Effectiveness of the Proposed OLPP Amendment

The foregoing proposed OLPP amendment has become effective pursuant to Rule 11Aa3–2(c)(3)(iii) [6] because it involves solely a technical or ministerial matter. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraphs (b)(1) and (c)(2) of Rule 11Aa3–2,[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. 4–443. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed amendment 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 BSE. All submissions should refer to File No. 4–443 and should be submitted by March 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3030 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 6007, February 9, 2004.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, February 11, 2004, at 12:30 p.m.

CHANGE IN THE MEETING: Time change.

The closed meeting scheduled for Wednesday, February 11, 2004, at 12:30 p.m. has been changed to Wednesday, February 11, 2004, at 9 a.m.

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: February 10, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–3191 Filed 2–10–04; 10:49 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27799]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 6, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under 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 February 27, 2004, 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 February 27, 2004 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Enron Corp., et al. (70–10200)

Enron Corp. ("Enron" or "Applicant"), 1400 Smith Street, Houston, Texas 77002–7361, a public utility holding company, on its behalf and on behalf of its subsidiaries held as of the date of this notice, including Portland General Electric Company ("Portland General"), 121 Salmon Street, Portland, Oregon 97204 , a public utility company (collectively, "Applicants"),[1] have filed an application-declaration ("Application") with the Commission under sections 6(a), 7, 9(a), 10, 12, 13 of the Act and rules 16, 42–46, 52–53, 54, 80–87, 90–91 under the Act.

I. Introduction

Enron is a public utility holding company within the meaning of the Act by reason of its ownership of all of the outstanding voting securities of Portland General, an Oregon electric public utility company. From 1985 through mid-2001, Enron grew from a domestic natural gas pipeline company into a large global natural gas and power company. Headquartered in Houston, Texas, Enron and its subsidiaries historically provided products and services related to natural gas, electricity, and communications to wholesale and retail customers. As of December 2001, the Enron companies employed approximately 32,000 individuals worldwide. The Enron companies were principally engaged in (a) The marketing of natural gas, electricity and other commodities, and

[6] 17 CFR 240.11Aa3–2(c)(3)(iii).

[7] 17 CFR 240.11Aa3–2(b)(1) and (c)(2).

[8] 17 CFR 200.30–3(a)(29).

[1] Applicants include both debtor and non-debtor subsidiaries of Enron.

related risk management and finance services worldwide, (b) the delivery and management of energy commodities and capabilities to end-use retail customers in the industrial and commercial business sectors, (c) the generation, transmission, and distribution of electricity to markets in the northwestern United States, (d) the transportation of natural gas through pipelines to markets throughout the United States, and (e) the development, construction, and operation of power plants, pipelines, and other energy-related assets worldwide.

In the last quarter of 2001, the Enron companies lost access to the capital markets, both debt and equity, and had insufficient liquidity and financial resources to satisfy their current financial obligations. On December 2, 2001, Enron and certain of its subsidiaries each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). As of today, one hundred eighty (180) Enron-related entities have filed voluntary petitions. Under sections 1107 and 1108 of the Bankruptcy Code, the Enron and its subsidiaries that have filed voluntary petitions ("Debtors") continue to operate their businesses and manage their properties as debtors in possession. Portland General, Enron's sole public utility subsidiary company, has not filed a voluntary petition under the Bankruptcy Code and is not in bankruptcy. Likewise, many other Enron companies that are operating companies have not filed bankruptcy petitions and continue to operate their businesses.

The Debtors have been engaged, since the commencement of the chapter 11 cases, in the rehabilitation and disposition of their assets to satisfy the claims of creditors. The Debtors have been consolidating, selling businesses and assets, dissolving entities and simplifying their complex corporate structure. The Debtors also have been involved in the settlement of numerous contracts related to wholesale and retail trading of various commodities. The Debtors are holding cash from prior sales pending distribution under a chapter 11 plan and are positioning other assets for sale or other disposition. In this process, hundreds of corporations have been or will be liquidated. Eventually, substantially all of the Debtors, including Enron, will be liquidated.

The Debtors have worked with the Official Committee of Unsecured creditors appointed in the Debtors' chapter 11 cases (the "Creditors' Committee"), the examiner appointed by the Bankruptcy Court with respect to the chapter 11 case of Enron North America Corp. and individual creditor groups to formulate a chapter 11 plan. On July 11, 2003, the Debtors filed a joint chapter 11 plan and a related disclosure statement which documents were subsequently amended several times. On January 12, 2004, the Debtors filed a fifth amended plan (the "Plan") and a related amended disclosure statement with the Bankruptcy Court [2]. A hearing to consider the adequacy of the information contained in the disclosure statement was held commencing on January 6, 2004. On January 9, 2004, the Bankruptcy Court issued two orders approving the disclosure statement for the Plan, establishing voting procedures, and ordering the solicitation of votes approving or rejecting the Plan.

The Plan provides for the appointment of a Reorganized Debtor Plan Administrator ("Administrator") on the Effective Date for the purpose of carrying out the provisions of the Plan. Under the Plan, the Administrator would be Stephen Forbes Cooper, LLC, an entity headed by Stephen Forbes Cooper, Enron's Acting President, Acting Chief Executive Officer, and Chief Restructuring Officer. In accordance with the Plan, the Administrator shall be responsible for implementing the distribution of the assets in the Debtors' estates to the creditors, including, without limitation, the divestiture of Portland General common stock or the sale of that stock followed by the distribution of the proceeds to the Debtors' creditors and, possibly, equity interest holders. In addition, pursuant to the Plan, as of the Effective Date, the Reorganized Debtors will assist the Administrator in performing the following activities: (a) Holding the Operating Entities, including Portland General, for the benefit of creditors and providing certain transition services to such entities, (b) liquidating the Remaining Assets, (c) making distributions to creditors pursuant to the terms of the Plan, (d) prosecuting Claim objections and litigation, (e) winding up the Debtors' business affairs, and (f) otherwise implementing and effectuating the terms and provisions of the Plan.

[2] The Plan and related disclosure statement are available at www.enron.com and are included as exhibits to this Application. Unless defined in the text of this Application, all capitalized terms used in this notice follow definitions specified in the Plan.

In a companion filing with the Commission ("Plan Application"), Applicants request an order: (i) Approving the Plan under section 11(f) of the Act; (ii) issuing a report on the Plan under section 11(g) of the Act; and (iii) authorizing Debtors under rules 60 and 62–64 to continue the Bankruptcy Court's authorized solicitation of votes of the Debtors' creditors for acceptances or rejections of the Plan and to make available to creditors a report on the Plan, as prescribed in section 11(g) of the Act.[3]

II. Requested Authority

Enron has entered into an agreement to sell its only public utility subsidiary company, Portland General. The Plan also provides that Portland General would be sold or, in the event such transaction cannot be consummated, distributed to creditors and, in certain circumstances, equity interest holders [4] as soon as requisite consents can be obtained and, as a possible intermediate step, the common stock of Portland General may be contributed to a trust ("PGE Trust"),[5] that may be formed by December 31, 2004. Upon (i) the sale of Portland General, (ii) the distribution of the shares of Portland General to creditors, or (iii) the contribution of the Portland General common stock to the PGE Trust, it is anticipated that Enron would deregister as a holding company under the Act. Accordingly, this application seeks authorization for the proposed transactions through the earlier of the deregistration of Enron and July 31, 2005 ("Authorization Period"). Generally, Applicants request authority for certain financing, nonutility corporate reorganizations, dividends, affiliate sales of goods and services and other transactions described below to

[3] SEC File No. 70–10199, filed February 6, 2004.

[4] Applicants submit that, in accordance with existing projections, existing Enron common stock and preferred stock are highly unlikely to receive any distributions pursuant to the Plan. However, the Plan provides Enron stockholders with a contingent right to receive a recovery in the event that the total amount of Enron's assets, including recoveries in association with litigation and the subordination, waiver or disallowance of Claims in connection therewith, exceeds the total amount of Allowed Claims against Enron. No distributions will be made in accordance with the Plan to holders of equity interests unless and until all unsecured claims are fully satisfied.

[5] There may be an adjustment in the number of Portland common shares prior to contribution to the PGE Trust and in all events prior to distribution to creditors. If the Portland General common stock is distributed to creditors rather than sold as described in this Application, it is intended that the current Portland General shares of common stock will be canceled and 80 million shares of new Portland General common stock will be authorized and approximately 62.5 million shares issued pursuant to the Plan, in each case, representing 100% of the common equity of Portland General.

allow Enron and its subsidiaries to continue to operate their businesses as both debtors in possession in bankruptcy and non-debtors.

A. Prisma

Prisma Energy International Inc. ("Prisma"), a Cayman Islands limited liability company, was organized on June 24, 2003, for the purpose of acquiring the Prisma Assets, which include equity interests in certain international energy infrastructure businesses that are indirectly owned by Enron and certain of its affiliates, intercompany loans to the businesses held by affiliates of Enron, and contractual rights held by affiliates of Enron. Enron and its affiliates will contribute the Prisma Assets to Prisma in exchange for shares of Prisma Common Stock commensurate with the value of the Prisma Assets contributed.

Prisma, Enron, and its affiliates also expect to enter into certain ancillary agreements, which may include a new Transition Services Agreement, a tax allocation agreement ("Prisma Tax Allocation Agreement") and a Cross License Agreement. The employees of Enron and its affiliates who have been supervising and managing the Prisma Assets since December 2001, became employees of a subsidiary of Prisma effective on or about July 31, 2003. In connection therewith, as approved by the Bankruptcy Court, Enron and its affiliates entered into four separate Transition Services Agreements pursuant to which such employees will continue to supervise and manage the Prisma Assets and other international assets and interests owned or operated by Enron and its affiliates. The ancillary agreements, together with the Prisma Contribution and Separation Agreement, will govern the relationship between Prisma and Enron and its affiliates subsequent to the contribution of the Prisma Assets, provide for the performance of certain interim services, and define other rights and obligations until the distribution of shares of capital stock of Prisma pursuant to the Plan or the sale of the stock to a third party. In addition, the Prisma Contribution and Separation Agreement or the ancillary agreements are expected to set forth certain shareholder protection provisions with respect to Prisma and may contain indemnification obligations of the Prisma Enron Parties.

Applicants intend that Prisma will certify as a foreign utility company ("FUCO") under section 33 of the Act prior to the transfer of the businesses described above to Prisma. Applicants state that certain indemnification agreements between Enron group[6] companies in connection with the contribution of the Prisma Assets would constitute the extension of credit among associate companies and require Commission authorization under section 12(b) of the Act and rule 45(a) under the Act. In addition, Applicants state that the Prisma Tax Allocation Agreement to be entered into among Prisma and its subsidiaries and Enron would comply with the requirements of rule 45(c) under the Act in all material respects, except that it would permit Enron to receive payment from the subsidiaries filing jointly with Enron for the value of any net operating losses or other tax attributes that resulted in a reduction in the consolidated tax, ratably with any other Enron subsidiary also contributing such tax benefits to the consolidated tax group. Accordingly, Applicants seek authorization to enter into indemnification agreements and the Tax Allocation Agreement in connection with the formation of Prisma as authorized by the Bankruptcy Court and as described above.

B. Cross Country

CrossCountry was incorporated in the State of Delaware on May 22, 2003. On June 24, 2003, CrossCountry and the CrossCountry Enron Parties entered into the original CrossCountry Contribution and Separation Agreement providing for the contribution of Enron's direct and indirect interests in its interstate pipelines and other related assets to CrossCountry. On September 25, 2003, the Bankruptcy Court issued an order approving the transfer of the pipeline interests and the related assets from the CrossCountry Enron Parties to CrossCountry and other related transactions, pursuant to the original CrossCountry Contribution and Separation Agreement. That order contemplates that the parties may make certain modifications to the original Contribution and Separation Agreement. The parties have negotiated an Amended and Restated Contribution and Separation Agreement that incorporates certain changes to the original Contribution and Separation Agreement including the substitution of CrossCountry Energy LLC ("CrossCountry LLC") in place of CrossCountry as the holding company owning the pipeline interests.

Pursuant to the Amended and Restated Contribution and Separation Agreement, Enron and certain of its affiliates will contribute their ownership interests in certain gas transmission pipeline businesses and certain nonutility service companies to CrossCountry LLC in exchange for equity interests in CrossCountry LLC. The closing of the transactions contemplated by the Amended and Restated Contribution and Separation Agreement is expected to occur as soon as possible. It is anticipated that, following confirmation of the Plan and prior to the CrossCountry Distribution Date, the equity interests in CrossCountry LLC will be exchanged for equity interests in CrossCountry Distributing Company in the CrossCountry transaction. As a result of the CrossCountry transaction, CrossCountry Distributing Company will obtain direct or indirect ownership in the Pipeline Businesses and certain service companies described below.

Applicants state that the agreements among companies in the Enron group to indemnify other Enron group companies in connection with the contribution of these businesses and the financing of the CrossCountry entities constitute extensions of credit among associate companies under section 12(b) of the Act and rule 45(a) under the Act. In addition, the Amended and Restated Contribution and Separation Agreement contemplates that a tax allocation agreement ("CrossCountry Tax Allocation Agreement") would be entered into among CrossCountry and its subsidiaries and Enron. Applicants state that the CrossCountry Tax Allocation Agreement would comply with the requirements of rule 45(c) under the Act in all material respects, except that it would permit Enron to receive payment from the subsidiaries filing jointly with Enron for the value of any net operating losses or other tax attributes that resulted in a reduction in the consolidated tax, ratably with any other Enron subsidiary also contributing such tax benefits to the consolidated tax group.

Therefore, Applicants seek authorization to enter into the CrossCountry transaction consistent with the authorization granted by the Bankruptcy Court and with the terms and conditions of the Amended and Restated Contribution and Separation Agreement, including, but not limited to, the indemnification agreements, the Tax Allocation Agreement, and related financing transactions in connection with the formation of CrossCountry as authorized by the Bankruptcy Court and as described above.

[6] "Enron group" includes all of Enron's subsidiaries, whether or not they are Debtors.

C. Other Financing Transactions

1. Debtor-in Possession ("DIP") Financing Arrangements

Enron has four letters of credit outstanding under the Second Amended DIP Credit Agreement in the approximate aggregate amount of $24.5 million. Applicants seek Commission authorization to continue to obtain letters of credit, or to extend the maturity of previously issued letters of credit, up to an aggregate amount of $150 million under the Second Amended DIP Credit Agreement as now in effect or as it may subsequently be amended or extended by order of the Bankruptcy Court through the Authorization Period. Applicants also request authorization for additional debtors to become guarantors under the agreement when the Bankruptcy Court enters an applicability order with respect to such debtor making the provisions of the Second Amended DIP Credit Agreement applicable to such entity.

2. Pre-petition Letters of Credit

In a limited number of instances, the Debtors may be obligated on reimbursement agreements in connection with certain letters that are still outstanding and which the issuing bank may choose to extend, without the consent or involvement of a Debtor. This renewal is beyond the control of the Debtors and the Debtors do not take any affirmative action in connection with such renewal. Absent such a renewal, the beneficiary of the letter of credit would have a right to draw on the letter of credit, to the detriment of both the lender that issued the letter of credit and the Debtors who have a pre-petition reimbursement obligation to such lenders. To the extent necessary, Applicants seek Commission authorization for such involuntary extension of the maturity of any such letter of credit.

3. Enron Cash Management

Enron managed its cash on a centralized basis with funds loaned to or from Enron and to subsidiaries. Enron is permitted to continue to borrow from or lend to certain subsidiaries under terms specified by the Bankruptcy Court. Orders of the Bankruptcy Court dated December 3, 2001 and February 25, 2002, permit, among other things, the Debtors to use their centralized cash management system, subject to certain modifications including a grant of adequate protection for intercompany transfers in the form of superpriority Junior Reimbursement Claims and Junior Liens.

Applicants seek Commission authorization to continue to borrow and lend funds between associated companies in accordance with the Amended Cash Management Order as such order may be amended by the Bankruptcy Court.

4. Portland General Cash Management Agreements

Portland General has entered into agreements with its wholly-owned subsidiaries for cash management. Under the agreements, Portland General periodically transfers from the bank accounts of each subsidiary any cash held in the subsidiary's bank account. If the subsidiary has cash needs in excess of any amount remaining in the account, upon request, Portland General transfers the required amount into the subsidiary's bank account. Portland General does not pay interest on the amounts transferred from a subsidiary's account unless the closing balance of the amount transferred at the end of any month exceeds $500,000. Any interest paid is at an annual rate of 3% and is retained by Portland General until returned to the subsidiary to meets its cash needs. All administrative expenses are borne by Portland General. Portland General seeks authorization to continue to perform under such cash management agreements.

5. Global Trading Contract and Assets Settlement and Sales Agreements

Certain settlement agreements and asset sales entered into by Enron and its subsidiaries may involve extensions of credit among associate companies subject to section 12(b) of the Act and rule 45(a) under the Act. Enron's subsidiaries were extensively engaged in the retail and/or wholesale trading in various commodities including, but not limited to, energy, natural gas, paper pulp, oil and currencies. Subsequent to the bankruptcy filings, these companies now are engaged in settling these contracts with unaffiliated counterparties under a settlement process approved by both the Creditors' Committee and the Bankruptcy Court. In addition, asset or stock sale agreements may be entered into between Enron and/or its subsidiaries and unaffiliated counterparties. The settlements and sales may involve extensions of credit among associate companies, guaranties and indemnifications. Under a settlement agreement, or asset or stock sale agreement, the value associated with a group of contracts or claims may be netted into a single aggregate payment to be paid to the appropriate debtor(s) to resolve all claims between the settling Enron companies and the settling counterparty companies. Although undefined at the time of the settlement, each settling company presumably has some right to a portion of the settlement proceeds or a liability for a portion of the settlement payment, so, arguably, collecting or paying the funds centrally would create a form of an intercompany extension of credit, but only as a result of allocation findings by the Bankruptcy Court and not as a result of intended extensions of credit among associated companies. Accordingly, Applicants seek to continue to execute settlement agreements and asset or stock sale agreements.[7]

6. Portland General Short-Term Financing

Upon Enron's registration under the Act, Commission authorization would be required for Portland General to issue debt with a maturity of less than one year. Such securities are not required to be authorized by the Oregon Public Utility Commission ("OPUC") and the exemption provided by rule 52(a), therefore, would not be applicable.[8]

Portland General requests authorization to issue short-term debt in accordance with an existing short-term revolving credit facility with certain banks under the terms and conditions described below. In addition, Portland General requests authorization, through the Authorization Period, to issue short-term debt in the form of institutional borrowings, bid notes and commercial paper as necessary to supplement or replace the short-term revolving credit facility. Portland General also requests authorization to issue letters of credit to provide credit support for trading contracts and other uses.

All issuances of short-term debt would not exceed $350 million in aggregate principal amount outstanding. Pricing and other terms at the time of issuance will be comparable to issuances by companies with comparable credit ratings and credit profile with respect to debt having similar maturities. In addition, Portland General will not issue any additional short-term debt if Portland General's common stock equity as a percentage of total capitalization is less than 30%, after giving effect to the issuance.

Portland General requests that the Commission reserve jurisdiction with

[7] Any settlement or sale proceeds or costs aggregated as a result of a settlement will be allocated among the Enron group companies as required by the Bankruptcy Court.

[8] Issuance of such securities would be subject to approval of the Federal Energy Regulatory Commission ("FERC"). Portland General currently has FERC authorization to issue short-term debt up to $550 million.

respect to the issuances of short-term debt under the requested authorization if, at the time of issuance, Portland General does not have an investment grade credit rating from at least one nationally recognized statistical rating organization.

Under the terms of Portland General's $150 million 364-day revolving credit facility ("Facility"), Portland General currently has approximately $130 million available borrowing capacity. Portland General may borrow, repay and reborrow pursuant to the Facility for a period lasting through May 27, 2004. The Facility is secured by Portland General's first mortgage bonds. The security gives the lenders under the Facility *pari passu* status with Portland General's first mortgage bondholders.

Portland General proposes to use funds raised under the short-term authorization requested in this Application for general corporate purposes, including (1) financing, in part, investments by, and capital expenditures of, Portland General, (2) financing the working capital requirements of Portland General, (iii) funding future investments in subsidiary companies, and (iv) repaying, redeeming, refunding or purchasing any securities issued by Portland General. Portland General also may issue letters of credit to provide credit support for trading contracts and other uses, but would not use any financing authorized herein for businesses other than those conducted by Portland General and its subsidiaries. Portland General is restricted, without prior OPUC approval, from making dividend distributions to Enron that would reduce Portland General's common equity capital below 48% of total capitalization (excluding short-term borrowings).

Portland General also seeks authorization to issue additional short-term debt generally in the form of, but not limited to, institutional borrowings, commercial paper and bid notes as may be necessary to replace, extend, rearrange, modify or supplement the Facility described above. Portland General may sell commercial paper, from time to time, in established U.S., Canadian or European commercial paper markets. Such commercial paper would be sold through agents at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally.

Portland General also may establish bank lines of credit, directly or indirectly through one or more financing subsidiaries. Loans under these lines will have maturities of less than one year from the date of each borrowing. Alternatively, if the notional maturity of short-term debt is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under U.S. generally accepted accounting principles. Portland General also proposes to engage in other types of short-term financing generally available to borrowers with comparable credit ratings and credit profile, as it may deem appropriate in light of its needs and market conditions at the time of issuance.

7. Foreign Assets

Enron's foreign pipeline, gas and electricity distribution and power generation assets typically have FUCO status or exempt wholesale generator ("EWG") status at the project level. Enron has prepared and filed or is in the process of preparing FUCO certifications to obtain FUCO status for the Enron holding companies that hold a number of these projects. Most of these holding companies were formed to hold assets along geographical lines (*e.g.*, Enron South America LLC holds many of the Enron interests in South American projects).[9] Some Enron group companies, however, may be related to the business of Prisma, but may not qualify for FUCO status because they may not directly or indirectly own or operate foreign utility assets. Such companies may, for example, have loans outstanding to a FUCO or a subsidiary of a FUCO. In other cases, such as settlements or asset reorganizations, the securities of a FUCO may be acquired by Enron group companies.

Accordingly, the Enron group companies request authorization under section 33(c) and rule 53(c) under the Act, to issue new securities for the purpose of financing FUCOs (or to amend the terms of existing financings) and to acquire FUCO securities in connection with financings, settlements and reorganizations. Applicants request that authorization for purposes of financing new investments in their existing FUCOs be limited to $100 million ("FUCO Financing Limit").

D. Sale of Nonutility Companies

The Debtors, non-Debtor associates, and certain other related companies have completed a number of significant asset sales during the pendency of the chapter 11 cases, resulting in gross consideration to the Debtors' bankruptcy estates, non-Debtor associates, and certain other related companies aggregating approximately $3.6 billion. In most cases, the sale transactions are for all cash consideration. Some sales, however, may involve the acquisition of a security from the purchaser or the company being sold. A security would be accepted only when the transaction could not otherwise be negotiated for all cash consideration. For the most part, the Debtors would seek to convert securities into cash. Any security not converted into cash by the time the assets of the estates are distributed to creditors would reside in the Remaining Assets Trust, and creditors would receive an interest in that liquidating trust.

Indemnifications and guarantees by and between companies in the Enron group also may be part of the sale of nonutility assets, nonutility securities or settlements on claims with third parties. In the case of sales to third parties, indemnifications are capped at no more than the amount of the sale proceeds received by the seller. Applicants request indemnification and guarantee authority to provide them with the flexibility to manage the process of selling the assets of the estates in a manner that would maximize their value.

Applicants seek authorization for transactions involving the acquisition of securities, indemnifications and guarantees described above as they would occur in the context of the sale of any Enron group company (except Portland General) if such sale is (i) in the ordinary course of business of a debtor in possession (directly or indirectly through debtor or non-debtor subsidiaries) or, (ii) is authorized by the Bankruptcy Court.[10]

E. Dividends Out of Capital or Unearned Surplus

Applicants request general relief from the dividend and acquisition, retirement and redemption restrictions under section 12(c) of the Act and the rules under the Act as necessary in furtherance of the chapter 11 process to reorganize and reallocate value in the Enron group that will ultimately be distributed to creditors. Applicants also request specific relief for one subsidiary company, Northern Border Partners,

[9] Many of the foreign assets will likely be transferred into Prisma. As indicated above, the shares of Prisma may be distributed to creditors in connection with the implementation of Enron's chapter 11 plan or Prisma may be sold and the proceeds will then be distributed to creditors.

[10] The transactions proposed herein would not involve indemnifications or guarantees made by Portland General and would not have an adverse impact on that company.

relating to distributions of Available Cash[11] that are largely to be received by the public unit holders of this non-debtor subsidiary.[12] The Applicants seek an exception from the dividend restrictions under the Act as applied to all nonutility subsidiaries in the Enron group subject to the conditions noted above.

Section 12(c) of the Act restricts the acquisition, retirement or redemption of the securities of a registered holding company or subsidiary by the issuer of such securities, in contravention of the rules, regulations or orders of the Commission. Under rule 42, the effect of this prohibition is to continue to require Commission approval for purchases and redemptions from associates and affiliates. To permit the Enron group companies to transfer value among the companies in the Enron group as necessary to sell assets or to transfer the proceeds of such sales from subsidiaries to parent companies, Applicants request authorization for the Enron group companies, other than Portland General, to acquire, retire and redeem securities that they have issued.[13]

F. New Acquisitions

Through several subsidiaries, Northern Border Partners, a non-Debtor subsidiary of Enron, owns transportation gas systems (Northern Border Pipeline Company, Midwestern Gas Transmission Company, Viking Gas Transmission Company and a one third interest in Guardian Pipeline, L.L.C.) and gas gathering systems located in the Powder River Basin, the Wind River Basin, and the Williston Basin located in Wyoming, Montana, and the Dakotas. Through its subsidiary, Crestone Energy Ventures, L.L.C, Northern Border Partners owns a 49% interest in Bighorn Gas Gathering, L.L.C.; a 33.33% interest in Fort Union Gas Gathering, L.L.C.; and a 35% interest in Lost Creek Gathering, L.L.C. The gathering facilities interconnect to the interstate gas grid pipeline serving natural gas markets in the Rocky Mountains, the Midwest, and California. Northern Border Partners also owns a minority interest in a gas gathering system in Alberta, Canada. Northern Border Partners' 273-mile coal slurry pipeline connects a coal mine in Arizona to a power station in Nevada.

Northern Border Partners seeks authorization to, directly or indirectly through subsidiaries, issue and sell equity and debt securities to fund general partnership operations and new acquisitions of assets producing qualifying income and to acquire the securities of or other interests in gas-related properties.

Northern Border Partners currently has an effective shelf registration statement on Form S–3 for issuance of $500 million in equity or debt securities, of which approximately $102 million in equity was issued in May and June 2003. Depending on the results of its acquisition program, Northern Border Partners believes that during the course of the next year it may need to issue an additional $500 million to keep Northern Border Partners on an equal footing with its competitors in the acquisition market. Therefore, Northern Border Partners requests authorization under the Act to issue up to $1 billion of equity and debt securities at any one time outstanding through July 31, 2005, and to invest up to that amount in the acquisition of qualifying income assets (described below) without further Commission authorization.

Northern Border Partners requests authority to continue the ordinary course of its natural gas gathering, processing, storage and transportation operations in the United States and Canada ("Energy Assets"), which are generally conducted through partnerships and other companies, and through the acquisition of partnership or joint venture interests. To that end, Northern Border Partners requests authority to acquire and finance the acquisition of Energy Assets and the securities of companies which solely develop, finance, own and operate such Energy Assets within the United States and Canada up to a total authorized additional investment of $1 billion through the Authorization Period.

G. Simplifying Complex Corporate Structure and Dissolving Existing Subsidiaries

Enron seeks Commission authorization to restructure, rationalize and simplify or dissolve, as necessary, all of its nonutility businesses and implement settlements (which may involve transactions as described above regarding substantially all of its remaining direct and indirect assets) to effect all transactions authorized by the Bankruptcy Court and otherwise as necessary to simplify and restructure its businesses in furtherance of the chapter 11 process.[14] Applicants also seek authorization to form, merge, reincorporate, dissolve, liquidate or otherwise extinguish companies. Any newly formed entity would engage only in businesses in which the Enron group continues to engage pending the resolution of the chapter 11 cases. Further, Applicants seek authorization to restructure, forgive or capitalize loans and other obligations and to change the terms of outstanding nonutility company securities held by other Enron group companies for the purpose of facilitating settlements with creditors, simplifying the business of the group and maximizing the value of the Debtors' estates.

H. Rule 16 Exemptions

Citrus Corp. ("Citrus"), a holding company which is 50% owned by Enron and 50% owned by El Paso Corp., has the following subsidiaries: FGT, Citrus Trading Corp. ("CTC"), and Citrus Energy Services, Inc. ("CESI"). FGT is engaged in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Federal Energy Regulatory Commission. CTC is engaged in the supply of natural gas, while CESI is engaged in transportation management, having recently terminated its facilities operation and maintenance business. FGT owns and operates gas transmission facilities that extend from South Texas to South Florida along the Gulf of Mexico. Bridgeline Holdings, L.P. ("Bridgeline"), is an intrastate gas pipeline partnership that is engaged in the storage, transportation and supply of natural gas in Louisiana. Enron indirectly owns a 40% equity interest in the partnership and a 50% voting interest in the partnership, with the remaining equity

[11] Available Cash is defined under the Partnership Agreement to include cash derived from all sources including partnership holdings, financings and sale of assets less cash that is used for operating expenses, taxes, debt service payments, capital expenditures and contributions and increases to reserves.

[12] Corporations may pay dividends out of current income and retained earnings consistent with the restriction in section 12(c) of the Act which limits only dividends paid out of capital and capital surplus. Partnerships do not have a retained earnings account, so partnership distributions of available cash would come from current net income of the partnership, and partners' capital to the extent current net income of the partnership is insufficient to cover the whole distribution. Northern Border Partners' request to pay distributions in the amount of its Available Cash may require authorization under section 12(c) of the Act to the extent that Available Cash exceeds current partnership net income.

[13] Portland General has 249,727 outstanding shares of preferred stock. Should Portland General exercise its right to redeem any of its preferred stock it would rely on the exemption under rule 42 for the acquisition of stock from unaffiliated entities.

[14] As previously requested above, Applicants seek authorization to acquire, redeem and retire securities and to pay dividends out of capital and unearned surplus, provided that such transactions are consistent with applicable corporate or partnership law and any applicable financing covenants.

and voting interest held by ChevronTexaco Corp.

Besides Northern Border Partners' extensive gas gathering operations in the Williston Basin in Montana and North Dakota as well as in the Powder River Basin in Wyoming, through its wholly owned subsidiary, Crestone Energy Ventures, L.L.C., Northern Border Partners owns a 49% interest in Bighorn Gas Gathering, L.L.C. ("Bighorn"), a 33.3% interest in Fort Union Gas Gathering, L.L.C. ("Fort Union"), and a 35% interest in Lost Creek Gathering, L.L.C. ("Lost Creek"). These three companies which collectively own over 300 miles of gas gathering facilities in the Powder River and Wind River Basins in Wyoming. Northern Border Partners also owns an undivided interest in a 86-mile gathering pipeline in Alberta, Canada.

The Bighorn and Fort Union systems gather coalbed methane gas produced in the Powder River Basin in Wyoming. The remaining ownership interest in Bighorn is held by Cantera Gas Company, which is the operator. The remaining ownership interest in Fort Union is held by Cantera Gas Company, Western Gas Resources, Bargath, Inc. and CIG Resources Company. Cantera Gas Company is the managing member, Western Gas Resources is the field operator and CIG Resources Company is the administrative manager. Burlington Resources Trading, Inc. holds the remaining interest in Lost Creek and is the managing member. The Lost Creek system gathers natural gas produced from conventional gas wells in the Wind River Basin in central Wyoming. Through its subsidiary, Border Midstream Services, Ltd., Northern Border Partners owns an undivided interest in the Gregg Lake/Obed Pipeline in Alberta, Canada which entitles Border Midstream to a voting interest of 36%. The pipeline is operated by a third party, Central Alberta Midstream.

Northern Border Partners also owns an undivided one-third interest in Guardian Pipeline, L.L.C. ("Guardian"), a 141-mile interstate natural gas pipeline system which transports natural gas from Joliet, Illinois to a point west of Milwaukee, Wisconsin. Subsidiaries of Wisconsin Public Service and Wisconsin Energy Corporation hold the remaining interests in this system.

Each of Citrus, Bridgeline, Bighorn, Fort Union, Lost Creek and Guardian (the "Rule 16 Companies") seek to rely on an exemption from the obligations, duties and liabilities imposed upon them under the Act as a subsidiary or affiliate of a registered holding company. Accordingly, Applicants request that the Commission authorize Enron to acquire its respective interests in the Rule 16 Companies under Sections 9(a)(1) and 10, subject to any requirement in the Plan or as may be imposed by the Bankruptcy Court for the subsequent disposition of these assets.

I. Affiliate Transactions

Portland General has entered into a master service agreement ("MSA") with certain affiliates, including Enron. The MSA allows Portland General to provide affiliates with the following general types of services: Printing and copying, mail services, purchasing, computer hardware and software support, human resources support, library services, tax and legal services, accounting services, business analysis, product development, finance and treasury support, and construction and engineering services. The MSA also allows Enron to provide Portland General with the following services: executive oversight, general governance, financial services, human resource support, legal services, governmental affairs service, and public relations and marketing services. Portland General would provide services to affiliates at cost under the MSA and affiliate services provided to Portland General also would be priced at cost.[15]

Enron provides certain employee health and welfare benefits, 401(k), and insurance coverages to Portland General under the MSA that are directly charged to Portland General based upon Enron's cost for those benefits and coverages. The estimated cost of these services for the year 2004 in the aggregate is $26 million. The provision of these services is anticipated to continue until such services are replaced, which Enron expects will occur by the end of 2004.

Portland General provides certain administrative services to Enron's subsidiary Portland General Holdings ("PGH") and its subsidiaries under the MSA. The services that are allocated or directly charged to PGH and its subsidiaries based upon the cost for those services. The estimated cost of these services for the year 2004 in the aggregate is $700,000.

Applicants request that the Commission reserve jurisdiction with respect to any amendments to service arrangements involving Portland General, such as the Transition Services Agreement, pending completion of the record.

The nonutility subsidiaries in the Enron group also are engaged in providing services to one another. These services include, without limitation, environmental, right-of-way, safety, information technology, accounting, planning, finance, tax, procurement, accounts payable, human resources, regulatory, and legal services.

Enron Operation Services Corp. ("EOSC") or its affiliates, including CES, also provides services to Citrus and its subsidiaries under an operating agreement originally entered into between an Enron affiliate and Citrus. The primary term of the operating agreement expired on June 30, 2001; however, services continue to be provided pursuant to the terms of the operating agreement. Under an implied agreement pursuant to the terms of the operating agreement, Citrus reimburses the service provider for costs attributable to the operations of Citrus and its subsidiaries.

Northern Plains provides operating services to the Northern Border Partners pipeline system pursuant to operating agreements entered into with Northern Border Pipeline, Midwestern, and Viking. Under these agreements, Northern Plains manages the day-to-day operations of Northern Border Pipeline, Midwestern, and Viking, and is compensated for the salaries, benefits, and other expenses it incurs. Northern Plains also utilizes Enron affiliates for administrative and operating services related to Northern Border Pipeline, Midwestern, and Viking. NBP Services provides certain administrative and operating services for Northern Border Partners and its gas gathering and processing and coal slurry businesses. NBP Services is reimbursed for its direct and indirect costs and expenses pursuant to an administrative services agreement with Northern Border Partners. NBP Services also utilizes Enron affiliates to provide these services.

It is anticipated that at the closing of the transactions contemplated by the CrossCountry Amended and Restated Contribution and Separation Agreement, CrossCountry and Enron will enter into a Transition Services Agreement pursuant to which Enron will provide to CrossCountry, on an interim, transitional basis, various services, including, but not limited to, the following categories of services: (i) Office space and related services, (ii) information technology services, (iii) SAP accounting system usage rights and administrative support, (iv) tax services, (v) cash management services, (vi)

[15] If cost based pricing of particular services provided under the MSA would conflict with the affiliate transaction pricing rules of the OPUC, Portland General and Enron would refrain from providing such services, unless they have first obtained specific authorization from the OPUC to use cost based pricing for such services.

insurance services, (vii) contract management and purchasing support services, (viii) corporate legal services, (ix) corporate secretary services, (x) off-site and on-site storage, (xi) payroll, employee benefits and administration services, and (xii) services from RAC on a defined project basis.

CrossCountry will provide to Enron, on an interim, transitional basis, various services, including, but not limited to, the following categories of services: (i) Floor space for servers and other information technology equipment, (ii) technical expertise and assistance, including, without limitation, pipeline integrity, safety, environmental and compliance, (iii) accounts payable support, and (iv) accounting services relating to businesses owned directly or indirectly by ETS immediately prior to closing.

The parties are expected to enter into a Transition Services Supplemental Agreement at the closing of the Amended and Restated Contribution and Separation Agreement. Subject to the consent of the Creditors' Committee, the Transition Services Supplemental Agreement will more fully delineate the services provided within each category set forth in the Transition Services Agreement. The charges for such transition services will be cost-based in accordance with section 13(b) and rules 90 and 91. Certain services will be charged on an "as needed" basis.

Provision of the transition services will commence on the effective date of the Transition Services Agreement and terminate on December 31, 2004, unless otherwise agreed in writing by the parties. However, except as otherwise provided for in the Transition Services Supplemental Agreement, Enron may terminate any transition service upon ninety days' prior written notice to CrossCountry.

It is also anticipated that at the closing of the transactions contemplated by the CrossCountry Amended and Restated Contribution and Separation Agreement, Enron and certain of its subsidiaries and affiliated companies will enter into a Cross License Agreement pursuant to which each of the companies that is a party to the Cross License Agreement will grant, without warranty of any kind, to each and every other party and its respective subsidiaries, all of the intellectual property rights of the party granting the license in and to certain software programs, documentation, and patents described in the Cross License, a non-exclusive, royalty free, sublicensable license, with fully alienable rights, to: (i) use, copy, and modify the licensed programs and documentation; (ii) use, make, have made, distribute, and sell any and all products and services of the party receiving the license as well as such party's subsidiaries and sublicensees (if any); and (iii) engage in the business of such party receiving the license and business of its subsidiaries and sublicensees (if any) prior to, on, and after the closing date.

The Cross License Agreement will become effective on the closing date and the licenses granted will continue in perpetuity unless licenses granted to a breaching party are terminated by any affected non-breaching party in the event such breaching party fails to cure a material breach of the Cross License Agreement within thirty days after delivery of written notice of the breach.

Finally, prior to or at the closing of the CrossCountry Amended and Restated Contribution and Separation Agreement, Enron and CrossCountry will enter into a license or lease agreement under which CrossCountry will lease to Enron adequate floor space in the Ardmore Data Center for servers and other information technology equipment owned by the CrossCountry Enron Parties. The space will be provided on a cost basis for a term to be specified in the Ardmore Collocation License Agreement.

Prisma and Enron and its affiliates also expect to enter into certain ancillary agreements, which may include a new Transition Services Agreement, a tax allocation agreement discussed below, and a Cross License Agreement. The employees of Enron and its affiliates who have been supervising and managing the Prisma Assets since December 2001, became employees of a subsidiary of Prisma effective on or about July 31, 2003. In connection therewith, as approved by the Bankruptcy Court, Enron and its affiliates entered into four separate Transition Services Agreements pursuant to which such employees will continue to supervise and manage the Prisma Assets and other international assets and interests owned or operated by Enron and its affiliates. The ancillary agreements, together with the Prisma Contribution and Separation Agreement, will govern the relationship between Prisma and Enron and its affiliates subsequent to the contribution of the Prisma Assets, provide for the performance of certain interim services, and define other rights and obligations until the distribution of shares of capital stock of Prisma pursuant to the Plan or the sale of the stock to a third party. In addition, the Prisma Contribution and Separation Agreement or the ancillary agreements are expected to set forth certain shareholder protection provisions with respect to Prisma and may contain indemnification obligations of the Prisma Enron Parties.

Enron requests authority through the Authorization Period to provide the services specified above at other than cost due to the special and unusual circumstances of its bankruptcy.

Applicants, other than Enron, that are providing goods and services at terms other than cost to associate companies, other than Portland General, also request authority through the Authorization Period to provide the services specified above at other than cost due to the special and unusual circumstances of its bankruptcy.

J. Tax Allocation Agreements

Enron has entered into agreements with Portland General and Transwestern for the payment and allocation of tax liabilities on a consolidated group basis. These agreements generally require the subsidiaries to pay their separate return tax to Enron. In consolidation, Enron offsets the subsidiaries' income with the losses, tax credits and other tax-reducing attributes of Enron and other group companies and pays the resulting lower tax liability amount to the Internal Revenue Service or other taxing authority. Under the agreements, group companies, including Enron, that contributed tax benefits such as losses or credits to the consolidated return are paid their proportionate share of the tax reduction resulting from the use of such benefits in the consolidated tax return filing. Enron seeks authorization to continue to perform under these current agreements (or new agreements on similar terms) and for CrossCountry to enter into a new tax allocation agreement with Enron, when Transwestern is contributed to CrossCountry. Further, it is contemplated that the existing tax allocation agreement with Portland General may be amended to provide that Enron would pay Portland General for certain Oregon state tax credits generated by Portland General but not used on the consolidated Oregon tax return. Enron and Portland General also seek authorization to amend the Portland General tax allocation agreement accordingly.

Enron also has other written and oral tax-related agreements with other Enron group companies. It is contemplated that these agreements will be rejected as executory contracts by the Debtors on the Confirmation Date, with an effective date as of December 2, 2001 (Enron's bankruptcy petition date). Notwithstanding this rejection, Enron will continue to file a consolidated tax return as required by the Internal

Revenue Code. In such circumstances, Enron will no longer charge companies with income the stand-alone tax that they would pay on their income but for the consolidated losses. Enron generally would no longer pay loss companies for the benefit of their losses used to offset income on the consolidated return, except that it is expected that payments to Enron under the Portland General and CrossCountry tax allocation agreements would be shared with all loss companies consistent with past practice. Portland General, Transwestern and Prisma (discussed further below) are not part of this arrangement. Applicants request authorization for Enron and the other Enron group companies subject to the contract rejection described above to file consolidated returns in accordance with the method described above.

K. U5B Registration Statement

Enron seeks a modification to the Commission's reporting requirement to permit it to submit the Disclosure Statement in lieu of a Registration Statement on Form U5B. If the Commission staff indicates to Enron that it requires additional information called for in Form U5B but not included in the Disclosure Statement, Enron will undertake to promptly provide such additional information.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3111 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27800]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 6, 2004.

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 February 27, 2004, 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 February 27, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Enron Corp., et al. (File No. 70–10199)

Enron Corporation ("Enron"), a public-utility holding company by reason of its ownership of Portland General Electric Company ("Portland General"), an Oregon public-utility company, has filed an application, on its own behalf and on behalf of its subsidiaries and affiliates in the bankruptcy cases under Chapter 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") (together with Enron, "Debtors"),[1] for an order: (i) approving the Debtors' Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code, dated January 9, 2004 ("Plan") under section 11(f) of the Act; (ii) issuing a report on the Plan under section 11(g) of the Act; and (iii) authorizing Debtors under rules 62 and 64 to continue the Bankruptcy Court's authorized solicitation of votes of the Debtors' creditors for acceptances or rejections of the Plan and to make available to creditors a report on the Plan, as prescribed in section 11(g) of the Act. The application is sometimes referred to below as the "Plan Application."

In a companion filing, Enron, on its own behalf and on behalf of its subsidiaries and affiliates (collectively "Applicants"), listed in Exhibit H of the application in File No. 70–10200 ("Omnibus Application"),[2] seeks authorization to conduct business under the Act in a manner that furthers the Chapter 11 process. Specifically, the Omnibus Application requests authorization for the Enron group companies to reorganize their nonutility businesses, enter into settlements, asset sales and other transactions involving guarantees, indemnifications and the acquisition of securities, pay dividends and redeem securities to transfer value among the group companies in connection with the rationalization of Enron's complex corporate structure, engage in affiliate sales of goods and services and other transactions described below, all through July 31, 2005 ("Authorization Period").[3]

I. Enron and Its Subsidiaries

From 1985 through mid-2001, Enron grew from a domestic natural gas pipeline company into a large global natural gas and power company. Headquartered in Houston, Texas, Enron and its subsidiaries provided products and services related to natural gas, electricity, and communications to wholesale and retail customers. As of December 2001, the Enron companies employed approximately 32,000 individuals worldwide. The companies were principally engaged in: (i) The marketing of natural gas, electricity and other commodities, and related risk management and financial services worldwide; (ii) the delivery and management of energy commodities and capabilities to end-use retail customers in the industrial and commercial business sectors; (iii) the generation, transmission, and distribution of electricity to markets in the northwestern United States; (iv) the transportation of natural gas through pipelines to markets throughout the United States; and (v) the development, construction, and operation of power plants, pipelines, and other energy-related assets worldwide.

Enron became a public-utility holding company in 1997, when it acquired Portland General. Portland General is engaged in the generation, purchase, transmission, distribution, and retail sale of electricity in Oregon. It also sells wholesale electric energy to utilities, brokers, and power marketers located throughout the western United States.

The Oregon Public Utility Commission ("Oregon Commission") regulates Portland General with regard to its rates, terms of service, financings, affiliate transactions and other aspects of its business. The Federal Energy Regulatory Commission ("FERC") regulates the utility with respect to its activities in the interstate wholesale power markets.

[1] The Debtors, other than Enron, are identified in Exhibit H of the application. Portland General is not a Debtor.

[2] Applicants in the Omnibus Application include both Debtor and non-Debtor subsidiaries of Enron.

[3] "Enron group" includes all of Enron's subsidiaries, whether or not they are Debtors.

As of and for the nine months ended September 30, 2003, Portland General and its subsidiaries on a consolidated basis had operating revenues of $1,375 million, net income of $30 million, retained earnings of $517 million and assets of $3,185 million.

Portland General is not a Debtor in the Chapter 11 cases. The application states that the utility is extensively insulated from Enron as a result of conditions imposed under Oregon law at the time of the acquisition by Enron in 1997. In addition, in an effort to preserve Portland General's investment grade credit rating, a bankruptcy-remote structure was created. This structure requires the affirmative vote of an independent shareholder, who holds a share of limited voting junior preferred stock of Portland General, before the company can be placed into bankruptcy unilaterally by Enron, except in certain carefully prescribed circumstances in which the reason for the bankruptcy is to implement a transaction pursuant to which all of Portland General's debt will be paid or assumed without impairment.

II. The Bankruptcy Cases

In the last quarter of 2001, the Enron group companies lost access to the capital markets, both debt and equity, and had insufficient liquidity and financial resources to satisfy their current financial obligations. On December 2, 2001, Enron and certain of its subsidiaries each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As of February 3, 2004, one hundred eighty (180) Enron-related entities have filed voluntary petitions.[4] Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors in possession.

Portland General has not filed a voluntary petition under the Bankruptcy Code and is not in bankruptcy. Likewise, many other Enron companies have not filed bankruptcy petitions and continue to operate their businesses.

The Debtors have been engaged, since the commencement of the Chapter 11 cases, in the rehabilitation and disposition of their assets to satisfy the claims of creditors. The Debtors have been consolidating, selling businesses and assets, dissolving entities and simplifying their complex corporate structure. They are holding cash from prior sales pending distribution under the Plan and are positioning other assets for sale or other disposition.[5] In this process, hundreds of corporations have or will be liquidated.[6] The Debtors also have been involved in the settlement of numerous contracts related to wholesale and retail trading of various commodities.[7] In some cases, cash resulting from these settlements also is being held pending distribution pursuant to the Plan. Eventually, substantially all of the Debtors, including Enron, will be liquidated.

III. Status of Enron Under the Act

As noted above, Enron became a public-utility holding company when it acquired Portland General in 1997. Enron originally claimed exemption from registration under section 3(a)(1) of the Act by filings pursuant to rule 2. Enron subsequently filed two applications for exemption, one requesting an order under section 3(a)(1) of the Act and the other seeking an exemption by order under section 3(a)(3) or section 3(a)(5) of the Act. By order dated December 29, 2003, the Commission denied the requests for exemption.[8] Enron subsequently filed an application for exemption under section 3(a)(4) of the Act on behalf of itself and two other entities.[9] This application, as it related to Enron but not the other two applicants, was set for hearing by order of the Commission dated January 14, 2004.[10]

Enron and the Commission's Division of Investment Management have held discussions regarding the registration of Enron as a public-utility holding company under section 5 of the Act, the Plan for Enron and the other Debtors, the solicitation of votes accepting or rejecting the Plan, and various transactions in furtherance of the Chapter 11 cases that may require Commission authorization under the Act, if Enron were a registrant under the Act. In addition, Enron has proposed a comprehensive settlement of the exemption application in File No. 70–11373.

The application in this file and the companion application in File No. 70–10200 result from these discussions. The Omnibus Application supplements the Plan Application. It is intended that the Commission's authorization of both applications would give the Enron group companies sufficient authorization under the Act to solicit creditor votes for the Plan, obtain the confirmation of the Plan before the Bankruptcy Court, implement the Plan, and conduct business within the parameters specified in the Omnibus Application, pending the confirmation and full implementation of the Plan. The Plan Application and the Omnibus Application are predicated on Enron's registration under the Act immediately after the Commission grants the requested authorizations.

If, as proposed under the Plan and discussed further below, Enron sells the common stock of Portland General to an unaffiliated purchaser or distributes the stock to the Debtors' creditors or to a trust, Enron would deregister as a holding company upon the completion of the transaction, Enron will file a separate application with the Commission to seek authorization under section 12(d) of the Act for the sale of Portland General to a third party or the distribution of the common stock of Portland General to creditors or to a trust.[11]

IV. The Plan[12]

A. Introduction

On July 11, 2003, the Debtors filed a joint Chapter 11 plan and a related

[4] On November 29, 2001, and on various subsequent dates, certain foreign affiliates of Enron in England went into administration. Shortly thereafter, various other foreign affiliates also commenced (either voluntarily or involuntarily) insolvency proceedings in Australia, Singapore and Japan. Additional filings have continued worldwide and insolvency proceedings for foreign affiliates are continuing for various companies registered in Argentina, Bahamas, Bermuda, Canada, the Cayman Islands, France, Germany, Hong Kong, India, Italy, Mauritius, the Netherlands, Peru, Spain, Sweden and Switzerland.

[5] The Debtors and other Enron group companies have completed a number of significant asset sales during the pendency of the Chapter 11 cases, resulting in gross consideration to the Debtors' bankruptcy estates, non-Debtor associate companies and certain other related companies that aggregates approximately $3.6 billion. In many instances, proceeds from these sales are segregated, or are in escrow accounts. The distribution of the proceeds will require either the consent of the Creditors' Committee or an order of the Bankruptcy Court.

[6] On the initial petition date, the Enron group totaled approximately 2,400 legal entities. Approximately 600 have been sold, merged or dissolved and approximately 1,800 remain. It is anticipated that, by the end of 2004, the number of legal entities will be reduced to that necessary for Enron's operating businesses and the liquidation of assets.

[7] At the commencement of the Chapter 11 cases, both Debtor and non-Debtor companies had a significant number of non-terminated and terminated positions arising out of physical and financial contracts relating to numerous commodities. The companies have evaluated these contracts and undertaken efforts to perform, sell or settle these positions. The settlement of the contracts is approved under pre-established protocols that the Bankruptcy Court has approved.

[8] Holding Co. Act Release No. 27782.

[9] File No. 70–10190.

[10] Holding Co. Act Release No. 27793.

[11] The requested order in this filing would not authorize those transactions.

[12] Unless defined in the text of the Plan Application, all capitalized terms used hereinafter follow the definitions specified in the Plan. The Plan and Disclosure Statement are attached as Exhibits I–1 and I–2 to the Plan Application. The Plan, Disclosure Statement and other documents

Disclosure Statement, both of which were subsequently amended several times. A hearing to consider the adequacy of the information in the Disclosure Statement was held commencing on January 6, 2004. On January 9, 2004, the Bankruptcy Court issued two orders approving the Disclosure Statement, establishing voting procedures, and ordering the solicitation of votes approving or rejecting the Plan.[13] The Bankruptcy Court established April 20, 2004 as the date for commencement of the Confirmation Hearing and March 24, 2004 as the last date for filing objections to confirmation of the Plan. To confirm the Plan, the Bankruptcy Court must find that (i) the Plan is feasible, (ii) it is proposed in good faith, and (iii) the Plan and the proponent of the Plan are in compliance with the Bankruptcy Code.

In accordance with the Disclosure Statement Orders, the Debtors have placed solicitation materials online at www.enron.com, prepared documents and diskettes for distribution and begun distribution of the materials to creditors and equity interest holders. The Debtors note that the order and report of the Commission requested in the Plan Application could be included in the Plan Supplement that is scheduled to be filed with the Bankruptcy Court and placed online at www.enron.com no later than March 9, 2004 or such date as the Bankruptcy Court may authorize. Creditors would then have the opportunity to consider the order and report prior to the expiration of the period to vote on the Plan.

B. Proposed Global Resolution of Chapter 11 Cases

The Debtors state that the Plan represents a compromise and settlement of significant issues. They state that they have worked with the Official Committee of Unsecured Creditors appointed in the Debtors' Chapter 11 cases ("Creditors' Committee"), the Bankruptcy Court-appointed examiner to review transactions related to Enron North America Corp. ("ENA") and to represent the creditors of ENA ("ENA Examiner"),[14] and individual creditor groups to formulate a Chapter 11 plan.

The Debtors explain that, because of the diverse creditor body and the myriad of complex issues posed, the Debtors, the ENA Examiner and the Creditors' Committee spent more than one year engaged in analysis and negotiations concerning the terms of what eventually became the Plan and related matters. These discussions focused on a variety of issues, including: (i) Maximizing value to creditors, (ii) resolving issues regarding substantive consolidation and other inter-estate and inter-creditor disputes, and (iii) facilitating an orderly and efficient distribution of value to creditors. The Debtors state that the Plan represents the culmination of these efforts and reflects agreements and compromises reached among the Debtors, the ENA Examiner and the Creditors' Committee concerning these issues. The Debtors note that the Creditors' Committee and the ENA Examiner fully support the Plan. The members of the Creditors' Committee have unanimously recommended that creditors vote to accept it, and the ENA Examiner has included a letter in the solicitation materials endorsing the Plan and urging parties to support confirmation.

The Plan incorporates various inter-Debtor, Debtor-Creditor and inter-Creditor settlements and compromises designed to achieve a global resolution of the Chapter 11 cases. Thus, the Plan is premised upon a settlement, rather than litigation, of these disputes.[15] The settlements and compromises embodied in the Plan represent, in effect, a linked series of concessions by Creditors of every individual Debtor in favor of each other. The agreements are interdependent.

Several components of the global compromise include: (i) Settlement of the issue of substantive consolidation of the Debtors' estates, (ii) the use of a common currency (referred to as Plan Currency) to make distributions under the Plan, (iii) the treatment of Intercompany Claims and resolution of other inter-estate issues, (iv) the resolution of certain asset ownership disputes between Enron and ENA, (v) the resolution of interstate issues regarding rights to certain claims and causes of action, (vi) the treatment of Allowed Guaranty Claims, and (vii) a reduction in the administrative costs post-confirmation. Each of these components is discussed in detail in the Plan and Disclosure Statement.

C. Property To Be Distributed

The Plan is premised upon the distribution of all of the value of the Debtors' assets in accordance with the priority scheme contained in the Bankruptcy Code. Distribution would involve Creditor Cash, Plan Securities and, to the extent that such trusts are created, interests in the Remaining Asset Trusts, Operating Trusts, Litigation Trust and the Special Litigation Trust. It is anticipated that Creditor Cash will constitute approximately two-thirds of the Plan Currency. In the event that the Portland General sale transaction is consummated, the percentage would increase. Excluding the potential value of interests in the Litigation Trust and Special Litigation Trust, the Debtors estimate that the value of total recoveries will be approximately $12 billion.

The Debtors state that, since the Initial Petition Date, they have conducted sales efforts for substantially all of the Enron companies' core domestic and international assets. In those instances where an immediate sale maximized the value of the interest, the assets either were sold or are the subject of pending sales. Following consultation with the Creditors' Committee, in those instances where the long-term prospects were anticipated ultimately to produce greater value, assets were retained. These retained assets will either (i) be located in one of the Operating Entities, *i.e.*, Portland General, Prisma Energy International Inc. ("Prisma") and CrossCountry Energy Corp. ("CrossCountry"), as discussed further below, with the stock or other equity of the Operating Entities to be distributed to Creditors pursuant to the Plan, or (ii) be sold at a later date.

As discussed in greater detail in the Plan Application and the Plan, when and to the extent that an interest in any

related to the Chapter 11 cases are also available at *http://www.enron.com*.

[13] Order on motion of Enron Corp. approving the Disclosure Statement, setting record date for voting purposes, approving solicitation packages and distribution procedures, approving forms of ballots and vote tabulation procedures, and scheduling a hearing and establishing notice and objection procedures in respect of confirmation of the plan, Docket No. 15303, *In re Enron Corp., et al.*, Chapter 11 Case No. 01–16034 (AJG), Jan. 9, 2004 (U.S. Bankruptcy Court, S.D.N.Y.). Order, pursuant to sections 105(a), 502, 1125 and 1126 of the Bankruptcy Code and rules 3003, 3017 and 3018 of the Federal Rules of Bankruptcy Procedure establishing voting procedures in connection with the plan process and temporary allowance of claims procedures related thereto, Docket No. 15296, *In re Enron Corp., et al.*, Chapter 11 Case No. 01–16034 (AJG), Jan. 9, 2004 (U.S. Bankruptcy Court, S.D.N.Y.) (collectively, the "Disclosure Statement Orders"). Representatives of the Commission were present at the hearing to consider approval of the Disclosure Statement. The orders are attached to the Plan Application as Exhibits J–1 and J–2.

[14] The Debtors state that ENA is the single largest creditor of Enron and its intercompany claim against Enron is its single largest asset. The ENA Examiner was appointed, among other things, to serve as a plan facilitator for ENA and its subsidiaries. The ENA Examiner has performed this function by engaging in dialogue with the Debtors, representatives of the Creditors' Committee, and certain parties in interest that assert claims against ENA and its subsidiaries, and by filing reports concerning various issues related to the Plan.

[15] The Plan does provide, however, for a litigation trust or similar vehicle to pursue avoidance and other types of claims against numerous financial institutions and other entities that are creditors of the estates.

of these businesses or related businesses is sold, the resulting net sale proceeds held by a Debtor will be distributed to Creditors in the form of Creditor Cash. To the extent that Portland General, Prisma and CrossCountry have not been sold as of the Initial Distribution Date, then the value in these Operating Entities will be distributed to Creditors in the form of Plan Securities free and clear of all liens, claims, interests and encumbrances.

The Plan does not provide for Enron to survive in the long term as an ongoing entity with any material operating businesses. Enron's role as a Reorganized Debtor will be to hold and sell assets and to manage the litigation of the estates pending the final conclusion of the Chapter 11 cases. Although it is expected that several years may be required to conclude the extensive litigation in which the Debtors' estates are involved, the Operating Entities, including Portland General, are expected to be divested relatively soon after confirmation of the Plan.

D. Key Elements of the Plan

1. Sale or Distribution of Portland General

Enron recently announced an agreement to sell the common stock of Portland General to Oregon Electric Utility Company, LLC ("Oregon Electric"), a newly formed entity financially backed by investment funds managed by the Texas Pacific Group, a private equity investment firm.[16] The transaction is valued at approximately $2.35 billion, including the assumption of debt. The sale is subject to the receipt of Bankruptcy Court, Commission and Oregon Commission and certain other regulatory authorizations. Closing is currently anticipated to occur in the second half of 2004. The transaction is described in detail in Exhibits B–1 and B–2 of the Plan Application.

On December 5, 2003, the Bankruptcy Court issued a bidding procedures order specifying January 28, 2004 as the last date on which competing prospective buyers could submit bids to acquire Portland General.[17] Under the Purchase and Sale Agreement, Enron is permitted to accept a bid that represents a "higher or better" offer for Portland General. No qualifying bid was received prior to the January 28, 2004 deadline.

If Portland General has not been sold, is no longer the subject of the Purchase and Sale Agreement described above and is not the subject of another purchase agreement, then, Enron will cause Portland General to distribute its shares to creditors and equity holders pursuant to the Plan. In preparation for the distribution of Portland General under the Plan, Enron may transfer its ownership interest in Portland General, upon receipt of all appropriate regulatory approvals, including that of the Commission, to PGE Trust, a to-be-formed entity. If formed, PGE Trust would hold Enron's interest in Portland General as a liquidating vehicle, for the purpose of distributing, directly or indirectly, the shares of Portland General (or the proceeds of a sale of Portland General) to the Debtor's creditors and equity holders as required by the Plan.[18] It is possible that PGE Trust also would hold Enron's interest in Portland General for the purposes of consummating the sale of the utility to Oregon Electric.[19]

Specifically, the Plan provides that the Debtors and the Creditors' Committee would jointly determine whether the Portland General common stock should be distributed to creditors directly by Enron or through an Entity[20] (the PGE Trust) [21] to be created on or subsequent to the Confirmation Date to hold the common stock.[22] If formed, the PGE Trust, will be managed under an agreement, the PGE Trust Agreement, which must be satisfactory to the Creditors' Committee in form and substance.

The PGE Trust Agreement will provide for the management of the PGE Trust by the PGE Trustee, who will manage, administer, operate and liquidate the assets in the PGE Trust and distribute the proceeds or the Portland General common stock.[23] As currently contemplated, the PGE Trustee would be Stephen Forbes Cooper, LLC (an entity headed by Stephen Forbes Cooper and more fully described below), or such other Entity appointed by the PGE Trust Board and approved by the Bankruptcy Court to administer the PGE Trust in accordance with the provisions of the PGE Trust Agreement and Article XXIV of the Plan.[24] The PGE Trust Board would be selected by the Debtors, after consultation with the Creditors' Committee, and appointed by the Bankruptcy Court, or any replacements thereafter selected in accordance with the PGE Trust Agreement. If the PGE Trust is not formed, SFC, as Administrator, would oversee the management, administration and operation of Portland General (and the Debtors' other assets) until it is sold or its common stock is distributed to creditors under the Plan.

The Plan describes the purpose of the PGE Trust and the trusts that may be established in connection with the distribution of Prisma and CrossCountry (collectively, the "Operating Trusts") and the proposed management of the trusts.[25] For all federal income tax purposes, all parties (including the Debtors, the Operating Trustee and the beneficiaries of the Operating Trusts) must treat the transfer of assets to the respective Operating Trusts as a transfer to the holders of certain allowed claims, followed by a transfer by these holders to the respective Operating Trusts. The beneficiaries of the Operating Trusts are treated as the grantors of the trusts.[26]

The rights of the Operating Trustees to invest assets transferred to the Operating Trusts, the proceeds of the

[16] Enron Corp. Press Release dated November 18, 2003. The Purchase and Sale Agreement is attached to the Plan Application as Exhibit B–2.

[17] Docket No. 14665, *In re Enron Corp., et al.*, Chapter 11 Case No. 01–16034 (AJG), Dec. 5, 2003 (U.S. Bankruptcy Court, S.D.N.Y.).

[18] PGE Trust is an applicant in File No. 70–11373 for an exemption from registration under section 3(a)(4) of the Act.

[19] See Article XXIV of the Plan.

[20] Section 1.130 of the Plan provides that an "Entity" refers to a person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, governmental unit, or any subdivision thereof, including, without limitation, the Office of the United States Trustee or any other entity.

[21] Plan Section 1.187.

[22] Enron expects that the PGE Trust would be formed if, upon the Effective Date, sufficient General Unsecured Claims have not been allowed such that at least 30% of the Portland General common stock may be distributed.

[23] Portland General currently has 42,758,877 shares of common stock, par value of $3.75 per share, all of which are held by Enron. Upon satisfaction of the conditions for the distribution of Portland General to the creditors under the Plan, the existing Portland General common stock held by Enron will be cancelled and new Portland General common stock will be issued. The shares of Portland General to be issued under the Plan will have no par value, of which 80,000,000 shares shall be authorized and of which 62,500,000 shares shall be issued under the Plan. The preferred stock of Portland General will remain outstanding.

[24] Article XXIV of the Plan describes the establishment, purpose and operating parameters of the Operating Trusts, which include the PGE Trust, the Prisma Trust and the CrossCountry Trust.

[25] The Operating Trusts would be established on behalf of the Debtors and the holders of allowed claims in certain specified classes. The Operating Trusts would be formed by the execution of the respective Operating Trust Agreements as soon as is practical after the receipt of all appropriate or required governmental, agency or other consents authorizing the transfer of the respective assets to the Operating Trusts. See Plan Section 24.1. With respect to the PGE Trust, the authorization of the Oregon Commission and the FERC may be required prior to the contribution of the common stock of Portland General into the PGE Trust and the distribution of the stock to the creditors.

[26] Consistent with this view, under the Operating Trust Agreements, the Debtors on the Effective Date will have no obligation to provide any funding with respect to any of the Operating Trusts.

investments, or any income earned by the respective Operating Trusts, will be limited to the right and power to invest the assets (pending periodic distributions) in cash equivalents. The Operating Trustees must distribute at least annually to the holders of the respective Operating Trust Interests all net cash income plus all net cash proceeds from the liquidation of assets, but the Operating Trustees may retain amounts necessary to satisfy liabilities and to maintain the value of the assets of the Operating Trusts during liquidation and to pay reasonable administrative expenses. The Operating Trusts must terminate no later than the third anniversary of the Confirmation Date, provided, however, that the Bankruptcy Court may extend the term of the Operating Trusts for additional periods not to exceed three years in the aggregate if it is necessary to liquidate the assets of the Operating Trusts.[27]

2. Formation of Prisma and CrossCountry and Disposition of Debtors' Other Assets, Generally

In addition to the divestiture of Portland General, other key aspects of the Plan include the formation of two nonutility holding companies, Prisma and CrossCountry.[28] Prisma is a Cayman Islands entity formed initially as a holding company pending the transfer of certain international energy infrastructure businesses that are indirectly owned by Enron and certain of its affiliates. CrossCountry is a Delaware corporation that would hold Enron's pipeline businesses, which provide natural gas transportation services through an extensive North American pipeline infrastructure.

As part of the Plan, creditors would receive shares of Prisma and CrossCountry, interests in a trust or other entity formed to distribute these assets, or cash proceeds of the sale of Prisma or CrossCountry. The Plan also makes provision for the distribution of other assets of the Debtors' estate, including in excess of $6 billion in cash, the proceeds of the liquidation or divestiture of businesses that do not fit into Prisma and CrossCountry, and the value of certain claims that Enron is pursuing against various professional service firms and financial institutions, such as commercial and investment banks. Additional detail with respect to Prisma and CrossCountry is provided below.

a. Prisma

Prisma was organized on June 24, 2003 for the purpose of acquiring the Prisma Assets, which include equity interests in the identified businesses, intercompany loans to the businesses held by affiliates of Enron, and contractual rights held by affiliates of Enron. Enron and its affiliates will contribute the Prisma Assets to Prisma in exchange for shares of Prisma Common Stock commensurate with the value of the Prisma Assets contributed.

It is expected that the contribution of the Prisma Assets will be effected pursuant to the Prisma Contribution and Separation Agreement to be entered into among Prisma and Enron and several of its affiliates. The Debtors anticipate that the Prisma Contribution and Separation Agreement, which is currently being negotiated, will be submitted for Bankruptcy Court approval either as part of the Plan Supplement or by a separate motion.

Prisma and Enron and its affiliates also expect to enter into certain ancillary agreements, which may include a new Transition Services Agreement, a tax allocation agreement ("Prisma Tax Allocation Agreement") and a Cross License Agreement. The employees of Enron and its affiliates who have been supervising and managing the Prisma Assets since December 2001 became employees of a subsidiary of Prisma effective on or about July 31, 2003. In connection with the transfer of employees, as approved by the Bankruptcy Court, Enron and its affiliates entered into four separate Transition Services Agreements, pursuant to which these employees will continue to supervise and manage the Prisma Assets and other international assets and interests owned or operated by Enron and its affiliates. The ancillary agreements, together with the Prisma Contribution and Separation Agreement, will govern the relationship between Prisma and Enron and its affiliates after the contribution of the Prisma Assets; provide for the performance of certain interim services; and define other rights and obligations until the distribution of shares of capital stock of Prisma pursuant to the Plan or the sale of the stock to a third party. In addition, the Prisma Contribution and Separation Agreement or the ancillary agreements are expected to set forth certain shareholder protection provisions with respect to Prisma and may contain indemnification obligations of the Prisma Enron Parties.

To date, no operating businesses or assets have been transferred to Prisma. Subject to obtaining requisite consents, however, the Debtors intend to transfer the businesses described above, either in connection with the Plan or at such earlier date as may be determined by Enron and approved by the Bankruptcy Court.[29] Prisma will be engaged in the generation and distribution of electricity, the transportation and distribution of natural gas and liquefied petroleum gas, and the processing of natural gas liquids.[30] Applicants intend that Prisma will be a foreign utility company ("FUCO") under section 33 under the Act prior to the transfer of the businesses described above to Prisma. The transfer of such businesses to Prisma in exchange for interests in Prisma would generally be exempt under section 33(c)(1) of the Act.

b. CrossCountry

CrossCountry was incorporated in Delaware on May 22, 2003. On June 24, 2003, CrossCountry and the CrossCountry Enron Parties entered into the original CrossCountry Contribution and Separation Agreement providing for the contribution of Enron's direct and indirect interests in its interstate pipelines and other related assets to CrossCountry. On September 25, 2003, the Bankruptcy Court issued an order approving the transfer of the pipeline interests and the related assets from the CrossCountry Enron Parties to CrossCountry and other related transactions, pursuant to the original CrossCountry Contribution and Separation Agreement. That order contemplates that the parties may make certain modifications to the original

[27] The United States Internal Revenue Service has stated that an organization created under Chapter 11 of the Bankruptcy Code to be a liquidating trust will be characterized as such if it meets certain requirements. In particular, the IRS requires the trustee of a liquidating trust to commit to make continuing efforts to dispose of the trust assets, make timely distributions, and not unduly prolong the duration of the trust. The Debtors state that these requirements are all incorporated into the Plan. *See generally*, Plan Article XXIV. *See also*, Rev. Proc. 94–45, 1994–2 CB 684, *amplifying and modifying* Rev. Proc. 82–58, 1982–2 CB 847, and Rev. Proc. 91–15, 1991–1 CB 484.

[28] Of the approximately 1,800 entities in the Enron group currently, approximately 82 entities would become part of Prisma and 15 would be contributed to CrossCountry. The remaining entities would be sold or liquidated in accordance with the Plan.

[29] In addition to Bankruptcy Court approval, the transfer of the businesses will require the consent of other parties, including, but not limited to, governmental authorities in various jurisdictions. If any of these consents are not obtained, then at the discretion of Enron, with the consent of the Creditors' Committee, as contemplated in the Plan, one or more of these businesses may not be transferred to Prisma, but remain instead, directly or indirectly, with Enron.

[30] If all businesses are transferred to Prisma as contemplated, the company will own interests in businesses with assets that include over 9,600 miles of natural gas transmission and distribution pipelines, over 56,000 miles of electric transmission and distribution lines and over 2,100 megawatts of electric generating capacity. The businesses will serve 6.5 million liquefied petroleum gas, gas and electricity customers in 14 countries.

Contribution and Separation Agreement. The parties are negotiating an Amended and Restated Contribution and Separation Agreement that incorporates certain changes to the original Contribution and Separation Agreement.[31] Pursuant to the Amended and Restated Contribution and Separation Agreement, Enron and certain of its affiliates would contribute their ownership interests in certain gas transmission pipeline businesses and certain nonutility service companies to CrossCountry LLC in exchange for equity interests in CrossCountry LLC. The closing of the transactions contemplated by the Amended and Restated Contribution and Separation Agreement is expected to occur as soon as possible. It is anticipated that, following confirmation of the Plan and prior to the CrossCountry Distribution Date, the equity interests in CrossCountry LLC will be exchanged for equity interests in CrossCountry Distributing Company in the CrossCountry Transaction. As a result of the CrossCountry Transaction, CrossCountry Distributing Company will obtain direct or indirect ownership in the Pipeline Businesses and certain services companies described below. CrossCountry LLC's principal assets will, upon closing of the formation transactions, consist of the following:

- A 100% indirect ownership interest in Transwestern Holdings Company, Inc. ("Transwestern"), which, through its subsidiary Transwestern Pipeline Company, owns an approximately 2,600-mile interstate natural gas pipeline system that transports natural gas from western Texas, Oklahoma, eastern New Mexico, the San Juan basin in northwestern New Mexico and southern Colorado to California, Arizona, and Texas markets. Transwestern's net income for the year ended December 31, 2002 was $20.7 million.
- A 50% ownership interest in Citrus Corp. ("Citrus"), a holding company that owns, among other businesses, Florida Gas Transmission Company ("FGT"), a company with an approximately 5,000-mile natural gas pipeline system that extends from South Texas to South Florida. An affiliate of CrossCountry operates Citrus and certain of its subsidiaries. Citrus's net income for the year ended December 31, 2002 was $96.6 million, 50% of which, or $48.3 million, comprised Enron's equity earnings. CrossCountry LLC is expected to hold its interest in Citrus through its wholly owned subsidiary, CrossCountry Citrus Corp.
- A 100% interest in Northern Plains Natural Gas Company ("Northern Plains"), which directly or through its subsidiaries holds 1.65% out of an aggregate 2% general partner interest and a 1.06% limited partner interest in Northern Border Partners, L.P. ("Northern Border") a publicly traded limited partnership that is a leading transporter of natural gas imported from Canada to the Midwestern United States. Pursuant to operating agreements, Northern Plains operates Northern Border's interstate pipeline systems, including Northern Border Pipeline, Midwestern, and Viking. Northern Border also has (i) extensive gas gathering operations in the Powder River Basin in Wyoming, (ii) natural gas gathering, processing and fractionation operations in the Williston Basin in Montana and North Dakota, and the western Canadian sedimentary basin in Alberta, Canada, and (iii) ownership of the only coal slurry pipeline in operation in the United States. Northern Border's net income for the year ended December 31, 2002 was $113.7 million, of which $9.1 million comprised Enron's equity earnings.

The Debtors state that these companies have a history of expanding their pipeline systems to meet growth in market demand and to increase customers' access to additional natural gas supplies. These expansions not only provide the individual interstate pipeline businesses with additional net income and cash flow, but also are important factors in maintaining and enhancing their market positions. Historically, the interstate pipeline businesses have undertaken expansions when they are backed by long-term firm contract commitments. In addition, the pipelines have historically made acquisitions to meet market growth and gain access to gas supplies.

The Debtors expect that the contribution of the interests in the gas pipeline businesses to CrossCountry LLC under the Contribution and Separation Agreement, in exchange for equity interests in CrossCountry LLC, would be exempt capital contributions under rule 45(b)(4) under the Act.

3. Other Assets and Claims

Pursuant to the Plan, any Remaining Assets not converted to Cash as of the Effective Date will continue to be liquidated for distribution to holders of Allowed Claims in the form of Creditor Cash. In the event that the Debtors and the Creditors' Committee jointly determine to create the Remaining Asset Trusts on or prior to the date on which the Litigation Trust is created, interests in the Remaining Asset Trusts will be deemed to be allocated to holders of Allowed Claims at the then estimated value of Remaining Assets. The allocation of Remaining Asset Trust Interests will form part of the Plan Currency in lieu of Creditor Cash, and Creditors holding Allowed Claims will receive distributions on account of such interests in Cash, as and when Remaining Assets are realized upon.

The Plan provides for holders of Allowed Unsecured Claims against Enron (which includes Allowed Guaranty Claims and Allowed Intercompany Claims) to share the proceeds, if any, from numerous potential causes of action. To the extent that the Litigation Trust and Special Litigation Trust are implemented, these causes of action shall be deemed transferred to Creditors, on account of their Allowed Claims, and then be deemed to have contributed such causes of actions to either the Litigation Trust or the Special Litigation Trust, in exchange for beneficial interests in such trusts. The Debtors shall include, in the Plan Supplement, a listing of the claims and causes of action, comprising Litigation Trust Claims and Special Litigation Trust Claims, and which may be transferred to and prosecuted by the Litigation Trust and the Special Litigation Trust.

Upon the Effective Date, holders of Allowed Enron Preferred Equity Interests and Allowed Enron Common Equity Interests will receive, in exchange for such interests, Preferred Equity Trust Interests and Common Equity Trust Interests, respectively. The Preferred Equity Trust and Common Equity Trust will hold the Exchanged Enron Preferred Stock and Exchanged Enron Common Stock, respectively. Holders of the Preferred Equity Trust Interests and Common Equity Trust Interests will have the contingent right to receive cash distributions in the very unlikely event that the value of the Debtors' assets exceeds the Allowed Claims, but in no event will the Exchanged Enron Preferred Stock and Exchanged Enron Common Stock be distributed to those holders. The Preferred Equity Trust Interests and Common Equity Trust Interests will be uncertificated and non-transferable, except through the laws of descent or distribution.

[31] Among other things, CrossCountry Energy LLC ("CrossCountry LLC") replaces CrossCountry as the holding company that owns the pipeline interests. Docket No. 13381, *In re Enron Corp., et al.*, Chapter 11 Case No. 01–16034 (AJG), Oct. 8, 2003 (U.S. Bankruptcy Court, S.D.N.Y.); Docket No. 14560, *In re Enron Corp., et al.*, Chapter 11 Case No. 01–16034 (AJG), Dec. 1, 2003 (U.S. Bankruptcy Court, S.D.N.Y.).

4. Treatment of Claims

The Plan generally classifies the creditors of, and other investors in, the Debtors into several classes. The treatment of each class of creditors is described in detail in the Plan and in the Disclosure Statement. The list below illustrates the descending order of priority of the distributions to be made under the Plan. In accordance with the Bankruptcy Code, distributions are made based on this order of priority such that, absent consent, holders of Allowed Claims or Equity Interests in a given Class must be paid in full before a distribution is made to a more junior Class. Notably, the Debtors continue to believe that existing Enron common stock and preferred stock has no value. However, the Plan provides Enron stockholders with a contingent right to receive a recovery in the event that the total amount of Enron's assets, including recoveries in association with litigation and the subordination, waiver or disallowance of Claims in connection with the litigation, exceeds the total amount of Allowed Claims against Enron. No distributions will be made to holders of equity interests, unless and until all unsecured claims are fully satisfied.

- Secured Claims
- Priority Claims
- Unsecured and Convenience Claims
- Section 510 Senior Note Claims and Enron Subordinated Debenture Claims
- Penalty Claims and other Subordinated Claims
- Section 510 Enron Preferred Equity Interest Claims
- Enron Preferred Equity Interests
- Section 510 Enron Common Equity Interests and Enron Common Equity Interests

In addition to the distributions on pre-petition Claims described above, the Plan provides for payment of Allowed Administrative Expense Claims in full. The Plan further provides that Administrative Expense Claims may be fixed either before or after the Effective Date.

5. Effectiveness of the Plan

Following confirmation of the Plan by the Bankruptcy Court, the Plan will become effective upon the satisfaction of certain conditions. Section 1.94 of the Plan specifies that the Effective Date will occur on the first business day after the Plan is confirmed after which the conditions to the effectiveness of the Plan have been satisfied or waived, but in no event earlier than December 31, 2004.[32] The conditions to the effectiveness of the Plan, set forth in Section 37.1, are: (i) Entry of the Bankruptcy Court confirmation order; (ii) the execution of documents and other actions necessary to implement the Plan; (iii) the receipt of consents necessary to transfer assets to and establish Prisma and CrossCountry, and (iv) the receipt of consents necessary to issue the Portland General common stock under the Plan.[33]

Implementing the Plan will involve the distributions to creditors by the Debtors required by the Plan, reporting on the status of Plan consummation, and applying for a final decree that closes the cases after they have been fully administered, including, without limitation, reconciliation of claims. As such, administration of the estates in conjunction with the Bankruptcy Court will continue post confirmation, in the manner described above, including the resolution of over five hundred adversary proceedings.

6. Administration of the Estates

a. Post-Confirmation Administration

As part of the global compromise under the Plan, the governance and oversight of the Chapter 11 cases will be streamlined. On the Effective Date, a five-member board of directors of Reorganized Enron will be appointed, with four of the directors to be designated by the Debtors after consultation with the Creditors' Committee and one of the directors to be designated by the Debtors after consultation with the ENA Examiner. Section 1129(a)(5) of the Bankruptcy Code requires that, to confirm a Chapter 11 plan, the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors; that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy; and that there be disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtors. The Debtors intend to file such information in the Plan Supplement no later than fifteen (15) days prior to the Ballot Date. The terms and manner of selection of the directors of each of the other Reorganized Debtors will be as provided in the Reorganized Debtors Certificate of Incorporation and the Reorganized Debtors By-laws, as the same may be amended.

The ENA Examiner will (i) cease his routine reporting duties, unless otherwise directed by the Bankruptcy Court, and (ii) retain his status (other than his limited investigatory role) pursuant to orders of the Bankruptcy Court entered as of the date of the Disclosure Statement order. Pending the Effective Date of the Plan, the ENA Examiner will continue his current oversight and advisory roles as set forth in prior orders of the Bankruptcy Court, subject to the right of the Debtors, in their sole discretion, to streamline existing internal processes, including cash management and other transaction review committees.

Although the Debtors may streamline their internal processes, the information typically provided to the ENA Examiner will continue to be provided to ensure that the ENA Examiner can fulfill his oversight functions. The Creditors' Committee will be dissolved on the Effective Date, except as provided below.

b. Post-Effective Date Administration

Upon appointment of the new board of Reorganized Enron, from and after the Effective Date, the Creditors' Committee will continue to exist only for limited purposes relating to the ongoing prosecution of estate litigation. Specifically, the Creditors' Committee will continue to exist only (i) to continue prosecuting claims or causes of action previously commenced by it on behalf of the Debtors' estates, (ii) to complete other litigation, if any, to which the Creditors' Committee is a party as of the Effective Date (unless, in the case of (i) or (ii), the Creditors' Committee's role in such litigation is assigned to another representative of the Debtors' estates, including the Reorganized Debtors, the Litigation Trust or the Special Litigation Trust) and (iii) to participate, with the Creditors' Committee's professionals and the Reorganized Debtors and their professionals, on the joint task force created with respect to the prosecution of the Litigation Trust Claims pursuant to the terms and conditions and to the full extent agreed between the Creditors'

[32] Under Section 1.94, the Debtors and the Creditors' Committee, in their discretion, could designate another Effective Date that falls after the Confirmation Date.

[33] As noted previously, in preparation for the distribution of Portland General under the Plan, upon receipt of all appropriate regulatory approvals, Enron may transfer its ownership interest in Portland General to PGE Trust, a to-be-formed entity. There may be an adjustment in the number of Portland common shares prior to contribution to the PGE Trust and in all events prior to distribution to creditors. If the Portland General common stock is distributed to creditors rather than sold, it is intended that the current Portland General shares of common stock will be canceled and 80 million shares of new Portland General common stock will be authorized and approximately 62.5 million shares issued pursuant to the Plan.

Committee and the Debtors as of the date of the Disclosure Statement Order. Thus, virtually all of the decisions that will need to be made with respect to, among other things, (i) the disposition of the Debtors' Remaining Assets, (ii) the reconciliation of Claims and (iii) the prosecution or settlement of numerous claims and causes of action (other than specific litigation involving the Creditors' Committee, as set forth above), will be made by Reorganized Enron through its agents, and the board of Reorganized Enron appointed after consultation with the Creditors' Committee and the ENA Examiner will oversee such administration. The Debtors believe that the foregoing post-Effective Date administration is consistent with the goals of reducing the expenses in the Chapter 11 cases and will thereby maximize recoveries to creditors entitled to distributions under the Plan.

The Plan does provide, however, that the ENA Examiner may have a continuing role during the post-Effective Date period. Within 20 days after the Confirmation Date, the ENA Examiner or any creditor of ENA or its subsidiaries will be entitled to file a motion requesting that the Bankruptcy Court define the duties of the ENA Examiner for the period following the Effective Date. If no such pleading is timely filed, the ENA Examiner's role will conclude on the Effective Date. The Plan's flexibility in this regard is not intended nor will it be deemed to create a presumption that the role or duties of the ENA Examiner should or should not be continued after the Effective Date; provided, however, that in no event will the ENA Examiner's scope be expanded beyond the scope approved by orders entered as of the date of the Disclosure Statement Order. In the event that the Bankruptcy Court enters an order defining the post-Effective Date duties of the ENA Examiner, notwithstanding the narrower scope of the Creditors' Committee envisioned by the Plan, the Creditors' Committee will continue to exist following the Effective Date to exercise all of its statutory rights, powers and authority until the date the ENA Examiner's rights, powers and duties are fully terminated pursuant to a Final Order. The Debtors and the Creditors' Committee intend to object to the continuation of the ENA Examiner during the post-Effective Date period.

The Plan also provides for the appointment of a Reorganized Debtor Plan Administrator ("Administrator") on the Effective Date for the purpose of carrying out the provisions of the Plan. Pursuant to Section 1.226 of the Plan, the Administrator would be Stephen Forbes Cooper, LLC, an entity headed by Stephen Forbes Cooper, Enron's Acting President, Acting Chief Executive Officer and Chief Restructuring Officer.[34] In accordance with Section 36.2 of the Plan, the Administrator shall be responsible for implementing the distribution of the assets in the Debtors' estates to the Debtors' creditors, including, without limitation, the divestiture of Portland General common stock or the sale of that stock followed by the distribution of the proceeds to the Debtors' creditors. In addition, pursuant to the Plan, as of the Effective Date, the Reorganized Debtors will assist the Administrator in performing the following activities: (i) Holding the Operating Entities, including Portland General, for the benefit of Creditors and providing certain transition services to such entities, (ii) liquidating the Remaining Assets, (iii) making distributions to Creditors pursuant to the terms of the Plan, (iv) prosecuting Claim objections and litigation, (v) winding up the Debtors' business affairs, and (vi) otherwise implementing and effectuating the terms and provisions of the Plan.

Finally, in connection with the prosecution of litigation claims against financial institutions, law firms, accounting firms and similar defendants, a joint task force comprised of the Debtors, Creditors' Committee representatives and certain of their professionals was formed in order to maximize coordination and cooperation between the Debtors and the Creditors' Committee. Each member of the joint task force is entitled to, among other things, notice of, and participation in, meetings, negotiations, mediations, or other dispute resolution activities with regard to such litigation. Following the Effective Date, the Creditors' Committee representatives, together with the Creditors' Committee's professionals, may continue to participate in the joint task force.

[34] Mr. Cooper assumed this role at Enron on January 29, 2002, after Enron filed for bankruptcy under Chapter 11. Mr. Cooper is also the chairman of Kroll Zolfo Cooper, LLC ("Kroll"), and Kroll's Corporate Advisory and Restructuring Group. Kroll is a consulting company that provides services in corporate recovery and crisis management, forensic accounting, technology, intelligence, investigations and background screening. The Debtors state that Mr. Cooper, in his capacity as Enron's CEO, has worked with the Enron board, the Creditors' Committee, and other stakeholders in the bankruptcy process to sell non-core businesses, rehabilitate assets, prosecute the Debtors' claims against banks and professional advisors, and to assist employees. Mr. Cooper works under the supervision of Enron's board of directors, which is comprised of four individuals with extensive business and energy industry experience. The Enron board is wholly independent and each has the support of the Creditors' Committee.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3112 Filed 2–11–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49197; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Granting Approval of Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

February 5, 2004.

Notice is hereby given that the Securities and Exchange Commission ("SEC" or "Commission") has issued an Order, pursuant to sections 17(d)[1] and 11A(a)(3)(B)[2] of the Securities Exchange Act of 1934 ("Act"), granting approval of an amendment to the plan for allocating regulatory responsibility filed pursuant to Rule 17d–2 of the Act,[3] by the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc. ("ISE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "SRO participants").

I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every national securities exchange and registered securities association ("SRO") to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

[4] 15 U.S.C. 78s(g)(1).

to section 17(d) or 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1, adopted on April 20, 1976,[8] authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the Federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[9] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[10] On May 23, 2000, the Commission approved an amendment to the plan that added the ISE as a participant.[11] On November 8, 2002, the Commission approved another amendment that replaced the original plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner.[12] The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants.

Generally, under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm's "Designated Options Examining Authority" ("DOEA"). Pursuant to the plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period the firm is assigned to a DOEA.

III. Proposed Amendment to the Plan

On February 5, 2004, the parties submitted a proposed amendment to the plan. The primary purpose of the amendment is to include the BSE, which proposes establish a new options trading facility to be known as the Boston Options Exchange ("BOX"), as an SRO participant. The amended agreement replaces the previous agreement in its entirety. The text of the proposed amended 17d–2 plan is as follows (additions are italicized; deletions are bracketed):[13]

Agreement among the American Stock Exchange LLC, *the Boston Stock Exchange, Inc.*, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.

This Agreement, among the American Stock Exchange LLC, *the Boston Stock Exchange, Inc.*, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., hereinafter collectively referred to as the Participants, is made this [first] *14th* day of [July, 2002] *January, 2004* pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (the "Act"), which allows for plans among self-regulatory organizations to allocate regulatory responsibility.

WHEREAS, the Participants are desirous of allocating regulatory responsibilities with respect to their common members (members of two or more of the Participants) for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants (collectively, "Covered Securities"); and

WHEREAS, the Participants are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d–2 and filing such plan with the Securities and Exchange Commission ("SEC" or the "Commission") for its approval;

NOW, THEREFORE, in consideration of the mutual covenants contained hereafter, the Participants agree as follows:

I. Except as otherwise provided herein, each Participant shall assume Regulatory Responsibility (as hereinafter

[5] 15 U.S.C. 78s(g)(2).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

[10] *See* Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983).

[11] *See* Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 24759 (May 31, 2000). This Amendment also updated the corporate names of the Amex, the Midwest Stock Exchange (now known as the Chicago Stock Exchange, Inc.), and the Pacific Stock Exchange Incorporated (now known as the Pacific Exchange, Inc.).

[12] *See* Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

[13] Changes are marked from the most recent plan approved by the Commission on November 8, 2002. *See supra* note 12.

defined) for its members that are both (i) members of more than one Participant (hereinafter the "Common Members") and (ii) allocated to it in accordance with the terms hereof. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Examining Authority ("DOEA") of each Common Member allocated to it.

II. As used herein, the term "Regulatory Responsibility" shall mean the inspection, examination and enforcement responsibilities relating to compliance by the Common Members and persons associated therewith with the rules of the applicable Participant that are substantially similar to the rules of the other Participants (the "Common Rules") and the provisions of the Act and the rules and regulations thereunder, insofar as they apply to the conduct of accounts for Covered Securities. In discharging its Regulatory Responsibility, a DOEA may act directly and perform such responsibilities itself or may make arrangements for the performance of such responsibilities on its behalf by The Options Clearing Corporation, a national securities exchange registered with the SEC under Section 6(a) of the Act or a national securities association registered with the SEC under Section 15A of the Act, but excluding an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products. Without limiting the foregoing, a non-exhaustive list of the current, Common Rules of each Participant applicable to the conduct of accounts for Covered Securities is attached hereto as Exhibit A. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibility" does not include, and each of the Participants shall (unless allocated pursuant to Rule 17d–2 otherwise than under this Agreement) retain full responsibility for:

(a) surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(b) registration pursuant to its applicable rules of associated persons;

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Act;

(d) evaluation of advertising, responsibility for which shall remain with the Participant to which a Common Member submits same for approval; and

(e) any rules of a Participant that are not substantially similar to the rules of all of the other Participants.

III. Apparent violations of another Participant's rules discovered by a DOEA, but which rules are not within the scope of the discovering DOEA's Regulatory Responsibility, shall be referred to the relevant Participant for such action as the Participant to which such matter has been referred deems appropriate. Notwithstanding the foregoing, nothing contained herein shall preclude a DOEA in its discretion from requesting that another Participant conduct an enforcement proceeding on a matter for which the requesting DOEA has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in an investigation or enforcement proceeding.

IV. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council (the "Council"). The Council shall be composed of one representative designated by each of the Participants. Each Participant shall also designate one or more persons as its alternate representative(s). In the absence of the representative of a Participant, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each Participant may, at any time, by notice to the then Chair of the Council, replace its representative and/or its alternate representative on such Council. A majority of the Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. From time to time, the Council shall elect one member of the Council to serve as Chair and another to serve as Vice Chair (to substitute for the Chair in the event of his or her unavailability) for such term as shall be designated and until his or her successor is duly elected, provided that in the event a Participant replaces a representative who is acting as Chair or Vice Chair, such representative shall also assume the position of Chair or Vice Chair, as applicable. All notices and other communications for the Council shall be sent to it in care of the Chair or to each of the representatives.

V. The Council shall determine the times and locations of Council meetings, provided that the Chair, acting alone, may also call a meeting of the Council in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior thereto. Notwithstanding anything herein to the contrary, representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VI. For the purpose of fulfilling the Participants' DOEA Regulatory Responsibilities, the Council shall allocate Common Members that conduct a public options business among Participants from time to time in such manner as the Council deems appropriate, provided that any such allocation shall be based on the following [principals] *principles* except to the extent all affected Participants consent:

(a) The Council may not allocate a member to a Participant unless the member is a member of that Participant.

(b) To the extent practical, Common Members that conduct a public options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants. For example, if sixteen Common Members that conduct a public options business are members only of three Participants, such members shall be allocated among such Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members.

(c) To the extent practical, the allocation of Common Members shall take into account the amount of customer activity conducted by each member in Covered Securities such that Common Members shall be allocated among the Participants of which they are members in such manner as most evenly divides the Common Members with the largest amount of customer activity among such Participants.

(d) Insofar as practical, it is intended that allocation of Common Members to Participants will be rotated among the applicable Participants and, more specifically, that Common Members shall not be allocated to a Participant as to which such member was allocated within the previous two years.

(e) The Council shall make general reallocations of Common Members from time-to-time as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOEA, the DOEA shall promptly inform the Council, which shall promptly review the matter and allocate the Common Member to another Participant.

(g) A DOEA may request that a Common Member that is allocated to it be reallocated to another Participant by giving thirty days written notice thereof. The Council, in its discretion, may approve such request and reallocate such Common Member to another Participant.

(h) All determinations by the Council with respect to allocations shall be by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any allocation relating to a Common Member unless the Common Member is a member of such Participant.

(i) Allocations for calendar years [2003 and] 2004 *and 2005* shall also be subject to the provisions set forth at Appendix A hereof, which provisions shall control in the event of any conflict between them and the provisions set forth above.

VII. Each DOEA shall conduct a routine inspection and examination of each Common Member allocated to it on a cycle not less frequently than determined by the Council. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOEA. At each meeting of the Council, each Participant shall be prepared to report on the status of its examination program for the previous quarter and any period prior thereto that has not previously been reported to the Council. In the event a DOEA believes it will not be able to complete the examination cycle for its allocated firms, it will so advise the Council. The Council will undertake to remedy this situation by allocating selected firms and, if necessary, lengthening the cycles for selected firms.

VIII. Each Participant will, upon request, promptly furnish a copy of the report, or applicable portions thereof relating to Covered Securities, of any examination made pursuant to the provisions of this Agreement to each other Participant of which the Common Member examined is a member.

IX. Each Participant will, routinely, forward to each other Participant of which a Common Member is a member, copies of all communications regarding deficiencies relating to Covered Securities noted in a report of examination conducted by each Participant. If an examination relating to Covered Securities conducted by a Participant reveals no deficiencies, such fact will also, upon request, be communicated to each other Participant of which the Common Member concerned is a member.

X. Each DOEA's Regulatory Responsibility shall include investigations into terminations "for cause" of associated persons relating to Covered Securities, unless such termination is related solely to another Participant's market. In the latter instance, that Participant to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding a Covered Security-related termination for cause, the other Participants of which the Common Member is a member shall furnish, upon request, copies of all pertinent materials related thereto in their possession. As used in this Section, "for cause" shall include, without limitation, terminations characterized on Form *U5* [U–5] under the label "Permitted to Resign," "Discharge" or "Other."

XI. Each DOEA shall discharge the Regulatory Responsibility relative to a Covered Securities-related customer complaint or Form *U4* [U–4] filing[,] unless such complaint or filing is uniquely related to another Participant's market. In the latter instance, the DOEA shall forward the matter to that Participant to whose market the matter relates, and the latter shall discharge Regulatory Responsibility with respect thereto. If a Participant receives a customer complaint for a Common Member related to a Covered Security for which the Participant is not the DOEA, the Participant shall promptly forward a copy of such complaint to the DOEA.

XII. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to each Participant entitled to receipt thereof, to the attention of the Participant's representative on the Council at the Participant's then principal office or by e-mail at such address as the representative shall have filed in writing with the Chair.

XIII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any Participants may agree that one or more will compensate the other(s) for costs.

XIV. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Council.

XV. This Agreement may be amended in writing duly approved by each Participant.

XVI. Any of the Participants may manifest its intention to cancel its participation in this Agreement at any time upon the giving to the Council of written notice thereof at least 90 days prior to such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above, the petitioning Participant shall retain all its rights, privileges, duties and obligations hereunder.

XVII. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, provided that in the event a notice of cancellation is received from a Participant that, assuming the effectiveness thereof, would result in there being just one remaining member of the Council, notice to the Commission of termination of this Agreement shall be given promptly upon the receipt of such notice of cancellation, which termination shall be effective upon the effectiveness of the cancellation that triggered the notice of termination to the Commission.

Limitation of Liability

No Participant nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the Participants or the Council with respect to any Regulatory

Responsibility to be performed by each of them hereunder.

Relief From Responsibility

Pursuant to Section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, the Participants join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those Participants which are from time to time participants in this Agreement which are not the DOEA as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOEA.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

APPENDIX A—ALLOCATION PROVISIONS FOR CALENDAR YEARS [2003 AND] 2004 *AND 2005*

The allocation for calendar year [2003] *2004* shall be performed in accordance with the provisions of Section VI, provided that *there shall be a partial allocation to the Boston Stock Exchange, Inc. whereby the Boston Stock Exchange, Inc. is allocated one-half of its share of the total number of Common Members. For calendar year 2005, there shall be a reallocation whereby the Boston Stock Exchange, Inc. shall receive from the other DOEAs a number of Common Members to make the allocation equitable* [immediately following the initial allocation there shall be a partial reallocation whereby one-half of the Common Members allocated to the International Stock Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc. (such Participants being herein called the "New DOEAs") are reallocated among the other Participants that have such member in common. In the event that an initial allocation results in a New DOEA being allocated an odd number of Common Members, for purposes of the reallocation, such number shall be deemed to be increased by one or decreased by one to the extent this will result in the number of Common Members allocated to the remaining DOEAs being more equal. For example, if sixteen Common Members are members of one New DOEA as well as two DOEAs that are not New DOEAs, such members shall be allocated among such DOEAs in the normal manner such that two DOEAs are allocated five such members and the remaining DOEA is allocated six members. Thereafter and assuming only five Common Members were allocated to the New DOEA, three of the members allocated to the New DOEA would be reallocated among the DOEAs that are not New DOEAs such that the New DOEA shall end up with two Common Members allocated to it and the remaining two DOEAs shall both end up with seven Common Members. Again by way of example, if twenty-one Common Members are members of one New DOEA as well as three DOEAs that are not New DOEAs and the New DOEA received an allocation of five members and two of the remaining DOEAs also received an allocation of five members with the fourth DOEA receiving an allocation of six members, only two of the five Common Members allocated to the New DOEA would be reallocated since such reallocation would result in an equal allocation of six each among the remaining DOEAs. For calendar year 2004, the Common Members reallocated from the New DOEAs to the remaining DOEAs as part of the allocation for calendar year 2003 shall be reallocated back to the New DOEA to which such Common Member was originally allocated].

Exhibit A [14]—Participant Rules Applicable to the Conduct of Covered Securities: Rules Enforced Under 17d–2 Agreement

Opening of Accounts
- AMEX—Rules 411 and 921
- CBOE—Rule 9.7
- ISE—Rule 608
- NASD—Rule 2860(b)(16); IM–2860–2
- NYSE—Rules 721 and 405
- PHLX—Rule 1024(b)
- PCX—Rule 9.2(a) and Rule 9.18(b)
- *BSE/BOX—Chapter XI, Section 9*

Supervision
- AMEX—Rules 411 and 922
- CBOE—Rule 9.8
- ISE—Rule 609
- NASD—Rule 2860(b)(20)
- NYSE—Rules 722, 342 and 343
- PHLX—Rule 1025
- PCX—Rule 9.2(b)
- *BSE/BOX—Chapter XI, Section 10*

Suitability
- AMEX—Rule 923
- CBOE—Rule 9.9
- ISE—Rule 610
- NASD—Rule 2860(b)(19)
- NYSE—Rule 723
- PHLX—Rule 1026
- PCX—Rule 9.18(c)
- *BSE/BOX—Chapter XI, Section 11*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended plan 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–966. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the amended plan that are filed with the Commission, and all written communications relating to the amended plan 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of each of the SROs. All submissions should refer to File No. S7–966 and should be submitted by March 4, 2004.

V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants, and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective.[15] In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add the BSE as an SRO participant. By approving it today, the amendment can be implemented prior to the BSE's options trading facility, BOX, beginning its operations. In addition, the prior plan, which this amends, was published for comment, and no comments were received.[16] The Commission does not believe that the amendment raises any new regulatory issues.

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7–966. The SRO participants shall notify all members affected by the amended plan of their rights and obligations under the amended plan.

[14] This is a partial list of the rules provided to the Commission. The full list of rules provided to the Commission is available at the principal offices of each of the SROs and at the Commission's Public Reference Room.

[15] 17 CFR 240.17d–2(c).

[16] *See supra* note 12.

It is therefore ordered, pursuant to sections 17(d) [17] and 11A(a)(3)(B) [18] of the Act, that the amended plan of the Amex, BSE, CBOE, ISE, NASD, NYSE, PCX, and Phlx filed pursuant to Rule 17d–2 [19] is approved.

It is further ordered that those SRO participants that are not the DOEA as to a particular member are relieved of those responsibilities allocated to the member's DOEA under the amended plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3024 Filed 2–11–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49192; File No. SR–BSE–2004–05]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Establish a Six-Month Pilot for Market Opening Procedures of the Boston Options Exchange

February 4, 2004.

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 February 4, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 4, 2004, the Exchange submitted Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended for a six-month pilot period.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a provision to its Boston Options Exchange trading rules to provide for a six-month pilot regarding market opening procedures, that will expire on August 6, 2004. Proposed new language is *italicized.* Proposed deletions are in [brackets].

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RULES OF THE BOSTON STOCK EXCHANGE

RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY

Trading of Options Contracts on BOX

Chapter V Doing Business on BOX

* * * * *

Sec. 9 Opening the Market

The following rules are in effect until August 6, 2004.

(a) Pre-Opening Phase. [Orders may be submitted, modified and cancelled throughout the pre-opening phase preceding the start of the market. Customers may only submit Market-On-Opening or limit orders pursuant to Section 14(c) of this Chapter V. In addition, any open and unexecuted orders from the previous trading session, which are still valid, will remain on the BOX Book during the pre-opening phase. Market Makers shall submit orders during the pre-opening phase pursuant to their obligations' under Chapter VI of these Rules. No trade matches are to occur during the pre-opening phase. BOX will calculate a theoretical opening price ("TOP") and broadcast it to all BOX market participants throughout this period. The TOP is the price at which opening trades would occur if the opening were to commence at that given moment.

(b) Opening Match. BOX will determine a single price at which a particular option series will be opened. BOX will calculate the optimum number of options contracts that could be matched at a price, taking into consideration all the orders on the BOX Book.

i. The opening match price is the price which will result in the matching of the highest number of options contracts.

ii. Should two or more prices satisfy the maximum quantity criteria, the price which will leave the fewest resting orders in the BOX Book will be selected as the opening match price.

iii. Should there still be two or more prices which meet both criteria in paragraphs (i) and (ii), the price which is closest to the previous day's closing price will be selected as the opening match price.

(c) The determination of the opening match price in each series of options shall be held promptly following the opening of the underlying security in the primary market where it is traded. An underlying security shall be deemed to be opened on the primary market where it is traded if such market has (i) reported a transaction in the underlying security, or (ii) disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever first occurs.

(d) The opening match in any options class shall be delayed until the underlying security has opened for trading in the primary market, unless BOXR determines that the interests of a fair and orderly market are best served by opening trading in the options class. In the event that the underlying security has not opened within a reasonable time after 9:30 a.m. est, an Options Official shall report the delay to the Market Regulation Center and an inquiry shall be made to determine the cause of the delay.

(e) BOXR may delay the opening match in any class of options in the interests of a fair and orderly market.]

For some period of time before the opening in the underlying security (as determined by BOXR but not less than one hour and distributed to all BOX Participants via regulatory circular from BOXR), the BOX Trading Host will accept orders and quotes. During this period, known as the Pre-Opening Phase, orders and quotes are placed on the BOX Book but do not generate trade executions. Complex Orders and contingency orders (except "Market-on-Opening", Minimum Volume, and Fill and Kill orders) do not participate in the opening and are not accepted by the BOX Trading Host during this Pre-Opening Phase. BOX-Top Orders and Price Improvement Period orders are not accepted during the Pre-Opening Phase.

(b) Calculation of Theoretical Opening Price. From the time that the BOX Trading Host commences accepting orders and quotes at the start of the Pre-Opening Phase, the BOX Trading Host will calculate and provide the Theoretical Opening Price ("TOP") for the current resting orders and quotes on the BOX Book during the Pre-Opening Phase. The TOP is that price at which the Opening Match would occur at the current time, if that time were the opening, according to the Opening Match procedures described in

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[17] 15 U.S.C. 78q(d).

[18] 15 U.S.C. 78k–1(a)(3)(B).

[19] 17 CFR 240.17d–2.

[20] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John A. Boese, Vice President Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 4, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made a technical correction to the rule text.

paragraph (e) below. The quantity that would trade at this price is also calculated. The TOP is re-calculated and disseminated every time a new order or quote is received, modified or cancelled and where such event causes the TOP price or quantity to change.

A TOP can only be calculated if an opening trade is possible. An opening trade is possible if: (i) The BOX Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals lowest offer), or there are Market-on-Opening Orders in the BOX Book and (ii) at least one order or quote on the opposite side of the market.

(c) Broadcast Information During Pre-Opening Phase. The BOX Trading Host will disseminate information to all BOX Participants about resting orders in the BOX Book that remain from the prior business day and any orders or quotes sent in before the Opening Match. This information will be disseminated in the usual BOX format of five best limits and associated quantity, aggregating all orders and quotes at each price level. This broadcast will also include the TOP and the quantity associated with the TOP. Any orders or quotes which are at a price better (i.e. bid higher or offer lower) than the TOP, as well as all Market-on-Opening orders will be shown only as a total quantity on the BOX Book at a price equal to the TOP.

(d) Market Maker Obligations During Pre-Opening Phase. BOX Market Makers holding an assignment on a given options class are obliged, as part of their obligations to ensure a fair and orderly market, to provide continuous two-sided quotes according to the BOX minimum standards commencing with the minute preceding the scheduled opening of the market for the underlying security.

(e) Opening Match.

(i) Complex Orders and contingency orders do not participate in the Opening Match or in the determination of the opening price. The BOX Trading Host will establish the opening price at the time of the Opening Match. The opening price is the TOP at the moment of the Opening Match. The BOX Trading Host will process the series of a class in a random order, starting at the first round minute after the opening for trading of the underlying security, and at each round minute thereafter. If the opening of a particular class is to occur within 15 seconds of the next round minute, the opening of that class will take place at the next subsequent round minute after the round minute that is 15 or less seconds away (i.e. within 75 seconds). In determining the priority of orders to be filled, the BOX Trading Host will give priority to Market-on-Opening orders first, then to Limit Orders whose price is better than the opening price, and then to resting orders on the BOX Book at the opening price. One or more series of a class may not open because of conditions cited in paragraph (f) of this Section 9.

(ii) The BOX Trading Host will determine a single price at which a particular option series will be opened. BOX will calculate the optimum number of options contracts that could be matched at a price, taking into consideration all the orders on the BOX Book.

(1) The opening match price is the price which will result in the matching of the highest number of options contracts.

(2) Should two or more prices satisfy the maximum quantity criteria, the price which will leave the fewest resting contracts in the BOX Book will be selected as the opening match price.

(3) Should there still be two or more prices which meet both criteria in subparagraphs (1) and (2), the price which is closest to the previous day's closing price will be selected as the opening match price. For new classes in which there is no previous day's closing price, BOX will utilize the price assigned to the class by BOX at the time the class was created ("reference price").

(f) As the Opening Match price is determined by series, the BOX Trading Host will proceed to move the series from the Pre-Opening Phase to the continuous or regular trading phase and disseminate to OPRA and to all Options Participants the opening trade price, if any. At this point, the BOX trading system is open for trading and all orders and quotes are accepted and processed according to the BOX trading rules. When the BOX Trading Host cannot determine an opening price, but none of the reasons exist for delaying an opening as outlined in paragraph (g) of this Section 9, below, the series will nevertheless move from Pre-Opening Phase to the continuous trading phase.

(g) The BOX Trading Host will not open a series if one of the following conditions is met:

i. The opening price is not within an acceptable range as determined by the MRC, and will be announced to all BOX Participants via the Trading Host. (In making this determination the MRC will consider, among other factors, all prices that exceed a variance greater than either $.50 or 20% to the previous day's closing price.)

ii. There is a Market-on-Opening order with no corresponding order or quote on the opposite side.

(h) If one of the conditions in paragraph (g) of this Section 9 is met, the MRC will not open the series but will send a RFQ. MRC will delay the opening of the series until such time as responses to the RFQ from the BOX Market Makers assigned to the class, or other interested trading parties, have been received and booked by the BOX Trading Host and the consequent opening price is deemed compatible with an orderly market.

(i) MRC may order a deviation from the standard manner of the opening procedure, including delaying the opening in any option class, when it believes it is necessary in the interests of a fair and orderly market.

(j) The procedure described in this Section 9 may be used to reopen a class after a trading halt.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add a new section to the Rules of the Boston Options Exchange on a six-month pilot basis relating to opening the market. Chapter V, Doing Business on BOX, Section 9, Opening the Market, establishes guidelines regarding market opening procedures.

The BOX Opening the Market process is designed to maximize the transparency of the opening process, enable the widest possible participation and ensure that the principles of price and time priority are respected. Achieving these three goals should ensure a fair and orderly market opening at a price determined by the convergence of all buy and sell interests at that moment. The BSE believes that the BOX Pre-Opening Phase and Opening Match process would be transparent and encourage participation of all market participants by treating all orders equally.

General Description

Prior to the start of trading each day, the BOX Trading Host would be in Pre-Opening Phase. This Pre-Opening Phase would commence at least one hour prior to the scheduled Opening Match. All BOX Options Participants would be informed of the precise time of the Pre-Opening Phase via a regulatory circular disseminated by BOXR (BOXR currently plans to start the Pre-Opening Phase at 7:45 a.m. est). During the Pre-Opening Phase Options Participants would be able to enter, modify and cancel orders and quotes, including Limit Orders, Fill and Kill orders, Market-on-Opening orders and quotes. Moreover, Limit Orders from previous trading sessions which are still valid (*e.g.* GTC orders) would be automatically brought to the new Pre-Opening Phase and also would be available for modification and cancellation. During the Pre-Opening Phase the Trading Host would prohibit BOX-Top and Price Improvement Period ("PIP") orders. A Theoretical Opening Price ("TOP"), which is the price which would be the opening price if the Opening Match were to occur at that moment, would be calculated and broadcast continuously to all BOX Options Participants during the Pre-Opening Phase; however, no orders would be matched, nor trades executed. All Pre-Opening Phase allowable orders and quotes may continue to be entered, modified and cancelled up to the moment of the Opening Match. Any orders or quotes remaining on the BOX Book after the Opening Match would be accessible for modification or cancellation during regular trading.

Theoretical Opening Price

From the time that the BOX Trading Host commences accepting orders and quotes at the start of the Pre-Opening Phase, the BOX Trading Host would calculate and provide the TOP for the current orders and quotes on the BOX Book during the Pre-Opening Phase.

The TOP is that price at which the greatest number of options contracts in the BOX Book would be traded. If there is more than one price that would satisfy this criteria, the TOP is the price that would then leave the fewest number of resting, options contracts on the BOX Book after execution of all eligible quantities at the TOP. If there is still more than one price satisfying both these criteria, the TOP would be the price closest to the previous day's closing price.

The quantity that would theoretically trade at the TOP also would be calculated. The TOP would be re-calculated and disseminated every time a new order or quote is received, modified or cancelled and where such event causes the TOP price or quantity to change. A TOP can only be calculated if an opening trade is possible. An opening trade is possible if: (1) the BOX Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals lowest offer), or there are Market-on-Opening orders in the BOX Book and (2) at least one order on the opposite side of the market, which may include another Market-on-Opening order.

Broadcast During Pre-Opening Phase

Throughout the Pre-Opening Phase, Options Participants would receive the BOX broadcast that includes the "five best limits" (total quantity of contracts and number of orders for each price on each side of the market), which is identical to that provided by BOX during the regular trading day. In addition, during the Pre-Opening Phase, the BOX broadcast would include the TOP as well as the total quantity of contracts and orders on each side of the market that could execute at that price. This quantity would include Limit Orders and quotes equal to or better than the TOP, as well as Market-on-Opening orders. As with all BOX market data broadcasts, the orders and quotes are anonymous.

Opening Match

The Opening Match would be at the conclusion of the Pre-Opening Phase when the eligible orders would be executed. The Opening Match price would be the TOP at the moment of the Opening Match. In determining which orders would be executed at the opening price in the case of an imbalance between bids and offers, the BOX Trading Host would give priority to Market-on-Opening orders first, then to Limit Orders whose price is better than the opening price, and then to resting orders on the BOX Book at the opening price. Immediately following the Opening Match, the options series would move into a continuous, or regular trading phase. The BOX Trading Host would process the series of a class in a random order, starting at the first round minute after the opening for trading of the underlying security, and at each round minute thereafter. If the opening of a particular class would occur within 15 seconds of the next round minute, the opening of that class would take place at the next subsequent round minute after the round minute that is 15 or less seconds away (*i.e.* within 75 seconds). The BSE estimates that the entire process for a class generally would take fewer than five seconds. As the Opening Match price is determined for each series, the BOX system would proceed to move that series from the Pre-Opening Phase to the continuous or regular trading phase and would disseminate to the Options Price Reporting Authority and to all Options Participants the opening trade price, if any. At this point, the BOX trading system would be open for trading in that series and all orders and quotes would be accepted and processed according to the BOX trading rules.

When there is no Opening Match possible due to the absence of matching orders or quotes and none of the reasons exist for delaying an opening as outlined in paragraph (g) of Section 9 and as described below, the series would nevertheless move from the Pre-Opening Phase to the continuous or regular trading phase. This situation would occur when no orders or quotes are on the BOX Book at the time of the scheduled Opening Match calculation. Consequently, the series would be open for trading under the BOX market rules and procedures for the continuous or regular trading phase, and BOX would be able to receive orders and quotes as they are submitted. BOX would send an advisory message to all Options Participants when any option series has been opened and moved into the continuous or regular trading phase, including those where no opening match trade was possible.

BOX Market Makers During Pre-Opening Phase

The BOX Market Maker obligations provide that each Market Maker in an appointed class should begin to assume his quoting obligations no later than one minute prior to the scheduled opening of the underlying security. This time (at present 9:29 EST) will be communicated to Options Participants via regulatory circular from BOXR. BOX Market Maker obligations also provide that Market Makers are responsible for ensuring a fair and orderly opening of the market and that they must respond within three seconds with a bid and offer for at least ten contracts if an RFQ is issued on a class where they do not already have a quote.

Delayed Opening

BOX would delay the opening of an options series if it is determined by the Market Regulation Center ("MRC") and announced to all BOX Participants via the Trading Host that the Opening Match price (as indicated by the TOP) would be outside an acceptable price range. In making such a determination the MRC would consider, among other factors, prices that exceed a variance

greater than either $0.50 or 20% to the previous day's closing price. BOX would also delay the opening of an options series if there is no order or quote on the opposite side of the market from a Market-on-Opening order. In each case, the MRC would issue an RFQ obliging BOX Market Makers to furnish additional orders and quotes such that the options series may open fairly.

Pursuant to Section 19(b)(2) of the Act,[4] the BSE requests that the Commission find good cause to accelerate the effectiveness of this rule filing. The Exchange believes accelerated approval is warranted because the proposed rule change will provide standardized market open procedures for BOX that the BSE can surveil for and enforce, that will be in place on the first day that trading begins on BOX. Because the proposed rule change is a pilot, the BSE will be able to assess the proposed rule change before requesting permanent approval of the BOX's market open rules. The BSE also requests acceleration of effectiveness for business considerations. The BSE acknowledges that it may be required to amend BOX's market open rules before the Commission will approve them on a permanent basis. Accordingly, the BSE requests that the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,[5] in general, and furthers the objective of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the general public by standardizing procedures during market openings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as amended, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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–BSE–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by March 4, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review of the proposal, as amended, the Commission finds that the proposed rule change to establish BOX Market Opening procedures for a six-month pilot period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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.[9] The Commission believes that the proposed rules should help to ensure that the opening of the BOX Market is conducted in a fair and orderly fashion.

Pursuant to Section 19(b)(2) of the Act,[10] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change prior to the 30th day after publishing notice of the proposal in the **Federal Register**.

The Commission notes that many of the proposed revisions to the provisions of the BOX Market Opening procedures are modeled on existing rules of the other options exchanges. The Commission believes that accelerating approval of these rules for the BOX Market Opening is appropriate because these revisions do not raise new regulatory issues. Other revisions, although not based on existing exchange rules, were not material to the overall proposal because such revisions clarify the proposed BOX Market Opening procedures and ensure that each series will open in a fair and orderly fashion in the absence of a specialist or primary market maker. Further, the Commission believes that granting accelerated approval of the proposal will allow the BSE to expeditiously implement the pilot program to launch the BOX Market without any unnecessary delay. Accordingly, pursuant to Section 19(b)(2),[11] the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended, (SR–BSE–2004–05) is hereby approved on an

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving the Exchange's proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

accelerated basis, for a six-month pilot period until August 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3023 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49191; File No. SR–BSE–2004–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Add a New Section to the Rules of the Boston Options Exchange Relating to the Exercise and Delivery of Options Contracts

February 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to 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 BSE. On February 4, 2004, the BSE amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules of the Boston Options Exchange (the "BOX Rules") regarding the exercise and delivery of options contracts. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deleted text is [bracketed].

* * * * *

RULES OF THE BOSTON STOCK EXCHANGE

RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY

Trading of options contracts on BOX

Chapter VII. Exercises and Deliveries

Sec. 1 Exercise of Options Contracts

(a) Subject to the restrictions set forth in Chapter III, Section 9 of these Rules (Exercise Limits) and to such restrictions as may be imposed pursuant to Chapter III, Section 12 of these Rules (Other Restrictions on Options Transactions and Exercises) or pursuant to the Rules of the Clearing Corporation, an outstanding options contract may be exercised during the time period specified in the Rules of the Clearing Corporation by the tender to the Clearing Corporation of an exercise notice in accordance with the Rules of the Clearing Corporation. An exercise notice may be tendered to the Clearing Corporation only by the Clearing Participant in the account of which such options contract is carried with the Clearing Corporation. *Participants may establish fixed procedures as to the latest time they will accept exercise instructions from customers.*

[(b) The exercise cutoff time for all non cash-settled options shall be 5:30 p.m. EST on the business day immediately prior to the expiration date. This is the latest time at which an exercise instruction for expiring non cash-settled options positions may be:

i. Prepared by a Clearing Participant for positions in its proprietary trading account;

ii. Submitted to a Clearing Participant by an Options Participant for positions in the Options Participant's account or error account;

iii. Accepted by an Options Participant from any customer for its positions in the customer's account.

(c) Notwithstanding the foregoing, Options Participants may receive and Options Participants may submit exercise instructions after the exercise cutoff time but prior to expiration in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Participant and a copy thereof shall be promptly filed with BOXR. An exercise instruction after the exercise cutoff may be received or submitted:

i. in order to remedy mistakes or errors made in good faith;

ii. where exceptional circumstances relating to a customer's or person's ability to communicate exercise instructions to the Participant (or the Participant's ability to receive exercise instructions) prior to such cutoff time warrant such action.

(d) Submitting or preparing an exercise instruction after the exercise cutoff time in any expiring options on the basis of material information released after the cutoff time is activity inconsistent with just and equitable principles of trade.

(e) For purposes of this Chapter VII with respect to any Options Participant, the word "customer" shall mean every person or organization other than a Market Maker, broker or the Participant itself. The term "exercise instruction," with respect to a Market Maker, broker and Clearing Participant, shall also mean a notice either not to exercise an options position which would otherwise be exercised, or to exercise an options position which would otherwise not be exercised, by operation of the Rules of the Clearing Corporation, or to modify or withdraw a previously submitted instruction. All exercise instructions must be time stamped at the time they are prepared.

(f) No Options Participant may prepare, time stamp or submit an exercise instruction prior to the purchase of the exercised contracts if the Options Participant knew or had reason to know that the contracts had not yet been purchased.

(g) Clearing Participants must follow the procedures of the Clearing Corporation when exercising expiring non cash-settled equity options contracts. Options Participants also must follow the procedures set forth below with respect to the exercise of non cash-settled equity options contracts which would otherwise not be exercised, or the non exercise of contracts which otherwise would be exercised, by operation of Clearing Corporation Rule 804:

i. For all contracts so exercised or not exercised, a "contrary exercise advice," must be delivered by the Market Maker, broker or clearing firm, as applicable, in such form or manner prescribed by BOXR no later than 5:30 p.m. est.

ii. Subsequent to the delivery of a "contrary exercise advice," should the Market Maker, broker, customer or firm determine to act other than as reflected on the original advice form, the Market Maker, broker, or clearing firm, as applicable, must also deliver an "advice cancel," in such form or manner prescribed by BOXR no later than 5:30 p.m. est.

iii. Options Participants shall properly communicate to BOX final exercise decisions in respect of

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[12] 17 CFR 200.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John A. Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 4, 2004 ("Amendment No. 1"). In Amendment No. 1, the BSE made technical corrections to its rule text, changing two references of the term "Exchange" to "BOX."

positions for which they are responsible.

iv. The preparation, time stamping or submission of a "contrary exercise advise" prior to the purchase of the contracts to be exercised or not exercised shall be deemed a violation of this Section.

v. All of the above procedures of this paragraph (g) are in full force and effect whether or not the Clearing Corporation waives the exercise by exception provisions of its Rule 804; in the event of such waiver the procedures of this paragraph shall be followed as if such provisions of Clearing Corporation Rule 804 were in full force and effect. The Clearing Corporation rules may require the submission of an affirmative exercise notice even in circumstances where a contrary exercise advise is not submitted.

vi. The failure of any Options Participant to follow the procedures in this paragraph (g) may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by BOXR.]

(b) Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by the Clearing Corporation, expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to the Rules of the Clearing Corporation, the following BOX requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:

(i) take no action and allow exercise determinations to be made in accordance with the Clearing Corporation's Ex-by-Ex procedure where applicable; or

(ii) submit a "Contrary Exercise Advice" to BOX by the deadline specified in paragraph (c) below. A Contrary Exercise Advice is a communication either: (a) To not exercise an option that would be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure, or (b) to exercise an option that would not be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure. A Contrary Exercise Advice may be submitted by a Participant by using BOX's Contrary Exercise Advice Form, the Clearing Corporation's ENCORE system, a Contrary Exercise Advice form of any other national securities exchange of which the firm is a Participant and where the option is listed, or such other method as BOX may prescribe. A Contrary Exercise Advice may be canceled by filing an "Advice Cancel" with BOX or resubmitted at any time up to the submission cut-off times specified below.

(c) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. For customer accounts, Participants may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice. For non-customer accounts, Participants may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice if such Participant employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Consistent with Supplemental Material .03, Participants are required to submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Participants do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.

(d) If the Clearing Corporation has waived the Ex-by-Ex procedure for an options class, Participants must either:

(i) submit to BOX, a Contrary Exercise Advice, in a manner specified by BOX, within the time limits specified in paragraph (c) above if the holder intends to exercise the option; or

(ii) take no action and allow the option to expire without being exercised. In cases where the Ex-by-Ex procedure has been waived, the Rules of the Clearing Corporation require that Participants wishing to exercise such options must submit an affirmative Exercise Notice to the Clearing Corporation, whether or not a Contrary Exercise Advice has been filed with BOX.

(e) A Participant that has accepted the responsibility to indicate final exercise decisions on behalf of another Participant or non-Participant broker-dealer shall take the necessary steps to ensure that such decisions are properly indicated to BOX. Such Participant may establish a processing cut-off time prior to BOX's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each Participant that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions are indicated in a timely manner to such broker-dealer.

(f) Notwithstanding the foregoing, Participants may make final exercise decisions after the exercise cut-off time but prior to expiration without having submitted a Contrary Exercise Advice in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Participant and a copy thereof shall be filed with BOX no later than 12:00 noon Eastern Time on the first business day following the respective expiration. An exercise decision after the exercise cut-off time may be made:

(i) in order to remedy mistakes or errors made in good faith; or

(ii) where exceptional circumstances have restricted an option holder's ability to inform a Participant of a decision regarding exercise, or a Participant's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the Participant seeking to rely on such exceptions.

(g) In the event BOX provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Paragraph (c) of this Section 1. However, Participants may deliver a Contrary Exercise Advice or Advice Cancel to BOX within 2 hours 28 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. Eastern Time deadline found in Paragraph(c) of this Section 1 for customer accounts and non-customer accounts where such Participant employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, Participants that do not employ an electronic procedure with time stamp for the

submission of exercise instructions are required to deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Paragraph(c) of this Section 1.

(h) Modification of cut-off time.

(i) BOX may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances. For purposes of this subparagraph (h)(i), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

(ii) BOX with at least one (1) business day prior advance notice, by 12:00 noon on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading. For purposes of this subparagraph (h)(ii), an "unusual circumstance" includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.

(i) Submitting or preparing an exercise instruction, contrary exercise advice or advice cancel after the applicable exercise cut-off time in any expiring options on the basis of material information released after the cut-off time is activity inconsistent with just and equitable principles of trade.

(j) The failure of any Participant to follow the procedures in this Section 1 may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by BOX.

Supplementary Material

.01 For purposes of this Section 1, the terms "customer account" and "non-customer account" have the same meaning as defined in the Clearing Corporation By-Laws Article I(C)(28) and Article I(N)(2), respectively.

.02 Each Participant shall prepare a memorandum of every exercise instruction received showing the time when such instruction was so received. Such memoranda shall be subject to the requirements of SEC Rule 17a–4(b).

.03 Although the deadline for all option holders to make a final decisicn to exercise or not exercise is 5:30 p.m. Eastern Time, the deadline for the submission of the Contrary Exercise Advice in the case of non-customer accounts will depend on the manner of the decision to exercise or not exercise.

(i) For electronic time stamp submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by Participants must be received by BOX by 6:30 p.m. Eastern Time.

(ii) For manual submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by Participants must be received by BOX by 5:30 p.m. Eastern Time.

.04 Each Participant shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

.05 The filing of a Contrary Exercise Advice required by this Section 1 does not serve to substitute as the effective notice to the Clearing Corporation for the exercise or non-exercise of expiring options.

* * * * *

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 BSE 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 and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the BOX Rules relating to the exercise of options contracts. Chapter VII, *Exercises and Deliveries*, Section 1, *Exercise of Options Contracts* contains various procedures, requirements, and guidelines regarding the exercise of options contracts. Due to recent changes in the practices and rules of other options exchanges in this area, particularly in regard to contrary exercise advices, the BSE proposes to amend Chapter VII, *Exercises and Deliveries*, Section 1, *Exercise of Options Contracts* in order to remain consistent with the similar rules of other options exchanges.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act in general [4] and furthers the objectives of Section 6(b)(5) in particular,[5] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the general public by adopting rules for the exercise of options contracts consistent with the rules of the Options Clearing Corporation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section

[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(5).
[6] 15 U.S.C. 78s(b)(3)(A).
[7] 17 CFR 240.19b–4(f)(6)

19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action in consistent with the protection of investors and the public interest. The BSE has requested that the Commission accelerate the thirty-day operative date so that the Exchange may remain competitive with other exchanges that currently have similar rules in effect.

The Commission believes that waiving the thirty-day operative date is consistent with the protection of investors and the public interest.[12] Accelerating the operative date will allow the BSE to immediately implement rules similar to ones already in place at the other options exchanges,[13] and will simplify and clarify the process by which BOX Participants accept exercise decisions from options holders and submit such decisions to the Exchange. For these reasons, the Commission designates the proposed rule change, as amended, as effective and operative immediately. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such proposed 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.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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–BSE–2004–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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 Exchange. All submissions should refer to File No. SR–BSE–2004–04 and should be submitted by March 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.15 U.S.C. 78c(f).

[13] *See* Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR–Amex–2001–92); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR–ISE–2003–20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR–PCX–2003–47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR–Phlx–2003–65).

[14] For purposes of calculating the sixty-day abrogation period, the Commission considers the period to commence on February 4, 2004, the date at which the Exchange filed Amendment No. 1.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49194; File No. SR–CBOE–2003–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Obvious Error Rule

February 5, 2004.

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 December 22, 2003, the Chicago Board Options Exchange, Inc. ("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. On January 20, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Legal Division, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 16, 2004. Amendment No. 1 amended the introductory paragraph of CBOE Rule 6.25 to clarify that existing paragraphs (b)–(e) of CBOE Rule 6.25 will apply to the adjustment and nullification of open outcry transactions in the exact same manner that they apply to electronic transactions. Amendment No. 1 also amended the title of CBOE Rule 6.25 to eliminate the word "Electronic."

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend portions of its obvious error rule to open outcry transactions. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Rule 6.25 Nullification and Adjustment of [Electronic] Transactions

This Rule governs the nullification and adjustment of options trades [executed electronically and has no application to options trades executed in open outcry]. *Paragraphs (a)(1), (2), and (6) of this Rule have no applicability to trades executed in open outcry.*

(a)–(e) No change.

Interpretations and Policies * * *

.01—.02 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 24, 2003, the Commission approved CBOE's obvious error rule,[4] which establishes six specific objective guidelines that may be used as the basis for adjusting or nullifying a transaction. The Exchange specifically limited application of the obvious error rule to trades executed electronically, the premise being, according to CBOE, that parties to an open outcry trade would have an opportunity to evaluate whether to enter into a transaction prior to actually consummating that transaction. Therefore, if the market maker determined to make the trade after evaluating all available information, he shouldn't be able to reconsider the decision after the trade occurred. Recent events have proved that while this is generally a sound premise, instances outside of the control of the Exchange and the parties to a trade necessitate a different conclusion. For this reason, the Exchange proposes to amend its obvious error rule to make certain limited portions of the rule applicable to open outcry trades.

Specifically, CBOE proposes to extend the application of CBOE Rule 6.25(a)(3), (4), and (5) to open outcry trades. CBOE also proposes that existing paragraphs (b)–(e) of CBOE Rule 6.25 would apply to the adjustment and nullification of open outcry transactions in the exact same manner that they apply to electronic transactions.

CBE Rule 6.25(a)(3), (4), and (5) cover: Verifiable Disruptions or Malfunctions of Exchange Systems, Erroneous Print in the Underlying, and Erroneous Quote in the Underlying. Market makers base their quotes off of the underlying and each of these provisions covers instances where the information the market maker is using to price options is erroneous, through no fault of their own. For instance, with respect to sections (4) and (5) of CBOE Rule 6.25, an erroneous quote or print in the underlying means that the market maker is receiving erroneous information from the underlying market, which he then incorporates into his quotes. In these instances, CBOE represents that the market maker has little if any chance of pricing options accurately. CBOE believes that the same rationale as to why these provisions apply to electronic trades should apply to open outcry trades.

CBOE offers the following example: assume that the Nasdaq Stock Market reports bad trades and then, pursuant to its NASD Rule 11890, either nullifies or adjusts them. During this period, assume 10 trades execute on CBOE, eight of which occur electronically, and two of which occur in open outcry. The Exchange, pursuant to CBOE Rule 6.25(a)(4), can adjust or nullify the electronic trades; however, it can do nothing regarding the open outcry trades. CBOE believes that this is certainly an unintended and inequitable result.

The Exchange does not propose to extend the application of sections (a)(1) (Obvious Price Error), (a)(2) (Obvious Quantity Error), and (a)(6) (Trades Below Intrinsic Value) of CBOE Rule 6.25 to open outcry trading. With respect to subparagraph (a)(1) (Obvious Price Error), CBOE believes that if a market maker receives accurate underlying pricing information and gives an inaccurate quote, he must live with the consequences of his actions. This also applies to instances in which the market maker gives a verbal quote with a bigger size than intended or where he inadvertently prices an option under parity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of section 6(b)(5)[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. CBOE believes that the proposal provides for the adjustment or nullification of trades executed at clearly erroneous prices due to the receipt by the market maker of inaccurate pricing information that he uses to price his markets. CBOE notes that the exact same provisions have already been approved in the context of electronic trading.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2003–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should be submitted by March 4, 2004.

[4] *See* Securities Exchange Act Release No. 48827 (November 24, 2003), 68 FR 67498 (December 2, 2003) (File No. SR–CBOE–2001–04).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3109 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49203; File No. SR–CHX–2002–09]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated, Adding Certain Rules to the CHX Minor Rule Violation Plan

February 6, 2004.

On April 11, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") 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 that would add to the CHX Minor Rule Violation Plan ("Plan") certain violations of Rule 11Ac1–1 under the Act[3] ("Firm Quote Rule"), as well as violations of CHX Article XX, Rule 37(a) ("BEST Rule") and CHX Article XX, Rule 37, Interpretation and Policy .04 ("Ability to Switch MAX to Manual Execution" procedures). The CHX amended the proposed rule change on December 17, 2003, and again on December 22, 2003.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on January 6, 2004.[5] The Commission received no comments on the proposal.

The Commission has reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).[6] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Additionally, the Commission finds the proposal is consistent with Rule 19d–1(c)(2) under the Act,[8] which governs minor rule violation plans. For these reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 6(b)(5)[9] in particular.

The Commission believes that the proposed rule change should enable the Exchange to appropriately discipline its members and others associated with its members for violation of these rules. In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Exchange will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan on a case by case basis, or if a violation requires formal disciplinary action.

In addition, the Commission notes that the rules that the CHX is adding to the Plan through the proposed rule change relate to specialists' market making obligations. The Commission believes that only the most technical and non-substantive violations of a specialist's market making obligations should be handled pursuant to the Plan.[10]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2002–09), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3110 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49196; File No. SR–EMCC–2003–06]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Admission Criteria for Members

February 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 2003, Emerging Markets Clearing Corporation ("EMCC") 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 primarily by EMCC. 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 amends EMCC's Rule 2, Section 6, Admission Criteria for Members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11Ac1–1.

[4] Each amendment completely replaced and superseded the previous filing.

[5] Securities Exchange Act Release No. 49004 (December 29, 2003), 69 FR 00709.

[6] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 19d–1(c)(2).

[9] 15 U.S.C. 78f(b)(5).

[10] *See, e.g.*, Securities Exchange Act Release No. 27878 (April 14, 1990), 55 FR 13345 (April 10, 1990)(SR–NYSE–89–44).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make a technical amendment to EMCC's Rule 2, Section 6 to eliminate erroneous references to "Excess" Net Capital regarding the calculation of the aggregate indebtedness to net capital ratio and the net capital to aggregate debit item ratio as set forth in the rule.

EMCC believes that as a technical change to its rules, the proposed rule change is concerned solely with the administration of EMCC and is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from EMCC members have not been solicited or received on the proposed rule change.

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)(i) of the Act [3] and Rule 19b–4(f)(1) [4] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. 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–EMCC–2003–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC and on EMCC's Web site at *http://www.e-m-c-c.com/legal/index.html*. All submissions should refer to the File No. SR–EMCC–2003–06 and should be submitted by March 4, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3021 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49195; File No. SR–ISE–2003–38]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc. To Increase the Number of Authorized Shares of Class B Common Stock, Series B–2 From 130 to 160

February 5, 2004.

On December 11, 2003, the International Securities Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] to increase the number of authorized shares of Class B Common Stock, Series B–2 from 130 to 160. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships. The proposed rule change was published for comment in the **Federal Register** on December 30, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act which requires, among other things, that the Exchange's rule be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the sale of 30 additional CMM Memberships may increase the depth and liquidity of the Exchange's market. It may also provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange also represented that it has carefully evaluated its systems capacity and believes that it has more than sufficient capacity to handle the increased number of CMM Members without any adverse effects. Furthermore, the Exchange noted that it would require a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–ISE–2003–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3026 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48959 (December 18, 2003), 68 FR 75296.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48407A; File No. SR–NASD–00–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Margin Requirements; Correction

February 5, 2004.

Release No. 34–48407 (the "Release"), issued on August 25, 2003, and published in the **Federal Register** on September 2, 2003,[1] contained an error in Part IV.[2] Specifically, Part IV of the Release stated that "the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $40 million and financial assets of at least $45 million" and that met other specified requirements. The financial requirement for exempt accounts was stated incorrectly and should indicate that an "exempt account" includes any person that has net worth of at least $45 million and financial assets of at least $40 million. Accordingly, Part IV of the Release should be revised to state that "the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $45 million and financial assets of at least $40 million" and that meets the other requirements for exempt accounts specified in the Release.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3025 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* 68 FR 52259.

[2] *See* 68 FR 51314, 51315 and 51316.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48365A; File No. SR–NYSE–98–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the New York Stock Exchange, Inc. Relating to Margin Requirements; Correction

February 5, 2004.

Release No. 34–48365 (the "Release"), issued on August 19, 2003, and published in the **Federal Register** on August 26, 2003,[1] contained errors in Part II.C.3 and in Part IV.[2] Specifically, Part II.C.3 of the Release stated that the proposal defined an "exempt account" to include "any person that has a net worth of at least $40 million and financial assets of at least $45 million" and that met other specified requirements. Part IV of the Release stated that "the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $40 million and financial assets of at least $45 million" and that met other specified requirements. In both cases, the financial requirements for exempt accounts were stated incorrectly. The financial requirements should state that an "exempt account" includes any person that has net worth of at least $45 million and financial assets of at least $40 million.

Accordingly, Part II.C.3 of the Release should be revised to state that an "exempt account" includes "any person that has a net worth of at least $45 million and financial assets of at least $40 million" and that meets the other requirements for exempt accounts specified in the Release. Part IV of the Release should be revised to state that "the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $45 million and financial assets of at least $40 million" and that meets the other requirements for exempt accounts specified in the Release.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3108 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* 68 FR 51314.

[2] *See* 68 FR 51314, 51315 and 51316.

[3] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before April 12, 2004.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, Director, Office of Licensing and Program Standards, Small Business Administration, 409 3rd Street SW., Suite 6300, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Director, 202–205–7559 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Size Status Declaration."
Description of Respondents: Small Businesses Requesting Size Determinations.
Form No.: 480.
Annual Responses: 4,200.
Annual Burden: 700.

Title: "SBIC Financial Reports."
Description of Respondents: Small Business Investment Companies.
Form No.: 468.
Annual Responses: 1,040.
Annual Burden: 16,480.

Title: "Portfolio Financing Reports."
Description of Respondents: Small Business Investment Companies.
Form No.: 1031.
Annual Responses: 2,100.
Annual Burden: 420.

Title: "Stockholder's Confirmation (Corporation); Ownership Confirmation (Partnership)."
Description of Respondents: Newly Licensed SBIC's.
Form No.: 1405.
Annual Responses: 600.
Annual Burden: 600.

Title: "Financing Eligibility Statement—social disadvantaged Economic Disadvantaged."
Description of Respondents: Small Businesses seeking financing from Specialized Small Business Investment Companies (SSBIC).

Form Nos.: 1941A, 1941B, 1941C.
Annual Responses: 293.
Annual Burden: 586.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cheryl Fletcher, Business Opportunity Specialist, Office of Business Development, Small Business Administration, 409 3rd Street SW., Suite 8800, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Cheryl Fletcher, Business Opportunity Specialist, 202–619–1850 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "8(a) SDB Paper and Electronic Application."
Description: 8(a) Companies.
Form Nos.: 1010, 1010B, 1010C, 2065.
Annual Responses: 6,103.
Annual Burden: 28,821.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 04–3018 Filed 2–11–04; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0420]

Aspen Ventures III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Aspen Ventures III, L.P., of 1000 Fremont Avenue, Suite 200, Los Altos, California 94024, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.703, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2001)). Aspen Ventures III, L.P. proposes to provide equity financing to Amperion, Inc. of Two Tech Drive, Andover, Massachusetts 01810. The financing is contemplated for general corporate purposes including research and development, sales and marketing expansion and working capital.

This financing is brought within the purview of § 107.730(a)(1) of the Regulations because Aspen Ventures III L.P.'s limited partner Redleaf Group, Inc. (an investor in Aspen Ventures III) and an Associate of Aspen Ventures III, L.P., currently owns greater than 10 percent of Amperion, Inc. and therefore is considered an Associate Aspen Ventures III, L.P., as defined in § 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: January 14, 2004.

Jeffrey D. Pierson,
Associate Administrator for Investment.
[FR Doc. 04–3020 Filed 2–11–04; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3565]

State of California

Orange County and the contiguous counties of Los Angeles, Riverside, San Bernardino and San Diego in the State of California constitute a disaster area as a result of an apartment fire on December 2, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 5, 2004 and for economic injury until the close of business on November 5, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, PO Box 419004, Sacramento, CA 95841–9004.

The interest rates are:

For Physical Damage:
Homeowners With Credit Available Elsewhere—6.250%.
Homeowners Without Credit Available Elsewhere—3.125%.
Businesses With Credit Available Elsewhere—6.123%.
Businesses and Non-Profit Organizations Without Credit Available Elsewhere—3.061%.
Others (Including Non-Profit Organizations) with Credit Available Elsewhere—4.875%.
For Economic Injury:
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—3.061%.

The number assigned to this disaster for physical damage is 356505 and for economic damage is 9Z2500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 5, 2004.

Hector V. Barreto,
Administrator.
[FR Doc. 04–3031 Filed 2–11–04; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3555]

State of California (Amendment #5)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective February 3, 2004, the above numbered declaration is hereby amended to reopen the incident period for this disaster as beginning October 21, 2003 and continuing through and including March 31, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage remains as January 9, 2004, and for economic injury the deadline is July 27, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 5, 2004.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.
[FR Doc. 04–3035 Filed 2–11–04; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3564]

State of Ohio (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective January 30, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning January 3, 2004 and continuing through January 30, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is March 26, 2004, and for economic injury the deadline is October 26, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 5, 2004.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.
[FR Doc. 04–3034 Filed 2–11–04; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice Inviting Application for Funding Under the 7(j) Management and Technical Assistance Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of invitation for proposals for 7(j) Management and Technical Assistance Awards in FY 2004.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. MTA–04–01, to solicit proposals from organizations to provide business development assistance for nationwide 7(j) eligible client executives. The authorizing legislation for this training is Section 7(j) of the Small Business Act, U.S.C. 636(j). SBA will select successful proposals using a competitive process.

Award recipients will have responsibility for project oversight, design, marketing, management, execution, monitoring and reporting for the training program. Proposals are being solicited from non-profit organizations, small businesses and educational institutions. The applicant must have the qualified trainers, support staff, training and technical materials, equipment and facilities, or access to facilities, as well as an internal financial management system, to provide business development assistance to 7(j) eligible client executives.

The business development proposal must provide practical information and guidance on how to define business development and carry out that business development. The proposal must include plans to assist the firms in the development of Individualized Business Development Plans (IBDPs). The proposal must also include the development of DVD/materials package (full audio and video) for the 7(j) clients. The business development training workshops, IBDPs and DVDs will be provided to firms with less than two years in the 8(a) program and other 7(j) eligible clients who have been in business for not more than four (4) years. The class room lecture and workshops will provide brief training and development of the (IBDP) that address: competence in accounting; competence in marketing; competence in cash flow management; access to credit; access to capital; access to surety; access to Federal procurement, non-Federal procurement and subcontracts; access to further training, which may include marketing, human resources, accounting, management, technical/professional skills

SBA plans to award approximately $1,000,000.00, subject to the availability of funds, under this notice. This amount would fund one or multi-awards which would provide business development training workshops and DVDs to approximately 1,500 firms including 8(a) participants entering the program and other eligible 7(j) executives. SBA reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice. Awards will have a project period of one (1) year. Award amounts may vary, depending on the number of 7(j) eligible clients that an applicant is able to train.

The selection criteria to be used for this competition will be provided in the application package.

DATES: The closing date for applications will be March 19, 2004.

ADDRESSES: To obtain a copy of the complete application package call Adrienne Dinkins at (202) 205–7140, or go to SBA's Web site at *http://www.sba.gov.*

For Applications and Further Information: Questions concerning the technical aspects of this notice should be directed to Jacqueline Fleming at (202) 205–6177. Questions about budget or funding matters should be directed to Adrienne Dinkins at (202) 205–7140.

Program Authority: 15 U.S.C. 636(j).

Eugene Cornelius, Jr.,

Associate Administrator, Business Development.

[FR Doc. 04–3019 Filed 2–11–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 4622]

2004 G8 Summit Planning Organization; Notice of Information Collection Under Emergency Review: DS–4056, Credential Application—Sea Island Homeowner; DS–4057, Credential Application—Official Guest; DS–4058, Credential Application—Media; DS–4059, Credential Application—Delegate; DS–4060, Credential Application—SPO Staff; DS–4061, Credential Application—Volunteer; DS–4062, Credential Application—Vendor; DS–4063, Credential Application—Hotel Employee; OMB No. 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: A/TSS/SMT.

Title of Information Collection: Sea Island Summit Credential Applications.

Frequency: On occasion, once per individual.

Form Number: DS–4056, DS–4057, DS–4058, DS–4059, DS–4060, DS–4061, DS–4062, DS–4063.

Respondents: Persons requesting access to Sea Island Summit venues.

Estimated Number of Respondents: 18,000.

Average Hours Per Response: 5 minutes.

Total Estimated Burden: 1500 hours.

Emergency review and approval of this collection has been requested from OMB by February 6, 2004. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached at 202–395–7860.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the collection listed in this notice should be directed to Bolton Walters, G8 Summit Planning Organization, U.S. Department of State, Washington, DC 20520, who may be reached at 202–647–3419.

Dated: February 5, 2004.

Bob Goodwin,

Executive Director, 2004 G8 Summit Planning Organization, Department of State.

[FR Doc. 04–3125 Filed 2–11–04; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17021]

Notice of Receipt of Petition for Decision That Nonconforming European and Other Foreign Market 1997 Jeep Grand Cherokee Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming European and other foreign market 1997 Jeep Grand Cherokee multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997 Jeep Grand Cherokee MPVs manufactured for sale in Europe and other foreign markets that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 15, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1997 Jeep Grand Cherokee MPVs originally manufactured for sale in Europe and other foreign markets are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1997 Jeep Grand Cherokee MPVs that were manufactured for sale in the United States and certified by their manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified European and other foreign market 1997 Jeep Grand Cherokee MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified European and other foreign market 1997 Jeep Grand Cherokee MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified European and other foreign market 1997 Jeep Grand Cherokee MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 114 *Theft Protection* (noting that the vehicle has an audible gong anti-theft system that sounds when the key is left in the ignition lock and the driver's door is opened), 116 *Motor Vehicle Brake Fluids,* 118 *Power Window Systems* (noting that the window transport mechanism is inoperative when the ignition is switched off and the door is opened), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection* (noting that the vehicle is equipped with a safety belt warning system that includes an audible gong and illuminated dash light, with Type II seat belts in the front and rear outboard designated seating positions, and with a U.S.-model air bag and knee bolster in the driver's seating position), 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity* (noting that a rollover valve is integrated into the fuel module assembly, and is identical to that equipped on the vehicle's U.S. certified counterpart) and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified European and other foreign market 1997 Jeep Grand Cherokee MPVs comply with the Bumper Standard found in 49 CFR part 581, and with the Vehicle Identification Number (VIN) plate requirement of 49 CFR part 565.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Addition of the brake symbol.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of the headlight assemblies, which include sidemarker lights, and taillamp assemblies with U.S. model components.

The petitioner states that all vehicles must be inspected prior to importation for compliance with the Theft Prevention Standard found in 49 CFR part 541, and that U.S.-model anti-theft devices must be installed on all vehicles lacking that equipment.

The petitioner also states that a certification label must be affixed to the left front door jamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 9, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–3117 Filed 2–11–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17022]

Notice of Receipt of Petition for Decision That Nonconforming 1997 Land Rover Defender 90 Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997 Land Rover Defender 90 multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997 Land Rover Defender 90 MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 15, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, 202–366–3151.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and that the vehicle is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Barry W. Taylor Enterprises, Inc. of Richmond, California ("BTE") (Registered Importer 01–280) has petitioned NHTSA to decide whether 1997 Land Rover Defender 90 MPVs are eligible for importation into the United States. The vehicles that BTE believes are substantially similar are 1997 Land Rover Defender 90 MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1997 Land Rover Defender 90 MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

BTE submitted information with its petition intended to demonstrate that non-U.S. certified 1997 Land Rover Defender 90 MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997 Land Rover Defender 90 MPVs are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner states that the vehicle is equipped with a vehicle identification number plate that complies with the requirements of 49 CFR part 565 and with bumpers identical to those found on its U.S.-certified counterpart that meet the requirements of the Bumper Standard found in 49 CFR part 581. Petitioner observes that the vehicle is not subject to the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Replacement or conversion of the speedometer to read in miles per hour; (b) inspection of all vehicles to ensure that components subject to the standard are identical to those found on the vehicle's U.S.-certified counterpart.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlights; (b) modification of the amber sidemarker lights to meet the requirements of the standard; (c) inspection of all vehicles and replacement of noncompliant lighting system components with U.S-model parts on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement on the face of the passenger side rearview mirror, or replacement of

the mirror with one that is already so marked.

Standard No. 118 *Power Window Systems:* Inspection of all vehicles and modification of the wiring system, where necessary, to ensure compliance with the standard.

Standard No. 119 *New Pneumatic Tires for Vehicles other than Passenger Cars:* Inspection of all vehicles to ensure compliance with the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Inspection of all vehicles to ensure compliance with the standard. The petitioner asserts that the tires and rims on the non-U.S. certified vehicle it has examined are properly marked.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of all vehicles and replacement of any components subject to the standard that are not identical to those found on the vehicle's U.S.-certified counterpart. The petitioner asserts that those components on the non-U.S. certified vehicle it has examined are identical to those found on the vehicle's U.S.-certified counterpart.

Standard No. 208 *Occupant Crash Protection:* Inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner asserts that the occupant crash protection system on the non-U.S. certified vehicle it has examined is identical to that found on the vehicle's U.S.-certified counterpart.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner asserts that the seat belt assemblies on the non-U.S. certified vehicle it has examined are in compliance with the standard.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner asserts that the door beams on the non-U.S. certified vehicle it has examined are identical to those found on the vehicle's U.S.-certified counterpart.

Standard No. 301 *Fuel System Integrity:* Installation of an OEM rollover valve to meet the requirements of the standard.

The petitioner states that a certification label must be affixed to the driver's side door pillar to meet the requirements of the vehicle certification regulations in 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 9, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–3118 Filed 2–11–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34460]

Eyal Shapira—Continuance in Control Exemption—Pennsylvania & Southern Railway, LLC

Eyal Shapira (Shapira), has filed a verified notice of exemption to continue in control of Pennsylvania & Southern Railway, LLC (P&S), upon P&S becoming a Class III rail carrier.

The transaction was expected to be consummated on February 1, 2004.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34461, *Pennsylvania & Southern Railway, LLC—Operation Exemption—Franklin County General Authority.* In that proceeding, P&S seeks to operate approximately 25 miles of track and right-of-way and associated property (occupying approximately 1,200 acres of land) located inside the Cumberland Valley Business Park and the Letterkenny Army Depot in Chambersburg, PA, which is owned by the Franklin County General Authority, a municipal authority in the Commonwealth of Pennsylvania.

Shapira currently controls two Class III rail carriers: New York & Eastern Railway LLC and Raritan Central Railway, LLC, operating in Dutchess County, NY, and Middlesex County, NJ, respectively.

Shapira states that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34460, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 5, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–2938 Filed 2–11–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34461]

Pennsylvania & Southern Railway, LLC—Operation Exemption—Franklin County General Authority

Pennsylvania & Southern Railway, LLC (P&S), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an agreement with the Franklin County General Authority, a municipal authority in the Commonwealth of Pennsylvania, approximately 25 miles of track and right-of-way and associated property (occupying approximately

1,200 acres of land) located inside the Cumberland Valley Business Park and the Letterkenny Army Depot in Chambersburg, Franklin County, PA.

The transaction was scheduled to be consummated on or about February 1, 2004.

This transaction is related to STB Finance Docket No. 34460, *Eyal Shapira—Continuance in Control Exemption—Pennsylvania & Southern Railway, LLC,* wherein Eyal Shapira has filed a verified notice of exemption to continue in control of P&S upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34461, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 5, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–2939 Filed 2–11–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 5, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0007.

Form Number: SF 1199–A.

Type of Review: Extension.

Title: Direct Deposit Sign-Up Form.

Description: The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information is used to route the Direct Deposit payment account at the correct financial institution. It identifies persons who have executed the form.

Respondents: Individuals or households, Business or other for-profit, Federal Government.

Estimated Number of Respondents/Recordkeepers: 406,715.

Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes.

Frequency of Response: Other (one time).

Estimated Total Reporting/Recordkeeping Burden: 69,142 hours.

OMB Number: 1510–0066.

Form Number: None.

Type of Review: Extension.

Title: 31 CFR Part 208—Management of Federal Agency Disbursements; Final Rule.

Description: This regulation requires that most Federal payments be made by Electronic Funds Transfer (EFT); sets forth waiver requirements; and provides for a low-cost Treasury designated account to individuals at a financial institution that offers such accounts.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 1,300.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 325 hours.

Clearance Officer: Jiovannah L. Diggs, Financial Management Service, Administrative Programs Division, Records and Information Management Program, 3700 East West Highway, Room 144, Hyattsville, MD 20782, (202) 874–7662.

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. 04–3068 Filed 2–11–04; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1128

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1128, Application To Adopt, Change, or Retain a Tax Year.

DATES: Written comments should be received on or before April 12, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Adopt, Change, or Retain a Tax Year.

OMB Number: 1545–0134.

Form Number: 1128.

Abstract: Section 442 of the Internal Revenue Code requires that a change in a taxpayer's annual accounting period be approved by the Secretary. Under regulation section 1.442–1(b), a taxpayer must file Form 1128 to secure prior approval unless the taxpayer can automatically make the change. The IRS uses the information on the form to determine whether the application should be approved.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 11,800.

Estimated Time Per Respondent: 29 hours, 43 minutes.

Estimated Total Annual Burden Hours: 350,544.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3119 Filed 2–11–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–20, Certification for No Information Reporting on the Sale of a Principal Residence.

DATES: Written comments should be received on or before April 12, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certification for No Information Reporting on the Sale of a Principal Residence.

OMB Number: 1545–1592.

Revenue Procedure Number: Revenue Procedure 98–20.

Abstract: This revenue procedure sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except such sale or exchange from the information reporting requirements for real estate transactions under section 6045(e)(5) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,300,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours for Respondents: 383,000.

Estimated Number of Recordkeepers: 90,000.

Estimated Time Per Recordkeeeper: 25 minutes.

Estimated Total Annual Burden Hours for Recordkeepers: 37,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 9, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3120 Filed 2–11–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–25, Automatic Data Processing.

DATES: Written comments should be received on or before April 12, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue

Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Automatic Data Processing.

OMB Number: 1545–12595.

Revenue Procedure Number: Revenue Procedure 98–25.

Abstract: Revenue Procedure 98–25 provides taxpayers with comprehensive guidance on requirements for keeping and providing IRS access to electronic tax records. The revenue procedure requires taxpayers to retain electronic, or "machine-sensible" records, "so long as their contents may become material to the administration of the internal revenue laws." Such materiality would continue, according to IRS, at least until the period of limitations, including extensions, expires for each tax year.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 120,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 9, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3121 Filed 2–11–04; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1345

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 1345, Handbook for Authorized IRS e-file Providers.

DATES: Written comments should be received on or before April 12, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the publication should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Publication 1345, Handbook for Authorized IRS e-file Providers.

OMB Number: 1545–1708.

Publication Number: 1345.

Abstract: Publication 1345 informs those who participate in the IRS e-file Program for Individual Income Tax Returns of their obligations to the Internal Revenue Service, taxpayers, and other participants.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 145,000.

Estimated Time Per Respondent: 25 hours, 5 minutes.

Estimated Total Annual Burden Hours: 3,636,463.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 9, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3122 Filed 2–11–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
February 12, 2004

Part II

Department of Labor

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

ACTION: Notice.

EFFECTIVE DATE: The annual list of labor surplus areas is effective October 1, 2003, for all States.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 2004.

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, Acting Division Chief, U.S. Employment Service, Employment and Training Administration, 200 Constitution Avenue, NW., Room C4512, Washington, DC 20210. Telephone: (202) 693–2784.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, Subparts A and B. These regulations require the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide an exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Dated: February 3, 2004.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Eligible Labor Surplus Areas

Procedures for Classifying Labor Surplus Areas

Labor surplus areas are classified on the basis of civil jurisdictions. Civil jurisdictions are now defined as all cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered civil jurisdictions in four states (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico, and Rhode Island, where counties have very limited or no government functions, the classifications are done for individual towns.

A civil jurisdiction is classified as a labor surplus area when its average unemployment rate was at least 20 percent above the average unemployment rate for all states (including the District of Columbia and Puerto Rico) during the previous two calendar years. During periods of high national unemployment, the 20 percent ratio is disregarded, and an area is classified as a labor surplus area if its unemployment rate during the previous two calendar years was 10 percent or more. This 10 percent ceiling concept comes into operation whenever the two-year average unemployment rate for all states was 8.3 percent or above (*i.e.*, 8.3 percent times the 1.2 ratio equals 10 percent). Similarly, a "floor" concept of six percent is used during periods of low national unemployment for an area to be classified as a labor surplus area. The six percent floor" comes into effect whenever the average unemployment rate for all states during the two-year reference period was five percent or less.

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. The exceptional circumstance procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment that is not temporary or seasonal and was not adequately reflected in the data for the two-year reference period. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the State Workforce Agency must submit a petition requesting such classification to the Department of Labor's Employment and Training Administration. The current conditions for exceptional circumstance classification are: an area unemployment rate of at least 6.4 percent for each of the three most recent months; a projected unemployment rate of at least 6.4 percent for each of the next 12 months; and documented information that the exceptional circumstance event has already occurred. The State Workforce Agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget. The addresses of State Workforce Agencies are available at the end of this description. The Department of Labor issues the labor surplus area listing on a fiscal year basis. The listing becomes effective each October 1 and remains in effect through the following September 30. During the course of the fiscal year, the annual listing is updated on the basis of exceptional circumstances petitions submitted by State Workforce Agencies and approved by the Employment and Training Administration. The reference period used in preparing the current list was January 2001 through December 2002. The national average unemployment rate during this period (including data for Puerto Rico) was 5.3 percent. As a result, a 6.4 percent rate, as explained in paragraph number three above, went into effect for the Fiscal Year 2004 labor surplus area classifications. Therefore, areas are included on the current annual labor surplus area listing because their average unemployment rate during the reference period was 6.4 percent or above. The Fiscal Year 2004 classifications will be in effect from October 1, 2003, through September 30, 2004.

State Workforce Agencies

Alabama: Department of Industrial Relations, 649 Monroe Street, Montgomery 36131

Alaska: Department of Labor and Workforce Development, P.O. Box 21149, Juneau 99802

Arizona: Arizona Department of Economic Security, 1789 West Jefferson, Phoenix 85005

Arkansas: Employment Security Department, Department of Labor, P.O. Box 2981, Little Rock 72203

California: Employment Development Department, P.O. Box 826880, MIC 83, Sacramento 94280–0001

Colorado: Department of Labor and Employment, 1515 Arapahoe Street, Denver 80202–2117

Connecticut: Employment Security Division, Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield 06109

Delaware: Department of Labor, 4425 North Market Street, Wilmington 19803

District of Columbia: Department of Employment Services, 64 New York Avenue, NE, Washington 20002

Florida: Agency for Workforce Innovation, 1320 Executive Center Drive, Tallahassee 32399–0667

Georgia: Georgia Department of Labor, 148 Andrew Young International Boulevard, NE, Atlanta 30303

Guam: Department of Labor, Government of Guam, P.O. Box 9970, Tamuning, Guam 96931

Hawaii: Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu 96813

Idaho: Department of Labor, 317 Main Street, P.O. Box 35, Boise 83735

Illinois: Department of Employment Security, 401 South State Street, Chicago 60605–1289

Indiana: Department of Workforce Development, 10 North Senate Avenue, Indianapolis 46204

Iowa: Iowa Workforce Development, 1000 Grand Avenue, Des Moines 50319

Kansas: Division of Employment, Department of Human Resources, 401 S.W. Topeka Avenue, Topeka 66603
Kentucky: Department for Employment Services, 275 East Main Street, Frankfort 40621
Louisiana: Department of Labor, P.O. Box 94094, Baton Rouge 70804–9094
Maine: Department of Labor, 20 Union Street, P.O. Box 309, Augusta 04330
Maryland: Department of Labor, Licensing, and Regulation, 1100 N. Eutaw Street, Baltimore 21201
Massachusetts: Division of Employment and Training, 19 Staniford Street, Charles F. Hurley Building, Boston 02114
Michigan: Department of Career Development, 201 North Washington Square, Lansing 48913
Minnesota: Department of Employment and Economic Development, 390 North Robert Street, St. Paul 55101
Mississippi: Employment Security Commission, 1520 West Capital Street, P.O. Box 1699, Jackson 39215–1699
Missouri: Department of Economic Development, P.O. Box 1087, Jefferson City 65102
Montana: Department of Labor and Industry, P.O. Box 1728, Helena 59624
Nebraska: Department of Labor, 550 South 16th St., P.O. Box 94600, Lincoln 68509
Nevada: Department of Employment, Training and Rehabilitation, 500 East 3rd Street, Carson City 89713
New Hampshire: Department of Employment Security, 32 S. Main Street, Room 204, Concord 03301
New Jersey: Department of Labor, John Fitch Plaza, P.O. Box 110, Trenton 08625
New Mexico: Department of Labor, 401 Broadway, N.E., P.O. Box 1928, Albuquerque 87103
New York: Department of Labor, State Campus, Building 12, Albany 12240
North Carolina: Employment Security Commission, P.O. Box 25903, Raleigh 27611
North Dakota: Job Service North Dakota, 1000 E. Divide Avenue, P.O. Box 5507, Bismarck 58506–5507
Ohio: Department of Job and Family Services, 30 East Broad Street, Columbus 43216
Oklahoma: Employment Security Com, 2410 N. Lincoln, Will Rogers Memorial Office Building, Oklahoma City 73105
Oregon: Employment Department, Department of Human Resources, 875 Union Street, N.E., Salem 97311
Pennsylvania: Department of Labor and Industry, 1720 Labor and Industry Building, Harrisburg 17121
Puerto Rico: Department of Labor and Human Resources, 505 Munoz Rivera Avenue, Hato Rey 00936–4453
Rhode Island Department of Labor and Training, 1511 Pontiac Avenue, Cranston 02920–4407
South Carolina: Employment Security Commission, P.O. Box 995, Columbia 29202
South Dakota: Department of Labor, 700 Governors Drive, Pierre 57501–2277
Tennessee: Department.of Labor and Workforce Development, 500 James Robertson Parkway, Davy Crockett Tower, Nashville 37245
Texas: Texas Workforce Commission, 101 East 15th Street, Austin 78778
Utah: Department of Workforce Services, 140 East 300 South, P.O. Box 45249, Salt Lake City 84145–0249
Vermont: Department of Employment & Training, P.O. Box 488, 5 Green Mountain Drive, Montpelier 05601–0488
Virgin Islands: Department of Labor, 2203 Church Street Christiansted, St. Croix 00820–4612
Virginia: Virginia Employment Commission, 703 East Main Street, Richmond 23219
Washington: Employment Security Department, P.O. Box 9046, Olympia 98507–9046
West Virginia: Bureau of Employment Programs, 112 California Avenue, Charleston 25305–0112
Wisconsin: Department of Workforce Development, 201 East Washington Avenue, Room 400X, Madison 53707
Wyoming: Department of Employment, 1510 East Pershing Boulevard, Cheyenne 82002

LABOR SURPLUS AREAS

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
ANNISTON CITY	ANNISTON CITY IN CALHOUN COUNTY.
BARBOUR COUNTY	BARBOUR COUNTY.
BESSEMER CITY	BESSEMER CITY IN JEFFERSON COUNTY.
BIBB COUNTY	BIBB COUNTY.
BULLOCK COUNTY	BULLOCK COUNTY.
BUTLER COUNTY	BUTLER COUNTY.
CHAMBERS COUNTY	CHAMBERS COUNTY.
CHOCTAW COUNTY	CHOCTAW COUNTY.
CLARKE COUNTY	CLARKE COUNTY.
COLBERT COUNTY	COLBERT COUNTY.
CONECUH COUNTY	CONECUH COUNTY.
COOSA COUNTY	COOSA COUNTY.
COVINGTON COUNTY	COVINGSTON COUNTY.
CRENSHAW COUNTY	CRENSHAW COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
DECATUR CITY	DECATUR CITY IN LIMESTONE COUNTY, MORGAN COUNTY.
ESCAMBIA COUNTY	ESCAMBIA COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
FLORENCE CITY	FLORENCE CITY IN LAUDERDALE COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
GADSDEN CITY	GADSDEN CITY IN ETOWAH COUNTY.
GENEVA COUNTY	GENEVA COUNTY.
GREENE COUNTY	GREENE COUNTY.
HALE COUNTY	HALE COUNTY.
HENRY COUNTY	HENRY COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LAMAR COUNTY	LAMAR COUNTY.
BALANCE OF LAUDERDALE COUNTY	LAUDERDALE COUNTY LESS FLORENCE CITY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LOWNDES COUNTY	LOWNDES COUNTY.
MARION COUNTY	MARION COUNTY.
MOBILE CITY	MOBILE CITY IN MOBILE COUNTY.
MONROE COUNTY	MONROE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
PERRY COUNTY	PERRY COUNTY.
PHENIX CITY	PHENIX CITY IN LEE COUNTY, RUSSELL COUNTY.
PICKENS COUNTY	PICKENS COUNTY.
PRICHARD CITY	PRICHARD CITY IN MOBILE COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
SUMTER COUNTY	SUMTER COUNTY.
TALLADEGA COUNTY	TALLADEGA COUNTY.
TALLAPOOSA COUNTY	TALLAPOOSA COUNTY.
WALKER COUNTY	WALKER COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WILCOX COUNTY	WILCOX COUNTY.
WINSTON COUNTY	WINSTON COUNTY.
ALASKA	
ALEUTIAN ISLAND WEST CENSUS AREA	ALEUTIAN ISLAND WEST CENSUS AREA.
BETHEL CENSUS AREA	BETHEL CENSUS AREA.
BRISTOL BAY BOROUGH DIV	BRISTOL BAY BOROUGH DIV.
DENALI BOROUGH	DENALI BOROUGH.
DILLINGHAM CENSUS AREA	DILLINGHAM CENSUS AREA.
FAIRBANKS CITY	FAIRBANKS CITY IN FAIRBANKS NORTH STAR BOROUGH.
HAINES BOROUGH	HAINES BOROUGH.
KENAI PENINSULA BOROUGH	KENAI PENINSULA BOROUGH.
KETCHIKAN GATEWAY BOROUGH	KETCHIKAN GATEWAY BOROUGH.
KODIAK ISLAND BOROUGH	KODIAK ISLAND BOROUGH.
LAKE AND PENINSULA BOROUGH	LAKE AND PENINSULA BOROUGH.
MATANUSKA-SUSITNA BOROUGH	MATANUSKA-SUSITNIA BOROUGH.
NOME CENSUS AREA	NOME CENSUS AREA.
NORTH SLOPE BOROUGH	NORTH SLOPE BOROUGH.
NORTHWEST ARCTIC BOROUGH	NORTHWEST ARCTIC BOROUGH.
PRINCE OF WALES OUTER KETCHIKAN	PRINCE OF WALES OUTER KETCHIKAN.
SKAGWAY-HOONAH-ANGOOD CEN AREA	SKAGWAY-HOONAH-ANGOOD CEN AREA.
SOUTHEAST FAIRBANKS CENSUS AREA	SOUTHEAST FAIRBANKS CENSUS AREA.
VALDEZ CORDOVA CENSUS AREA	VALDEZ CORDOVA CENSUS AREA.
WADE HAMPTON CENSUS AREA	WADE HAMPTON CENSUS AREA.
WRANGELL-PETERSBURG CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA.
YAKUTAT BOROUGH	YAKUTAT BOROUGH.
YUKON-KOYUKUK CENSUS AREA	YUKON-KOYUKUK CENSUS AREA.
ARIZONA	
APACHE COUNTY	APACHE COUNTY.
AVONDALE CITY	AVONDALE CITY IN MARICOPA COUNTY.
BALANCE OF COCONINO COUNTY	COCONINO COUNTY LESS FLAGSTAFF CITY.
GILA COUNTY	GILA COUNTY.
GRAHAM COUNTY	GRAHAM COUNTY.
GREENLEE COUNTY	GREENLEE COUNTY.
NAVAJO COUNTY	NAVAJO COUNTY.
BALANCE OF PINAL COUNTY	PINAL COUNTY LESS APACHE JUNCTION, CASA GRANDE CITY.
SANTA CRUZ COUNTY	SANTA CRUZ COUNTY.
SURPRISE CITY	SURPRISE CITY IN MARICOPA COUNTY.
YUMA CITY	YUMA CITY IN YUMA COUNTY.
BALANCE OF YUMA COUNTY	YUMA COUNTY LESS YUMA CITY.
ARKANSAS	
ASHLEY COUNTY	ASHLEY COUNTY.
BRADLEY COUNTY	BRADLEY COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CHICOT COUNTY	CHICOT COUNTY.
CLAY COUNTY	CLAY COUNTY.
CLEVELAND COUNTY	CLEVELAND COUNTY.
BALANCE OF CRITTENDEN COUNTY	CRITTENDEN COUNTY LESS WEST MEMPHIS CITY.
CROSS COUNTY	CROSS COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
DESHA COUNTY	DESHA COUNTY.
DREW COUNTY	DREW COUNTY.
FULTON COUNTY	FULTON COUNTY.
GREENE COUNTY	GREENE COUNTY.
HOT SPRING COUNTRY	HOT SPRING COUNTY.
IZARD COUNTY	IZARD COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
JACKSON COUNTY	JACKSON COUNTY.
JACKSONVILLE CITY	JACKSONVILLE CITY IN PULASKI COUNTY.
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS PINE BLUFF CITY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LEE COUNTY	LEE COUNTY.
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY.
MONROE COUNTY	MONROE COUNTY.
NEWTON COUNTY	NEWTON COUNTY.
OUACHITA COUNTY	OUACHITA COUNTY.
PERRY COUNTY	PERRY COUNTY.
PHILLIPS COUNTY	PHILLIPS COUNTY.
PINE BLUFF CITY	PINE BLUFF CITY IN JEFFERSON COUNTY.
POINSETT COUNTY	POINSETT COUNTY.
POLK COUNTY	POLK COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
SHARP COUNTY	SHARP COUNTY.
ST. FRANCIS COUNTY	ST. FRANCIS COUNTY.
VAN BUREN COUNTY	VAN BUREN COUNTY.
WOODRUFF COUNTY	WOODRUFF COUNTY.
CALIFORNIA	
ALPINE COUNTY	ALPINE COUNTY.
AZUSA CITY	AZUSA CITY IN LOS ANGELES COUNTY.
BAKERSFIELD CITY	BAKERSFIELD CITY IN KERN COUNTY.
BALDWIN PARK CITY	BALDWIN PARK CITY IN LOS ANGELES COUNTY.
BANNING CITY	BANNING CITY IN RIVERSIDE COUNTY.
BELL CITY	BELL CITY IN LOS ANGELES COUNTY.
BELL GARDENS CITY	BELL GARDENS CITY IN LOS ANGELES COUNTY.
BALANCE OF BUTTE COUNTY	BUTTE COUNTY LESS CHICO CITY; PARADISE CITY.
CALAVERAS COUNTY	CALAVERAS COUNTY.
CALEXICO CITY	CALEXICO CITY IN IMPERIAL COUNTY.
CERES CITY	CERES CITY IN STANISLAUS COUNTY.
CHICO CITY	CHICO CITY IN BUTTE COUNTY.
CLOVIS CITY	CLOVIS CITY IN FRESNO COUNTY.
COLTON CITY	COLTON CITY IN SAN BERNARDINO COUNTY.
COLUSA COUNTY	COLUSA COUNTY.
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY.
DEL NORTE COUNTY	DEL NORTE COUNTY.
DELANO CITY	DELANO CITY IN KERN COUNTY.
EAST PALO ALTO CITY	EAST PALO ALTO CITY IN SAN MATEO COUNTY.
EL CENTRO CITY	EL CENTRO CITY IN IMPERIAL COUNTY.
EL MONTE CITY	EL MONTE CITY IN LOS ANGELES COUNTY.
EUREKA CITY	EUREKA CITY IN HUMBOLDT COUNTY.
FRESNO CITY	FRESNO CITY IN FRESNO COUNTY.
BALANCE OF FRESNO COUNTY	FRESNO COUNTY LESS CLOVIS CITY, FRESNO CITY.
GILROY CITY	GILROY CITY IN SANTA CLARA COUNTY.
GLENN COUNTY	GLENN COUNTY.
HANFORD CITY	HANFORD CITY IN KINGS COUNTY.
HEMET CITY	HEMET CITY IN RIVERSIDE COUNTY.
HESPERIA CITY	HESPERIA CITY IN SAN BERNARDINO COUNTY.
HOLISTER CITY	HOLISTER CITY IN SAN BENITO COUNTY.
HUNTINGTON PARK CITY	HUNTINGTON PARK CITY IN LOS ANGELES COUNTY.
IMPERIAL BEACH CITY	IMPERIAL BEACH CITY IN SAN DIEGO COUNTY.
BALANCE OF IMPERIAL COUNTY	IMPERIAL COUNTY LESS CALEXICO CITY; EL CENTRO CITY.
INDIO CITY	INDIO CITY IN RIVERSIDE COUNTY.
INGLEWOOD CITY	INGLEWOOD CITY IN LOS ANGELES COUNTY.
BALANCE OF KERN COUNTY	KERN COUNTY LESS BAKERSFIELD CITY; DELANO CITY; RIDGECREST CITY.
BALANCE OF KINGS COUNTY	KINGS COUNTY LESS HANFORD CITY.
LA PUENTE CITY	LA PUENTE CITY IN LOS ANGELES COUNTY.
LAKE COUNTY	LAKE COUNTY.
LASSEN COUNTY	LASSEN COUNTY.
LAWNDALE CITY	LAWNDALE CITY IN LOS ANGELES COUNTY.
LODI CITY	LODI CITY IN SAN JOAQUIN COUNTY.
LOS ANGELES CITY	LOS ANGELES CITY IN LOS ANGELES COUNTY.
LOS BANOS CITY	LOS BANOS CITY IN MERCED COUNTY.
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY.
MADERA CITY	MADERA CITY IN MADERA COUNTY.
BALANCE OF MADERA COUNTY	MADERA COUNTY LESS MADERA CITY.
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
MARINA CITY	MARINA CITY IN MONTEREY COUNTY.
MARIPOSA COUNTY	MARIPOSA COUNTY.
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGLES COUNTY.
MENDOCINO COUNTY	MENDOCINO COUNTY.
MERCED CITY	MERCED CITY IN MERCED COUNTY.
BALANCE OF MERCED COUNTY	MERCED COUNTY LESS LOS BANOS CITY, MERCED CITY.
MILPITAS CITY	MILPITAS CITY IN SANTA CLARA COUNTY.
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY.
MODOC COUNTY	MODOC COUNTY.
BALANCE OF MONTEREY COUNTY	MONTEREY COUNTY LESS MARINA CITY, MONTEREY CITY, SALINAS CITY, SEASIDE CITY.
NATIONAL CITY	NATIONAL CITY IN SAN DIEGO COUNTY.
OAKLAND CITY	OAKLAND CITY IN ALAMEDA COUNTY.
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY.
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY.
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY.
PICO RIVER CITY	PICO RIVERA CITY IN LOS ANGELES COUNTY.
PLUMAS COUNTY	PLUMAS COUNTY.
POMONA CITY	POMONA CITY IN LOS ANGELES COUNTY.
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY.
REDDING CITY	REDDING CITY IN SHASTA COUNTY.
RICHMOND CITY	RICHMOND CITY IN CONTRA COSTA COUNTY
ROSEMEAD CITY	ROSEMEAD CITY IN LOS ANGELES COUNTY.
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY.
BALANCE OF SAN BENITO COUNTY	SAN BENITO COUNTY LESS HOLISTER CITY.
SAN BERNARDINO CITY	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY.
SAN JACINTO CITY	SAN JACINTO CITY IN RIVERSIDE COUNTY.
BALANCE OF SAN JOAQUIN COUNTY	SAN JOAQUIN COUNTY LESS LODI CITY, MANTECA CITY, STOCKTON CITY, TRACEY CITY.
SAN JOSE CITY	SAN JOSE CITY IN SANTA CLARA COUNTY.
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY.
SANTA ANA CITY	SANTA ANA CITY IN ORANGE COUNTY.
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY.
SEASIDE CITY	SEASIDE CITY IN MONTEREY COUNTY.
BALANCE OF SHASTA COUNTY	SHASTA COUNTY LESS REDDING CITY.
SIERRA COUNTY	SIERRA COUNTY.
SISKIYOU COUNTY	SISKIYOU COUNTY.
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY.
BALANCE OF STANISLAUS COUNTY	STANISLAUS COUNTY LESS CERES CITY, MODESTO CITY, TURLOCK CITY.
STANTON CITY	STANTON CITY IN ORANGE COUNTY.
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY.
BALANCE OF SUTTER COUNTY	SUTTER COUNTY LESS YUBA CITY.
TEHAMA COUNTY	TEHAMA COUNTY
TRACEY CITY	TRACEY CITY IN SAN JOAQUIN COUNTY.
TRINITY COUNTY	TRINITY COUNTY.
TULARE CITY	TULARE CITY IN TULARE COUNTY.
BALANCE OF TULARE COUNTY	TUJLARE COUNTY LESS PORTERVILLE CITY, TULARE CITY, VISALIA CITY.
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY.
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY.
VISALIA CITY	VISALIA CITY IN TULARE COUNTY.
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY.
YUBA CITY	YUBA CITY IN SUTTER COUNTY.
YUBA COUNTY	YUBA COUNTY.
COLORADO	
BENT COUNTY	BENT COUNTY.
CONEJOS COUNTY	CONEJOS COUNTY.
COSTILLA COUNTY	COSTILLA COUNTY.
DOLORES COUNTY	DOLORES COUNTY.
RIO GRANDE COUNTY	RIO GRANDE COUNTY.
SAGUACHE COUNTY	SAGUACHE COUNTY.
SAN JUAN COUNTY	SAN JUAN COUNTY.
CONNECTICUT	
BRIDGEPORT CITY	BRIDGEPORT CITY.
HARTFORD CITY	HARTFORD CITY.
WATERBURY CITY	WATERBURY CITY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
DISTRICT OF COLUMBIA	
WASHINGTON DC CITY	WASHINGTON DC CITY IN DISTRICT OF COLUMBIA.
FLORIDA	
DE SOTO COUNTY	DE SOTO COUNTY.
DELRAY BEACH CITY	DELRAY BEACH CITY IN PALM BEACH COUNTY.
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY.
FT. LAUDERDALE CITY	FT. LAUDERDALE CITY IN BROWARD COUNTY.
GLADES COUNTY	GLADES COUNTY.
HALLANDALE CITY	HALLANDALE CITY IN BROWARD COUNTY.
HAMILTON COUNTY	HAMILTON COUNTY.
HARDEE COUNTY	HARDEE COUNTY.
HENDRY COUNTY	HENDRY COUNTY.
HIALEAH CITY	HIALEAH CITY IN MIAMI-DADE COUNTY.
HOMESTEAD CITY	HOMESTEAD CITY IN MIAMI-DADE COUNTY.
INDIAN RIVER COUNTY	INDIAN RIVER COUNTY.
LAUDERDALE LAKES CITY	LAUDERDALE LAKES CITY IN BROWARD COUNTY.
MIAMI BEACH CITY	MIAMI BEACH CITY IN MIAMI-DADE COUNTY.
MIAMI CITY	MIAMI CITY IN MIAMI-DADE COUNTY.
BALANCE OF MIAMI-DADE COUNTY	MIAMI-DADE COUNTY LESS CORAL GABLES CITY, HIALEAH CITY, HOMESTEAD CITY, MIAMI BEACH CITY, MIAMI CITY, NORTH MIAMI BEACH CITY, NORTH MIAMI CITY.
NORTH MIAMI CITY	NORTH MIAMI CITY IN MIAMI-DADE COUNTY.
OKEECHOBEE COUNTY	OKEECHOBEE COUNTY.
PANAMA CITY	PANAMA CITY IN BAY COUNTY.
POMPANO BEACH CITY	POMPANO BEACH CITY IN BROWARD COUNTY.
RIVIERA BEACH CITY	RIVIERA BEACH CITY IN PALM BEACH COUNTY.
BALANCE OF ST. LUCIE COUNTY	ST. LUCIE COUNTY LESS FORT PIERCE CITY, PORT ST. LUCIE CITY.
TAYLOR COUNTY	TAYLOR COUNTY.
WEST PALM BEACH CITY	WEST PALM BEACH CITY IN PALM BEACH COUNTY.
GEORGIA	
ALBANY CITY	ALBANY CITY IN DOUGHERTY COUNTY.
APPLING COUNTY	APPLING COUNTY.
ATKINSON COUNTY	ATKINSON COUNTY.
ATLANTA CITY	ATLANTA CITY IN DE KALB COUNTY.
BACON COUNTY	BACON COUNTY.
BURKE COUNTY	BURKE COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CHATTAHOOCHEE COUNTY	CHATTAHOOCHEE COUNTY.
CRISP COUNTY	CRISP COUNTY.
DECATUR COUNTY	DECATUR COUNTY.
EAST POINT CITY	EAST POINT CITY IN FULTON COUNTY.
ELBERT COUNTY	ELBERT COUNTY.
EMANUEL COUNTY	EMANUEL COUNTY.
GREENE COUNTY	GREENE COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
HART COUNTY	HART COUNTY.
JEFF DAVIS COUNTY	JEFF DAVIS COUNTY.
JEFFERSON COUNTY	JEFFERSON COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
LA GRANGE CITY	LA GRANGE CITY IN TROUP COUNTY.
LAMAR COUNTY	LAMAR COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MACON COUNTY	MACON COUNTY.
MC·DUFFIE COUNTY	MC DUFFIE COUNTY.
MERIWETHER COUNTY	MERIWETHER COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
SCREVEN COUNTY	SCREVEN COUNTY.
STEWART COUNTY	STEWART COUNTY.
SUMTER COUNTY	SUMTER COUNTY.
TALIAFERRO COUNTY	TALIAFERRO COUNTY.
TELFAIR COUNTY	TELFAIR COUNTY.
TERRELL COUNTY	TERRELL COUNTY.
TOOMBS COUNTY	TOOMBS COUNTY.
TREUTLEN COUNTY	TREUTLEN COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
TURNER COUNTY	TURNER COUNTY.
TWIGGS COUNTY	TWIGGS COUNTY.
UPSON COUNTY	UPSON COUNTY.
WARREN COUNTY	WARREN COUNTY.
WHEELER COUNTY	WHEELER COUNTY.
WILKES COUNTY	WILKES COUNTY.
IDAHO	
ADAMS COUNTY	ADAMS COUNTY.
BENEWAH COUNTY	BENEWAH COUNTY.
BONNER COUNTY	BONNER COUNTY.
BOUNDARY COUNTY	BOUNDARY COUNTY.
CALDWELL CITY	CALDWELL CITY IN CANYON COUNTY.
CARIBOU COUNTY	CARIBOU COUNTY.
CLEARWATER COUNTY	CLEARWATER COUNTY.
CUSTER COUNTY	CUSTER COUNTY.
ELMORE COUNTY	ELMORE COUNTY.
GEM COUNTY	GEM COUNTY.
IDAHO COUNTY	IDAHO COUNTY.
BALANCE OF KOOTENAI COUNTY	KOOTENAI COUNTY LESS COEUR D ALENE CITY.
LEMHI COUNTY	LEMHI COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
MINIDOKA COUNTY	MINIDOKA COUNTY.
NAMPA CITY	NAMPA CITY IN CANYON COUNTY.
BALANCE OF NEZ PERCE COUNTY	NEZ PERCE COUNTY LESS LEWISTON CITY.
PAYETTE COUNTY	PAYETTE COUNTY.
POWER COUNTY	POWER COUNTY.
SHOSHONE COUNTY	SHOSHONE COUNTY.
VALLEY COUNTY	VALLEY COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
ILLINOIS	
ADDISON VILLAGE	ADDISON VILLAGE IN DU PAGE COUNTY.
ALEXANDER COUNTY	ALEXANDER COUNTY.
ALTON CITY	ALTON CITY IN MADISON COUNTY.
AURORA CITY	AURORA CITY IN DU PAGE COUNTY, KANE COUNTY.
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY.
BERWYN CITY	BERWYN CITY IN COOK COUNTY.
BOONE COUNTY	BOONE COUNTY.
CALUMET CITY	CALUMET CITY IN COOK COUNTY.
CARPENTERSVILLE CITY	CARPENTERSVILLE CITY IN KANE COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CHICAGO CITY	CHICAGO CITY IN COOK COUNTY.
CHICAGO HEIGHTS CITY	CHICAGO HEIGHTS CITY IN COOK COUNTY.
CICERO CITY	CICERO CITY IN COOK COUNTY.
CLAY COUNTY	CLAY COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
CUMBERLAND COUNTY	CUMBERLAND COUNTY.
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY.
DE WITT COUNTY	DE WITT COUNTY.
DECATUR CITY	DECATUR CITY IN MACON COUNTY.
DES PLAINES CITY	DES PLAINES CITY IN COOK COUNTY.
DOLTON VILLAGE	DOLTON VILLAGE IN COOK COUNTY.
EAST ST. LOUIS CITY	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY.
ELGIN CITY	ELGIN CITY IN COOK COUNTY, KANE COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
FREEPORT CITY	FREEPORT CITY IN STEPHENSON COUNTY.
FULTON COUNTY	FULTON COUNTY.
GALESBURG CITY	GALESBURG CITY IN KNOX COUNTY.
GALLATIN COUNTY	GALLATIN COUNTY.
GRANITE CITY	GRANITE CITY IN MADISON COUNTY.
GRUNDY COUNTY	GRUNDY COUNTY.
HAMILTON COUNTY	HAMILTON COUNTY.
HANOVER PARK VILLAGE	HANOVER PARK VILLAGE IN COOK COUNTY, DU PAGE COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HARVEY CITY	HARVEY CITY IN COOK COUNTY.
IROQUOIS COUNTY	IROQUOIS COUNTY.
JASPER COUNTY	JASPER COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
JEFFERSON COUNTY	JEFFERSON COUNTY.
JOLIET CITY	JOLIET CITY IN WILL COUNTY.
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY.
LA SALLE COUNTY	LA SALLE COUNTY.
MARION COUNTY	MARION COUNTY.
MASON COUNTY	MASON COUNTY.
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY.
MERCER COUNTY	MERCER COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
NORTH CHICAGO CITY	NORTH CHICAGO CITY IN LAKE COUNTY.
PARK FOREST VILLAGE	PARK FOREST VILLAGE IN COOK COUNTY, WILL COUNTY.
PEKIN CITY	PEKIN CITY IN TAZEWELL COUNTY.
PERRY COUNTY	PERRY COUNTY.
POPE COUNTY	POPE COUNTY.
PULASKI COUNTY	PULASKI COIUNTY.
PUTNAM COUNTY	PUTNAM COUNTY.
ROCKFORD CITY	ROCKFORD CITY IN WINNEBAGO COUNTY.
ROUND LAKE BEACH VILLAGE	ROUND LAKE BEACH VILLAGE IN LAKE COUNTY.
SALINE COUNTY	SALINE COUNTY.
SHELBY COUNTY	SHELBY COUNTY.
ST. CHARLES CITY	ST. CHARLES CITY IN DU PAGE COUNTY, KANE COUNTY.
STARK COUNTY	STARK COUNTY.
WABASH COUNTY	WABASH COUNTY.
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY.
WHITESIDE COUNTY	WHITESIDE COUNTY.
INDIANA	
ANDERSON CITY	ANDERSON CITY IN MADISON COUNTY.
BLACKFORD COUNTY	BLACKFORD COUNTY.
EAST CHICAGO CITY	EAST CHICAGO CITY IN LAKE COUNTY.
ELKHART CITY	ELKHART CITY IN ELKHART COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
FULTON COUNTY	FULTON COUNTY.
GARY CITY	GARY CITY IN LAKE COUNTY.
GREENE COUNTY	GREENE COUNTY.
HAMMOND CITY	HAMMOND CITY IN LAKE COUNTY.
JAY COUNTY	JAY COUNTY.
KOKOMO CITY	KOKOMO CITY IN HOWARD COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
MARION CITY	MARION CITY IN GRANT COUNTY.
MIAMI COUNTY	MIAMI COUNTY.
MICHIGAN CITY	MICHIGAN CITY IN LA PORTE COUNTY.
MUNCIE CITY	MUNCIE CITY IN DELAWARE COUNTY.
NOBLE COUNTY	NOBLE COUNTY.
ORANGE COUNTY	ORANGE COUNTY.
PULASKI COUNTY	PULASKI COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
RICHMOND CITY	RICHMOND CITY IN WAYNE COUNTY.
SOUTH BEND CITY	SOUTH BEND CITY IN ST. JOSEPH COUNTY.
STARKE COUNTY	STARKE COUNTY.
STEUBEN COUNTY	STEUBEN COUNTY.
TERRE HAUTE CITY	TERRE HAUTE CITY IN VIGO COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WHITE COUNTY	WHITE COUNTY.
IOWA	
CHICKAWAY COUNTY	CHICKASAW COUNTY.
LEE COUNTY	LEE COUNTY.
KANSAS	
CHEROKEE COUNTY	CHEROKEE COUNTY.
COFFEY COUNTY	COFFEY COUNTY.
DONIPHAN COUNTY	DONIPHAN COUNTY.
GARDEN CITY	GARDEN CITY IN FINNEY COUNTY.
GEARY COUNTY	GEARY COUNTY.
KANSAS CITY KN	KANSAS CITY KN IN WYANDOTTE COUNTY.
LEAVENWORTH CITY	LEAVENWORTH CITY IN LEAVENWORTH COUNTY.
LINN COUNTY	LINN COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
WOODSON COUNTY	WOODSON COUNTY.
KENTUCKY	
ALLEN COUNTY	ALLEN COUNTY.
BALLARD COUNTY	BALLARD COUNTY.
BATH COUNTY	BATH COUNTY.
BELL COUNTY	BELL COUNTY.
BREATHITT COUNTY	BREATHITT COUNTY.
BRECKINRIDGE COUNTY	BRECKINRIDGE COUNTY.
BUTLER COUNTY	BUTLER COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CARTER COUNTY	CARTER COUNTY.
CASEY COUNTY	CASEY COUNTY.
BALANCE OF CHRISTIAN COUNTY	CHRISTIAN COUNTY LESS HOPKINSVILLE CITY.
CLAY COUNTY	CLAY COUNTY.
CLINTON COUNTY	CLINTON COUNTY.
CRITTENDEN COUNTY	CRITTENDEN COUNTY.
CUMBERLAND COUNTY	CUMBERLAND COUNTY.
EDMONSON COUNTY	EDMONSON COUNTY.
ELLIOTT COUNTY	ELLIOTT COUNTY.
ESTILL COUNTY	ESTILL COUNTY.
FLOYD COUNTY	FLOYD COUNTY.
FULTON COUNTY	FULTON COUNTY.
GRAVES COUNTY	GRAVES COUNTY.
GRAYSON COUNTY	GRAYSON COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HARLAN COUNTY	HARLAN COUNTY.
HARRISON COUNTY	HARRISON COUNTY.
HENDERSON CITY	HENDERSON CITY IN HENDERSON COUNTY.
HOPKINS COUNTY	HOPKINS COUNTY.
KNOX COUNTY	KNOX COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LEE COUNTY	LEE COUNTY.
LETCHER COUNTY	LETCHER COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LIVINGSTON COUNTY	LIVINGSTON COUNTY.
LOGAN COUNTY	LOGAN COUNTY.
MAGOFFIN COUNTY	MAGOFFIN COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MARTIN COUNTY	MARTIN COUNTY.
BALANCE OF MC CRACKEN COUNTY	MC CRACKEN COUNTY LESS PADUCAH CITY.
MC CREARY COUNTY	MC CREARY COUNTY.
MC LEAN COUNTY	MC LEAN COUNTY.
MEADE COUNTY	MEADE COUNTY.
MENIFEE COUNTY	MENIFEE COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
MUHLENBERG COUNTY	MUHLENBERG COUNTY.
NELSON COUNTY	NELSON COUNTY.
NICHOLAS COUNTY	NICHOLAS COUNTY.
OHIO COUNTY	OHIO COUNTY.
PERRY COUNTY	PERRY COUNTY.
POWELL COUNTY	POWELL COUNTY.
PULASKI COUNTY	PULASKI COUNTY.
RICHMOND CITY	RICHMOND CITY IN MADISON COUNTY.
ROCKCASTLE COUNTY	ROCKCASTLE COUNTY.
RUSSELL COUNTY	RUSSELL COUNTY.
TODD COUNTY	TODD COUNTY.
TRIMBLE COUNTY	TRIMBLE COUNTY.
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS BOWLING GREEN CITY.
WAYNE COUNTY	WAYNE COUNTY.
WEBSTER COUNTY	WEBSTER COUNTY.
WHITLEY COUNTY	WHITLEY COUNTY.
WOLFE COUNTY	WOLFE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
LOUISIANA	
ALEXANDRIA CITY	ALEXANDRIA CITY IN RAPIDES PARISH.
ALLEN PARISH	ALLEN PARISH.
ASCENSION PARISH	ASCENSION PARISH.
ASSUMPTION PARISH	ASSUMPTION PARISH.
AVOYELLES PARISH	AVOYELLES PARISH.
BEAUREGARD PARISH	BEAUREGARD PARISH.
BIENVILLE PARISH	BIENVILLE PARISH.
CALDWELL PARISH	CALDWELL PARISH.
CATAHOULA PARISH	CATAHOULA PARISH.
CLAIBORNE PARISH	CLAIBORNE PARISH.
CONCORDIA PARISH	CONCORDIA PARISH.
DE SOTO PARISH	DE SOTO PARISH.
EAST CARROLL PARISH	EAST CARROLL PARISH.
EVANGELINE PARISH	EVANGELINE PARISH.
FRANKLIN PARISH	FRANKLIN PARISH.
GRANT PARISH	GRANT PARISH.
IBERVILLE PARISH	IBERVILLE PARISH.
JACKSON PARISH	JACKSON PARISH.
JEFFERSON DAVIS PARISH	JEFFERSON DAVIS PARISH.
LA SALLE PARISH	LA SALLE PARISH.
LAKE CHARLES CITY	LAKE CHARLES CITY IN CALCASIEU PARISH.
LIVINGSTON PARISH	LIVINGSTON PARISH.
MADISON PARISH	MADISON PARISH.
MONROE CITY	MONROE CITY IN OUACHITA PARISH.
MOREHOUSE PARISH	MOREHOUSE PARISH.
NATCHITOCHES PARISH	NATCHITOCHES PARISH.
NEW IBERIA CITY	NEW IBERIA CITY IN IBERIA PARISH.
POINTE COUPEE PARISH	POINTE COUPEE PARISH.
RED RIVER PARISH	RED RIVER PARISH.
RICHLAND PARISH	RICHLAND PARISH.
SABINE PARISH	SABINE PARISH.
SHREVEPORT CITY	SHREVEPORT CITY IN BOSSIER PARISH, CADDO PARISH.
ST. JAMES PARISH	ST. JAMES PARISH.
ST. JOHN BAPTIST PARISH	ST. JOHN BAPTIST PARISH.
ST. LANDRY PARISH	ST. LANDRY PARISH.
ST. MARTIN PARISH	ST. MARTIN PARISH.
ST. MARY PARISH	ST. MARY PARISH.
TANGIPAHOA PARISH	TANGIPAHOA PARISH.
TENSAS PARISH	TENSAS PARISH.
VERMILION PARISH	VERMILION PARISH.
WASHINGTON PARISH	WASHINGTON PARISH.
WEBSTER PARISH	WEBSTER PARISH.
WEST CARROLL PARISH	WEST CARROLL PARISH.
WINN PARISH	WINN PARISH.
MAINE	
PISCATAQUIS COUNTY	PISCATAQUIS COUNTY.
SOMERSET COUNTY	SOMERSET COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
MARYLAND	
ALLEGANY COUNTY	ALLEGANY COUNTY.
BALTIMORE CITY	BALTIMORE CITY.
DORCHESTER COUNTY	DORCHESTER COUNTY.
GARRETT COUNTY	GARRETT COUNTY.
SOMERSET COUNTY	SOMERSET COUNTY.
WORCESTER COUNTY	WORCESTER COUNTY.
MASSACHUSETTS	
ADAMS TOWN	ADAMS TOWN IN BERKSHIRE COUNTY.
AQUINNAH TOWN	AQUINNAH TOWN IN DUKES COUNTY.
ATHOL TOWN	ATHOL TOWN IN WORCESTER COUNTY.
CHELSEA CITY	CHELSEA CITY IN SUFFOLK COUNTY.
FALL RIVER CITY	FALL RIVER CITY IN BRISTOL COUNTY.
FITCHBURG CITY	FITCHBURG CITY IN WORCESTER COUNTY.
FLORIDA TOWN	FLORIDA TOWN IN BERKSHIRE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
GARDNER TOWN	GARDNER TOWN IN WORCESTER COUNTY.
HAVERHILL CITY	HAVERHILL CITY IN ESSEX COUNTY.
HUBBARDSTON TOWN	HUBBARDSTON TOWN IN WORCESTER COUNTY.
LAWRENCE CITY	LAWRENCE CITY IN ESSEX COUNTY.
LOWELL CITY	LOWELL CITY IN MIDDLESEX COUNTY.
METHUEN CITY	METHUEN CITY IN ESSEX COUNTY.
NEW BEDFORD CITY	NEW BEDFORD CITY IN BRISTOL COUNTY.
PHILLIPSTON TOWN	PHILLIPSTON TOWN IN WORCESTER COUNTY.
PROVINCETOWN TOWN	PROVINCETOWN TOWN IN BARNSTABLE COUNTY.
ROYALSTON TOWN	ROYALSTON TOWN IN WORCESTER COUNTY.
SPRINGFIELD CITY	SPRINGFIELD CITY IN HAMPDEN COUNTY.
TRURO TOWN	TRURO TOWN IN BARNSTABLE COUNTY.
MICHIGAN	
ALCONA COUNTY	ALCONA COUNTY.
ALPENA COUNTY	ALPENA COUNTY.
ANTRIM COUNTY	ANTRIM COUNTY.
ARENAC COUNTY	ARENAC COUNTY.
BARAGA COUNTY	BARAGA COUNTY.
BATTLE CREEK CITY	BATTLE CREEK CITY IN CALHOUN COUNTY.
BAY CITY	BAY CITY IN BAY COUNTY.
BENZIE COUNTY	BENZIE COUNTY.
BURTON CITY	BURTON CITY IN GENESEE COUNTY.
CHARLEVOIX COUNTY	CHARLEVOIX COUNTY.
CHEBOYGAN COUNTY	CHEBOYGAN COUNTY.
CHIPPEWA COUNTY	CHIPPEWA COUNTY.
CLARE COUNTY	CLARE COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
DELTA COUNTY	DELTA COUNTY.
DETROIT CITY	DETROIT CITY IN WAYNE COUNTY.
EMMET COUNTY	EMMET COUNTY.
FLINT CITY	FLINT CITY IN GENESEE COUNTY.
GLADWIN COUNTY	GLADWIN COUNTY.
GOGEBIC COUNTY	GOGEBIC COUNTY.
GRAND RAPIDS CITY	GRAND RAPIDS CITY IN KENT COUNTY.
HIGHLAND PARK CITY	HIGHLAND PARK CITY IN WAYNE COUNTY.
HILLSDALE COUNTY	HILLSDALE COUNTY.
HURON COUNTY	HURON COUNTY.
INKSTER CITY	INKSTER CITY IN WAYNE COUNTY.
IOSCO COUNTY	IOSCO COUNTY.
IRON COUNTY	IRON COUNTY.
JACKSON CITY	JACKSON CITY IN JACKSON CITY COUNTY.
KALAMAZOO CITY	KALAMAZOO CITY IN KALAMAZOO COUNTY.
KALKASKA COUNTY	KALKASKA COUNTY.
KEWEENAW COUNTY	KEWEENAW COUNTY.
LAKE COUNTY	LAKE COUNTY.
LAPEER COUNTY	LAPEER COUNTY.
LUCE COUNTY	LUCE COUNTY.
MACKINAC COUNTY	MACKINAC COUNTY.
MANISTEE COUNTY	MANISTEE COUNTY.
MARQUETTE COUNTY	MARQUETTE COUNTY.
MASON COUNTY	MASON COUNTY.
MENOMINEE COUNTY	MENOMINEE COUNTY.
MISSAUKEE COUNTY	MISSAUKEE COUNTY.
MONTCALM COUNTY	MONTCALM COUNTY
MONTMORENCY COUNTY	MONTMORENCY COUNTY.
MOUNT MORRIS TOWNSHIP	MOUNT MORRIS TOWNSHIP IN GENESEE COUNTY.
MUSKEGON CITY	MUSKEGON CITY IN MUSKEGON COUNTY.
BALANCE OF MUSKEGON COUNTY	MUSKEGON COUNTY LESS MUSKEGON CITY.
NEWAYGO COUNTY	NEWAYGO COUNTY.
OCEANA COUNTY	OCEANA COUNTY.
OGEMAW COUNTY	OGEMAW COUNTY.
ONTONAGON COUNTY	ONTONAGON COUNTY
OSCEOLA COUNTY	OSCEOLA COUNTY.
OSCODA COUNTY	OSCODA COUNTY
OTSEGO COUNTY	OTSEGO COUNTY
PONTIAC CITY	PONTIAC CITY IN OAKLAND COUNTY.
PORT HURON CITY	PORT HURON CITY IN ST. CLAIR COUNTY.
PRESQUE ISLE COUNTY	PRESQUE ISLE COUNTY.
ROSCOMMON COUNTY	ROSCOMMON COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
ROSEVILLE CITY	ROSEVILLE CITY IN MACOMB COUNTY.
SAGINAW CITY	SAGINAW CITY IN SAGINAW COUNTY.
SANILAC COUNTY	SANILAC COUNTY.
SCHOOLCRAFT COUNTY	SCHOOLCRAFT COUNTY.
SHIAWASSEE COUNTY	SHIAWASSEE COUNTY.
BALANCE OF ST. CLAIR COUNTY	ST. CLAIR COUNTY LESS PORT HURON CITY.
ST. JOSEPH COUNTY	ST. JOSEPH COUNTY.
TUSCOLA COUNTY	TUSCOLA COUNTY.
WEXFORD COUNTY	WEXFORD COUNTY.
AITKIN COUNTY	AITKIN COUNTY.
CLEARWATER COUNTY	CLEARWATER COUNTY.
GRANT COUNTY	GRANT COUNTY.
ITASCA COUNTY	ITASCA COUNTY.
KANABEC COUNTY	KANABEC COUNTY.
KITTSON COUNTY	KITTSON COUNTY.
MAHNOMEN COUNTY	MAHNOMEN COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MEEKER COUNTY	MEEKER COUNTY.
MILLE LACS COUNTY	MILLE LACS COUNTY.
MORRISON COUNTY	MORRISON COUNTY.
PINE COUNTY	PINE COUNTY.
RED LAKE COUNTY	RED LAKE COUNTY.
MISSISSIPPI	
ADAMS COUNTY	ADAMS COUNTY.
ALCORN COUNTY	ALCORN COUNTY.
ATTALA COUNTY	ATTALA COUNTY.
BENTON COUNTY	BENTON COUNTY.
BOLIVAR COUNTY	BOLIVAR COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CHICKASAW COUNTY	CHICKASAW COUNTY.
CHOCTAW COUNTY	CHOCTAW COUNTY.
CLAIBORNE COUNTY	CLAIBORNE COUNTY.
CLARKE COUNTY	CLARKE COUNTY.
CLAY COUNTY	CLAY COUNTY.
COAHOMA COUNTY	COAHOMA COUNTY.
COLUMBUS CITY	COLUMBUS CITY IN LOWNDES COUNTY.
COPIAH COUNTY	COPIAH COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
GEORGE COUNTY	GEORGE COUNTY.
GREENE COUNTY	GREENE COUNTY.
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY.
GRENADA COUNTY	GRENADA COUNTY.
HOLMES COUNTY	HOLMES COUNTY.
HUMPHREYS COUNTY	HUMPHREYS COUNTY.
ISSAQUENA COUNTY	ISSAQUENA COUNTY.
JEFFERSON COUNTY	JEFFERSON COUNTY.
JEFFERSON DAVIS COUNTY	JEFFERSON DAVIS COUNTY.
KEMPER COUNTY	KEMPER COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LEFLORE COUNTY	LEFLORE COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MONROE COUNTY	MONROE COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
NEWTON COUNTY	NEWTON COUNTY.
NOXUBEE COUNTY	NOXUBEE COUNTY.
PANOLA COUNTY	PANOLA COUNTY.
PERRY COUNTY	PERRY COUNTY.
PIKE COUNTY	PIKE COUNTY.
QUITMAN COUNTY	QUITMAN COUNTY.
SHARKEY COUNTY	SHARKEY COUNTY.
SUNFLOWER COUNTY	SUNFLOWER COUNTY.
TALLAHATCHIE COUNTY	TALLAHATCHIE COUNTY.
TIPPAH COUNTY	TIPPAH COUNTY.
TISHOMINGO COUNTY	TISHOMINGO COUNTY.
WALTHALL COUNTY	WALTHALL COUNTY.
BALANCE OF WASHINGTON COUNTY	WASHINGTON COUNTY LESS GREENVILLE CITY.
WAYNE COUNTY	WAYNE COUNTY.
WEBSTER COUNTY	WEBSTER COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
WILKINSON COUNTY	WILKINSON COUNTY.
WINSTON COUNTY	WINSTON COUNTY.
YALOBUSHA COUNTY	YALOBUSHA COUNTY.
YAZOO COUNTY	YAZOO COUNTY.
MISSOURI	
BATES COUNTY	BATES COUNTY.
BENTON COUNTY	BENTON COUNTY.
BOLLINGER COUNTY	BOLLINGER COUNTY.
CALDWELL COUNTY	CALDWELL COUNTY.
CARTER COUNTY	CARTER COUNTY.
CHARITON COUNTY	CHARITON COUNTY.
CLARK COUNTY	CLARK COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
DENT COUNTY	DENT COUNTY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
DUNKLIN COUNTY	DUNKLIN COUNTY.
HICKORY COUNTY	HICKORY COUNTY.
IRON COUNTY	IRON COUNTY.
LACLEDE COUNTY	LACLEDE COUNTY.
LINN COUNTY	LINN COUNTY.
MACON COUNTY	MACON COUNTY.
MADISON COUNTY	MADISON COUNTY.
MILLER COUNTY	MILLER COUNTY.
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
NEW MADRID COUNTY	NEW MADRID COUNTY.
PEMISCOT COUNTY	PEMISCOT COUNTY.
REYNOLDS COUNTY	REYNOLDS COUNTY.
RIPLEY COUNTY	RIPLEY COUNTY.
SHANNON COUNTY	SHANNON COUNTY.
SHELBY COUNTY	SHELBY COUNTY.
ST. LOUIS CITY	ST. LOUIS CITY.
ST. FRANCOIS COUNTY	ST. FRANCOIS COUNTY.
STODDARD COUNTY	STODDARD COUNTY.
STONE COUNTY	STONE COUNTY.
TANEY COUNTY	TANEY COUNTY.
TEXAS COUNTY	TEXAS COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
WRIGHT COUNTY	WRIGHT COUNTY.
MONTANA	
ANACONDA-DEER LODGE COUNTY	ANACONDA-DEER LODGE COUNTY.
BIG HORN COUNTY	BIG HORN COUNTY.
GLACIER COUNTY	GLACIER COUNTY.
GRANITE COUNTY	GRANITE COUNTY.
LAKE COUNTY	LAKE COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MINERAL COUNTY	MINERAL COUNTY.
MUSSELSHELL COUNTY	MUSSELSHELL COUNTY.
ROOSEVELT COUNTY	ROOSEVELT COUNTY.
ROSEBUD COUNTY	ROSEBUD COUNTY.
SANDERS COUNTY	SANDERS COUNTY.
NEBRASKA	
THURSTON COUNTY	THURSTON COUNTY.
NEVADA	
CHURCHILL COUNTY	CHURCHILL COUNTY.
ESMERALDA COUNTY	ESMERALDA COUNTY.
LANDER COUNTY	LANDER COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LYON COUNTY	LYON COUNTY.
MINERAL COUNTY	MINERAL COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
NORTH LAS VEGAS CITY	NORTH LAS VEGAS CITY IN CLARK COUNTY.
NYE COUNTY	NYE COUNTY.
NEW HAMPSHIRE	
COOS COUNTY	COOS COUNTY.
NEW JERSEY	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY.
CAMDEM CITY	CAMDEN CITY IN CAMDEN COUNTY.
CAPE MAY COUNTY	CAPE MAY COUNTY.
CITY OF ORANGE TOWNSHIP	CITY OF ORANGE TOWNSHIP IN ESSEX COUNTY.
BALANCE OF CUMBERLAND COUNTY	CUMBERLAND COUNTY LESS MILLVILLE CITY, VINELAND CITY.
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY.
ELIZABETH CITY	ELIZABETH CITY IN UNION COUNTY.
IRVINGTON TOWNSHIP	IRVINGTON TOWNSHIP IN ESSEX COUNTY.
JERSEY CITY	JERSEY CITY IN HUDSON COUNTY.
LONG BRANCH CITY	LONG BRANCH CITY IN MONMOUTH COUNTY.
MILLVILLE CITY	MILLVILLE CITY IN CUMBERLAND COUNTY.
NEW BRUNSWICK CITY	NEW BRUNSWICK CITY IN MIDDLESEX COUNTY.
NEWARK CITY	NEWARK CITY IN ESSEX COUNTY.
PASSAIC CITY	PASSAIC CITY IN PASSAIC COUNTY.
PATERSON CITY	PATERSON CITY IN PASSAIC COUNTY.
PERTH AMBOY CITY	PERTH AMBOY CITY IN MIDDLESEX COUNTY.
PLAINFIELD CITY	PLAINFIELD CITY IN UNION COUNTY.
TRENTON CITY	TRENTON CITY IN MERCER COUNTY.
UNION CITY	UNION CITY IN HUDSON COUNTY.
VINELAND CITY	VINELAND CITY IN CUMBERLAND COUNTY.
WEST NEW YORK TOWN	WEST NEW YORK TOWN IN HUDSON COUNTY.
NEW MEXICO	
CARLSBAD CITY	CARLSBAD CITY IN EDDY COUNTY.
CATRON COUNTY	CATRON COUNTY.
BALANCE OF DONA ANA COUNTY	DONA ANA COUNTY LESS LAS CRUCES CITY.
GRANT COUNTY	GRANT COUNTY.
GUADALUPE COUNTY	GUADALUPE COUNTY.
HIDALGO COUNTY	HIDALGO COUNTY.
LAS CRUCES CITY	LAS CRUCES CITY IN DONA ANA COUNTY.
LUNA COUNTY	LUNA COUNTY.
MORA COUNTY	MORA COUNTY.
BALANCE OF OTERO COUNTY	OTERO COUNTY LESS ALAMOGORDO CITY.
RIO ARRIBA COUNTY	RIO ARRIBA COUNTY.
ROSWELL CITY	ROSWELL CITY IN CHAVES COUNTY.
BALANCE OF SAN JUAN COUNTY	SAN JUAN COUNTY LESS FARMINGTON CITY.
SAN MIGUEL COUNTY	SAN MIGUEL COUNTY.
BALANCE OF SANDOVAL COUNTY	SANDOVAL COUNTY LESS RIO RANCHO CITY.
TAOS COUNTY	TAOS COUNTY.
NEW YORK	
AUBURN CITY	AUBURN CITY IN CAYUGA COUNTY.
BINGHAMTON CITY	BINGHAMTON CITY IN BROOME COUNTY.
BRONX COUNTY	BRONX COUNTY.
BUFFALO CITY	BUFFALO CITY IN ERIE COUNTY.
CATTARAUGUS COUNTY	CATTARAUGUS COUNTY.
CORTLAND COUNTY	CORTLAND COUNTY.
ELMIRA CITY	ELMIRA CITY IN CHEMUNG COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
JAMESTOWN CITY	JAMESTOWN CITY IN CHAUTAUQUA COUNTY.
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS WATERTOWN CITY.
KINGS COUNTY	KINGS COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LOCKPORT CITY	LOCKPORT CITY IN NIAGARA COUNTY.
NEW YORK COUNTY	NEW YORK COUNTY.
NEWBURGH CITY	NEWBURGH CITY IN ORANGE COUNTY.
NIAGARA FALLS CITY	NIAGARA FALLS CITY IN NIAGARA COUNTY.
OSWEGO COUNTY	OSWEGO COUNTY.
ROCKESTER CITY	ROCHESTER CITY IN MONROE COUNTY.
SCHUYLER COUNTY	SCHUYLER COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
ST. LAWRENCE COUNTY	ST. LAWRENCE COUNTY.
STEUBEN COUNTY	STEUBEN COUNTY.
SYRACUSE CITY	SYRACUSE CITY IN ONONDAGA COUNTY.
UTICA CITY	UTICA CITY IN ONEIDA COUNTY.
WATERTOWN CITY	WATERTOWN CITY IN JEFFERSON COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
NORTH CAROLINA	
ALEXANDER COUNTY	ALEXANDER COUNTY.
ALLEGHANY COUNTY	ALLEGHANY COUNTY.
ANSON COUNTY	ANSON COUNTY.
ASHE COUNTY	ASHE COUNTY.
BEAUFORT COUNTY	BEAUFORT COUNTY.
BERTIE COUNTY	BERTIE COUNTY.
BLADEN COUNTY	BLADEN COUNTY.
BALANCE OF BURKE COUNTY	BURKE COUNTY LESS HICKORY CITY.
BURLINGTON CITY	BURLINGTON CITY IN ALAMANCE COUNTY.
CALDWELL COUNTY	CALDWELL COUNTY.
CASWELL COUNTY	CASWELL COUNTY.
BALANCE OF CATAWBA COUNTY	CATAWBA COUNTY LESS HICKORY CITY.
CHEROKEE COUNTY	CHEROKEE COUNTY.
CLEVELAND COUNTY	CLEVELAND COUNTY.
COLUMBUS COUNTY	COLUMBUS COUNTY.
BALANCE OF DAVIDSON COUNTY	DAVIDSON COUNTY LESS HIGH POINT CITY.
DUPLIN COUNTY	DUPLIN COUNTY.
BALANCE OF EDGECOMBE COUNTY	EDGECOMBE COUNTY LESS ROCKY MOUNT CITY.
BALANCE OF GASTON COUNTY	GASTON COUNTY LESS GASTONIA CITY.
GASTONIA CITY	GASTONIA CITY IN GASTON COUNTY.
GOLDSBORO CITY	GOLDSBORO CITY IN WAYNE COUNTY.
GRAHAM COUNTY	GRAHAM COUNTY.
GREENE COUNTY	GREENE COUNTY.
GREENVILLE COUNTY	GREENVILLE CITY IN PITT COUNTY.
HALIFAX COUNTY	HALIFAX COUNTY.
HARNETT COUNTY	HARNETT COUNTY.
HICKORY CITY	HICKORY CITY IN BURKE COUNTY, CATAWBA COUNTY.
HIGH POINT CITY	HIGH POINT CITY IN DAVIDSON COUNTY, GUILFORD COUNTY, RANDOLPH COUNTY.
HOKE COUNTY	HOKE COUNTY.
HYDE COUNTY	HYDE COUNTY.
KANNAPOLIS CITY	KANNAPOLIS CITY IN CABARRUS COUNTY, ROWAN COUNTY.
KINSTON CITY	KINSTON CITY IN LENOIR COUNTY.
LEE COUNTY	LEE COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MARTIN COUNTY	MARTIN COUNTY.
MCDOWELL COUNTY	MCDOWELL COUNTY.
MITCHELL COUNTY	MITCHELL COUNTY.
MONROE CITY	MONROE CITY IN UNION COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
BALANCE OF NASH COUNTY	NASH COUNTY LESS ROCKY MOUNT CITY.
NORTHAMPTON COUNTY	NORTHAMPTON COUNTY.
PENDER COUNTY	PENDER COUNTY.
PERSON COUNTY	PERSON COUNTY.
RICHMOND COUNTY	RICHMOND COUNTY.
ROBESON COUNTY	ROBESON COUNTY.
ROCKINGHAM COUNTY	ROCKINGHAM COUNTY.
ROCKY MOUNT CITY	ROCKY MOUNT CITY IN EDGECOMBE COUNTY, NASH COUNTY.
RUTHERFORD COUNTY	RUTHERFORD COUNTY.
SALISBURY CITY	SALISBURY CITY IN ROWAN COUNTY.
SAMPSON COUNTY	SAMPSON COUNTY.
SCOTLAND COUNTY	SCOTLAND COUNTY.
STANLY COUNTY	STANLY COUNTY.
SURRY COUNTY	SURRY COUNTY.
SWAIN COUNTY	SWAIN COUNTY.
TYRRELL COUNTY	TYRRELL COUNTY.
VANCE COUNTY	VANCE COUNTY.
WARREN COUNTY	WARREN COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WILKES COUNTY	WILKES COUNTY.
WILMINGTON CITY	WILMINGTON CITY IN NEW HANOVER COUNTY.
WILSON CITY	WILSON CITY IN WILSON COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
YANCEY COUNTY	YANCEY COUNTY.
NORTH DAKOTA	
BENSON COUNTY	BENSON COUNTY.
MCLEAN COUNTY	MCLEAN COUNTY.
PEMBINA COUNTY	PEMBINA COUNTY.
ROLETTE COUNTY	ROLETTE COUNTY.
SHERIDAN COUNTY	SHERIDAN COUNTY.
ADAMS COUNTY	ADAMS COUNTY.
AKRON CITY	AKRON CITY IN SUMMIT COUNTY.
ASHTABULA COUNTY	ASHTABULA COUNTY.
BARBERTON CITY	BARBERTON CITY IN SUMMIT COUNTY.
BROWN COUNTY	BROWN COUNTY.
CANTON CITY	CANTON CITY IN STARK COUNTY.
CLEVELAND CITY	CLEVELAND CITY IN CUYAHOGA COUNTY.
COSHOCTON COUNTY	COSHOCTON COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
DAYTON CITY	DAYTON CITY IN MONTGOMERY COUNTY.
EAST CLEVELAND CITY	EAST CLEVELAND CITY IN CUYAHOGA COUNTY.
ELYRIA CITY	ELYRIA CITY IN LORAIN COUNTY.
HOCKING COUNTY	HOCKING COUNTY.
HURON COUNTY	HURON COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LIMA CITY	LIMA CITY IN ALLEN COUNTY.
LORAIN CITY	LORAIN CITY IN LORAIN COUNTY.
MANSFIELD CITY	MANSFIELD CITY IN RICHLAND COUNTY.
MEIGS COUNTY	MEIGS COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
NOBLE COUNTY	NOBLE COUNTY.
OTTAWA COUNTY	OTTAWA COUNTY.
PERRY COUNTY	PERRY COUNTY.
PIKE COUNTY	PIKE COUNTY.
SANDUSKY CITY	SANDUSKY CITY IN ERIE COUNTY.
SCIOTO COUNTY	SCIOTO COUNTY.
SENECA COUNTY	SENECA COUNTY.
SPRINGFIELD CITY	SPRINGFIELD CITY IN CLARK COUNTY.
TOLEDO CITY	TOLEDO CITY IN LUCAS COUNTY.
VINTON COUNTY	VINTON COUNTY.
WARREN CITY	WARREN CITY IN TRUMBULL COUNTY.
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN MAHONING COUNTY.
ZANESVILLE CITY	ZANESVILLE CITY IN MUSKINGUM COUNTY.
OKLAHOMA	
CHOCTAW COUNTY	CHOCTAW COUNTY.
COAL COUNTY	COAL COUNTY.
MAYES COUNTY	MAYES COUNTY.
MC CURTAIN COUNTY	MC CURTAIN COUNTY.
NOWATA COUNTY	NOWATA COUNTY.
OKMULGEE COUNTY	OKMULGEE COUNTY.
OTTAWA COUNTY	OTTAWA COUNTY.
PUSHMATAHA COUNTY	PUSHMATAHA COUNTY.
SEMINOLE COUNTY	SEMINOLE COUNTY.
OREGON	
ALBANY CITY	ALBANY CITY IN LINN COUNTY.
BAKER COUNTY	BAKER COUNTY.
COLUMBIA COUNTY	COLUMBIA COUNTY.
COOS COUNTY	COOS COUNTY.
CROOK COUNTY	CROOK COUNTY.
CURRY COUNTY	CURRY COUNTY.
BALANCE OF DESCHUTES COUNTY	DESCHUTES COUNTY LESS BEND CITY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
GRANT COUNTY	GRANT COUNTY.
HARNEY COUNTY	HARNEY COUNTY.
HOOD RIVER COUNTY	HOOD RIVER COUNTY.
BALANCE OF JACKSON COUNTY	JACKSON COUNTY LESS MEDFORD CITY.
JEFFERSON COUNTY	JEFFERSON COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
JOSEPHINE COUNTY	JOSEPHINE COUNTY.
KLAMATH COUNTY	KLAMATH COUNTY.
LAKE COUNTY	LAKE COUNTY.
BALANCE OF LANE COUNTY	LANE COUNTY LESS EUGENE CITY, SPRINGFIELD CITY.
LINCOLN COUNTY	LINCOLN COUNTY.
BALANCE OF LINN COUNTY	LINN COUNTY LESS ALBANY CITY.
MALHEUR COUNTY	MALHEUR COUNTY.
BALANCE OF MARION COUNTY	MARION COUNTY LESS KEIZER CITY, SALEM CITY.
MC MINNVILLE CITY	MC MINNVILLE CITY IN YAMHILL COUNTY.
MORROW COUNTY	MORROW COUNTY.
BALANCE OF MULTNOMAH COUNTY	MULTNOMAH COUNTY LESS GRESHAM CITY, LAKE OSWEGO CITY, PORTLAND CITY.
BALANCE OF POLK COUNTY	POLK COUNTY LESS SALEM CITY.
PORTLAND CITY	PORTLAND CITY IN CLACKAMAS COUNTY, MULTNOMAH COUNTY, WASHINGTON COUNTY.
SALEM CITY	SALEM CITY IN MARION COUNTY, POLK COUNTY.
SHERMAN COUNTY	SHERMAN COUNTY.
SPRINGFIELD CITY	SPRINGFIELD CITY IN LANE COUNTY.
UMATILLA COUNTY	UMATILLA COUNTY.
WALLOWA COUNTY	WALLOWA COUNTY.
WASCO COUNTY	WASCO COUNTY.
WHEELER COUNTY	WHEELER COUNTY.
BALANCE OF YAMHILL COUNTY	YAMHILL COUNTY LESS MC MINNVILLE CITY.
ARMSTRONG COUNTY	ARMSTRONG COUNTY.
BEDFORD COUNTY	BEDFORD COUNTY.
BALANCE OF CAMBRIA COUNTY	CAMBRIA COUNTY LESS JOHNSTOWN CITY.
CAMERON COUNTY	CAMERON COUNTY.
CARBON COUNTY	CARBON COUNTY.
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY.
CLEARFIELD COUNTY	CLEARFIELD COUNTY.
CLINTON COUNTY	CLINTON COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
ELK COUNTY	ELK COUNTY.
ERIE CITY	ERIE CITY IN ERIC COUNTY.
BALANCE OF ERIE COUNTY	ERIE COUNTY LESS ERIE CITY, MILLCREEK TOWNSHIP.
FAYETTE COUNTY	FAYETTE COUNTY.
FOREST COUNTY	FOREST COUNTY.
FULTON COUNTY	FULTON COUNTY.
HAZLETON CITY	HAZLETON CITY IN LUZERNE COUNTY.
HUNTINGTON COUNTY	HUNTINGTON COUNTY.
INDIANA COUNTY	INDIANA COUNTY.
JEFFERSON COUNTY	JEFFERSON COUNTY.
JOHNSTOWN CITY	JOHNSTOWN CITY IN CAMBRIA COUNTY.
MCKEESPORT CITY	MCKEESPORT CITY IN ALLEGHENY COUNTY.
MIFFLIN COUNTY	MIFFLIN COUNTY.
MONROE COUNTY	MONROE COUNTY.
NEW CASTLE CITY	NEW CASTLE CITY IN LAWRENCE COUNTY.
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY.
READING CITY	READING CITY IN BERKS COUNTY.
SCHUYLKILL COUNTY	SCHUYLKILL COUNTY.
SOMERSET COUNTY	SOMERSET COUNTY.
SULLIVAN COUNTY	SULLIVAN COUNTY.
SUSQUEHANNA COUNTY	SUSQUEHANNA COUNTY.
TIOGA COUNTY	TIOGA COUNTY.
WILLIAMSPORT CITY	WILLIAMSPORT CITY IN LYCOMING COUNTY.
YORK CITY	YOUR CITY IN YORK COUNTY.
PUERTO RICO	
ADJUNTAS MUNICIPIO	ADJUNTAS MUNICIPIO.
AGUADA MUNICIPIO	AGUADA MUNICIPIO.
AGUADILLA MUNICIPIO	AGUADILLA MUNICIPIO.
AGUAS BUENAS MUNICIPIO	AGUAS BUENAS MUNICIPIO.
AIBONITO MUNICIPIO	AIBONITO MUNICIPIO.
ANASCO MUNICIPIO	ANASCO MUNICIPIO.
ARECIBO MUNICIPIO	ARECIBO MUNICIPIO.
ARROYO MUNICIPIO	ARROYO MUNICIPIO.
BARCELONETA MUNICIPIO	BARCELONETA MUNICIPIO.
BARRANQUITAS MUNICIPIO	BARRANQUITAS MUNICIPIO.
BAYAMON MUNICIPIO	BAYAMON MUNICIPIO.
CABO ROJO MUNICIPIO	CABO ROJO MUNICIPIO.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO.
CAMUY MUNICIPIO	CAMUY MUNICIPIO.
CANOVANAS MUNICIPIO	CANOVANAS MUNICIPIO.
CAROLINA MUNICIPIO	CAROLINA MUNICIPIO.
CANTANO MUNICIPIO	CANTANO MUNICIPIO.
CAYEY MUNICIPIO	CAYEY MUNICIPIO.
CEIBA MUNICIPIO	CEIBA MUNICIPIO.
CIALES MUNICIPIO	CIALES MUNICIPIO.
CIDRA MUNICIPIO	CIDRA MUNICIPIO.
COAMO MUNICIPIO	COAMO MUNICIPIO.
COMERIO MUNICIPIO	COMERIO MUNICIPIO.
COROZAL MUNICIPIO	COROZAL MUNICIPIO.
DORADO MUNICIPIO	DORADO MUNICIPIO.
FAJARDO MUNICIPIO	FAJARDO MUNICIPIO.
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO.
GUANICA MUNICIPIO	GUANICA MUNICIPIO.
GUAYAMA MUNICIPIO	GUAYAMA MUNICIPIO.
GUAYANILLA MUNICIPIO	GUAYANILLA MUNICIPIO.
GURABO MUNICIPIO	GURABO MUNICIPIO.
HATILLO MUNICIPIO	HATILLO MUNICIPIO.
HORMIGUEROS MUNICIPIO	HORMIGUEROS MUNICIPIO.
HUMACAO MUNICIPIO	HUMACAO MUNICIPIO.
ISABELA MUNICIPIO	ISABELA MUNICIPIO.
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO.
JUANA DIAZ MUNICIPIO	JUANA DIAZ MUNICIPIO.
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO.
LAJAS MUNICIPIO	LAJAS MUNICIPIO.
LARES MUNICIPIO	LARES MUNICIPIO.
LAS MARIAS MUNICIPIO	LAS MARIAS MUNICIPIO.
LAS PIEDRAS MUNICIPIO	LAS PIEDRAS MUNICIPIO.
LOIZA MUNICIPIO	LOIZA MUNICIPIO.
LUQUILLO MUNICIPIO	LUQUILLO MUNICIPIO.
MANATI MUNICIPIO	MANATI MUNICIPIO.
MARICAO MUNICIPIO	MARICAO MUNICIPIO.
MAUNABO MUNICIPIO	MAUNABO MUNICIPIO.
MAYAGUEZ MUNICIPIO	MAYAGUEZ MUNICIPIO.
MOCA MUNICIPIO	MOCA MUNICIPIO.
MOROVIS MUNICIPIO	MOROVIS MUNICIPIO.
NAGUABO MUNICIPIO	NAGUABO MUNICIPIO.
NARANJITO MUNICIPIO	NARANJITO MUNICIPIO.
OROCOVIS MUNICIPIO	OROCOVIS MUNICIPIO.
PATILLAS MUNICIPIO	PATILLAS MUNICIPIO.
PENUELAS MUNICIPIO	PENUELAS MUNICIPIO.
PONCE MUNICIPIO	PONCE MUNICIPIO.
QUEBRADILLAS MUNICIPIO	QUEBRADILLAS MUNICIPIO.
RINCON MUNICIPIO	RINCON MUNICIPIO.
RIO GRANDE MUNICIPIO	RIO GRANDE MUNICIPIO.
SABANA GRANDE MUNICIPIO	SABANA GRANDE MUNICIPIO.
SALINAS MUNICIPIO	SALINAS MUNICIPIO.
SAN GERMAN MUNICIPIO	SAN GERMAN MUNICIPIO.
SAN JUAN MUNICIPIO	SAN JUAN MUNICIPIO.
SAN LORENZO MUNICIPIO	SAN LORENZO MUNICIPIO.
SAN SEBASTIAN MUNICIPIO	SAN SEBASTIAN MUNICIPIO.
SANTA ISABEL MUNICIPIO	SANTA ISABEL MUNICIPIO.
TOA ALTA MUNICIPIO	TOA ALTA MUNICIPIO.
TOA BAJA MUNICIPIO	TOA BAJA MUNICIPIO.
UTUADO MUNICIPIO	UTUADO MUNICIPIO.
VEGA ALTA MUNICIPIO	VEGA ALTA MUNICIPIO.
VEGA BAJA MUNICIPIO	VEGA BAJA MUNICIPIO.
VIEQUES MUNICIPIO	VIEQUES MUNICIPIO.
VILLALBA MUNICIPIO	VILLALBA MUNICIPIO.
YABUCOA MUNICIPIO	YABUCOA MUNICIPIO.
YAUCO MUNICIPIO	YAUCO MUNICIPIO.
CENTRAL FALLS CITY	CENTRAL FALLS CITY.
NEW SHOREHAM TOWN	NEW SHOREHAM TOWN.
PROVIDENCE CITY	PROVIDENCE CITY.
WOONSOCKET CITY	WOONSOCKET CITY.
SOUTH CAROLINA	
ABBEVILLE COUNTY	ABBEVILLE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
ANDERSON CITY	ANDERSON CITY IN ANDERSON COUNTY.
BARNWELL COUNTY	BARNWELL COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CHEROKEE COUNTY	CHEROKEE COUNTY.
CHESTER COUNTY	CHESTER COUNTY.
CHESTERFIELD COUNTY	CHESTERFIELD COUNTY.
CLARENDON COUNTY	CLARENDON COUNTY.
DARLINGTON COUNTY	DARLINGTON COUNTY.
DILLON COUNTY	DILLON COUNTY.
FAIRFIELD COUNTY	FAIRFIELD COUNTY.
FLORENCE CITY	FLORENCE CITY.
GEORGETOWN COUNTY	GEORGETOWN COUNTY.
GREENWOOD COUNTY	GREENWOOD COUNTY.
HAMPTON COUNTY	HAMPTON COUNTY.
KERSHAW COUNTY	KERSHAW COUNTY.
LANCASTER COUNTY	LANCASTER COUNTY.
LAURENS COUNTY	LAURENS COUNTY.
LEE COUNTY	LEE COUNTY.
MARION COUNTY	MARION COUNTY.
MARLBORO COUNTY	MARLBORO COUNTY.
MC CORMICK COUNTY	MC CORMICK COUNTY.
NEWBERRY COUNTY	NEWBERRY COUNTY.
OCONEE COUNTY	OCONEE COUNTY.
ORANGEBURG COUNTY	ORANGEBURG COUNTY.
ROCKHILL CITY	ROCKHILL CITY IN YORK COUNTY.
SPARTANBURG CITY	SPARTANBURG CITY IN SPARTANBURG COUNTY.
SUMTER CITY	SUMTER CITY IN SUMTER COUNTY.
BALANCE OF SUMTER COUNTY	SUMTER COUNTY LESS SUMTER CITY.
UNION COUNTY	UNION COUNTY.
WILLIAMSBURG COUNTY	WILLIAMSBURG COUNTY.
SOUTH DAKOTA	
BUFFALO COUNTY	BUFFALO COUNTY.
CLARK COUNTY	CLARK COUNTY.
CORSON COUNTY	CORSON COUNTY.
DEWEY COUNTY	DEWEY COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MOODY COUNTY	MOODY COUNTY.
SHANNON COUNTY	SHANNON COUNTY.
TODD COUNTY	TODD COUNTY.
ZIEBACH COUNTY	ZIEBACH COUNTY.
TENNESSEE	
BENTON COUNTY	BENTON COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CLAY COUNTY	CLAY COUNTY.
COCKE COUNTY	COCKE COUNTY.
CROCKETT COUNTY	CROCKETT COUNTY.
DECATUR COUNTY	DECATUR COUNTY.
DYER COUNTY	DYER COUNTY.
FENTRESS COUNTY	FENTRESS COUNTY.
GIBSON COUNTY	GIBSON COUNTY.
GILES COUNTY	GILES COUNTY.
GRAINGER COUNTY	GRAINGER COUNTY.
GREENE COUNTY	GREENE COUNTY.
GRUNDY COUNTY	GRUNDY COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
HARDEMAN COUNTY	HARDEMAN COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HAYWOOD COUNTY	HAYWOOD COUNTY.
HENDERSON COUNTY	HENDERSON COUNTY.
HENRY COUNTY	HENRY COUNTY.
HOUSTON COUNTY	HOUSTON COUNTY.
HUMPHREYS COUNTY	HUMPHREYS COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
LAUDERDALE COUNTY	LAUDERDALE COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
LEWIS COUNTY	LEWIS COUNTY.
MACON COUNTY	MACON COUNTY.
MC MINN COUNTY	MC MINN COUNTY.
MC NAIRY COUNTY	MC NAIRY COUNTY.
MEIGS COUNTY	MEIGS COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
OVERTON COUNTY	OVERTON COUNTY.
PERRY COUNTY	PERRY COUNTY.
PICKETT COUNTY	PICKETT COUNTY.
SCOTT COUNTY	SCOTT COUNTY.
STEWART COUNTY	STEWART COUNTY.
TROUSDALE COUNTY	TROUSDALE COUNTY.
UNICOI COUNTY	UNICOI COUNTY.
VAN BUREN COUNTY	VAN BUREN COUNTY.
WARREN COUNTY	WARREN COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
TEXAS	
BALANCE OF ANGELINA COUNTY	ANGELINA COUNTY LESS LUFKIN CITY.
BEAUMONT CITY	BEAUMONT CITY IN JEFFERSON COUNTY.
BALANCE OF BRAZORIA COUNTY	BRAZORIA COUNTY LESS LAKE JACKSON CITY, PEARLAND CITY.
BROOKS COUNTY	BROOKS COUNTY.
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
BALANCE OF CAMERON COUNTY	CAMERON COUNTY LESS BROWNSVILLE CITY, HARLINGEN CITY.
CASS COUNTY	CASS COUNTY.
CLEBURNE CITY	CLEBURNE CITY IN JOHNSON COUNTY.
COCHRAN COUNTY	COCHRAN COUNTY.
CULBERSON COUNTY	CULBERSON COUNTY.
DALLAS CITY	DALLAS CITY IN COLLIN COUNTY, DALLAS COUNTY, DENTON COUNTY.
DEL RIO CITY	DEL RIO CITY IN VAL VERDE COUNTY.
DIMMIT COUNTY	DIMMIT COUNTY.
DUVAL COUNTY	DUVAL COUNTY.
EAGLE PASS CITY	EAGLE PASS CITY IN MAVERICK COUNTY.
BALANCE OF ECTOR COUNTY	ECTOR COUNTY LESS ODESSA CITY.
EDINBURG CITY	EDINBURG CITY IN HIDALGO COUNTY.
EL PASO CITY	EL PASO CITY IN EL PASO COUNTY.
BALANCE OF EL PASO COUNTY	EL PASO COUNTY LESS EL PASO CITY, SOCORRO CITY.
FANNIN COUNTY	FANNIN COUNTY.
FLOYD COUNTY	FLOYD COUNTY.
FRIO COUNTY	FRIO COUNTY.
FT WORTH CITY	FT WORTH CITY IN TARRANT COUNTY.
GALVESTON CITY	GALVESTON CITY IN GALVESTON COUNTY.
BALANCE OF GALVESTON COUNTY	GALVESTON COUNTY LESS FRIENDSWOOD CITY, GALVESTON CITY, LEAGUE CITY, TEXAS CITY.
GRIMES COUNTY	GRIMES COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HARLINGEN CITY	HARLINGEN CITY IN CAMERON COUNTY.
BALANCE OF HIDALGO COUNTY	HIDALGO COUNTY LESS EDINGBURG CITY, MCALLEN CITY, MISSION CITY, PHARR CITY, SAN JUAN CITY, WESLACO CITY.
JASPER COUNTY	JASPER COUNTY.
JIM WELLS COUNTY	JIM WELLS COUNTY.
KAUFMAN COUNTY	KAUFMAN COUNTY.
KILLEEN CITY	KILLEEN CITY IN BELL COUNTY.
KINNEY COUNTY	KINNEY COUNTY.
LA SALLE COUNTY	LA SALLE COUNTY.
LAREDO CITY	LAREDO CITY IN WEBB COUNTY.
LIBERTY COUNTY	LIBERTY COUNTY.
LONGVIEW CITY	LONGVIEW CITY IN GREGG COUNTY, HARRISON COUNTY.
LOVING COUNTY	LOVING COUNTY.
MARION COUNTY	MARION COUNTY.
MATAGORDA COUNTY	MATAGORDA COUNTY.
BALANCE OF MAVERICK COUNTY	MAVERICK COUNTY LESS EAGLE PASS CITY.
MCALLEN CITY	MCALLEN CITY IN HIDALGO COUNTY.
MCKINNEY CITY	MCKINNEY CITY IN COLLIN COUNTY.
MISSION CITY	MISSION CITY IN HIDALGO COUNTY.
MORRIS COUNTY	MORRIS COUNTY.
NEWTON COUNTY	NEWTON COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
ORANGE COUNTY	ORANGE COUNTY.
PANOLA COUNTY	PANOLA COUNTY.
PARIS CITY	PARIS CITY IN LAMAR COUNTY.
PHARR CITY	PHARR CITY IN HIDALGO COUNTY.
PORT ARTHUR CITY	PORT ARTHUR CITY IN JEFFERSON COUNTY.
PRESIDIO COUNTY	PRESIDIO COUNTY.
RED RIVER COUNTY	RED RIVER COUNTY.
REEVES COUNTY	REEVES COUNTY.
SABINE COUNTY	SABINE COUNTY.
SAN JUAN CITY	SAN JUAN CITY IN HIDALGO COUNTY.
SHELBY COUNTY	SHELBY COUNTY.
SHERMAN CITY	SHERMAN CITY IN GRAYSON COUNTY.
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY.
SOMERVELL COUNTY	SOMERVELL COUNTY.
STARR COUNTY	STARR COUNTY.
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY.
TYLER COUNTY	TYLER COUNTY.
UVALDE COUNTY	UVALDE COUNTY.
WARD COUNTY	WARD COUNTY.
BALANCE OF WEBB COUNTY	WEBB COUNTY LESS LAREDO CITY.
WESLACO CITY	WESLACO CITY IN HIDALGO COUNTY.
WILLACY COUNTY	WILLACY COUNTY.
WINKLER COUNTY	WINKLER COUNTY.
ZAPATA COUNTY	ZAPATA COUNTY.
ZAVALA COUNTY	ZAVALA COUNTY.
UTAH	
CARBON COUNTY	CARBON COUNTY.
CLEARFIELD CITY	CLEARFIELD CITY IN DAVIS COUNTY.
DUCHESNE COUNTY	DUCHESNE COUNTY.
EMERY COUNTY	EMERY COUNTY.
GARFIELD COUNTY	GARFIELD COUNTY.
GRAND COUNTY	GRAND COUNTY.
JUAB COUNTY	JUAB COUNTY.
MIDVALE CITY	MIDVALE CITY IN SALT LAKE COUNTY.
OGDEN CITY	OGDEN CITY IN WEBER COUNTY.
PIUTE COUNTY	PIUTE COUNTY.
SAN JUAN COUNTY	SAN JUAN COUNTY.
SANPETE COUNTY	SANPETE COUNTY.
SUMMIT COUNTY	SUMMIT COUNTY.
TOOELE COUNTY	TOOELE COUNTY.
WASATCH COUNTY	WASATCH COUNTY.
WEST VALLEY CITY	WEST VALLEY CITY IN SALT LAKE COUNTY.
VERMONT	
ESSEX COUNTY	ESSEX COUNTY.
KILLINGTON TOWN	KILLINGTON TOWN IN RUTLAND COUNTY.
ORLEANS COUNTY	ORLEANS COUNTY.
VIRGINIA	
APPOMATTOX COUNTY	APPOMATTOX COUNTY.
BUCHANAN COUNTY	BUCHANAN COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
DANVILLE CITY	DANVILLE CITY.
DICKENSON COUNTY	DICKENSON COUNTY.
GALAX CITY	GALAX CITY.
GRAYSON COUNTY	GRAYSON COUNTY.
HALIFAX COUNTY	HALIFAX COUNTY.
HENRY COUNTY	HENRY COUNTY.
LANCASTER COUNTY	LANCASTER COUNTY.
LUNENBURG COUNTY	LUNENBURG COUNTY.
MARTINSVILLE CITY	MARTINSVILLE CITY.
MECKLENBURG COUNTY	MECKLENBURG COUNTY.
NORTHUMBERLAND COUNTY	NORTHUMBERLAND COUNTY.
PATRICK COUNTY	PATRICK COUNTY.
PETERSBURG CITY	PETERSBURG CITY.
PITTSYLVANIA COUNTY	PITTSYLVANIA COUNTY.
PULASKI COUNTY	PULASKI COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
RUSSELL COUNTY	RUSSELL COUNTY.
SMYTH COUNTY	SMYTH COUNTY.
WILLAMSBURG CITY	WILLIAMSBURG CITY.
WYTHE COUNTY	WYTHE COUNTY.
WASHINGTON	
ADAMS COUNTY	ADAMS COUNTY.
AUBURN CITY	AUBURN CITY IN KING COUNTY.
BELLINGHAM CITY	BELLINGHAM CITY IN WHATCOM COUNTY.
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY.
BALANCE OF CHELAN COUNTY	CHELAN COUNTY LESS WENATCHEE CITY.
CLALLAM COUNTY	CLALLAM COUNTY.
COLUMBIA COUNTY	COLUMBIA COUNTY.
BALANCE OF COWLITZ COUNTY	COWLITZ COUNTY LESS LONGVIEW CITY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
EVERETT CITY	EVERETT CITY IN SNOHOMISH COUNTY.
FERRY COUNTY	FERRY COUNTY.
GRANT COUNTY	GRANT COUNTY.
GRAYS HARBOR COUNTY	GRAYS HARBOR COUNTY.
KENNEWICK CITY	KENNEWICK CITY IN BENTON COUNTY.
KITTITAS COUNTY	KITTITAS COUNTY.
KLICKITAT COUNTY	KLICKITAT COUNTY.
LAKEWOOD CITY	LAKEWOOD CITY IN PIERCE COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LONGVIEW CITY	LONGVIEW CITY IN COWLITZ COUNTY.
LYNNWOOD CITY	LYNNWOOD CITY IN SNOHOMISH COUNTY.
MASON COUNTY	MASON COUNTY.
MOUNT VERNON CITY	MOUNT VERNON CITY IN SKAGIT COUNTY.
OKANOGAN COUNTY	OKANOGAN COUNTY.
PACIFIC COUNTY	PACIFIC COUNTY.
PASCO CITY	PASCO CITY IN FRANKLIN COUNTY.
PEND OREILLE COUNTY	PEND OREILLE COUNTY.
RENTON CITY	RENTON CITY IN KING COUNTY.
SEATTLE CITY	SEATTLE CITY IN KING COUNTY.
BALANCE OF SKAGIT COUNTY	SKAGIT COUNTY LESS MOUNT VERNON CITY.
SKAMANIA COUNTY	SKAMANIA COUNTY.
SPOKANE CITY	SPOKANE CITY IN SPOKANE COUNTY.
STEVENS COUNTY	STEVENS COUNTY.
TACOMA CITY	TACOMA CITY IN PIERECE COUNTY.
VANCOUVER CITY	VANCOUVER CITY IN CLARK COUNTY.
WAHKIAKUM COUNTY	WAHKIAKUM COUNTY.
WALLA WALLA CITY	WALLA WALLA CITY IN WALLA WALLA COUNTY.
WENATCHEE CITY	WENATCHEE CITY IN CHELAN COUNTY.
BALANCE OF WHATCOM COUNTY	WHATCOM COUNTY LESS BELLINGHAM CITY.
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY.
BALANCE OF YAKIMA COUNTY	YAKIMA COUNTY LESS YAKIMA CITY.
WEST VIRGINIA	
BARBOUR COUNTY	BARBOUR COUNTY.
BOONE COUNTY	BOONE COUNTY.
BRAXTON COUNTY	BRAXTON COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CLAY COUNTY	CLAY COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
GILMER COUNTY	GILMER COUNTY.
GRANT COUNTY	GRANT COUNTY.
GREENBRIER COUNTY	GREENBRIER COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LOGAN COUNTY	LOGAN COUNTY.
BALANCE OF MARSHALL COUNTY	MARSHALL COUNTY LESS WHEELING CITY.
MASON COUNTY	MASON COUNTY.
MC DOWELL COUNTY	MC DOWELL COUNTY.
MINERAL COUNTY	MINERAL COUNTY.
MINGO COUNTY	MINGO COUNTY.
NICHOLAS COUNTY	NICHOLAS COUNTY.
PARKERSBURG CITY	PARKERSBURG CITY IN WOOD COUNTY.
PLEASANTS COUNTY	PLEASANTS COUNTY.
POCAHONTAS COUNTY	POCAHONTAS COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2003 through September 30, 2004]

Eligible labor surplus areas	Civil jurisdictions included
RANDOLPH COUNTY	RANDOLPH COUNTY.
RITCHIE COUNTY	RITCHIE COUNTY.
ROANE COUNTY	ROANE COUNTY.
SUMMERS COUNTY	SUMMERS COUNTY.
TUCKER COUNTY	TUCKER COUNTY.
BALANCE OF WAYNE COUNTY	WAYNE COUNTY LESS HUNTINGTON CITY.
WEBSTER COUNTY	WEBSTER COUNTY.
WETZEL COUNTY	WETZEL COUNTY.
WIRT COUNTY	WIRT COUNTY.
WISCONSIN	
ASHLAND COUNTY	ASHLAND COUNTY.
BAYFIELD COUNTY	BAYFIELD COUNTY.
BELOIT CITY	BELOIT CITY IN ROCK COUNTY.
BALANCE OF CHIPPEWA COUNTY	CHIPPEWA COUNTY LESS EAU CLAIRE CITY.
CLARK COUNTY	CLARK COUNTY.
FLORENCE COUNTY	FLORENCE COUNTY.
FOREST COUNTY	FOREST COUNTY.
GREEN BAY CITY	GREEN BAY CITY IN BROWN COUNTY.
IRON COUNTY	IRON COUNTY.
JANESVILLE CITY	JANESVILLE CITY IN ROCK COUNTY.
JUNEAU COUNTY	JUNEAU COUNTY.
KENOSHA CITY	KENOSHA CITY IN KENOSHA COUNTY.
LANGLADE COUNTY	LANGLADE COUNTY.
MANITOWOC CITY	MANITOWOC CITY IN MANITOWOC COUNTY.
MARINETTE COUNTY	MARINETTE COUNTY.
MARQUETTE COUNTY	MARQUETTE COUNTY.
MENOMINEE COUNTY	MENOMINEE COUNTY.
MILWAUKEE CITY	MILWAUKEE CITY IN MILWAUKEE COUNTY.
OCONTO COUNTY	OCONTO COUNTY.
POLK COUNTY	POLK COUNTY.
PRICE COUNTY	PRICE COUNTY.
RACINE CITY	RACINE CITY IN RACINE COUNTY.
RUSK COUNTY	RUSK COUNTY.
WASHBURN COUNTY	WASHBURN COUNTY.

[FR Doc. 04–3067 Filed 2–11–04; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Thursday,
February 12, 2004

Part III

Environmental Protection Agency

40 CFR Part 52

Interim Final Determination To Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District; Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District; Interim Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA269–0438b; FRL–7621–2]

Interim Final Determination To Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern San Joaquin Valley Unified Air Pollution Control District Rules 4701, 4702, 4703, 4305, 4306, and 4351.

DATES: This interim final determination is effective on February 12, 2004. However, comments will be accepted until March 15, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

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

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg Avenue, Fresno, CA 93726.

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

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121, *canaday.tom@epa.gov*.

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

I. Background

On February 28, 2002 (67 FR 9209), we published a limited approval and limited disapproval of SJVUAPCD Rule 4305, Rule 4351, Rule 4701, and Rule 4703. Rules 4305 and 4351 establish emission limits for oxides of nitrogen (NO_X) and other pollutants on certain boilers, steam generators, and process heaters. Rule 4305 was adopted locally on December 19, 1996, and submitted by the State on March 3, 1997. Rule 4351 was adopted locally on October 19, 1995, and submitted by the State on March 26, 1996. Rule 4701 establishes NO_X and other pollutant emissions limits on certain stationary internal combustion engines. Rule 4701 was adopted locally on December 19, 1996, and submitted by the State on March 10, 1998. Rule 4703 establishes NO_X emissions limits on certain stationary gas turbines. Rule 4703 was adopted locally on October 16, 1997, and submitted by the State on March 10, 1998. We based our limited disapproval action on certain deficiencies in these rules. See the proposed rule at 63 FR 49053 (September 14, 1998) and the final rule at 67 FR 9209 (February 28, 2002) for a discussion of these deficiencies. This limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after April 1, 2002, and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On August 21, 2003, SJVUAPCD adopted revisions to Rule 4351 and Rule 4305 that were intended to correct certain deficiencies identified in our limited disapproval action for these rules. On September 18, 2003, SJVUAPCD adopted new Rule 4306, which also limits emissions of NO_X and other pollutants on boilers, steam generators, and process heaters. New Rule 4306 was intended in part to correct those deficiencies in the previously-approved version of Rule 4305 that had not been addressed through the revisions to Rule 4305 as adopted by SJVUAPCD on August 21, 2003. On September 29, 2003, the State submitted these SIP revisions to EPA.

On August 21, 2003, SJVUAPCD adopted revisions to Rule 4701, and adopted a new Rule 4702, which also limits NO_X and other pollutant emissions from stationary internal combustion engines. The revised Rule 4701 and new Rule 4702 were intended in part to correct the deficiencies identified in our limited disapproval action for Rule 4701. On October 9, 2003, the State submitted these SIP revisions to EPA. Finally, on April 25, 2002, SJVUAPCD adopted revisions to Rule 4703 that were intended in part to correct the deficiencies identified in our limited disapproval action for this rule. On June 18, 2002, the State submitted these SIP revisions to EPA.

In the Proposed Rules section of today's **Federal Register**, we have published notice of an action proposing approval of these SIP submittals because we believe they correct the deficiencies identified in our February 28, 2002 limited disapproval action. Based on today's proposed action, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our February 28, 2002 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed approval of new or amended SJVUAPCD Rules 4305, 4306, 4351, 4701, 4702, and 4703, then we intend to take subsequent action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approving SJVUAPCD Rules 4305, 4305, 4351, 4701, 4702, and 4703.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SJVUAPCD Rules 4351, 4305, 4701, and 4703 based on our concurrent action proposing approval of revisions to the State's SIP as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional 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.

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

The administrator certifies that this action 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.*).

This rule 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 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 12, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 3, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–3077 Filed 2–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA269–0438a; FRL–7621–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve certain revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from boilers, steam generators, and process heaters; stationary internal combustion engines; and stationary gas turbines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 15, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

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

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

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Avenue, Fresno, CA 93726.

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

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121, *canaday.tom@epa.gov*.

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

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4351	Boilers, Steam Generators, and Process Heaters—Phase 1.	08/21/03	09/29/03
SJVUAPCD	4305	Boilers, Steam Generators, and Process Heaters—Phase 2.	08/21/03	09/29/03
SJVUAPCD	4306	Boilers, Steam Generators, and Process Heaters—Phase 3.	09/18/03	09/29/03
SJVUAPCD	4701	Internal Combustion Engines—Phase 1	08/21/03	10/09/03
SJVUAPCD	4702	Internal Combustion Engines—Phase 2	08/21/03	10/09/03
SJVUAPCD	4703	Stationary Gas Turbines	04/25/02	06/18/02

On November 10, 2003, submitted Rules 4351, 4305, 4306, 4701, and 4702 were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. Submitted Rule 4703 was found to meet the completeness criteria on July 23, 2002.

B. Are There Other Versions of These Rules?

SJVUAPCD adopted an earlier version of Rule 4351 on October 19, 1995, and CARB submitted it to us on March 26, 1996. SJVUAPCD adopted an earlier version of Rule 4305 on December 19, 1996, and CARB submitted it to us on March 3, 1997. SJVUAPCD adopted an earlier version of Rule 4701 on December 19, 1996, and CARB submitted it to us on March 10, 1998. SJVUAPCD adopted an earlier version of Rule 4703 on October 16, 1997, and CARB submitted it to us on March 10, 1998. We proposed a limited approval and limited disapproval of these previous versions of Rules 4351, 4305, 4701, and 4703 on September 14, 1998 (63 FR 49053) and finalized our limited approval and limited disapproval of these rules into the SIP on February 28, 2002 (67 FR 9209).

Between the time of our proposed rule in 1998 and our final rule in 2002, SJVUAPCD adopted an amended version of Rule 4701 on November 12, 1998, which CARB submitted on February 16, 1999. Subsequent to our final rule in 2002, SJVUAPCD adopted amended versions of Rule 4701 and Rule 4305 on December 19, 2002, and CARB submitted these to us on January 21, 2003. We have not taken action on these interim submittals of amended Rule 4701 and Rule 4305 and consider the current submitted versions of Rule 4701 and Rule 4305, identified in Table 1, to supercede the versions submitted to us previously. While we can act on only the most recently submitted versions of submitted rules, we have reviewed materials provided with previous submittals. There are no previously submitted versions of Rules 4306 and 4702.

C. What Is the Purpose of the Submitted Rule Revisions?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Specifically, NO_X is a precursor pollutant of the following "criteria" pollutants for which national ambient air quality standards (NAAQS) have been established: nitrogen dioxide,

ozone, and particulate matter (PM–10 and PM–2.5). Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions.

Rules 4351, 4305, and 4306 limit NO_X and carbon monoxide (CO) emissions from all gaseous fuel or liquid fuel fired boilers, steam generators, and process heaters with a rated heat input greater than five million Btu per hour. Rules 4701 and 4702 limit NO_X, CO, and volatile organic compound (VOC) emissions from stationary internal combustion engines with a rated brake horsepower greater than 50 horsepower. Rule 4701 applies to both spark-ignited and compression-ignited stationary internal combustion engines while Rule 4702 applies only to spark-ignited stationary internal combustion engines. Rule 4703 limits NO_X emissions from all stationary gas turbine systems which are subject to district permitting requirements and with ratings equal to or greater than 0.3 megawatt (MW) and/or a maximum heat input rating of more that three million Btu per hour. Stationary gas turbines in the San Joaquin Valley Area are used mostly as cogeneration units to supply steam and electricity for oil production and industrial processes.

The general purpose of the submitted rules is to reduce emissions of NO_X and other pollutants from three specific source categories (boilers, steam generators, and process heaters; stationary internal combustion engines; and stationary gas turbines) in San Joaquin Valley. More specifically, the particular versions of these submitted rules were adopted by SJVUAPCD and submitted by CARB to EPA to address deficiencies identified by EPA in prior versions of the rules and to address the additional planning requirements imposed under the Act on PM–10 nonattainment areas, such as San Joaquin Valley, that are classified as "serious," as discussed further in the following section.

II. Background

On September 14, 1998, EPA published a notice of proposed rulemaking for a limited approval and limited disapproval action ("1998 Proposed Rule") on SJVUAPCD Rules 4351, 4305, 4701 and 4703 that were submitted as revisions to the California SIP because, although we determined that these rules improved the SIP and were largely consistent with the relevant CAA requirements, we also determined that some provisions in these rules conflicted with section 110 and part D (of title I) of the Act. See 63 FR 49053. EPA extended the 30-day comment period for the 1998 Proposed Rule for an additional 30 days. See 63 FR 56881 (October 23, 1998). Upon consideration of comments received on the 1998 Proposed Rule, we determined that certain proposed deficiencies were not a basis for a limited disapproval but otherwise finalized the action as proposed. We published notice of our final rule in the **Federal Register** on February 28, 2002 ("2002 Final Rule"). See 67 FR 9209. The provisions deemed deficient can be placed in two basic categories, the Westside exemption and all other deficiencies.

Westside exemption: The rules contained an exemption from regulation, or federal enforceability of the regulation, for facilities west of Interstate Highway 5 in Fresno, Kern, or Kings County (referred to herein as the "Westside exemption"). The rationale for our limited disapproval with respect to the Westside exemption is set forth in the 1998 Proposed Rule: (1) Reasonably Available Control Measures (RACM) are required of major stationary sources of PM–10 precursors (including NO_X) under section 189(e) of the Act unless EPA determines that such sources do not contribute significantly to PM–10 levels, (2) EPA has concluded that the PM–10 attainment strategy for San Joaquin Valley will rely heavily on the control of precursors to PM–10, including NO_X, (3) the Westside exemption constitutes failure to implement RACM at these facilities as required under section 189(a)(1)(C) of the Act, and (4) section 110(l) of the Act forbids EPA from approving SIP revisions which would interfere with any applicable requirement of the Act, including section 189(a)(1)(C). See 63 FR 49053, at 49055 (September 14, 1998).

In response to a comment on our 1998 Proposed Rule, we cited a document, SJVUAPCD's PM–10 Attainment Demonstration Plan Progress Report 1997–1999 ("PM–10 Progress Report"), as further support for our conclusion about NO_X as a significant precursor to PM–10 in San Joaquin Valley. We acknowledge that the PM–10 Progress Report was received by us subsequent to the close of the comment period and that the public had no opportunity to challenge its contents or our use of the report prior to our final action. However, our reference to the PM–10 Progress Report was in response to a comment and was intended merely to supplement, rather than replace, the original basis for our conclusion that NO_X is a significant precursor for PM–10. In our 1998 Proposed Rule, we supported this conclusion by reference to a previous **Federal Register** notice (*i.e.*, 58 FR 3337), and in that previous notice, we summarized the findings of SJVUAPCD's 1991 Moderate PM–10 Plan as follows:

> The EPA is reclassifying the San Joaquin nonattainment area due to the fact that the PM–10 SIP for San Joaquin Valley submitted to EPA by the State of California on December 24, 1991, suggests that the area cannot practicably attain the PM–10 NAAQS by December 31, 1994. Moreover, the area has not projected attainment before the December 31, 2001 serious area attainment date. Violations of the PM–10 NAAQS in the San Joaquin Valley are dominated by two source categories: (1) Primary PM–10 sources, including reentrained road dust, construction activities, and farming operations; and (2) secondarily-formed PM–10, including ammonium nitrate and ammonium sulfate. On days when primary PM–10 emissions dominate, fugitive dust emissions account for nearly 80 percent of the PM–10 mass. On days when secondary PM–10 dominates, nitrates and sulfates account for 63 percent of the PM–10 mass. The attainment strategy for the San Joaquin Valley will rely heavily on the control of widespread fugitive dust sources and the control of precursors of PM–10, including nitrogen dioxide, sulfur dioxide and volatile organic compounds.

See 58 FR 3334, at 3337 (January 8, 1993).

Another comment was submitted on the 1998 Proposed Rule stating that the SJVUAPCD had shown, through modeling, that the reduction of NO_X emissions from Westside sources would not contribute to the attainment of the ozone NAAQS and that the Westside exemption was therefore consistent with CAA requirements for ozone. We responded to this comment by noting that, during the interval following our 1998 Proposed Rule, San Joaquin Valley had in fact failed to attain the ozone NAAQS by the applicable attainment date and that this failure to attain, in and of itself, proved the inadequacy of the previous ozone modeling that supported the Westside exemption. This response was not necessary, and we further note that the failure to attain the ozone NAAQS occurred subsequent to the close of the comment period and that the public had no opportunity prior to our final action to challenge our statement regarding its relevance in connection with the underlying ozone modeling results supporting the Westside exemption. As stated in our 1998 Proposed Rule, we did not intend to make any determination in that rulemaking regarding the Westside exemption's consistency with section 182(f), which provides the statutory criteria for approving area-wide or subarea-specific exemptions for controls of NO_X sources in connection with the ozone NAAQS attainment strategy. Instead, we intended to base our

determination of the deficiency of the Westside exemption solely on PM–10 planning requirements. We hereby re-affirm that our basis in the 1998 Proposed Rule and the 2002 Final Rule for finding the Westside exemption to be a deficiency derived from PM–10 planning requirements, not ozone planning requirements. In any event, the past issue of whether the Westside exemption was inconsistent with both ozone and PM–10 planning requirements or simply PM–10 (and not ozone) planning requirements has become moot in light of the need for additional NO_X emissions reductions throughout San Joaquin Valley for both PM–10 and ozone planning purposes.

All Other Deficiencies: The rules contained numerous other deficient provisions that varied from rule to rule but which generally covered such issues as source applicability and exemptions; stringency of emissions standards; excess emissions during start-up, shutdown, and malfunction conditions; and monitoring and record keeping.

In our 2002 Final Rule, we concluded that certain types of deficiencies, such as the emission limits and applicability thresholds, were inconsistent with the requirement to implement Reasonably Available Control Technology (RACT) for control of NO_X emissions (as a precursor to ozone) at existing sources, as required under CAA section 182(b)(2) and 182(f) for moderate and above ozone nonattainment areas, and were inconsistent with the requirement to implement RACM/RACT under the statutory provisions for PM–10 nonattainment plans cited above in connection with the Westside exemption. We concluded that other types of deficiencies, such as those related to monitoring and reporting, were inconsistent with the enforceability requirement for SIP rules under section 110(a)(2)(A) of the Act. These deficiencies are described in detail in the 1998 Proposed Rule (63 FR 49053, September 14, 1998), the TSDs prepared in connection with that proposal, and the 2002 Final Rule (67 FR 9209, February 28, 2002).

In 1998, when we proposed action on the previous versions of these rules, San Joaquin Valley was classified as a "serious" (*i.e.*, one classification higher than "moderate") nonattainment area for the ozone NAAQS and as a "serious" nonattainment area for the PM–10 NAAQS. By the time we took final action in 2002, the nonattainment classification for the valley with respect to the ozone NAAQS had been bumped-up to "severe." See 50 CFR 81.305.

San Joaquin Valley continues to be classified as a "serious" PM–10 nonattainment area, and while our previous rulemaking process, which culminated in the 2002 Final Rule, evaluated the rules with respect to the ozone RACT requirement and the PM–10 RACM/RACT requirement, San Joaquin Valley, as a serious PM–10 nonattainment area, is also subject to the requirement under sections 189(b)(1)(B) and 189(e) of the Act to implement Best Available Control Measures (BACM), which includes Best Available Control Technology (BACT), for the control of PM–10 precursor emissions, including NO_X.

The TSDs have more information about these rules.

III. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

We are evaluating the six submitted rules to determine whether they correct the deficiencies in the previous versions of the rules as set forth in our 2002 Final Rule, and thereby implement RACT under CAA sections 182(b)(2) and 182(f) and RACM/RACT under CAA sections 189(a)(1)(C) and 189(e), and whether they provide for implementation of BACM/BACT under CAA sections 189(b)(1)(B) and 189(e) for the relevant source categories. General regulatory and non-regulatory references that we used to help evaluate enforceability, RACT/RACM, and BACM/BACT requirements consistently include the following:

1. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, U.S. EPA, 57 FR 13489, April 16, 1992.
2. State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, U.S. EPA, 57 FR 55620, November 25, 1992.
3. State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, U.S. EPA, 59 FR 41998, August 16, 1994.
4. Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations (the Blue Book), U.S. EPA, May 25, 1988.
5. "Guidance Document for Correcting VOC Rule Deficiencies", U.S. EPA Region 9, August 21, 2001 (the little bluebook).
6. "State Implementation Plans: Policy Regarding Excess Emissions during Malfunctions, Startup, and Shutdown," EPA policy memorandum from Steven A. Herman to Regional Administrators, September 20, 1999, and re-issuance of this memo dated December 5, 2001 ("Excess Emissions Policy").
7. Improving Air Quality with Economic Incentive Programs, U.S. EPA Office of Air and Radiation, EPA–452/R–01–001, January 2001 ("EIP Guidance").
8. Cost Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT), U.S. EPA Office of Air Quality Planning and Standards, March 16, 1994.
9. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, State of California Air Resources Board, July 18, 1991 ("CARB 1991 RACT/BARCT Determination").
10. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen From Stationary Gas Turbines, State of California Air Resources Board, May 18, 1992 ("CARB 1992 RACT/BARCT Determination").
11. CAPCOA/ARB Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines, Draft, State of California Air Resources Board, December, 1997 ("CARB Draft 1997 RACT/BARCT Determination").
12. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines, State of California Air Resources Board, November, 2001 ("CARB 2001 RACT/BARCT Determination").

B. Do These Rules Meet the Evaluation Criteria?

Correction of Previously-Identified Deficiencies. The deficiencies identified in the previous versions of the rules are described in full in our previous rulemaking documents, including the 1998 Proposed Rule (63 FR 49053, September 14, 1998), the related TSDs (dated July 31, 1998), and the 2002 Final Rule (67 FR 9209, February 28, 2002). In the following paragraphs, we discuss how the new or amended rules correct the deficiencies by providing a discussion of each of 18 specific deficiencies set forth in our 2002 Final Rule (67 FR 9209, at 9210). The TSDs provide more detail on our evaluation.

1. SJVUAPCD removed the Westside exemption from Rules 4305, 4701, and 4703. The Westside exemption was not removed from Rule 4351 but all boilers, steam generators, and process heaters covered by that rule are now covered by Rule 4305 in which the exemption has been removed. Also, the exemption was not included in new Rules 4306 and 4702.

2. SJVUAPCD added provisions in Rule 4305 to address start-up and shutdown conditions, and the added provisions are consistent with EPA's Excess Emissions Policy. New Rule 4306 also includes satisfactory provisions to address start-up and shutdown conditions.

3. By adopting new Rules 4306 and 4702, SJVUAPCD has limited or eliminated several types of exemptions contained in Rules 4305 and 4701 that we found to be deficiencies. We note, however, that the exemption from RACT-level of control for low-use (*i.e.*, under 1,000 hours annually) internal combustion engines under amended Rule 4701 now applies to low-use engines at major NO_X sources on the Westside. For low-use spark-ignited engines, this exemption is superceded by new Rule 4702, but low-use compression-ignited (*i.e.* diesel) engines at major NO_X sources on the Westside would continue to be exempt from RACT-level of control. As discussed further in our TSD on submitted Rules 4701 and 4702, we conclude that this issue does not prevent our full approval of amended Rule 4701 given that the reduction in NO_X by application of RACT to low-use engines at major NO_X sources on the Westside would amount only to 0.1 ton per day. We have, however, included this issue as one for the District to address in the next revision to the rule.

4. SJVUAPCD has revised Rules 4305 and 4701 to specify appropriate averaging times for emissions concentration limits. New Rules 4306 and 4702 also specify appropriate averaging times.

5. SJVUAPCD has revised Rules 4351 and 4305 to include interim parametric monitoring in instances of deferred source testing. These requirements have also been extended to new Rule 4306.

6. SJVUAPCD has revised the representative testing requirements in Rules 4351 and 4305 to make them consistent with EPA policy and has extended these requirements to new Rule 4306. SJVUAPCD has deleted the option of representative testing from Rule 4701 and has not included the option of representative testing in new Rule 4702.

7. SJVUAPCD has deleted the alternative emission control plan (AECP) provisions from Rules 4305 and 4701 but has added AECP provisions to new Rules 4306 and 4702. The AECP provisions in new Rules 4306 and 4702 include a 10% environmental benefit relative to the underlying emissions limits that would otherwise apply to each individual unit.

8. SJVUAPCD has revised Rule 4351 to be consistent with Rules 4305 and 4306 and to require physical modification of an exempted unit to assure its operation at or below the rule application capacity threshold when the unit's nameplate capacity exceeds this threshold.

9. In our 2002 Final Rule, we withdrew our previous deficiency finding related to the failure in Rule 4351 to require source tests to be performed on units using each fuel which is allowed to be burned in that unit. See 67 FR 9209, at 9211 (February 28, 2002).

10. In our 2002 Final Rule, we withdrew our previous deficiency finding related to the lack in Rule 4351 of source test requirements for certain units. See 67 FR 9209, at 9211 (February 28, 2002).

11. SJVUAPCD has revised Rule 4701 to specify what information is required to be recorded and maintained as part of record keeping requirements. New Rule 4702 also has adequate record keeping requirements.

12. SJVUAPCD has revised Rule 4701 to provide for increased frequency of required compliance testing, and has included similar provisions in new Rule 4702.

13. SJVUAPCD has revised Rule 4701 to identify more precisely what operating records and support documentation are to be maintained by owners claiming exemption to the requirements of the rule, and has included similar provisions in new Rule 4702.

14. In our 2002 Final Rule, we withdrew our previous deficiency finding related to the RACT compliance deadline of May 31, 2001 for certain internal combustion engines under Rule 4701. See 67 FR 9209, at 9212 (February 28, 2002).

15. SJVUAPCD has removed the AECP provisions in Rules 4305 and 4701 but has included such provisions in new Rules 4306 and 4702. In each of the new rules, the AECP uses a 7-day averaging to determine compliance, which is more protective than the 14-day averaging period that had been included in Rules 4305 and 4701, and which is consistent with our policies, including the EIP Guidance, given the stringency of the underlying emissions limits that otherwise apply, the practical considerations involved in equipment repair, and the incorporation of the 10% environmental benefit into the AECP formulation of the new rules.

16. SJVUAPCD has removed the AECP provisions from Rule 4701 and has eliminated the deficiency related to excessive director's discretion in specifying what method is to be used to determine the applicable conversion factor from fuel use to engine emissions in the AECP provisions of new Rule 4702 by requiring approval of equivalent methods by EPA, CARB, and the Air Pollution Control Officer (APCO).

17. SJVUAPCD has removed the AECP provisions from Rule 4701 and has not included the calculation factor that we found to be a deficiency in Rule 4701 related to electric motors in the AECP provisions of new Rule 4702.

18. SJVUAPCD has revised Rule 4703 to refer to the appropriate continuous emission monitoring system requirements and reporting requirements in 40 CFR part 60.

Based on our review of the six new or amended rules, we conclude that SJVUAPCD has adequately corrected all of the deficiencies we identified through our 2002 Final Rule. Nonetheless, we have identified several areas or items for improvement in the rules themselves or in the documentation for the rules. These areas or items for rule improvement relate to such issues as the low-use exemption from RACT for diesel engines located at major NO_X sources on the Westside, the unnecessary uncertainty caused by the "and/or" formulation in the applicability subsection of amended Rule 4703, and the need to be more specific with respect to the contents of Emission Control Plans under new Rule 4306. These items or areas for improvement do not affect our ability to approve the submitted rules but constitute recommendations that we believe SJVUAPCD should address the next time the District revises these rules. See the TSDs for more information on our suggested rule improvements.

BACM/BACT Evaluation. As noted above, San Joaquin Valley is classified as a "serious" PM–10 nonattainment area, and such areas are subject to the BACM/BACT requirement under CAA sections 189(b)(1)(B) and 189(e). EPA provided its interpretation of the BACM/BACT requirement in Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (59 FR 41998, August 16, 1994). As set forth therein, the general process for

identifying BACM/BACT in any given serious PM–10 nonattainment area involves developing an inventory of sources of PM–10 and PM–10 precursors, evaluating the impact of the various source categories (to distinguish significant source categories for which BACM/BACT is required from *de minimis* categories for which BACM/BACT is not required), evaluating alternative control techniques and costs of control, and then selecting BACM for area sources and BACT for point sources.

SJVUAPCD has provided for the first two steps listed above through development and adoption of the *San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 microns and Smaller* ("2003 PM–10 Plan"). The 2003 PM–10 Plan was adopted locally on June 19, 2003, and submitted by CARB to EPA by letter dated August 19, 2003. SJVUAPCD amended portions of the 2003 PM–10 Plan and adopted the amendments on December 18, 2003. CARB submitted the plan amendments to EPA by letter dated December 30, 2003. The 2003 PM–10 Plan, as revised and supplemented by the plan amendments adopted in December 2003, is referred to herein as the "Amended 2003 PM–10 Plan".

The Amended 2003 PM–10 Plan identifies significant source categories for which BACM or BACT must be demonstrated. Among the categories identified as significant in the plan are natural gas boilers and natural gas oilfield steam generators, stationary internal combustion engines, and stationary gas turbines. (Together, these source categories are estimated to have emitted 67.3 tons per day of NO_X in 1999. See Table 4–8 of the Amended 2003 PM–10 Plan.) Thus, the submitted rules, which apply to these significant source categories, must provide for BACT-level of control.

SJVUAPCD has provided documentation for the other steps in the process for determining BACM/BACT for individual source categories in the staff reports submitted with the new or amended rules. Additional documentation is provided in the CARB 1991 RACT/BARCT Determination for boilers, steam generators, and process heaters, the 1992 CARB RACT/BARCT Determination for stationary gas turbines, the 1997 Draft CARB RACT/BARCT Determination for stationary internal combustion engines, and the 2001 CARB RACT/BARCT Determination for spark-ignited stationary internal combustion engines.

With the exception of stationary internal combustion engines used for agricultural purposes (discussed below) and "small" boilers, steam generators, and process heaters (also discussed below), the new or amended rules provide a level of control that is at least as, if not more, stringent than State-level Best Available Retrofit Control Technology (BARCT), which is equivalent to that level of control required to meet the Federal BACT requirement. Two de minimis exceptions to this finding include low-use compression-ignited (diesel) engines at major NO_X sources on the Westside and high-use diesel engines at public water districts. SJVUAPCD has indicated its intention to address issues related to non-agricultural diesel engines as part of the larger rulemaking discussed below in connection with agricultural internal combustion engines. See letter dated January 26, 2003, from Scott Nestor, SJVUAPCD Planning Manager to Andrew Steckel, U.S. EPA—Region IX. The TSD on Rules 4701 and 4702 provides more information on these de minimis exceptions.

Both amended Rule 4701 and new Rule 4702 exempt internal combustion engines used in agriculture. These engines are typically used for irrigation purposes. Most such engines are compression-ignited (*i.e.*, diesel) but roughly 10% are spark-ignited. The Amended 2003 PM–10 Plan identifies agricultural irrigation internal combustion engines as a significant source category, and thus, SJVUAPCD must provide for BACT-level of control for this currently uncontrolled component of the source category of stationary internal combustion engines. SJVUAPCD has met this requirement through adoption of a control measure in the Amended 2003 PM–10 Plan that commits the District to implement BACT for agricultural internal combustion engines by removing the general agricultural exemption from Rule 4702 and by establishing BACT-level NO_X emission limits in Rule 4702 for compression-ignited and spark-ignited agricultural internal combustion engines. We expect to approve this control measure into the SIP in a separate rulemaking action on the Amended 2003 PM–10 Plan.

Rules 4351, 4305, and 4306 apply to boilers, steam generators, and process heaters with heat input ratings greater than five million Btu per hour. However, the Amended PM–10 Plan concludes that small boilers, steam generators, and process heaters (*i.e.*, with heat input ratings between two and five million Btu per hour) are also a significant source of PM–10 precursor emissions, and thus, SJVUAPCD must provide BACT-level of control for them as well. SJVUAPCD has met this requirement by adopting a control measure that commits the District to implement BACT for control of NO_X from these sources. We expect to approve this control measure into the SIP in a separate rulemaking action on the Amended 2003 PM–10 Plan.

Conclusion. Therefore, we propose to find that the provisions of new or amended SJVUAPCD Rules 4351, 4305, 4306, 4701, 4702, and 4703 adequately correct the previously-identified deficiencies and are consistent with the relevant requirements under section 110(a) and part D of the Clean Air Act, as amended in 1990. Specifically, we propose to find that the new or amended rules implement RACT as required for moderate and above ozone nonattainment areas under CAA sections 182(b)(2) and 182(f), RACT/RACM as required for moderate and above PM–10 nonattainment areas under CAA sections 189(a)(1)(C) and 189(e), and BACM/BACT as required for serious PM–10 nonattainment areas under CAA sections 189(b)(1)(B) and 189(e) for NO_X emissions from the following existing sources or source categories: boilers, steam generators, and process heaters (with heat input ratings greater than five million Btu per hour), non-agricultural stationary internal combustion engines, and stationary gas turbines. Also, we propose to find that the new or amended rules meet the enforceability requirements of Section 110(a).

As noted above, SJVUAPCD has provided for BACM/BACT level of control of NO_X from the overall source categories by adoption of control measures related to small boilers, steam generators, and process heaters as well as agricultural stationary internal combustion engines. We expect to approve these control measures in a separate rulemaking on the Amended 2003 PM–10 Plan.

Also, because the submitted rules are consistent with the assumptions and commitments for these source categories in the Amended 2003 PM–10 Plan and the *Amended 2002 and 2005 Rate of Progress Plan for San Joaquin Valley Ozone*, as submitted by CARB to EPA on April 10, 2003, we conclude that our approval of them as a SIP revision is allowed under section 110(l) of the Act. The TSDs have more information on our evaluation of all of the rules addressed in today's action.

C. Public Comment and Final Action

Because EPA believes the submitted SJVUAPCD Rules 4351, 4305, 4306, 4701, 4702, and 4703 fulfill all relevant requirements, we are proposing to fully

approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

If we finalize this action as proposed, then SJVUAPCD Rules 4351, 4305, and 4306, submitted by CARB on September 29, 2003; SJVUAPCD Rules 4701 and 4702, submitted by CARB on October 9, 2003; and SJVUAPCD Rule 4703, submitted by CARB on June 18, 2002, will supercede SJVUAPCD Rules 4351, 4305, 4701 and 4703, approved by EPA on February 28, 2002 into the SJVUAPCD portion of the California SIP. This final action would terminate all sanction and Federal Implementation Plan (FIP) implications of our February 28, 2002 final action with respect to these rules.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: February 3, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–3078 Filed 2–11–04; 8:45 am]

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Vol. 69, No. 29

Thursday, February 12, 2004

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Executive orders and proclamations	741–6000
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Public Laws Update Service (numbers, dates, etc.)	741–6043
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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4843–5004	2
5005–5256	3
5257–5458	4
5459–5678	5
5679–5904	6
5905–6138	9
6139–6524	10
6525–6904	11
6905–7104	12

CFR PARTS AFFECTED DURING FEBRUARY

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:
7754 5457
7755 5677
7756 5903
Executive Orders:
12958(See EO 13328) 6901
13328 6901
12512 (Revoked by EO 13327) 5897
13327 5897
Administrative Orders:
Presidential Determinations:
No. 2004-21 4843

5 CFR

532 5257
Proposed Rules:
591 6020
890 5935

7 CFR

300 4845
301 4845
319 ..... 4845, 5673, 6905
762 5259
905 5679
930 6905
932 5905
984 6910
989 6912
1940 5263
1941 5259
1943 5259
1951 ..... 5259, 5264
1962 5264
1965 5264
Proposed Rules:
319 5673
761 6056
762 6056
763 6056
764 6056
765 6056
766 6056
767 6056
768 6056
769 6056
1205 5936
1423 6201
1728 6926

8 CFR

Proposed Rules:
103 5088

10 CFR

50 5267
71 6139
Proposed Rules:
170 4865
171 4865

11 CFR

111 6525

12 CFR

222 6526
229 6917
Proposed Rules:
25 5729
228 5729
345 5729
502 6201
563e 5729
Ch. VII 5300
703 4886
704 4886

13 CFR

Proposed Rules:
121 5302

14 CFR

1 6531
21 6531
25 6532
39 ..... 5505, 5007, 5459, 5907, 5909, 5911, 5913, 5914, 5918, 5920, 5922, 5924, 5926, 6139, 6532, 6533, 6534, 6536, 6538, 6539, 6541, 6542, 6546, 6547, 6549, 6552, 6553
61 6531
71 ..... 5008, 5009, 5010, 5011, 5012, 5013, 5014, 5461, 5462, 5463
77 5682
91 ..... 6531, 6532, 6555
93 6555
97 ..... 5683, 5684
119 ..... 6531, 6555
121 ..... 5388, 6380, 6531, 6532, 6555, 6556
125 ..... 6531, 6532, 6556
129 6531
135 ..... 5388, 6531, 6532, 6555, 6556,
139 6380
142 6531
145 5388
183 6555
1260 ..... 5015, 5016
1274 5016
Proposed Rules:
25 5747
36 6856
39 ..... 5302, 5477, 5756, 5759, 5762, 5765, 5767, 5769, 5771, 5773, 5775, 5778, 5780, 5781, 5783, 5785, 5787, 5790, 5792, 5794, 5936, 5939, 6214, 6585,

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 FEBRUARY 12, 2004

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:

Processed commodity analytical services; published 1-13-04

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish and Pacific halibut; seabird incidental take in hook-and-line fisheries; published 1-13-04

Caribbean, Gulf, and South Atlantic fisheries—

Red snapper; published 2-12-04

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

North Pacific Groundfish Observer Program; published 1-13-04

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; published 2-12-04

Kansas; published 1-13-04

Missouri; published 1-13-04

Toxic substances:

Significant new uses—

3-Hydroxy-1, 1-dimethylbutyl derivative, etc.; revoked; published 1-13-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Florida; published 1-13-04

Pollution:

Vessels carrying oil; response plans; salvage and firefighting equipment; partial suspension; published 1-23-04

TREASURY DEPARTMENT

Comptroller of the Currency

Bank activities and operations and real estate lending and appraisals:

National banks; State law applicability; published 1-13-04

National banks:

Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; published 1-13-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Soybean promotion, research, and consumer information:

Referendum request procedures; comments due by 2-17-04; published 1-27-04 [FR 04-01602]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Fruits and vegetables importation; conditions governing entry; comments due by 2-17-04; published 12-18-03 [FR 03-31202]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food Stamp Program:

Performance reporting system; high performance bonuses; comments due by 2-17-04; published 12-17-03 [FR 03-31031]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Sorghum; U.S. standards; comments due by 2-17-04; published 12-17-03 [FR 03-31092]

AGRICULTURE DEPARTMENT

Farm Security and Rural Investment Act of 2002:

Biobased products designation guidelines for Federal procurement; comments due by 2-17-04; published 12-19-03 [FR 03-31347]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pollock; comments due by 2-19-04; published 2-9-04 [FR 04-02715]

Pribilof Islands blue king crab; comments due by 2-17-04; published 12-18-03 [FR 03-31226]

Alaska; fisheries of Exclusive Economic Zone—

Demersal shelf rockfish; comments due by 2-20-04; published 1-21-04 [FR 04-01220]

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish resources; comments due by 2-19-04; published 1-5-04 [FR 04-00089]

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; correction; comments due by 2-20-04; published 2-5-04 [FR 04-02412]

Northeastern United States fisheries—

Atlantic sea scallop; comments due by 2-19-04; published 2-4-04 [FR 04-02411]

Northeast multispecies; reporting and recordkeeping requirements; comments due by 2-20-04; published 1-21-04 [FR 04-01214]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Skates; comments due by 2-20-04; published 1-6-04 [FR 04-00229]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT

Climate change:

Voluntary Greenhouse Gas Reporting Program; general guidelines; comment request; comments due by 2-17-04; published 1-29-04 [FR 04-01922]

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 pollution control:

State operating permit programs—

California; comments due by 2-17-04; published 1-16-04 [FR 04-01040]

California; comments due by 2-17-04; published 1-16-04 [FR 04-01041]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New York; comments due by 2-17-04; published 1-15-04 [FR 04-00889]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 2-17-04; published 1-15-04 [FR 04-00836]

New York; comments due by 2-17-04; published 1-16-04 [FR 04-01044]

South Dakota; comments due by 2-19-04; published 1-20-04 [FR 04-01035]

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:

Pennsylvania; comments due by 2-19-04; published 1-20-04 [FR 04-01042]

Solid wastes:

Hazardous waste; identification and listing—

Solvent-contaminated reusable shop towels, rags, disposable wipes, and paper towels; conditional exclusion; comments due by 2-18-

LIST OF PUBLIC LAWS

Note: A cumulative List of Public Laws for the first session of the 108th Congress appears in Part II of this issue.

Last List January 29, 2004

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108th Congress

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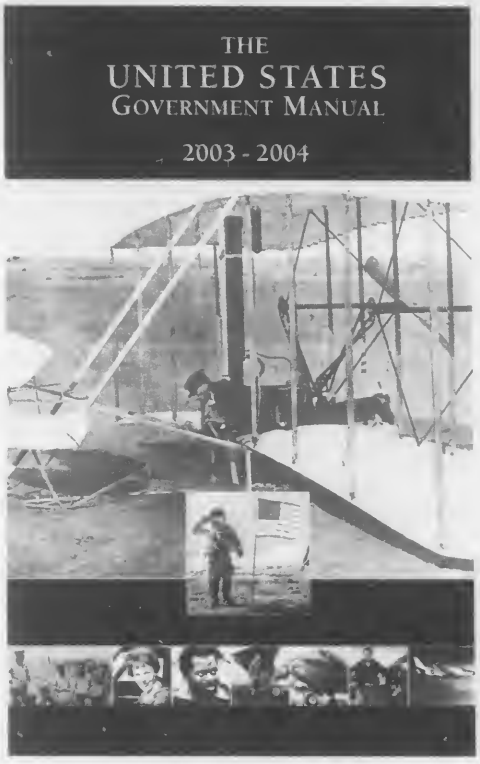

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