
# Federal Register

2–17–04 Tuesday
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 1

**[Docket No. 2003D–0545]**

## Guidance for Industry: Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 3); Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability of guidance.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 3)." The guidance responds to various questions raised about section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which require facilities that manufacture/process, pack, or hold food for consumption in the United States to register with FDA by December 12, 2003.

**DATES:** Submit written or electronic comments on the agency guidance at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the registration help desk, 1–800–216–7331 or 301–575–0156, or FAX: 301–210–0247. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

**FOR FURTHER INFORMATION CONTACT:** Melissa S. Scales, Office of Regulations and Policy (HFS–24), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1720.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58894), FDA issued an interim final rule to implement section 305 of the Bioterrorism Act. The registration regulation requires facilities that manufacture/process, pack, or hold food (including animal feed) for consumption in the United States to register with FDA by December 12, 2003.

On December 4, 2003, FDA issued the first edition of a guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities." Subsequently, in the **Federal Register** of January 12, 2004 (69 FR 1675), FDA announced the availability of a revision of that guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 2)". This guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 3)" is a revision of the guidance announced on January 9, 2004, and responds to additional questions about the interim final rule on registration. It is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart H.

FDA is issuing this guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 3)" as a level 1 guidance. Consistent with FDA's good guidance practices regulation § 10.115(g)(2) (21 CFR 10.115), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the Bioterrorism Act requires that covered facilities be registered with FDA by December 12, 2003. Clarifying the provisions of the interim final rule will facilitate prompt registration by covered facilities and thus, complete implementation of the interim final rule.

FDA continues to receive a large number of questions regarding the registration interim final rule, and is responding to these inquires under § 10.115 as promptly as possible, using a question-and-answer format. The agency believes that it is reasonable to maintain all responses to questions concerning food facilities registration in a single document that is periodically updated as the agency receives and responds to additional questions. The following four indicators will be employed to help users of the guidance identify revisions: (1) The guidance will be identified as a revision of a previously issued document, (2) the revision date of the guidance will appear on its cover, (3) the edition number of the guidance will be included in its title, and (4) questions and answers that have been added to the original guidance will be identified as such in the body of the guidance.

### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Mondaythrough Friday.

### III. Electronic Access

Persons with access to the Internet may obtain the document at*http://www.cfsan.fda.gov/guidance.html.*

Dated: February 11, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–3421 Filed 2–12–04; 11:07 am]

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Parts 1300 and 1313**

**[Docket No. DEA–194N]**

## Use of the Internet To Arrange International Sales of Listed Chemicals

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Guidance; request for comments.

**SUMMARY:** DEA is issuing this notice to clarify the applicability of current DEA regulations to Internet Web site providers located in the United States who serve as brokers or traders for arranging international transactions of listed chemicals. The growth in the number of Internet Web sites that provide information and services for buyers and sellers of listed chemicals has increased the possibility that there may be confusion over the applicability of DEA regulations to Web site providers serving as brokers or traders. This guidance provides information about the regulations with which Internet Web site providers located in the U.S. who serve as brokers or traders for arranging international transactions of listed chemicals must comply.

**DATES:** Written comments must be postmarked on or before April 19, 2004.

**ADDRESSES:** Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7297.

**SUPPLEMENTARY INFORMATION:**

### Why Is This Clarification Needed?

DEA has been studying the increased use of the Internet to provide information and services to persons interested in buying or selling listed chemicals. Operators of some Web sites mistakenly believe that they, as merely brokers of transactions, are not required to comply with DEA regulations. However, U.S. brokers of international transactions are regulated by DEA.

There also appears to be confusion over what types of Internet services fall under the regulatory scope of DEA. There are at least two reasons for this confusion. First, some Web sites provide a wide range of services, such as providing information and resources on chemicals, providing bulletin board services for buyers and sellers, and serving as an agent, sometimes for a fee, for arranging sales. Second, the chemicals are legal commercial products and, in many cases, only a small proportion of the chemicals included in the Web site information are listed chemicals regulated by DEA. For these reasons, Web site providers may be unaware that they are subject to DEA regulations.

This guidance explains when U.S. brokers of international transactions of listed chemicals are subject to DEA regulations, with what regulations they must comply, and the types of activities performed by Internet Web site providers that fall within the broker category and are subject to DEA regulations.

### What Are Listed Chemicals?

Listed chemicals are chemicals specifically designated by the Administrator of DEA and identified in 21 CFR 1310.02 that, in addition to legitimate uses, are used in illegally manufacturing controlled substances. There are two types of listed chemicals: List I and List II. List I chemicals are important in illegally manufacturing a controlled substance; List II chemicals are chemicals other than List I chemicals used in illegally manufacturing a controlled substance. Examples of List I chemicals include ephedrine, gamma-Butyrolactone, hydriodic acid, phenylpropanolamine, red phosphorus, and pseudoephedrine. Examples of List II chemicals include acetic anhydride, acetone, hydrochloric acid, iodine, methyl ethyl ketone, potassium permanganate, and toluene.

### What Is a Broker or Trader?

The terms "broker" and "trader" are defined in 21 CFR 1300.02(b)(4) to mean—

> Any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—
>
> (i) Negotiating contracts;
>
> (ii) Serving as an agent or intermediary; or
>
> (i) Fulfilling a formal obligation to complete the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter, or by receiving any form of compensation for so doing.

### What Is an International Transaction?

The term "international transaction" is defined in 21 CFR 1300.02(b)(15) to mean—

> A transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

### When Are U.S. Brokers of International Transactions of List I and List II Chemicals Subject to DEA Regulations?

If brokers or traders located in the United States participate or assist in transactions involving shipments of List I or List II chemicals between two foreign countries, the brokers or traders are subject to DEA regulations relating to international transactions.

### What Regulations Apply to U.S. Brokers of International Transactions of List I and List II Chemicals?

U.S. brokers of international transactions of listed chemicals are regulated by DEA under 21 CFR part 1313, Importation and Exportation of Precursors and Essential Chemicals. The following regulations apply:

*Advance Notification of International Transactions*

A broker or trader is required by 21 CFR 1313.32 to notify DEA no later than 15 days before an international transaction is to take place involving above-threshold amounts of a listed chemical in which the broker or trader participates. Threshold amounts for listed chemicals are provided in 21 CFR 1310.04. This notification must be made on DEA Form 486, must include the identification information listed in 21 CFR 1313.33(c), and must be mailed or faxed to DEA.

*No Transactions in Violation of the Laws of the Country to Which Chemicals Are Exported*

It is a violation of 21 U.S.C. 960(d)(2) (21 CFR 1313.32(c)) for a broker or trader to participate in an international transaction that he or she knows, or has reason to believe, is in violation of the laws of the country to which the chemical is exported, or knows, or has reason to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which it is exported. Finally, under 21 CFR 1313.25 any person or company that exports any listed chemical from the United States in violation of the laws of the country to which the chemical is exported is subject to penalties.

*Recordkeeping, Reporting, and Identification Requirements*

In addition to the requirements specifically applicable to brokers of international transactions under 21 CFR 1313, brokers are also subject to DEA requirements that apply to regulated

persons. A broker is a "regulated person" under 21 CFR 1300.02(b)(27) and an international transaction involving the shipment of a listed chemical is considered a regulated transaction under 21 CFR 1300.02(b)(28). Therefore, brokers of international transactions involving the shipment of listed chemicals are subject to the reporting and recordkeeping requirements of 21 CFR 1310.03–1310.06 and the identification requirements of 21 CFR 1310.07.

**What Is the Purpose of the 15-Day Advance Notification Requirement in 21 CFR 1313.32?**

The 15-day advance notification requirement provides a critical window of opportunity for DEA to carry out its mandate of preventing the diversion of listed chemicals for illegal manufacture of controlled substances. DEA may have knowledge or information unknown to the broker indicating that the chemical may be diverted for the illegal manufacture of controlled substances.

When copies of DEA Form 486 are received, DEA immediately reviews them. If DEA has reason to believe that the chemical proposed for shipment may be diverted to the illegal manufacture of a controlled substance, the Administrator may contact the broker or trader. The information in DEA Form 486 provides the Administrator with the means to identify the diversion and the opportunity to take appropriate steps to attempt to prevent diversion.

**Which Internet Web Site Providers Are Subject to DEA Requirements?**

Internet Web site providers located in the U.S. who assist in arranging transactions of listed chemicals among buyers, sellers, or transporters from foreign countries are brokers or traders as defined in 21 CFR 1300.02(b)(4). Such brokers or traders must comply with 21 CFR part 1313. Assistance in arranging international transactions by a Web site provider includes the following types of activity:

- Requiring the buyer, seller, or transporter to notify the Web site provider when an agreement for a transaction has been made;
- Utilizing user profiles of Web site visitors' interests to notify the visitors of the availability of listed chemicals they want to buy, the availability of customers for listed chemicals they want to sell, or the availability of transporters to ship the chemicals; and
- Imposing a fee or commission for the Web site service.

Merely advertising foreign companies on the Web site would not be considered "assisting in arranging international transactions." Furthermore, if the Web site provides only a bulletin board and does not monitor, facilitate, charge a fee for, or otherwise participate in any subsequent transactions, the provider would not be considered a broker or trader.

If either party to a transaction or both are located in the U.S., those companies have the responsibility to comply with the applicable requirements of 21 CFR parts 1309, 1310, and 1313, and the broker is not subject to the 15-day advance notification requirement.

DEA recommends that Internet Web site providers post a notice to their Web site users about the advance notification requirement for international transactions of listed chemicals so that buyers and sellers can plan their transactions accordingly. Web site providers acting as brokers of international transactions are subject to the civil and criminal penalties under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 *et seq.*), including 21 U.S.C. 842, 843, and 960 for any failure to comply with DEA regulations.

While the advance notification and the recordkeeping requirements impose a modest burden on brokers and traders, it is a necessary burden that provides DEA with important information that could prevent the diversion of listed chemicals.

**What Additional Information Is DEA Requesting?**

DEA requests comments on the following topics to better understand brokering/trading of listed chemicals on the Internet and to make it as easy as possible for Internet providers who serve as brokers or traders of international transactions of listed chemicals to comply with the regulations.

1. How do you provide assistance to chemical buyers and sellers through your Internet Web site?
2. At what point do you as a broker become involved in the transaction?
3. How will complying with the advance notification requirements affect the services you provide to buyers and sellers?
4. What is the size and scope of this emerging segment of the chemical industry?
5. What changes in the nature and methods of buying and selling listed chemicals have been brought about by the use of the Internet?
6. What does the future hold for the use of the Internet in this business?

DEA welcomes answers to these questions and any additional relevant information that you can provide. Please send comments to the address listed above under **ADDRESSES.**

Dated: February 4, 2004.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 04–3355 Filed 2–13–04; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF STATE

### 22 CFR Part 126

**[Public Notice 4625]**

**RIN 1400–ZA08**

### Amendment to the International Traffic in Arms Regulations

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the International Traffic in Arms Regulations (ITAR) by modifying the denial policy regarding the Democratic Republic of the Congo (DRC).

**EFFECTIVE DATE:** February 17, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Management, ATTN: Regulatory Change, DRC, 12th Floor, SA–1, Washington, DC 20522–0112. Comments will be accepted at any time.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Sweeney, Office of Defense Trade Controls Management, Department of State, Telephone (202) 663–2700 or FAX (202) 261–8199.

**SUPPLEMENTARY INFORMATION:** On April 29, 1993, the Department imposed a suspension and denial policy for all licenses and other approvals to export or otherwise transfer defense articles or defense services to Zaire (currently the DRC) (58 FR 26024, April 29, 1993). That action was taken in response to the violence and death fueled by the regime of President Mobutu. Zaire was added to the proscribed destination list at section 126.1 of the ITAR on July 22, 1993 (58 FR 39312, July 22, 1993).

UN Security Council Resolution 1493 (July 28, 2003) imposed an arms embargo on all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-Inclusive Agreement, in the DRC. The resolution qualified that those measures shall not apply to:

—Supplies to United Nations Organization Mission in the Democratic

Republic of the Congo (MONUC), the Interim Emergency Multinational Force deployed in Bunia and the integrated Congolese national army and police forces;

—Supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training as notified in advance to the Secretary-General through its Special Representative.

This amendment adds a new paragraph (i) at section 126.1 of the ITAR that modifies the policy to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the DRC. Consistent with UN Security Council Resolution 1493, a denial policy will remain for exports or imports of defense articles and defense services destined for or originating in the Democratic Republic of the Congo except, on a case-by-case basis, for (1) non-lethal equipment and training (lethal and non-lethal) to the MONUC, and the transitional National Unity Government of the Democratic Republic of the Congo, and the integrated Congolese national army and police forces; and (2) humanitarian or protective use, and related assistance and training as notified in advance to the UN.

Mirroring UN Security Council Resolution 1493, the amendment also imposes an arms embargo on certain groups operating in the territory of North and South Kivu and Ituri in the DRC and with respect to DRC groups not party to the Global and All-Inclusive Agreement.

**Regulatory Analysis and Notices**

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 533 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Order Nos. 12372 and 13132.

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 126 is amended as follows:

## PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for Part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

■ 2. Section 126.1 is amended by revising paragraph (a) and adding paragraph (i) to read as follows:

**§ 126.1 Prohibited exports and sales to certain countries.**

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Libya, North Korea, Syria and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.*, Burma, China, Haiti, Liberia, Somalia, and Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register.** The exemptions provided in the regulations in this subchapter, except § 123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this § 126.1.

* * * * *

(i) *Democratic Republic of the Congo.* It is the policy of the United States to deny licenses, other approvals, exports or imports of defense articles and defense services destined for or originating in the Democratic Republic of the Congo except for non-lethal equipment and training (lethal and non-lethal) to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and the transitional National Unity Government of the Democratic Republic of the Congo, and the integrated Congolese national army and police forces, and humanitarian or protective use, and related assistance and training as notified in advance to the UN. An arms embargo exists with respect to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive Agreement, in the Democratic Republic of the Congo.

Dated: January 15, 2004.

**John R. Bolton,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 04–3383 Filed 2–13–04; 8:45 am]

BILLING CODE 4710–25–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

### [TD 9101]

### RIN 1545–BC79

## Information Reporting Relating to Taxable Stock Transactions; Correction

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

**ACTION:** Correction to temporary regulations.

**SUMMARY:** This document contains corrections to temporary regulations that were published in the **Federal Register** on Tuesday, December 30, 2003 (68 FR 75119) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure.

**DATES:** This correction is effective December 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Nancy Rose, (202) 622–4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations (TD 9101) that are the subject of these corrections are under sections 6043(c) and 6045 of the Internal Revenue Code.

**Need for Correction**

As published, the temporary regulations (TD 9101) contain errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

■ Accordingly, the publication of the temporary regulations (TD 9101), that were the subject of FR Doc. 03–31361, is corrected as follows:

■ 1. On page 75119, column 3, in the heading, the language, is corrected to read "26 CFR Parts 1 and 602".

■ 2. On page 75122, column 1, in the preamble, the "List of Subjects" is corrected to read as follows:

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**PART 1—[AMENDED]**

■ 3. On page 75122, column 2, in the words of issuance, the language, "Accordingly, 26 CFR part 1 is amended" is corrected to read "Accordingly, 26 CFR parts 1 and 602 are amended".

**§ 1.6045–3T [Corrected]**

■ 4. On page 75125, column 3, § 1.6045–3T(e), lines 1 and 2, the language, "(e) Furnishing of forms to actual owners. The Form 1099–B prepared for" is corrected to read "(e) Furnishing of forms to customers. The Form 1099–B prepared for".

■ 5. On page 75126, column 1, the heading for Part 602 and amendments 4. and 5. are added following § 1.6045–3T to read as follows:

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 4.** The authority citation for part 602 continues to read in part as follows:

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

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the following entries in the table as follows:

**§ 602.101 OMB Control numbers**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.6043–4T | 1545–1812 |
| * * * * * | |
| 1.6045–3T | 1545–1812 |
| * * * * * | |

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 04–3262 Filed 2–13–04; 8:45 am]

BILLING CODE 4830–01–P

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**[Docket No. S–550]**

**RIN 1218–AB97**

## Commercial Diving Operations

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** OSHA is issuing this final rule to amend its Commercial Diving Operations (CDO) standards. This final rule allows employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements in the current CDO standards. The final rule applies only when these employees engage in recreational diving instruction and diving-guide duties; use an open-circuit, a semi-closed-circuit, or a closed-circuit self-contained underwater-breathing apparatus supplied with a breathing gas that has a high percentage of oxygen mixed with nitrogen; dive to a maximum depth of 130 feet of sea water; and remain within the no-decompression limits specified for the partial pressure of nitrogen in the breathing-gas mixture. These alternate requirements essentially are the same as the terms of a variance granted by OSHA to Dixie Divers, Inc. in 1999.

**DATES:** This final rule becomes effective on March 18, 2004.

**ADDRESSES:** In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of this final rule. Submit petitions of review to the Associate Solicitor at: Office of the Solicitor of Labor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** For general information and press inquiries, contact Mr. George Shaw, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Mr. Robert Bell, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2053 or fax (202) 693–1663.

Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1888. For an electronic copy of this notice, go to OSHA's Web site (*http://www.osha.gov*), and select "**Federal Register**," "Date of Publication," and then "2003."

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

The following Table of Contents identifies the major sections under **SUPPLEMENTARY INFORMATION**, including a detailed summary and explanation of the final rule.

I. Background
II. Summary and Explanation of the Rule
A. Final §§ 1910.401(a)(3) and 1910.402 ("Definitions")
B. Conditions Specified in Final Appendix C
III. Legal Considerations
IV. Final Economic Analysis and Regulatory Flexibility Certification
V. Paperwork Reduction Act
VI. Federalism
VII. State Plans
VIII. Unfunded Mandates
IX. Applicability of Existing Consensus Standards
List of Subjects in 29 CFR Part 1910
X. Authority and Signature

**I. Background**

In 1999, acting under section 6(d) of the Occupational Safety and Health Act of 1970 ("OSH Act" 29 U.S.C. 655), the Occupational Safety and Health Administration ("OSHA" or "the Agency") published an order granting a permanent variance to Dixie Divers, Inc. ("Dixie Divers") (Ex. 2–11). The permanent variance exempted Dixie Divers from OSHA's decompression-chamber requirements specified at § 1910.423(b)(2) and (c)(3)(iii), and § 1910.426(b)(1), when its recreational diving instructors and diving guides (hereafter, "divers") engage in underwater instructional and guiding operations.

The purpose of having a decompression chamber available and

ready for use at a dive site is to treat decompression sickness (DCS) and arterial gas embolism (AGE). DCS may occur from breathing air or mixed gases at diving depths and durations that require decompression, while AGE may result from over-pressurizing the lungs, usually following a rapid ascent to the surface during a dive without proper exhalation.

The Dixie Diver variance from the decompression-chamber requirements applied only to mixed-gas diving operations at a maximum depth of 130 feet of sea water ("fsw") performed within no-decompression limits. During these diving operations, divers use a breathing-gas mixture consisting of a high percentage of $O_2$ mixed with nitrogen (*i.e.*, a nitrox breathing-gas mixture) supplied by an open-circuit, semi-closed-circuit or closed-circuit self-contained underwater breathing apparatus (SCUBA). In issuing the permanent variance, the Agency noted that compliance would provide divers with a level of protection that met or exceeded the level of protection they would receive if they had access to a decompression chamber at the dive site as required by §§ 1910.423(b)(2) and (c)(3)(iii), and 1910.426(b)(1).

On January 10, 2003, OSHA proposed to amend its Commercial Diving Operations ("CDO") standards to incorporate the terms and conditions of the Dixie Divers variance as an appendix to the CDO standards (68 FR 1399). The Agency now is issuing the final rule to amend the CDO standards based on this proposal. OSHA believes that this amendment enables recreational diving instructors and diving guides to extend their diving operations while minimizing their risk of DCS and AGE. The Agency concludes that the recreational diving instructors and diving guides covered by this amendment will receive a level of safety and health protection that is equivalent to recreational diving instructors and diving guides who have a decompression chamber located at the dive site during mixed-gas diving operations regulated under the CDO standards. Therefore, a decompression chamber near the dive site is unnecessary for the divers covered by this final rule.

## II. Summary and Explanation of the Final Rule

OSHA received no requests for a hearing on the proposed amendment, thereby enabling it to proceed directly to this final rule after considering the comments submitted by the public in response to the proposal. In this regard, the Agency received 13 public comments on the proposal. However, two commenters each submitted a duplicate set of responses (Exs. 6–6 and 6–7, and 6–8 and 6–9); one set of duplicate responses (Exs. 6–6 and 6–7) was received from a commercial diver that involved an issue unrelated to this rulemaking. We address the remaining comments in sections A and B below, which discuss the conditions adopted in the final rule.

When the discussion regarding a condition does not cite a comment, then the public did not comment on that condition. In such cases, we have assumed that the regulated community found the proposed condition to be appropriate and necessary for diver safety based on OSHA's stated rationale in the proposed rule, and we have retained it in the final rule without further explanation (see 68 FR 1399, pages 1400–1409).

### *A. Final §§ 1910.401(a)(3) and 1910.402 ("Definitions")*

Proposed § 1910.401(a)(3) specified that this amendment would apply only to recreational diving instructors and diving guides who are engaged solely in recreational diving instruction and dive-guiding operations. Accordingly, OSHA also proposed to add the following definitions for "recreational diving instruction" and "dive-guiding operations" to § 1910.402 of the CDO standards:

> "Recreational diving instruction" means the training of diving students in the use of recreational diving procedures and the safe operation of diving equipment, including open-circuit, semi-closed-circuit, or closed-circuit SCUBA during dives.
>
> "Dive-guiding operations" means the leading of groups of trained sports divers, who use open-circuit, semi-closed-circuit, or closed-circuit SCUBA, to local undersea diving locations for recreational purposes.

To further limit application of the amendment, proposed § 1910.401(a)(3) required employers to ensure that the instructors and guides conduct these dives within the no-decompression limits, and that they use a nitrox breathing-gas mixture consisting of a high percentage of $O_2$ (more than 22% by volume) mixed with nitrogen and supplied by an open-circuit, semi-closed-circuit, or closed-circuit SCUBA. Under this proposed requirement, employers also would have to comply with the requirements specified in new Appendix C of subpart T.

Based on its analysis of the record, OSHA is adopting proposed §§ 1910.401(a)(3) and 1910.402 in the final rule. Recreational diving instructors and diving guides who use a nitrox breathing-gas mixture supplied by an open-circuit, semi-closed-circuit, or closed-circuit SCUBA under no-decompression diving limits will receive a level of safety and health protection equivalent to the recreational diving instructors and diving guides who have a decompression chamber located at the dive site during mixed-gas diving operations regulated under the CDO standards.

### *B. Conditions Specified in Final Appendix C*

OSHA proposed to add a new appendix to the CDO standards to specify the conditions under which employers may use this alternative to decompression chambers. Accordingly, the Agency is adopting new Appendix C in the final rule after revising the proposal based on comments submitted to the record. The following discussion addresses the comments received on the proposed conditions, and what OSHA is including in the final rule.

1. Equipment Requirements for Rebreathers

(a) *Manufacturer's instructions.* As proposed, this condition required employers to ensure that their recreational diving instructors and diving guides use rebreathers (*i.e.*, semi-closed circuit and closed-circuit SCUBA) according to the rebreather manufacturer's instructions. OSHA is retaining this condition in the final rule. As noted in the proposal, the Agency believes that SCUBA manufacturers are best qualified to identify and specify the components, configuration, and operation of their products.

(b) *Counterlungs.* This proposed condition required employers to ensure that each rebreather has a counterlung (also referred to as an "inhalation bag" or "breathing bag") that both contains a baffle system that prevents moisture from entering the scrubber or breathing hoses and supplies a sufficient volume of breathing gas to the divers to sustain their respiration rate during diving operations. The National Oceanic and Atmospheric Administration (NOAA) considers counterlungs a necessity for rebreather diving (see Ex. 3–12, p. 14–3). OSHA expects rebreather manufacturers to provide the purchaser or user with information regarding this displacement as part of their usual and customary practice. In addition, by keeping moisture from entering the scrubber, baffle systems prevent rapid deterioration of the $CO_2$-sorbent material housed in the scrubber and decrease the risk of $CO_2$ toxicity (see Ex. 3–12, p. 14–8).

The Agency received one comment (Ex. 5–2–1) regarding the proposed

baffle-system requirement. This commenter recommended revising the condition to read that the counterlung must contain "a baffle system and/or other moisture separating system that keeps moisture from entering the scrubber." In justifying this revision, the commenter stated: "While all manufactured units have some sort of system to accomplish this function, all do not call it a "baffle" system. Additionally, use of the specific term may * * * create problems for future technological developments, which may address the problem in different ways." OSHA agrees with this commenter that the proposed wording was too specific, and might hinder future efforts to develop new technologies to prevent moisture from entering the scrubber. Therefore, the final rule adopts the language of the proposed condition except for the part addressing baffle systems; for this part, the Agency is adopting the language recommended by this commenter.

(c) *Moisture traps.* Under this proposed condition, employers need to place a moisture trap in the breathing loop of each rebreather. The employer also must ensure that the rebreather manufacturer approves both the moisture trap and its location in the breathing loop, and that their divers use the moisture trap according to the rebreather manufacturer's instructions. The Agency is retaining this condition in the final rule as proposed because it believes that moisture traps, when approved by the rebreather manufacturer and located and used according to the manufacturer's instructions, prevent water from entering the $CO_2$-absorbing canisters. By preventing such water leakage, moisture traps preserve the $CO_2$-absorbing properties of the sorbent material inside the canister.

(d) *Moisture sensors.* Under this proposed condition, employers must ensure that each rebreather has a continuously functioning moisture sensor that connects to a visual (*e.g.*, digital, graphic, or analog) or auditory (*e.g.*, voice, pure tone) alarm. This alarm must be readily detectable by divers under the diving conditions in which they operate and warn them of moisture in the breathing loop in sufficient time for them to terminate the dive and return safely to the surface. Additionally, the proposed condition required employers to ensure that their divers use the moisture sensors according to the rebreather manufacturer's instructions. By warning divers of hazardous water leakage into the canister, moisture sensors allow divers to return to the surface before $CO_2$ in the recycled breathing gas reaches dangerous levels. Therefore, the final rule includes these requirements as proposed.

(e) *$CO_2$ sensors.* An important component in controlling excessive $CO_2$ is the $CO_2$ sensor. In the proposal, this condition required employers to ensure that each rebreather contains a continuously functioning $CO_2$ sensor in the breathing loop. It also specified that the rebreather manufacturer must approve the $CO_2$ sensor and its location in the breathing loop. In addition, employers must ensure that the $CO_2$ sensor is integrated with an alarm that operates in a visual (*e.g.*, digital, graphic, or analog) or auditory (*e.g.*, voice, pure tone) mode readily detectable by divers under the diving conditions in which they operate. This alarm would remain continuously activated when the inhaled $CO_2$ level reaches and exceeds 0.005 atmospheres absolute ("ATA").[1] In the final rule, OSHA is retaining the condition as proposed.

(f) *Calibrating $CO_2$ sensors.* This proposed condition stated that employers must, before each day's diving operations (and more often when necessary), calibrate each $CO_2$ sensor according to the sensor manufacturer's instructions. Additionally, employers must maintain the accuracy of the equipment and procedures used to perform the calibration to within 10% of a $CO_2$ concentration of 0.005 ATA or less according to the sensor manufacturer's instructions. Using this equipment, they would calibrate the $CO_2$ sensor to within 10% of a $CO_2$ concentration of 0.005 ATA or less. The Agency is including this condition in the final rule because it concludes that this calibration requirement is necessary to identify improperly functioning $CO_2$ sensors.

(g) *Faulty $CO_2$ sensors.* In the proposal, this condition specified that employers must replace $CO_2$ sensors that fail the accuracy requirements delineated above in Condition 1(f)(iii) with a sensor that meets these requirements. Eliminating sensors that are unreliable or that cannot function under rugged diving conditions is necessary to provide divers with safe breathing gas. OSHA is retaining this requirement in the final rule.

(h) *$CO_2$-sorbent materials.* As an alternative to using continuously functioning $CO_2$ sensors, the proposed condition allowed an employer to implement a rebreather manufacturer's schedule for replacing the $CO_2$-sorbent material in the canister of a rebreather. However, the manufacturer would have to develop the schedule according to the canister-testing protocol specified in Condition 11 of Appendix C ("Testing Protocol for Determining the $CO_2$ Limits of Rebreather Canisters"). Additionally, the employer may use the rebreather at a water temperature that is lower than the minimum, or higher than the maximum, water temperature used in the testing protocol specified in Condition 11, but only when the rebreather manufacturer adds that lower or higher temperature to the testing protocol.

A commenter (Ex. 5–2–1) stated that the proposed language regarding the minimum and maximum water-temperature requirement was confusing, and recommended that the requirement read as follows: "A rebreather within the temperature range for which the manufacturer conducted its scrubber canister tests following the protocol specified in Condition 11. Variations above or below the range are acceptable only after the manufacturer adds that lower or higher temperature to the protocol." OSHA agrees that the commenter's revision expresses more clearly than the proposal the meaning of this provision, and has revised this language in the final rule accordingly. The Agency believes that the canister-replacement schedule provides a reliable estimate of canister duration that incorporates an assessment of the physical properties of the $CO_2$-sorbent material and an evaluation of the canister's effectiveness.

(i) *Commercially pre-packed cartridges.* This proposed condition required employers who use a $CO_2$-sorbent replacement schedule specified in Condition 1(h) to ensure that each rebreather uses a manufactured (*i.e.*, commercially pre-packed), disposable scrubber cartridge. This cartridge would have to contain a $CO_2$-sorbent material that is approved by the rebreather manufacturer and is capable of removing $CO_2$ from the divers' exhaled gas. In this regard, the canister would maintain the $CO_2$ level in the breathable gas (*i.e.*, the gas a diver is inhaling directly from the regulator) below a partial pressure of 0.01 ATA.

OSHA is including this condition in the final rule as proposed. These requirements ensure proper compression and uniform distribution of the sorbent material in the cartridge, thereby minimizing "channeling" in the

[1] ATA is the partial pressure of a constituent gas in the total pressure of a breathing gas. When the percentage of the constituent gas in the breathing gas remains constant throughout a dive, its partial pressure, or ATA, increases in direct proportion to increases in diving depth.

material [2] and lowering the diver's risk of rebreathing exhaled breathing gas that is high in $CO_2$.

(j) *Alternative to commercially pre-packed cartridges.* This proposed condition permitted employers to fill $CO_2$ scrubber cartridges manually instead of using commercially pre-packed cartridges. This practice is acceptable when the rebreather manufacturer designs the scrubber cartridge to be filled manually, the employer implements the alternative method according to the rebreather manufacturer's instructions, and the employer can demonstrate that the alternative method meets the performance requirements for commercially pre-packed cartridges specified by Conditions 1(h) and 1(i). OSHA is adopting this condition in the final rule as proposed because manually filled cartridges that meet the performance requirements for commercially pre-packed cartridges will remove $CO_2$ effectively from the breathing loop.

(k) *Information module.* In the proposal, this condition required employers to ensure that their divers use an information module that provides them with critical information regarding rebreather operation. For all rebreathers, the module needed to contain visual or auditory warning devices that would alert the diver to electrical weaknesses or failures (*e.g.*, solenoid failure, low battery levels). In addition, modules used in semi-closed circuit rebreathers needed to contain visual displays for the partial pressure of $CO_2$, or deviations above and below a preset $CO_2$ partial pressure of 0.005 ATA. For closed-circuit rebreathers, the module also would have visual displays for the partial pressures of $O_2$ and $CO_2$, or deviations above and below a preset $CO_2$ partial pressure of 0.005 ATA and a preset $O_2$ partial pressure of 1.40 ATA. The module also needed to have a visual display for both gas temperature in the breathing loop and water temperature.

OSHA is including these requirements in the final rule as proposed because warning divers of electrical weaknesses and failures informs them not to rely on their electrically operated equipment and to take protective actions. Providing information about $O_2$ and $CO_2$ partial pressures alerts divers to rising and potentially toxic levels of these gases in time for them to prevent extended exposure. Additionally, information regarding water temperature warns divers of the risk of hypothermia, while gas-temperature information allows divers to estimate the duration of their $CO_2$-sorbent material.

(l) *Checking electrical power and circuits.* Under this proposed condition, employers would ensure that the electrical power supplies and electrical and electronic circuits in each rebreather are operating according to the rebreather manufacturer's instructions. Employers must check for proper operation prior to beginning diving operations each day, and more often when necessary. The Agency is adopting this condition as proposed because partial or total electronic failures could interfere with rebreather sensor and control systems.

2. Special Requirements for Closed-Circuit Rebreathers

(a) *Supply-pressure and temperature sensors.* This proposed condition stated that employers are responsible for ensuring that closed-circuit rebreathers use supply-pressure sensors for the $O_2$ and diluent gases (*i.e.*, air or nitrogen), as well as continuously functioning sensors for detecting temperature in the inhalation side of the breathing loop and in the ambient water. OSHA is including it in the final rule as proposed. In this regard, supply-pressure sensors inform divers of the remaining supply of breathing-gas ingredients (*i.e.*, $O_2$ and air or nitrogen), thereby enabling them to monitor their breathing-gas consumption during a dive. Low gas supplies alert divers to an unusually high consumption of breathing gas, indicating a possible problem with the rebreather. An unexpected gas loss also may increase the need for a diver to make a rapid (*i.e.*, emergency) ascent to the surface during a dive, which could result in over-pressurization of the lungs associated with AGE. In addition, OSHA believes that temperature sensors increase diver safety because the sensors alert divers to the possibility of hypothermia. Temperature reductions in breathing gas also inform divers that the efficiency of the $CO_2$-sorbent material is likely to deteriorate (Ex. 3–11).

(b) *$O_2$ sensors.* As proposed, this condition required employers to ensure that at least two $O_2$ sensors are located in the inhalation side of the breathing loop. These $O_2$ sensors must function continuously, compensate for variations in temperature, and be approved by the rebreather manufacturer. The Agency is including the condition in the final rule as proposed because the sensors provide divers with critical information regarding $O_2$ levels in the breathing gas. Accurate information about $O_2$ levels enables divers to maintain appropriate amounts of $O_2$ in the breathing gas, thereby minimizing the need for emergency escape.

(c) *Calibrating $O_2$ sensors.* This proposed condition specified that employers must calibrate $O_2$ sensors as required by the sensor manufacturer's instructions before the start of each day's diving operations and more often when necessary. In performing this requirement, employers would: (i) Ensure that the equipment and procedures used to perform the calibration are accurate to within 1% of the $O_2$ fraction by volume; (ii) maintain the accuracy of the calibration equipment as required by the manufacturer of the equipment; (iii) ensure that the sensors are accurate to within 1% of the $O_2$ fraction by volume; (iv) replace $O_2$ sensors when they fail to meet the specified accuracy requirements; and (v) ensure that the replacement $O_2$ sensors meet these accuracy requirements.

OSHA believes that the levels of accuracy specified under this condition provide an adequate safety margin for the divers to detect anomalous $O_2$ concentrations, to identify the cause of the anomaly and adjust breathing-system controls accordingly, and to ascend to the surface when necessary. Additionally, proper and timely calibration of $O_2$ sensors, as well as accurate information regarding the level of $O_2$ in the breathing loop, provides divers with an opportunity to take corrective action should the $O_2$ level exceed the specified parameters. Maintaining proper $O_2$ levels will prevent the central nervous system and pulmonary effects of $O_2$ toxicity, and will protect divers from death and injury. Accordingly, the Agency is including these $O_2$-sensor requirements in the final rule as proposed.

(d) *Controlling $O_2$ delivery.* This proposed condition stated that employers are to ensure that closed-circuit rebreathers have: (i) A gas-controller package with solenoid $O_2$-supply valves that are operated electronically; (ii) a pressure-activated regulator with a second-stage diluent-gas addition valve; (iii) a manually-operated gas-supply bypass valve to add $O_2$ and diluent gas to the breathing loop; and (iv) separate $O_2$ and diluent-gas cylinders to supply the breathing-gas mixture. Accordingly, closed-circuit rebreathers would automatically inject

[2] "Channeling" describes open spaces (or channels) that form in the sorbent material, and that permit exhaled breathing gas to pass through that part of the material to the inhalation side of the breathing apparatus with little or no absorption of the $CO_2$ contained in the exhaled breathing gas. Channeling can be prevented by compressing the sorbent material uniformly in the canister (*e.g.*, by shaking the canister vigorously).

$O_2$ into the breathing loop to maintain the pre-established $O_2$ partial pressure in the breathable gas, and automatically add diluent gas (*i.e.*, nitrogen or air) through the regulator to compensate for decreases in gas volume during descent. The diver also must be able to control these functions manually using gas-supply bypass valves provided on the equipment. Separate cylinders would provide the $O_2$ and diluent gas used in the breathing-gas mixture.

OSHA is adopting the condition as proposed because these equipment requirements maintain $O_2$ levels in the breathing gas within a specified range of partial pressures. This condition provides assurance that a sufficient and reliable breathing-gas pressure is available to deliver breathable gas to the diver without adversely affecting breathing effort. Maintaining a comfortable breathing effort reduces $CO_2$ accumulation caused by an increased rate of breathing and, in turn, lowers the risk of $CO_2$ toxicity. Additionally, by maintaining $O_2$ in the breathing loop at specified levels, the condition ensures that divers remain within pre-established $O_2$ exposure limits. Finally, the condition allows divers to manually add $O_2$ or diluent gas from separate cylinders, enabling them to adjust the components of the breathing-gas mixture should the gas-controller package and pressure-activated regulator fail.

3. $O_2$ Concentration in the Breathing Gas

Under this proposed condition, employers would be responsible for ensuring that the fraction of $O_2$ in the nitrox breathing-gas mixture exceeds 22% by volume.[3] For rebreathers, the fraction of $O_2$ would never exceed an $O_2$ partial pressure of 1.40 ATA, while for open-circuit SCUBA, the $O_2$ fraction would never exceed 40% by volume or an $O_2$ partial pressure of 1.40 ATA, whichever exposed divers to less $O_2$.

One commenter (Ex. 6–2) responded to this proposed condition by stating, "The concept that diving with a higher concentration of [$O_2$] than compressed air removes the risk of DCS is ludicrous. Any level of nitrogen predisposes individuals to the likelihood of DCS. * * *" The following comment submitted by Dr. Larry Raymond (Ex. 5–1), an occupational-health physician with experience in treating diving-related injuries, addressed this issue:

> Oxygen-rich mixtures of nitrogen and oxygen ("Nitrox") have indeed been shown to be advantageous[] with regard to decompression sickness (DCS). Nitrox allows longer dives at a given depth (vs. air dives). Nitrox is [] safe, as long as meticulous care is given to gas mixing, lubrication of oxygen-exposed surfaces (avoid fire), and compliance with depth limits and decompression schedules.

Although the Agency believes that increased $O_2$ levels can reduce the risk of DCS by displacing nitrogen in the nitrox breathing-gas mixture, it notes that the major purpose of this condition is to prevent $O_2$ toxicity or hypoxia, not to remove the risk of DCS. Another commenter (Ex. 6–1), who had three years of experience with nitrox breathing-gas mixtures as a recovery diver and diving instructor, recommended that "any diver who is engaged in recreational diving with open-circuit [SCUBA], be supplied with a breathing gas consisting of a high percentage of oxygen mixed with nitrogen." This recommendation attests to the health and safety benefits of nitrox breathing-gas mixtures, as incorporated in the final rule.

OSHA is including this condition in the final rule as proposed because it finds that the minimal level of 22% is consistent with the minimal level required for nitrox breathing-gas mixtures.[4] Additionally, the Agency is including in the final rule the upper limits designated for the $O_2$ component in the nitrox breathing-gas mixture as proposed (*i.e.*, 40% by volume and 1.40 ATA). The 40% limit specifies the level above which equipment exposed to $O_2$ (*e.g.*, SCUBA cylinders, valves, first-stage regulators, high-pressure hoses) must be rated for $O_2$ service because of the increased risk of an $O_2$-accelerated explosion (Ex. 3–12, p. 15–18), while the 1.40-ATA limit represents the maximum level of $O_2$ exposure that effectively will prevent $O_2$ toxicity among divers (see Ex. 3–4, pp. 3–5 through 3–15 and P–37 through P–45, and Ex. 3–10).

4. Regulating $O_2$ Exposures and Diving Depth

(a) *Limiting $O_2$ partial pressure.* This proposed condition identified procedures for preventing $O_2$ toxicity. Employers would have to: (i) Determine a diver's $O_2$ exposure duration using the maximum partial-pressure $O_2$ exposure during the dive and the total dive time (*i.e.*, from the time the diver leaves the surface until the diver returns to the surface); and (ii) using the diver's exposure duration, ensure that a diver exposed to partial pressures of $O_2$ between 0.60 and 1.40 ATA does not exceed the 24-hour single-exposure $O_2$ limits specified by the 2001 NOAA Diving Manual (Ex. 3–12, p. 3–23) or by the 1995 Diving Science and Technology Corporation (DSAT) report contained in the publication entitled "Enriched Air Operations and Resource Guide" (Ex. 3–13, p. 34).

Under this condition, paragraph (i) reduces the risk of developing $O_2$ toxicity by regulating $O_2$ exposures according to increases in $O_2$ partial pressure (*i.e.*, dive depth) and dive duration. Paragraph (ii) controls $O_2$ exposures by requiring that diving operations conform to the 24-hour single-exposure $O_2$ limits specified in the 2001 NOAA Diving Manual and the 1995 DSAT report contained in the publication entitled "Enriched Air Operations and Resource Guide." In the single comment received on this proposed condition (Ex. 5–1), Dr. Raymond expressed concern about the deleterious effects of breathing $O_2$ at 1.40 ATA, stating, "The risk of oxygen toxicity from Nitrox diving is a * * * very real concern. Oxygen-induced seizures usually abate when the high-oxygen gas * * * is replaced by air, but *any* seizure which occurs in the water is a potential disaster, placing the diver at risk for AGE, drowning and death." (Emphasis in original.)

As noted in the proposal, OSHA agrees that $O_2$ toxicity is a substantial hazard to divers breathing nitrox breathing-gas mixtures. The Agency is retaining this condition in the final rule as proposed because the NOAA and DSAT procedures are designed to protect divers by effectively regulating their exposure to $O_2$. Both NOAA and DSAT developed their $O_2$-exposure limits using models and theories extensively tested in the field for safety and efficacy. The recreational diving industry recognizes and uses both of these procedures and, as OSHA concluded in granting the Dixie Diver variance, both of these procedures afford divers adequate protection against $O_2$ toxicity. Moreover, restricting diving operations to 130 fsw (see Condition 4(b) below) will provide divers with added protection from $O_2$ toxicity.

(b) *Limiting diving depth.* Under this proposed condition, employers would have to limit divers covered by the amendment to a maximum depth of 130 fsw or to a maximum $O_2$ partial pressure of 1.40 ATA, whichever exposes them to less $O_2$. OSHA is adopting the requirements specified by this proposed condition in the final rule because it finds that the condition limits divers'

[3] Although low $O_2$ levels are rare under nitrox breathing conditions, the sensors also would detect levels of $O_2$ less than 22% by volume (see Condition 3 of Appendix C below).

[4] By definition, a nitrox breathing-gas mixture must contain a higher percentage of oxygen than is found in normal air (*i.e.*, 21%), usually 32% and 36% oxygen (Ex. 3–12).

overall exposure to $O_2$. In addition, as noted in the discussion of Condition 3 above, limiting the depth of diving operations also will restrict the partial pressure of oxygen in the nitrox breathing-gas mixture, thereby lowering the incidence of $O_2$ toxicity.

5. Use of No-Decompression Limits

(a) *No-decompression procedures.* In the proposal, this condition specified that employers must ensure that divers using nitrox breathing-gas mixtures remain within the no-decompression limits specified for single and repetitive air diving. These limits are available in the 2001 NOAA Diving Manual (Ex. 3–12) or the 1994 DSAT report entitled "Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner" (Ex. 3–14). In determining the no-decompression limits for nitrox breathing-gas mixtures in its 2001 Diving Manual, NOAA applies the equivalent-air-depth ("EAD") formula.

Divers using nitrox breathing-gas mixtures can use the EAD formula to determine accurately the no-decompression limits for different nitrogen partial pressures. According to NOAA, EAD "is the depth based on the partial pressure of nitrogen in the gas mixture to be breathed, rather than the actual depth of the dive" (Ex. 3–12, p. 15–7).

NOAA applies its EAD formula in determining what equivalent air-decompression limits to use with nitrox breathing-gas mixtures. The formula assumes that equivalent nitrogen partial pressures and dive durations will result in similar DCS risk to dives performed with air. OSHA believes that the NOAA EAD formula can accurately estimate the DCS risk associated with nitrox breathing-gas mixtures based on equivalent nitrogen partial pressures and dive durations used in air diving. In the proposal, OSHA cited comments regarding the efficacy of the EAD formula submitted to the record by Dr. Edward D. Thalmann (Ex. 2–7), a world-renowned expert in treating diving-related medical emergencies among recreational divers. In these comments, Dr. Thalmann asserts that research data show that the EAD approach is valid for computing no-decompression limits for $O_2$ partial pressures as high as 1.5 ATA. He also stated that DCS associated with breathing a nitrox gas mixture "should not be substantially different in incidence and severity compared to diving on air[,] provided the Nitrox no-decompression times are computed from accepted air no-decompression limits using the [NOAA] EAD [formula]." Dr. Thalmann concluded that, within these constraints, "there is no rationale for having different requirements for * * * air and Nitrox no-decompression diving."

OSHA received two comments on the proposed condition. The first commenter (Ex. 6–4) stated:

> Nitrox may reduce [DCS] only if you do not allow for more uptake[;] by staying longer you have just negated this aspect. [DCS] is not merely a subject of "coming up too fast,["] but rather [is caused by] "inadequate decompression." There is no miracle table/schedule and [DCS] can and will manifest regardless of the table, mix or schedule utilized[]. Current proven tables/schedules have risk, but are by no means 100%[.]

Similarly, the second commenter (Ex. 6–8) claimed that "the risk of [DCS] can be lessened, but only if you use air diving decompression procedures while diving on nitrox," and "the use of nitrox or any other mixed gas will not reduce the need for recompression chambers if the divers do not utilize air diving procedures while diving on oxygen enriched gas."

The Agency agrees with the first commenter that nitrox may reduce DCS. This reduction occurs in part because $O_2$ displaces nitrogen in the volume of breathing gas available for use. Additionally, Condition 5(a) imposes no-decompression limits on diving operations, thereby further reducing the uptake of nitrogen and the risk of DCS.

OSHA concurs with both commenters that no diving table or schedule, or breathing high levels $O_2$ instead of compressed air, will prevent DCS completely. Accordingly, the purpose of this provision is to reduce DCS as a significant risk for the divers covered by this final rule.

The statements made by the second commenter imply that only air-diving procedures will result in a low level of DCS risk. However, DSAT's published research reports (see the proposed rule at 68 FR 1406) clearly demonstrate that DSAT adopted its tables of no-decompression limits only after extensive laboratory and field testing showed that these tables are safe and reliable. Additionally, for its part, NOAA did base its no-decompression tables on equivalent air-decompression limits, consistent with the recommendations of this commenter. Therefore, based on this evidence, the Agency is retaining this condition in the final rule as proposed.[5]

(b) *Dive-decompression computers.* Under this proposed condition, employers could use dive-decompression computers designed to regulate decompression when the computers use the NOAA or DSAT no-decompression limits specified above in Condition 5(a) and provide output that reliably represents these limits. OSHA is including the condition in the final rule as proposed because the condition provides employers with the flexibility to use either manual calculations or dive-decompression computers to determine no-decompression limits. The Agency also finds that restricting the no-decompression limits programmed into the computers to those limits published by the 2001 NOAA Diving Manual and the 1994 DSAT report will ensure that divers use only those no-decompression limits approved under this rulemaking.

6. Mixing and Analyzing the Breathing Gas

(a) *Mixing of breathing gas by the employer.* When employers prepare the breathing-gas mixture, this proposed condition stated that they must: (i) Ensure that properly trained personnel mix nitrox breathing gases, and that nitrogen is the only inert gas used in the breathing-gas mixture; and (ii) mix the appropriate breathing-gas mixture before delivering it to the breathing-gas cylinders, using the continuous-flow or partial-pressure mixing techniques specified in the 2001 NOAA Diving Manual (Ex. 3–12), or using a filter-membrane system. The Agency is adopting this condition as proposed because these requirements provide quality control over the processes and techniques commonly used and accepted by the diving industry to mix nitrox breathing-gas mixtures.

(b) *Analyzing $O_2$.* This proposed condition would require employers, before the start of each day's diving operations, to determine the $O_2$ fraction of the breathing-gas mixture using an $O_2$ analyzer. In doing so, they must: (i) Ensure that the $O_2$ analyzer is accurate to within 1% of the $O_2$ fraction by volume; and (ii) maintain this accuracy as required by the manufacturer of the analyzer. OSHA is including this condition in the final rule as proposed. This condition will enable employers to accurately assess the proportions of $O_2$ and diluent gas in nitrox breathing-gas mixtures, thereby ensuring that divers maintain the $O_2$ levels necessary to comply with the 24-hour single-exposure $O_2$ limits described under Condition 4 above. The accuracy requirements specified by these provisions are consistent with the accuracy requirements for $O_2$ found in

[5] Note that the final rule reverses the designations of proposed Conditions 5 and 6 to Conditions 6 and 5, respectively. Redesignating proposed Condition 6 as Condition 5 groups it with the other conditions (*i.e.*, 3 and 4) that address procedures for protecting divers from $O_2$ toxicity and DCS.

other provisions of the final rule, and serve the same purpose described for these requirements (see the discussion for proposed Condition 2(c) above).

(c) *Commercially supplied breathing gas.* This proposed condition stated that when the breathing gas is a commercially supplied nitrox breathing-gas mixture, employers must ensure that the $O_2$ is Grade A (also known as "aviator's oxygen") or Grade B (referred to as "medical-industrial oxygen"). Also, the $O_2$ would have to meet the specifications, including the purity requirements, found in the ANSI-Compressed Gas Association Commodity Specification for Air, G–7.1–1997 (ANSI–CGA G7.1–1997). In addition, the employer must ensure that the commercial supplier: (i) Determines the $O_2$ fraction in the breathing-gas mixture using an analytic method that is accurate to within 1% of the $O_2$ fraction by volume; (ii) makes this determination when the mixture is in the charged tank and after disconnecting the charged tank from the charging apparatus; (iii) documents the $O_2$ fraction in the mixture; and (iv) provides the employer with a written certification of the $O_2$ analysis.

OSHA determined after publication of the proposed rule in the **Federal Register** that it inadvertently misidentified the standard for aviator's oxygen and medical-industrial oxygen. In this regard, the ANSI–CGA G7.1–1997 does not provide specifications for aviator's oxygen, and it lists requirements for medical-grade air, but not for medical-grade oxygen. The correct standard for aviator's oxygen and medical-grade oxygen is CGA G–4.3–2000 ("Commodity Specification for Oxygen").[6] The Agency considers this misidentification a technical error and is correcting the reference to CGA G–4.3–2000 in the final rule. Selecting $O_2$ that meets these specifications ensures that divers use the highest quality $O_2$ in their nitrox breathing-gas mixtures, thereby preventing them from inhaling contaminants. In addition, they require the $O_2$ to have a moisture content that helps to maintain normal pulmonary function.

The Agency revised the proposed condition to indicate that the requirements specified in paragraphs (i) through (iv) are the responsibility of the supplier, not the employer. The Agency also combined proposed paragraphs (iii) and (iv) in the final rule to simplify the requirements. These paragraphs still specify that the accuracy of the method used to analyze $O_2$ must conform to the tolerance limits specified under condition (b) above. Additionally, employers must ensure that commercial suppliers analyze the breathing-gas mixture actually contained in the SCUBA cylinders to determine the fraction of that the divers will breathe, unaffected by $O_2$ in the storage banks used to fill the SCUBA cylinders. Also, the supplier must provide documentation to the employer specifying the analytic procedures used in making the $O_2$ determination and the $O_2$ fraction in the charged tanks delivered to the employer. OSHA is including these requirements in the final standard to provide assurance that the nitrox breathing-gas mixtures supplied to divers contain the correct levels of $O_2$, as required by Condition 4 above.

(d) *Using a compressor.* This proposed condition specified that when employers produce nitrox breathing-gas mixtures, and before using a compressor in which the gas pressure in any system component exceeds 125 psi, they must ensure that: (i) Compressor manufacturers certify in writing that the compressor is suitable for mixing high-pressure air with the highest $O_2$ fraction used in the nitrox breathing-gas mixture; (ii) compressors are oil-less or oil-free and rated for $O_2$ service, unless the employer complies with the requirements of condition (e) below; and (iii) compressors meet the requirements specified in paragraphs (i)(1) and (i)(2) of § 1910.430 whenever the highest $O_2$ fraction used in the mixing process exceeds 40% by volume. In the proposal, OSHA stated that the purpose of these proposed requirements was to prevent $O_2$-accelerated explosions during the mixing process, the risk of which increases when gas pressure in a system component exceeds 125 psi.

OSHA revised paragraph (i) of this condition to indicate that the requirement specified in this paragraph is the responsibility of the compressor manufacturer, not the employer, but is adopting paragraph (ii) in the final rule as proposed. These provisions will provide assurance that a compressor's components cannot serve as an ignition source for an $O_2$-accelerated explosion.

Paragraph (iii) of this condition addresses cascading processes in which an employer takes $O_2$ from storage banks that contain $O_2$ concentrations higher than 40% by volume, and mixes it with diluent gas from separate cylinder banks. The mixed product is a final breathing-gas mixture that does not exceed 40% by volume as required above by Condition 3. Equipment used for this purpose must comply with paragraphs (i)(1) and (i)(2) of § 1910.430 ("Oxygen safety"). These paragraphs require employers to use equipment designed for $O_2$ service, and to clean the equipment of flammable materials before such use. The Agency finds that these equipment requirements, along with the other provisions of this condition, will reduce the risk of an $O_2$-accelerated explosion. Therefore, OSHA is adopting these requirements in the final rule.

(e) *Oil-lubricated compressors.* Before the employer produces nitrox breathing-gas mixtures using an oil-lubricated compressor to mix high-pressure air with $O_2$, and regardless of the gas pressure in any system component, this proposed condition would require employers to: (i) Use only uncontaminated air (*i.e.*, air containing no hydrocarbon particulates) for the nitrox breathing-gas mixture; (ii) have the compressor manufacturer certify in writing that the compressor is suitable for mixing the high-pressure air with the highest $O_2$ fraction used in the nitrox breathing-gas mixture; (iii) filter the high-pressure air to produce $O_2$-compatible air; (iv) have the filter-system manufacturer certify in writing that the filter system used for this purpose is suitable for producing $O_2$-compatible air; and (v) continuously monitor the air downstream from the filter for hydrocarbon contamination.

Two commenters responded to this proposed condition. The first commenter (Ex. 6–5) made the following statement:

> [R]estricting compressor usage based on the [u]nlikely event that there would be a fire is preposterous, particularly in the area of restricting oil compressors. We know of [no] incidents * * * where there was a problem using oil compressors and membrane systems. Most membrane systems [never] allow an oxygen content over 40%. In our case we keep our mixture around 32–33%, and it is not possible that this mixture would [cause] a fire. Our air is double filtered and our hydrocarbon content is quite low.

Unfortunately, this commenter did not identify the provisions of the proposed condition considered to be "restricting." The commenter stated that he already filters the high-pressure air as required under this condition by proposed paragraph (iii). The product-certification requirements under proposed paragraphs (ii) and (iv) placed the major responsibility on the compressor and filter manufacturers. The remaining requirements under this condition are the uncontaminated-air and continuous-monitoring requirements of proposed paragraphs (i)

[6] The aviator's oxygen specification is Type I, Quality Verification Level E (Aviator's Breathing Oxygen), while the specification for medical-grade oxygen is Type I, Quality Verification Level A (Medical USP); see Ex. 8–15, p. 2.

and (v). By maintaining the concentrations of $O_2$ in the mixing process at 40% or less, which the commenter already is doing, he avoids the additional requirements of paragraphs (i)(1) and (i)(2) of § 1910.430 specified above under Condition 6(d)(iii).

As OSHA noted in the proposal, oil-based lubricants used in compressors contain hydrocarbons that can ignite in the presence of an enriched $O_2$ environment during the mixing process; such ignition may cause an explosion that injures and kills employees. To prevent the injuries and death that could result from such explosions, the proposed requirements were designed to ensure that the high-pressure $O_2$ being pumped through the compressor is free of combustible hydrocarbons. Therefore, paragraph (i) of the proposed condition specified a requirement that employers use hydrocarbon-free air when mixing nitrox breathing gases. By obtaining the manufacturer's written certification that the compressor is suitable for this purpose, as required by paragraph (ii), the employer knows that system components exposed to high $O_2$ will be safe for mixing high-pressure air with the highest $O_2$ fraction used in the nitrox breathing-gas mixture. OSHA revised this provision slightly to indicate that providing documentation of a compressor's suitability is the responsibility of the manufacturer, not the employer.

The paragraph (iii) requirement to filter the high-pressure air when producing $O_2$-compatible breathing gases, and the filter system-certification requirement specified by paragraph (iv), also ensure that the breathing gas is free of hydrocarbons. In the final rule, OSHA revised paragraph (iv) to indicate that providing documentation that the filter system is suitable for producing $O_2$-compatible air is the responsibility of the manufacturer, not the employer. Additionally, the monitoring requirement under paragraph (v) would indicate when high-pressure $O_2$ contains hydrocarbons, thereby alerting the employer of the need to take emergency action (*i.e.*, shut off $O_2$ flow to the compressor and then purge the compressor with an inert gas). Paragraph (v) of this condition would impose a basic requirement to assure that the final nitrox mixture is free of hydrocarbon particulates. OSHA believes the elements of the proposed condition are necessary to protect divers, and is retaining these conditions in the final standard.

The president of Machine Design & Fabrication, Inc., Mr. Tom Grubb, submitted comments regarding compressors that use synthetic lubricants (Ex. 5–3). After noting that most compressors used for mixing breathing gases use synthetic lubricants (usually diester or triester based), Mr. Grubb argued that the final rule should treat these compressors in the same fashion as oil-less or oil-free compressors. In doing so, he asserted that compressors that use synthetic lubricants have flashpoints and autoignition temperatures that are higher than the operating temperatures of the compressors, thereby eliminating the risk of hydrocarbon contamination of the breathing gas. He concludes that these compressors are as safe as oil-less and oil-free compressors when operated according to the manufacturers' specifications regarding maximum temperature, cooling, ventilation, and maintenance.

Mr. Grubb raises an issue regarding the safety of synthetic lubricants that OSHA did not address in the proposal. As the regulated community has not had an opportunity to comment on this issue, the Agency is not in a position at this time to act on Mr. Grubb's recommendations. Therefore, for the purposes of the alternative procedures permitted by this final rule, employers who operate compressors that use synthetic lubricants are to treat these compressors in the same fashion as oil-lubricated compressors.

In addition, Mr. Grubb noted the importance of using compressor systems according to the manufacturers' specifications. Under the certification requirements in proposed conditions (d)(ii), (e)(ii), and (e)(iv), manufacturers are responsible for providing the user with information on how to use their equipment safely and appropriately. Therefore, the Agency is adding the phrase "when operated in accordance with the manufacturer's operating and maintenance specifications" to these provisions.

(f) *Compliance with other OSHA standards.* Under this proposed condition, employers must ensure that SCUBA equipment in which either nitrox breathing-gas mixtures or pure $O_2$ is under high pressure (*i.e.*, exceeding 125 psi) complies with the requirements of paragraphs (i)(1) and (i)(2) of § 1910.430. OSHA is including this condition in the final standard as proposed because it ensures that this equipment is free of ignition sources that could cause an $O_2$-accelerated explosion. As noted above in the discussion of Condition 3(d)(iii), the Agency believes that paragraphs (i)(1) and (i)(2) of § 1910.430 reduce this risk by requiring employers to use diving equipment designed for $O_2$ service and to clean the equipment of flammable materials before such use.[7]

7. Emergency Egress

(a) *Bail-out system.* The proposed condition would require employers to equip their divers with a reliable emergency-egress system (*i.e.*, a "bail-out system") for emergencies involving SCUBA malfunctions that endanger diver health and safety (*e.g.*, high $CO_2$ levels). The bail-out system must contain a separate supply of breathing gas, which may include air, and provide the breathing gas to the second stage of the SCUBA regulator. OSHA is including this condition in the final standard as proposed because the bail-out system enables divers to shift to a known, safe, and immediately available breathing gas, and to terminate the dive safely whenever a $CO_2$-related problem or other emergency occurs.

(b) *Alternative systems.* In the proposal, this condition allowed for alternatives to bail-out systems for use with open-circuit SCUBA and semi-closed-circuit or closed-circuit rebreathers. Such an alternative system would provide the diver with a reserve supply of breathing air or gas mixture. When a diver uses open-circuit SCUBA with a nitrox breathing-gas mixture, the alternative system permits employers to use the emergency-egress procedure (*i.e.*, reserve breathing-gas supplies) specified for open-circuit SCUBA by paragraph (c)(4) of § 1910.424 instead of a separate bail-out breathing-gas system.[8] For semi-closed-circuit and closed-circuit rebreathers, such an alternative system would be configured so that the second stage of the regulator connects to a reserve supply of emergency breathing gas.

The Agency is adopting the condition in the final rule as proposed. In this regard, paragraph (c)(4) of § 1910.424 already recognizes the safety afforded to divers by the alternative system used for air-supplied open-circuit SCUBA diving operations. Therefore, OSHA concludes that this alternative system will provide a similar level of protection to divers who use open-circuit SCUBA supplied with nitrox breathing-gas mixtures. In

[7] In addition, employers already are required to comply with other OSHA standards that provide for accurate mixing and decontamination (especially hydrocarbon removal) of breathing gases, and they must assure that employees are properly protected during these activities. These standards include the appropriate provisions of §§ 1910.101 ("Compressed gases (general requirements)"), 1910.169 ("Air receivers"), and 1910.134 ("Respiratory protection").

[8] Paragraph (c)(4) of § 1910.424 is an emergency-escape provision in OSHA's existing CDO standards that applies to divers using air-supplied open-circuit SCUBA.

extending this alternative system to semi-closed-circuit and closed-circuit rebreathers, OSHA believes that any bail-out system that allows divers to access a secondary source of sufficient quantities of emergency breathing gas will provide them with the requisite level of protection during emergency escape. Examples of a secondary source of emergency breathing gas include an inflator-regulator system or a manual reserve activated by a valve maintained in the closed position until needed (as permitted for air-supplied open-circuit SCUBA under § 1910.424(c)(4)(i) and (c)(5)).

(c) *Safety requirements.* This proposed condition provided that employers rely on rebreather manufacturers to specify the necessary capacity for a bail-out system because these manufacturers are in the best position to make this determination. A rebreather manufacturer can determine this capacity based on critical diving parameters (*e.g.*, depth of dive and breathing rate) provided by the employer.

The Agency is including this condition in the final rule as proposed because it ensures that the bail-out system used by divers, whether it is a separate bail-out system or an alternative bail-out system built into the breathing equipment, will function appropriately when needed by the diver for emergency egress. A properly functioning bail-out system will enable the diver to terminate the dive and make a safe and controlled ascent to the surface under emergency conditions, thereby preventing over-pressurization of the lungs associated with AGE.

8. Treating Diving-Related Medical Emergencies

(a) *Availability of medical resources.* As proposed, this condition would require employers, prior to beginning diving operations each day, to ensure that: (i) A hospital, qualified health-care professionals, and the nearest Coast Guard Coordination Center (or an equivalent rescue service operated by a state, county, or municipal agency) are available for diving-related medical emergencies; (ii) each dive site has a means to alert these treatment resources in a timely manner when a diving-related medical emergency occurs; and (iii) transportation to a suitable decompression chamber is readily available when no decompression chamber is at the dive site, and that this transportation can deliver the injured diver to the decompression chamber within two hours travel time from the dive site. These requirements would avoid unnecessary delay in treating diving-related injuries by confirming that resources are on call and available to render appropriate treatment, by alerting the treatment facility to the occurrence of a diving-related medical injury so it can initiate treatment action, and by providing timely transportation for the injured diver to the treatment facility.

The Agency received no comments on paragraphs (i) and (ii) of this condition. OSHA is adopting these paragraphs as proposed because it believes that these provisions will ensure that medical treatment for DCS and other diving-related injuries is readily available, thereby improving the likelihood that affected divers will recuperate fully from these injuries.

Regarding the two-hour travel-time requirement proposed by paragraph (iii) of this condition, the Professional Association of Diving Instructors (PADI) recommended that the Agency remove this paragraph entirely from the final rule (Exs. 5–2 and 5–2–1). PADI justified this recommendation in the following statement:

> The experience of the dive industry since the 1999 Dixie Divers variance went into effect has been that while the practice of no-decompression enriched air diving has expanded significantly, [DCS] injuries to professionals at work as a result of the variance have not occurred. In fact, PADI's incident reporting system, which requires PADI professionals to report any incident of injury that they may suffer or witness, has recorded no [DCS] (or other) injuries to dive professionals as a result of the variance. PADI records show that during this period of time, PADI Instructors have certified in excess of 30,000 divers during Enriched Air Certification courses, plus had many thousands of exposures using enriched air while acting as dive guides.

PADI also noted that in the preamble to the Dixie Diver variance, OSHA "quoted Dr. Edward D. Thalmann * * *, who clearly stated, 'there is no rationale for having different requirements for recompression chamber availability for air and (n)itrox no-decompression diving.'" In conclusion, PADI commented:

> Based upon Dr. Thalmann's previously stated position, and upon the experience of PADI Instructors in the field and PADI's incident report records, PADI recommends that the proposed condition for recompression chamber access as [it] relates to defining a specific maximum transport time is unnecessary, and the issue should be treated as it is for recreational diving using air, i[.]e., no special condition regarding maximum transport time should be required.

As OSHA noted in the proposal, Dr. Thalmann first discussed the four-hour travel-time requirement in the context of pain-only DCS and DCS with severe neurological symptoms that occur among recreational divers during no-decompression dives (Ex. 2–7). In this discussion, Dr. Thalmann noted that a treatment delay of four hours can occur without diminishing treatment success (*i.e.*, complete relief of symptoms). Dr. Thalmann stated further that "[t]here is no significant body of evidence to suggest that, so long as one is diving within accepted no-decompression limits breathing air or Nitrox, having access to a recompression facility within 4 hours is inadequate" (Ex. 2–7).

Secondly, Dr. Thalmann concluded that travel time and decompression-chamber availability are irrelevant with regard to AGE because the incidence of AGE is extremely low among recreational divers breathing air supplied by an open-circuit SCUBA. After reviewing available research studies and data from the Diver Alert Network ("DAN"), Dr. Thalmann concluded that "[AGE] is a rare occurrence and can be avoided with proper training and experience," that it "is essentially independent of the time spent at depth," and that "there is no evidence * * * [to] suggest that the occurrence and outcome of [AGE] would be any different breathing a [n]itrox mixture [other] than air." However, Dr. Larry Raymond stated that "[t]he treatment for [AGE] * * * is immediate pressurization in a recompression chamber. Delay compromises the diver's chances of a good outcome" (Ex. 5–1).[9]

In reviewing the AGE-related comments submitted by Drs. Thalmann and Raymond, OSHA finds that Dr. Thalmann's comments regarding AGE apply directly to recreational-diving operations, while Dr. Raymond did not describe the type of diving operations underlying his opinion. In addition, Dr. Thalmann based his comments on an extensive analysis of recreational divers, while Dr. Raymond did not indicate the specific basis for his opinions.

After carefully reviewing the available information, OSHA is revising the two-hour travel-time requirement proposed under paragraph (iii) of this condition to four hours in the final rule. The Agency is basing this decision on: Dr. Thalmann's comments showing that a four-hour travel delay is unlikely to impair treatment outcomes for DCS, and that AGE is rare among recreational

[9] Dr. Raymond made these comments in reference to an OSHA news release (dated January 10, 2003) that stated erroneously that nitrox breathing-gas mixtures prevented AGE. Dr. Raymond did indicate correctly that nitrox breathing-gas mixtures do *not*, in fact, prevent AGE. OSHA subsequently corrected this news release (with the same issue date of January 10, 2003).

divers and can be prevented with proper training and experience; PADI's observations regarding the protection afforded to divers by the Dixie Diver variance; and the equipment and procedural conditions specified in this final rule that are designed to significantly reduce the incidence of DCS and AGE.

(b) *$O_2$ treatment.* Oxygen treatment is the preferred means of initially treating AGE and DCS (Ex. 3–12, pp. 3–19 and 3–28). Accordingly, this proposed condition would require employers to ensure that portable $O_2$ equipment is available at the dive site to treat an injured diver. This equipment would have to deliver medical-grade $O_2$ (*i.e.*, Type I, Quality Verification Level A (medical USP) of CGA G–4.3–2000 ("Commodity Specification for Oxygen")) (Ex. 3–15, p. 2) to a transparent mask that covers the injured diver's nose and mouth. Additionally, the equipment must be available for this purpose from the time the employer recognizes the symptoms of a diving-related medical emergency until the injured diver reaches a decompression chamber for treatment.

OSHA is including this condition in the final rule as proposed because it will provide injured divers with the maximum dose of $O_2$ possible to enhance treatment effectiveness. Medical-grade $O_2$ contains minimal contaminates (especially hydrocarbons) and adequate moisture to prevent drying of the employee's breathing passages and lungs. Also, the transparent mask covering the diver's nose and mouth allows attendants to monitor the diver's breathing and provides the means to check for an effective seal against $O_2$ loss.

(c) *Treatment personnel.* This proposed condition specifies that the employer, before starting each day's diving operations, must ensure that at least two attendants (either employees or non-employees) qualified in first-aid and administering $O_2$ treatment are available at the dive site to treat diving-related medical emergencies, and must verify their qualifications before designating them for this purpose. The Agency is including this condition in the final standard as proposed because personnel qualified in first aid and $O_2$ treatment will stabilize the injured diver as rapidly as possible, thereby improving the effectiveness of subsequent treatment regimens. Regarding the use of non-employees, the Agency notes that the main purpose of this provision is to ensure that properly qualified personnel are available for initial treatment, regardless of their employment status. However, recognizing that employers may not be familiar with the qualifications of non-employees involved in this procedure, this provision requires employers to verify their qualifications prior to designating them for this purpose.

9. Diving Logs and Decompression Tables

(a) *Diving log.* This proposed condition required the employer, before beginning diving operations, to (i) designate an employee or non-employee to make entries in a diving log, and (ii) verify that this designee understands diving and medical terminology and the proper procedures for making such entries. Recognizing that many employers of recreational divers and diving guides are small businesses that may not have an employee available to make entries in the diving log, OSHA also proposed under this condition to allow non-employees to make entries in the log. The Agency is including this provision in the final rule as proposed because it believes that any properly qualified individual can make such entries, provided that, as noted earlier, the employer verifies their qualifications before designating them for this purpose.

(b) *Diving log requirements.* Under this proposed condition, employers would have to: (i) ensure that diving logs meet the information requirements specified by § 1910.423(d), including the requirement for DCS information when appropriate; and (ii) maintain diving logs according to the provisions of § 1910.440, including the requirements for record availability, access to records by employees and OSHA, and retention of records. The Agency is retaining this condition in the final standard as proposed. Diving logs enable the employer to assess the safety of each dive and determine which diving parameters are especially hazardous. Should an injury occur during a dive, the log allows the employer to inform medical personnel about the parameters of the dive that may assist them in making an accurate diagnosis of the injury and prescribing an effective treatment. In addition, employers covered by this condition must continue to collect dive records as required by § 1910.423(d) and meet the other recordkeeping provisions of § 1910.440 because their employees breathe a mixed gas (*i.e.*, nitrox) during diving operations.

(c) *Availability of decompression tables.* As proposed, employers must have a hard copy of the no-decompression tables used for the dives (see Condition 5(a) above) readily available at the dive site, whether or not the divers use dive-decompression computers. OSHA is maintaining the requirement in the final rule as proposed because it ensures that the parameters of the no-decompression limits are readily available and accessible as a reference source. In addition, a hard-copy of the decompression tables serves both as a reference source should decompression become necessary, and as a back-up resource to divers with dive-decompression computers (see Condition 5(b) above).

10. Diver Training

Under this condition as proposed, employers would have to ensure that their divers receive training that enables them to perform their work safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. At a minimum, the divers must be trained to: recognize the effects of breathing excessive $CO_2$ and $O_2$; take appropriate action after detecting the effects of breathing excessive $CO_2$ and $O_2$; and properly evaluate, operate, and maintain their diving equipment under the diving conditions they encounter.

This performance-based condition provides assurance that divers are trained to perform safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. Although the Agency believes that employers are in the best position to determine when the training their divers receive is adequate for this purpose, the provision nevertheless specifies several critical tasks, as noted above, that divers must perform safely and effectively.

The Agency is including the condition in the final standard as proposed because divers must be able to recognize the life-threatening effects of $CO_2$ and $O_2$ toxicity, including convulsions and loss of consciousness, and be capable of taking remedial actions to prevent and properly respond to them. In addition, OSHA believes that if divers know how to evaluate, operate, and maintain their open-circuit SCUBAs and rebreathers under the diving conditions they encounter, they will be less likely to experience equipment failure, thereby reducing the incidence of AGE that may result during rapid emergency egress.

11. Testing Protocol for Determining the $CO_2$ Limits of Rebreather Canisters

The proposed condition specified the requirements employers must follow when they use a schedule to replace depleted $CO_2$-sorbent material instead of using $CO_2$ sensors to detect when the

material is no longer absorbing $CO_2$ effectively (see Condition 1(h) above). Employers may use a canister-replacement schedule developed by a rebreather manufacturer only when the manufacturer has tested the schedule according to the protocol specified under this condition.

The Agency adapted the U.S. Navy Experimental Diving Unit's (NEDU) canister-testing protocol (Ex. 3–11) and statistical procedures (Ex. 3–9) for this rulemaking; the NEDU is the lead Federal agency for testing $CO_2$-sorbent replacement schedules. OSHA believes that the NEDU protocol provides valid and reliable data for determining $CO_2$-sorbent replacement schedules because NEDU carefully executed and controlled significant variables that deplete $CO_2$-sorbent materials, such as breathing rate (by using breathing machines) and ambient temperature. In addition, NEDU conducts extensive research and development programs involving canister-duration testing (Ex. 3–4, pp. 3–5, 5–12, 9–7 through 9–10, P–34 through P–36, and P–69 through P–75).

(a) *Testing the physical properties of the $CO_2$-sorbent material.* Under this proposed condition, employers would have to ensure that the rebreather manufacturer has used the required procedures to determine that the $CO_2$-sorbent material has several necessary physical properties. These procedures include: (i) The North Atlantic Treaty Organization $CO_2$ absorbent-activity test to assess the capacity of the material to absorb $CO_2$; (ii) the RoTap shaker and nested-sieves test to determine granule-size distribution; (iii) the NEDU-derived Schlegel test to assess the friability of the $CO_2$-sorbent material; and (iv) the NEDU's MeshFit software to evaluate mesh size conformance to specifications.

The Agency is including the condition in the final standard as proposed because it believes that these procedures assure the quality of the $CO_2$-sorbent material. They also indicate whether the $CO_2$-sorbent material meets the specifications provided by the material's manufacturer. In developing the canister-replacement schedule using the protocol specified under this condition, rebreather manufacturers must approve for use only $CO_2$-sorbent materials that meet these specifications. Carefully controlling the conditions used to develop a canister-replacement schedule, including the quality of the $CO_2$-sorbent material, will ensure that the schedule is reliable. Therefore, an employer who has this information will be able to replace a diver's canister before the $CO_2$-sorbent material fails (*i.e.*, before $CO_2$ increases to dangerous levels).

(b) *Testing canister function.* This proposed condition would require employers to ensure that the rebreather manufacturer has used the specified canister-testing protocol. The canister-testing protocol measures the effects of three factors on canister performance: depth, exercise level (*i.e.*, ventilation rate), and water temperature. Depth is the maximum depth at which a diver would use the $CO_2$-sorbent material, which for this final rule is 130 fsw. For the other variables, OSHA has selected three combinations of ventilation rates and $CO_2$-injection rates from the NEDU protocol to simulate three diverse levels of exercise (light, moderate, and heavy). The four water temperatures used in the proposed protocol are 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively); these temperatures represent the wide range of water temperatures that recreational diving instructors and diving guides are likely to encounter.

For this application, the Agency revised the NEDU protocol slightly by: limiting the maximum depth to 130 fsw; requiring an $O_2$ fraction of 0.28 in the nitrox breathing-gas mixture (this fraction being the maximum $O_2$ concentration permitted at this depth under the amendment); providing tolerance limits for water temperatures; and defining canister duration as the time taken to reach 0.005 ATA of $CO_2$ (a $CO_2$ partial pressure of 0.005 ATA is the level specified under Condition 1(e) as the maximum allowable amount of $CO_2$ in the breathing gas). In addition, the protocol expressly prohibits the employer from using extrapolation of the protocol results to establish a $CO_2$-sorbent replacement schedule. NEDU's statistical procedures (Ex. 3–9) do not provide a method for extrapolating the duration of $CO_2$-sorbent materials beyond the results obtained during the canister-testing trials.

The Agency is including this condition in the final rule as proposed to improve the validity and reliability of canister-replacement schedules. Accordingly, it will enable employers to replace $CO_2$-sorbent materials before the sorbent capabilities of these materials are depleted.

## III. Legal Considerations

Employers covered by this final rule are currently covered by the commercial diving standard. The requirements of that standard are protecting their employees from significant risk. In issuing a variance from this standard to Dixie Divers, the Agency determined that the practices and protections in the variance would provide Dixie Divers' recreational diving instructors and diving guides with comparable protection to that provided by the decompression-chamber requirements of the standard. This final rule extends these alternative protections to all such instructors and guides. In this regard, the amendment does not totally replace these existing requirements, but instead provides a limited alternative to them. OSHA finds that this final rule does not directly increase or decrease the protection afforded to employees, nor does it increase employers' compliance burdens. As demonstrated in the following sections, this amendment likely will reduce employers' compliance burdens by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions specified in the final rule.

## IV. Final Economic Analysis and Regulatory Flexibility Certification

This final rule is not a significant rulemaking under Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The final rule imposes no additional costs on any private-or public-sector entity, and does not meet any of the criteria for a significant or major rule specified by the Executive Order or relevant statutes.

Employers of recreational diving instructors and diving guides who comply with the conditions in the final rule will be able to expand their operations to include nitrox diving, because they will not need to purchase and maintain a decompression chamber at the dive site. By providing regulatory flexibility to these employers, the final rule may reduce their costs and increase productive time. The Agency concludes that this final rule does not impose any additional costs on affected employers; consequently, the standard requires no final economic analysis. Furthermore, because the final rule provides an additional voluntary compliance option and, thus, does not impose expenditures on any employer, OSHA certifies that the rule does not have a significant impact on a substantial number of small entities. Accordingly, the Agency did not prepare a final regulatory flexibility analysis.

## V. Paperwork Reduction Act

The final rule contains two collection-of-information (*i.e.*, paperwork) requirements: Conditions 9(b)(i) and 9(b)(ii) of Appendix C. Condition 9(b)(i) requires employers to ensure that the

diving log conforms to the requirements specified by paragraph (d) ("Record of dive") of § 1910.423, while Condition 9(b)(ii) specifies that employers must keep a record of the dive according to the provisions of § 1910.440 ("Recordkeeping requirements"). However, these paperwork requirements already apply to these employers under subpart T, regardless of this final rule, because their divers are using a mixed-gas (*i.e.*, nitrox) breathing supply. The regulatory alternative provided by this final rule only exempts the covered employers from having to maintain decompression chambers at the dive site, and does not exempt them from the other provisions of subpart T that apply to mixed-gas diving operations. Accordingly, the Agency already incorporates the time and cost burdens associated with these two paperwork requirements under OMB Control No. 1218–0069.

**VI. Federalism**

The Agency has reviewed this final rule and its Commercial Diving Operations standards according to the most recent Executive Order on Federalism (Executive Order 13132, 64 FR 43225, August 10, 1999). This Executive Order requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order allows Federal agencies to preempt State law only with the expressed consent of Congress; in such cases, Federal agencies must limit preemption of State law to the extent possible.

Under Section 18 of the OSH Act, Congress expressly provides OSHA with authority to preempt State occupational safety and health standards to the extent that the Agency promulgates a federal standard under Section 6 of the OSH Act. Accordingly, Section 18 of the OSH Act authorizes the Agency to preempt State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the State has an OSHA-approved occupational safety and health plan (*i.e.*, is a State-Plan State). (See *Gade* v. *National Solid Wastes Management Association*, 112 S. Ct. 2374 (1992).) Therefore, with respect to States that do not have OSHA-approved plans, the Agency concludes that this final rule conforms to the preemption provisions of the OSH Act. Additionally, Section 18 of the OSH Act prohibits States without approved plans from issuing citations for violations of OSHA standards; the Agency finds that this rulemaking does not expand this limitation.

This final rule addresses problems that are national in scope. In this regard, for employers across the nation whose divers provide recreational diving instruction and dive-guiding services, the final rule provides an opportunity to safely perform nitrox diving operations at a maximum depth of 130 feet of sea water without the expense involved in purchasing a decompression chamber. The amendment also enables employers in every State to protect their recreational diving instructors and diving guides from the risks of decompression sickness and arterial-gas embolism while using a breathing-gas mixture consisting of a high percentage of $O_2$ mixed with nitrogen supplied by an open-circuit, semi-closed-circuit, or closed-circuit self-contained breathing apparatus.

Section 18(c)(2) of the OSH Act (29 U.S.C. 667(c)(2)) requires State-Plan States to adopt standards that are identical to OSHA standards, or adopt different standards, that are at least as effective as the OSHA rule. The final rule only provides employers with an alternative to the requirements of the Commercial Diving Operations standards. It does not impose additional requirements on employers. Accordingly, State-Plan States are not obligated to adopt this final rule. Nevertheless, OSHA strongly encourages them to adopt the amendment to provide these compliance options to employers in their States.

**VII. State Plans**

The Agency strongly encourages the 24 States and two Territories with their own OSHA-approved occupational safety and health plans to revise their current Commercial Diving Operations standards to reflect this final rule. OSHA believes that such a revision would provide employers in the State-Plan States the economic benefits that are likely to accrue from its enactment, while continuing to protect the safety and health of recreational diving instructors and diving guides. These States and Territories are: Alaska, Arizona, California, Connecticut (public-sector employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (public-sector employees only), New Mexico, New York (public-sector employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands (public-sector employees only), Washington, and Wyoming.

**VIII. Unfunded Mandates**

OSHA has reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed above in Section V ("Final Economic Analysis and Regulatory Flexibility Finding") of this preamble, the Agency has made a determination that this rule imposes no regulatory burdens on any employer, either public or private. The substantive content of the amendment applies only to employers of recreational diving instructors and diving guides, and compliance with the amendment is strictly optional for the employers. Accordingly, the final rule requires no additional expenditures by either public or private employers.

OSHA standards do not apply to State and local governments, except in States that have voluntarily elected to adopt a State plan approved by the Agency. Consequently, this final rule does not meet the definition of a "federal intergovernmental mandate" (see Section 421(5) of the UMRA (2 U.S.C. 658(5)). In conclusion, this final rule does not mandate that State, local, and tribal governments adopt new, unfunded regulatory obligations.

**IX. Applicability of Existing Consensus Standards**

OSHA is not aware of any national consensus standards that are similar to this final rule.

**List of Subjects in 29 CFR Part 1910**

Health, Occupational safety and health, Safety.

**X. Authority and Signature**

This document was prepared under the authority of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. Accordingly, pursuant to Sections 4, 6, and 8 of the OSH Act of 1970 (29 U.S.C. 653, 655, 657), Section 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333), Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1911, OSHA is hereby amending subpart T of 29 CFR part 1910 as set forth below.

Signed at Washington, DC on February 10, 2004.

John L. Henshaw,

*Assistant Secretary of Labor.*

## XI. Amendment to Standard

■ For the reasons stated in the preamble, the Agency is amending 29 CFR part 1910, subpart T as follows:

## PART 1910—[AMENDED]

## Subpart T—[Amended]

■ 1. Revise the authority citation for subpart T of part 1910 to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Section 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911.

■ 2. Add new paragraph (a)(3) to § 1910.401 to read as follows:

**§ 1910.401 Scope and application.**

(a) * * *

(3) *Alternative requirements for recreational diving instructors and diving guides.* Employers of recreational diving instructors and diving guides are not required to comply with the decompression-chamber requirements specified by paragraphs (b)(2) and (c)(3)(iii) of § 1910.423 and paragraph (b)(1) of § 1910.426 when they meet all of the following conditions:

(i) The instructor or guide is engaging solely in recreational diving instruction or dive-guiding operations;

(ii) The instructor or guide is diving within the no-decompression limits in these operations;

(iii) The instructor or guide is using a nitrox breathing-gas mixture consisting of a high percentage of oxygen (more than 22% by volume) mixed with nitrogen;

(iv) The instructor or guide is using an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus (SCUBA); and

(v) The employer of the instructor or guide is complying with all requirements of Appendix C of this subpart.

* * * * *

■ 3. Add new definitions for "dive-guiding operations" and "recreational diving instruction" to the alphabetical list of definitions in § 1910.402, to read as follows:

**§ 1910.402 Definitions.**

*Dive-guiding operations* means leading groups of sports divers, who use an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus, to local undersea diving locations for recreational purposes.

* * * * *

*Recreational diving instruction* means training diving students in the use of recreational diving procedures and the safe operation of diving equipment, including an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus, during dives.

* * * * *

■ 4. Add a new Appendix C to 29 CFR part 1910, subpart T to read as follows:

* * * * *

## Appendix C to Subpart T of Part 1910—Alternative Conditions Under § 1910.401(a)(3) for Recreational Diving Instructors and Diving Guides (Mandatory)

Paragraph (a)(3) of § 1910.401 specifies that an employer of recreational diving instructors and diving guides (hereafter, "divers" or "employees") who complies with all of the conditions of this appendix need not provide a decompression chamber for these divers as required under §§ 1910.423(b)(2) or (c)(3) or 1910.426(b)(1).

**1. Equipment Requirements for Rebreathers**

(a) The employer must ensure that each employee operates the rebreather (*i.e.*, semi-closed-circuit and closed-circuit self-contained underwater breathing apparatuses (hereafter, "SCUBAs")) according to the rebreather manufacturer's instructions.

(b) The employer must ensure that each rebreather has a counterlung that supplies a sufficient volume of breathing gas to their divers to sustain the divers' respiration rates, and contains a baffle system and/or other moisture separating system that keeps moisture from entering the scrubber.

(c) The employer must place a moisture trap in the breathing loop of the rebreather, and ensure that:

(i) The rebreather manufacturer approves both the moisture trap and its location in the breathing loop; and

(ii) Each employee uses the moisture trap according to the rebreather manufacturer's instructions.

(d) The employer must ensure that each rebreather has a continuously functioning moisture sensor, and that:

(i) The moisture sensor connects to a visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) alarm that is readily detectable by the diver under the diving conditions in which the diver operates, and warns the diver of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface; and

(ii) Each diver uses the moisture sensor according to the rebreather manufacturer's instructions.

(e) The employer must ensure that each rebreather contains a continuously functioning $CO_2$ sensor in the breathing loop, and that:

(i) The rebreather manufacturer approves the location of the $CO_2$ sensor in the breathing loop;

(ii) The $CO_2$ sensor is integrated with an alarm that operates in a visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) mode that is readily detectable by each diver under the diving conditions in which the diver operates; and

(iii) The $CO_2$ alarm remains continuously activated when the inhaled $CO_2$ level reaches and exceeds 0.005 atmospheres absolute (ATA).

(f) Before each day's diving operations, and more often when necessary, the employer must calibrate the $CO_2$ sensor according to the sensor manufacturer's instructions, and ensure that:

(i) The equipment and procedures used to perform this calibration are accurate to within 10% of a $CO_2$ concentration of 0.005 ATA or less;

(ii) The equipment and procedures maintain this accuracy as required by the sensor manufacturer's instructions; and

(iii) The calibration of the $CO_2$ sensor is accurate to within 10% of a $CO_2$ concentration of 0.005 ATA or less.

(g) The employer must replace the $CO_2$ sensor when it fails to meet the accuracy requirements specified in paragraph 1(f)(iii) of this appendix, and ensure that the replacement $CO_2$ sensor meets the accuracy requirements specified in paragraph 1(f)(iii) of this appendix before placing the rebreather in operation.

(h) As an alternative to using a continuously functioning $CO_2$ sensor, the employer may use a schedule for replacing $CO_2$-sorbent material provided by the rebreather manufacturer. The employer may use such a schedule only when the rebreather manufacturer has developed it according to the canister-testing protocol specified below in Condition 11, and must use the canister within the temperature range for which the manufacturer conducted its scrubber canister tests following that protocol. Variations above or below the range are acceptable only after the manufacturer adds that lower or higher temperature to the protocol.

(i) When using $CO_2$-sorbent replacement schedules, the employer must ensure that each rebreather uses a manufactured (*i.e.*, commercially pre-packed), disposable scrubber cartridge containing a $CO_2$-sorbent material that:

(i) Is approved by the rebreather manufacturer;

(ii) Removes $CO_2$ from the diver's exhaled gas; and

(iii) Maintains the $CO_2$ level in the breathable gas (*i.e.*, the gas that a diver inhales directly from the regulator) below a partial pressure of 0.01 ATA.

(j) As an alternative to manufactured, disposable scrubber cartridges, the employer may fill $CO_2$ scrubber cartridges manually with $CO_2$-sorbent material when:

(i) The rebreather manufacturer permits manual filling of scrubber cartridges;

(ii) The employer fills the scrubber cartridges according to the rebreather manufacturer's instructions;

(iii) The employer replaces the $CO_2$-sorbent material using a replacement schedule developed under paragraph 1(h) of this appendix; and

(iv) The employer demonstrates that manual filling meets the requirements specified in paragraph 1(i) of this appendix.

(k) The employer must ensure that each rebreather has an information module that provides:

(i) A visual (*e.g.*, digital, graphic, analog) or auditory (e.g., voice, pure tone) display that effectively warns the diver of solenoid failure (when the rebreather uses solenoids) and other electrical weaknesses or failures (*e.g.*, low battery voltage);

(ii) For a semi-closed circuit rebreather, a visual display for the partial pressure of $CO_2$, or deviations above and below a preset $CO_2$ partial pressure of 0.005 ATA; and

(iii) For a closed-circuit rebreather, a visual display for: partial pressures of $O_2$ and $CO_2$, or deviations above and below a preset $CO_2$ partial pressure of 0.005 ATA and a preset $O_2$ partial pressure of 1.40 ATA or lower; gas temperature in the breathing loop; and water temperature.

(l) Before each day's diving operations, and more often when necessary, the employer must ensure that the electrical power supply and electrical and electronic circuits in each rebreather are operating as required by the rebreather manufacturer's instructions.

**2. Special Requirements for Closed-Circuit Rebreathers**

(a) The employer must ensure that each closed-circuit rebreather uses supply-pressure sensors for the $O_2$ and diluent (*i.e.*, air or nitrogen) gases and continuously functioning sensors for detecting temperature in the inhalation side of the gas-loop and the ambient water.

(b) The employer must ensure that:

(i) At least two $O_2$ sensors are located in the inhalation side of the breathing loop; and

(ii) The $O_2$ sensors are: functioning continuously; temperature compensated; and approved by the rebreather manufacturer.

(c) Before each day's diving operations, and more often when necessary, the employer must calibrate $O_2$ sensors as required by the sensor manufacturer's instructions. In doing so, the employer must:

(i) Ensure that the equipment and procedures used to perform the calibration are accurate to within 1% of the $O_2$ fraction by volume;

(ii) Maintain this accuracy as required by the manufacturer of the calibration equipment;

(iii) Ensure that the sensors are accurate to within 1% of the $O_2$ fraction by volume;

(iv) Replace $O_2$ sensors when they fail to meet the accuracy requirements specified in paragraph 2(c)(iii) of this appendix; and

(v) Ensure that the replacement $O_2$ sensors meet the accuracy requirements specified in paragraph 2(c)(iii) of this appendix before placing a rebreather in operation.

(d) The employer must ensure that each closed-circuit rebreather has:

(i) A gas-controller package with electrically operated solenoid $O_2$-supply valves;

(ii) A pressure-activated regulator with a second-stage diluent-gas addition valve;

(iii) A manually operated gas-supply bypass valve to add $O_2$ or diluent gas to the breathing loop; and

(iv) Separate $O_2$ and diluent-gas cylinders to supply the breathing-gas mixture.

**3. $O_2$ Concentration in the Breathing Gas**

The employer must ensure that the fraction of $O_2$ in the nitrox breathing-gas mixture:

(a) Is greater than the fraction of $O_2$ in compressed air (*i.e.*, exceeds 22% by volume);

(b) For open-circuit SCUBA, never exceeds a maximum fraction of breathable $O_2$ of 40% by volume or a maximum $O_2$ partial pressure of 1.40 ATA, whichever exposes divers to less $O_2$; and

(c) For a rebreather, never exceeds a maximum $O_2$ partial pressure of 1.40 ATA.

**4. Regulating $O_2$ Exposures and Diving Depth**

(a) Regarding $O_2$ exposure, the employer must:

(i) Ensure that the exposure of each diver to partial pressures of $O_2$ between 0.60 and 1.40 ATA does not exceed the 24-hour single-exposure time limits specified either by the 2001 National Oceanic and Atmospheric Administration Diving Manual (the "2001 NOAA Diving Manual"), or by the report entitled "Enriched Air Operations and Resource Guide" published in 1995 by the Professional Association of Diving Instructors (known commonly as the "1995 DSAT Oxygen Exposure Table"); and

(ii) Determine a diver's $O_2$-exposure duration using the diver's maximum $O_2$ exposure (partial pressure of $O_2$) during the dive and the total dive time (*i.e.*, from the time the diver leaves the surface until the diver returns to the surface).

(b) Regardless of the diving equipment used, the employer must ensure that no diver exceeds a depth of 130 feet of sea water ("fsw") or a maximum $O_2$ partial pressure of 1.40 ATA, whichever exposes the diver to less $O_2$.

**5. Use of No-Decompression Limits**

(a) For diving conducted while using nitrox breathing-gas mixtures, the employer must ensure that each diver remains within the no-decompression limits specified for single and repetitive air diving and published in the 2001 NOAA Diving Manual or the report entitled "Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner," published in 1994 by Hamilton Research Ltd. (known commonly as the "1994 DSAT No-Decompression Tables").

(b) An employer may permit a diver to use a dive-decompression computer designed to regulate decompression when the dive-decompression computer uses the no-decompression limits specified in paragraph 5(a) of this appendix, and provides output that reliably represents those limits.

**6. Mixing and Analyzing the Breathing Gas**

(a) The employer must ensure that:

(i) Properly trained personnel mix nitrox-breathing gases, and that nitrogen is the only inert gas used in the breathing-gas mixture; and

(ii) When mixing nitrox-breathing gases, they mix the appropriate breathing gas before delivering the mixture to the breathing-gas cylinders, using the continuous-flow or partial-pressure mixing techniques specified in the 2001 NOAA Diving Manual, or using a filter-membrane system.

(b) Before the start of each day's diving operations, the employer must determine the $O_2$ fraction of the breathing-gas mixture using an $O_2$ analyzer. In doing so, the employer must:

(i) Ensure that the $O_2$ analyzer is accurate to within 1% of the $O_2$ fraction by volume.

(ii) Maintain this accuracy as required by the manufacturer of the analyzer.

(c) When the breathing gas is a commercially supplied nitrox breathing-gas mixture, the employer must ensure that the $O_2$ meets the medical USP specifications (Type I, Quality Verification Level A) or aviator's breathing-oxygen specifications (Type I, Quality Verification Level E) of CGA G–4.3–2000 ("Commodity Specification for Oxygen"). In addition, the commercial supplier must:

(i) Determine the $O_2$ fraction in the breathing-gas mixture using an analytic method that is accurate to within 1% of the $O_2$ fraction by volume;

(ii) Make this determination when the mixture is in the charged tank and after disconnecting the charged tank from the charging apparatus;

(iii) Include documentation of the $O_2$-analysis procedures and the $O_2$ fraction when delivering the charged tanks to the employer.

(d) Before producing nitrox breathing-gas mixtures using a compressor in which the gas pressure in any system component exceeds 125 pounds per square inch (psi), the:

(i) Compressor manufacturer must provide the employer with documentation that the compressor is suitable for mixing high-pressure air with the highest $O_2$ fraction used in the nitrox breathing-gas mixture when operated according to the manufacturer's operating and maintenance specifications;

(ii) Employer must comply with paragraph 6(e) of this appendix, unless the compressor is rated for $O_2$ service and is oil-less or oil-free; and

(iii) Employer must ensure that the compressor meets the requirements specified in paragraphs (i)(1) and (i)(2) of § 1910.430 whenever the highest $O_2$ fraction used in the mixing process exceeds 40%.

(e) Before producing nitrox breathing-gas mixtures using an oil-lubricated compressor to mix high-pressure air with $O_2$, and regardless of the gas pressure in any system component, the:

(i) Employer must use only uncontaminated air (*i.e.*, air containing no hydrocarbon particulates) for the nitrox breathing-gas mixture;

(ii) Compressor manufacturer must provide the employer with documentation that the compressor is suitable for mixing the high-pressure air with the highest $O_2$ fraction used in the nitrox breathing-gas mixture when operated according to the manufacturer's operating and maintenance specifications;

(iii) Employer must filter the high-pressure air to produce $O_2$-compatible air;

(iv) The filter-system manufacturer must provide the employer with documentation that the filter system used for this purpose is suitable for producing $O_2$-compatible air when operated according to the manufacturer's operating and maintenance specifications; and

(v) Employer must continuously monitor the air downstream from the filter for hydrocarbon contamination.

(f) The employer must ensure that diving equipment using nitrox breathing-gas mixtures or pure $O_2$ under high pressure (*i.e.*, exceeding 125 psi) conforms to the $O_2$-service requirements specified in paragraphs (i)(1) and (i)(2) of § 1910.430.

**7. Emergency Egress**

(a) Regardless of the type of diving equipment used by a diver (*i.e.*, open-circuit SCUBA or rebreathers), the employer must ensure that the equipment contains (or incorporates) an open-circuit emergency-egress system (a "bail-out" system) in which the second stage of the regulator connects to a separate supply of emergency breathing gas, and the emergency breathing gas consists of air or the same nitrox breathing-gas mixture used during the dive.

(b) As an alternative to the "bail-out" system specified in paragraph 7(a) of this appendix, the employer may use:

(i) For open-circuit SCUBA, an emergency-egress system as specified in § 1910.424(c)(4); or

(ii) For a semi-closed-circuit and closed-circuit rebreather, a system configured so that the second stage of the regulator connects to a reserve supply of emergency breathing gas.

(c) The employer must obtain from the rebreather manufacturer sufficient information to ensure that the bail-out system performs reliably and has sufficient capacity to enable the diver to terminate the dive and return safely to the surface.

**8. Treating Diving-Related Medical Emergencies**

(a) Before each day's diving operations, the employer must:

(i) Verify that a hospital, qualified health-care professionals, and the nearest Coast Guard Coordination Center (or an equivalent rescue service operated by a state, county, or municipal agency) are available to treat diving-related medical emergencies;

(ii) Ensure that each dive site has a means to alert these treatment resources in a timely manner when a diving-related medical emergency occurs; and

(iii) Ensure that transportation to a suitable decompression chamber is readily available when no decompression chamber is at the dive site, and that this transportation can deliver the injured diver to the decompression chamber within four (4) hours travel time from the dive site.

(b) The employer must ensure that portable $O_2$ equipment is available at the dive site to treat injured divers. In doing so, the employer must ensure that:

(i) The equipment delivers medical-grade $O_2$ that meets the requirements for medical USP oxygen (Type I, Quality Verification Level A) of CGA G–4.3–2000 ("Commodity Specification for Oxygen");

(ii) The equipment delivers this $O_2$ to a transparent mask that covers the injured diver's nose and mouth; and

(iii) Sufficient $O_2$ is available for administration to the injured diver from the time the employer recognizes the symptoms of a diving-related medical emergency until the injured diver reaches a decompression chamber for treatment.

(c) Before each day's diving operations, the employer must:

(i) Ensure that at least two attendants, either employees or non-employees, qualified in first-aid and administering $O_2$ treatment, are available at the dive site to treat diving-related medical emergencies; and

(ii) Verify their qualifications for this task.

**9. Diving Logs and No-Decompression Tables**

(a) Before starting each day's diving operations, the employer must:

(i) Designate an employee or a non-employee to make entries in a diving log; and

(ii) Verify that this designee understands the diving and medical terminology, and proper procedures, for making correct entries in the diving log.

(b) The employer must:

(i) Ensure that the diving log conforms to the requirements specified by paragraph (d) ("Record of dive") of § 1910.423; and

(ii) Maintain a record of the dive according to § 1910.440 ("Recordkeeping requirements").

(c) The employer must ensure that a hard-copy of the no-decompression tables used for the dives (as specified in paragraph 6(a) of this appendix) is readily available at the dive site, whether or not the divers use dive-decompression computers.

**10. Diver Training**

The employer must ensure that each diver receives training that enables the diver to perform work safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. Accordingly, each diver must be able to demonstrate the ability to perform critical tasks safely and effectively, including, but not limited to: recognizing the effects of breathing excessive $CO_2$ and $O_2$; taking appropriate action after detecting excessive levels of $CO_2$ and $O_2$; and properly evaluating, operating, and maintaining their diving equipment under the diving conditions they encounter.

**11. Testing Protocol for Determining the $CO_2$ Limits of Rebreather Canisters**

(a) The employer must ensure that the rebreather manufacturer has used the following procedures for determining that the $CO_2$-sorbent material meets the specifications of the sorbent material's manufacturer:

(i) The North Atlantic Treating Organization $CO_2$ absorbent-activity test;

(ii) The RoTap shaker and nested-sieves test;

(iii) The Navy Experimental Diving Unit ("NEDU")-derived Schlegel test; and

(iv) The NEDU MeshFit software.

(b) The employer must ensure that the rebreather manufacturer has applied the following canister-testing materials, methods, procedures, and statistical analyses:

(i) Use of a nitrox breathing-gas mixture that has an $O_2$ fraction maintained at 0.28 (equivalent to 1.4 ATA of $O_2$ at 130 fsw, the maximum $O_2$ concentration permitted at this depth);

(ii) While operating the rebreather at a maximum depth of 130 fsw, use of a breathing machine to continuously ventilate the rebreather with breathing gas that is at 100% humidity and warmed to a temperature of 98.6 degrees F (37 degrees C) in the heating-humidification chamber;

(iii) Measurement of the $O_2$ concentration of the inhalation breathing gas delivered to the mouthpiece;

(iv) Testing of the canisters using the three ventilation rates listed in Table I below (with the required breathing-machine tidal volumes and frequencies, and $CO_2$-injection rates, provided for each ventilation rate):

TABLE I.—CANISTER TESTING PARAMETERS

| Ventilation rates (Lpm, ATPS [1]) | Breathing machine tidal volumes (L) | Breathing machine frequencies (breaths per min.) | $CO_2$ injection rates (Lpm, STPD [2]) |
|---|---|---|---|
| 22.5 | 1.5 | 15 | 0.90 |
| 40.0 | 2.0 | 20 | 1.35 |
| 62.5 | 2.5 | 25 | 2.25 |

[1] ATPS means ambient temperature and pressure, saturated with water.
[2] STPD means standard temperature and pressure, dry; the standard temperature is 32 degrees F (0 degrees C).

(v) When using a work rate (*i.e.*, breathing-machine tidal volume and frequency) other than the work rates listed in the table above, addition of the appropriate combinations of ventilation rates and $CO_2$-injection rates;

(vi) Performance of the $CO_2$ injection at a constant (steady) and continuous rate during each testing trial;

(vii) Determination of canister duration using a minimum of four (4) water temperatures, including 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively);

(viii) Monitoring of the breathing-gas temperature at the rebreather mouthpiece (at the "chrome T" connector), and ensuring that this temperature conforms to the temperature of a diver's exhaled breath at the water temperature and ventilation rate used during the testing trial; [1]

(ix) Implementation of at least eight (8) testing trials for each combination of temperature and ventilation-$CO_2$-injection rates (for example, eight testing trials at 40 degrees F using a ventilation rate of 22.5 Lpm at a $CO_2$-injection rate of 0.90 Lpm);

(x) Allowing the water temperature to vary no more than ± 2.0 degrees F (± 1.0 degree C) *between* each of the eight testing trials, and no more than ± 1.0 degree F (± 0.5 degree C) *within* each testing trial;

(xi) Use of the average temperature for each set of eight testing trials in the statistical analysis of the testing-trial results, with the testing-trial results being the time taken for the inhaled breathing gas to reach 0.005 ATA of $CO_2$ (*i.e.*, the canister-duration results);

(xii) Analysis of the canister-duration results using the repeated-measures statistics described in NEDU Report 2–99;

(xiii) Specification of the replacement schedule for the $CO_2$-sorbent materials in terms of the lower prediction line (or limit) of the 95% confidence interval; and

(xiv) Derivation of replacement schedules only by interpolating among, but not by extrapolating beyond, the depth, water temperatures, and exercise levels used during canister testing.

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[1] NEDU can provide the manufacturer with information on the temperature of a diver's exhaled breath at various water temperatures and ventilation rates, as well as techniques and procedures used to maintain these temperatures during the testing trials.

## DEPARTMENT OF DEFENSE

## 32 CFR Part 312

## Office of the Inspector General: Privacy Act; Implementation

**AGENCY:** Office of the Inspector General, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Inspector General, DoD (OIG, DoD) is exempting the system of records CIG–21, entitled "Congressional Correspondence Tracking System" from 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7). The exemption is needed because during the course of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case records in the system. To the extent that copies of exempt records from those "other" systems of records are entered into the Privacy Act case records, the Inspector General, DoD, hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records of which they are a part. In addition, two administrative changes are also being made.

The proposed rule was published on December 9, 2003, at 68 FR 68577. No comments were received; therefore, the rule is being adopted at published.

**EFFECTIVE DATE:** February 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darryl R. Aaron at (703) 604–9785.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published on December 9, 2003, at 68 FR 68577. No comments were received; therefore, the rule is being adopted at published.

### Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

### Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have a significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

### Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Office of the Inspector General and that the information collected within the Office of the Inspector General is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

### Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

### Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense does not have federalism implications. The rules do 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.

### List of Subjects in 32 CFR Part 312

Privacy.

■ For reasons stated in the Preamble, 32 CFR part 312 is amended as follows:

## PART 312—OFFICE OF THE INSPECTOR GENERAL (OIG) PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 312 continues to read as follows:

**Authority:** Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 312.8, paragraph (a) is revised to read as follows:

### § 312.8 OIG review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a record will be provided to the requester within 20 working days, unless final action regarding approval or denial will constitute acknowledgement.

* * * * *

■ 3. Section 312.12, paragraph (b) is revised and paragraph (i) is added to read as follows:

### § 312.12 Exemptions.

* * * * *

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)–(k)(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case-by-case basis by the Deputy Inspector General for Investigations or the Director,

Communications and Congressional Liaison Office, and the Chief, Freedom of Information/Privacy Act Office, which serve as the Systems Program Managers. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of the records system.

* * * * *

(i) System Identifier: CIG–21

(1) System name: Congressional Correspondence Tracking System.

(2) Exemption: During the processing of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7)

(4) Reasons: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: February 11, 2004.

**L.M. Bynum,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[COTP New Orleans–03–029]**

**RIN 1625–AA00**

## Safety Zone; Lower Mississippi River, Mile Marker 88.1 to 90.4 Above Head of Passes, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Lower Mississippi River (LMR), beginning at mile marker 88.1 and ending at mile marker 90.4 Above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the Cruise Ship (C/S) CONQUEST beneath the Entergy Corporation power cables located at mile marker 89.2. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

**DATES:** This rule is effective from February 16, 2004, to February 16, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans 03–024] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, LA, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Richard Paciorka, Marine Safety Office New Orleans, at (504) 589–4222.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the Cruise Ship (C/S) CONQUEST under the Entergy Corporation power cable, Lower Mississippi River (LMR), mile marker 89.2, Above Head of Passes, New Orleans, Louisiana.

### Background and Purpose

On August 18, 2003, the Coast Guard published a temporary final rule entitled "Safety Zone; Lower Mississippi River, Above Head of Passes, Mile Marker 88.1 to 90.4, New Orleans, LA" in the **Federal Register** (68 FR 49356). The temporary final was established to protect persons, mariners and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST as it proceeds beneath the Entergy Corporation power cables located at mile marker 89.2. This temporary final rule expired at 8 p.m. C.s.t. on January 11, 2004. The Captain of the Port New Orleans has determined the safety hazards associated with the C/S CONQUEST's inbound and outbound transit underneath the power cables continue to exist.

The C/S CONQUEST has an air draft of 210 feet and is home ported at the Julia Street Wharf located at mile marker 95.3. The Entergy Corporation power cables are at a height of 229.9 feet North American Vertical Datum (NAVD) at the center of the LMR. The power cables increase in height to a maximum of 366.4 feet NAVD on the East bank of the LMR and a maximum of 361.1 feet NAVD on the West bank of the LMR. The C/S CONQUEST requires a minimum air gap of 10 feet between itself and the Entergy Corporation power cables to prevent electrical arcing. When the river stage at the Carrollton gauge reads 10 feet or higher, the vessel must maneuver within 400 to 600 feet of the East bank or within 400 to 700 feet of the West bank to maintain the minimum air gap necessary to safely transit under the Entergy Corporation power cables. Other vessels transiting between mile marker 88.1 and 90.4 may restrict the maneuverability of the C/S CONQUEST through the safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cable, or nearby vessels.

This safety zone is needed to protect persons, mariners and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST as it proceeds beneath the Entergy Corporation power cables located at mile marker 89.2. This rule would only be enforced when the Carrolton gauge reads 10 feet or higher.

It is anticipated that the Entergy Corporation will complete the burial of

new power cables and removal of existing overhead cables by January 2005. Once this occurs, the safety hazards that necessitate this safety zone will cease to exist.

**Discussion of Rule**

This rule establishes a temporary safety zone for the LMR, beginning at mile marker 88.1 and ending at mile marker 90.4 Above Head of Passes, extending the entire width of the river. This safety zone will only be enforced when the river stage at the Carrollton gauge reads 10 feet or higher. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST as it proceeds beneath the Entergy Corporation power cables located at mile marker 89.2. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative. This prohibition would be effective one-half hour prior to the C/S CONQUEST arriving at the power cables and would continue in effect until the vessel safely passes underneath the power cables. The C/S CONQUEST is anticipated to arrive at the power cables at 3:45 a.m. and at 6:30 p.m. every Sunday. These arrival times are based on the predicted cruise schedule for the C/S CONQUEST and area subject to change. The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

This rule also prohibits vessels from anchoring in the New Orleans Emergency Anchorage below mile marker 90.4, which is the location of Chalmette Slip, and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock. Vessels anchored in this area could restrict the maneuverability of the C/S CONQUEST through safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cables, or nearby vessels. Vessels anchored within the New Orleans Emergency Anchorage are already required by 33 CFR 110.195(a)(16) to obtain permission from the Captain of the Port New Orleans prior to anchoring. The New Orleans General Anchorage extends from mile 90.1 to 90.9 on the LMR, and only 0.3 miles of the anchorage will be affected by this rule. This prohibition would be effective two hours prior to the C/S CONQUEST's arrival or departure from its berth and would remain effective until the vessel safely passes under the power cables.

This rule allows moored vessels to remain moored within the safety zone.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory procedures of DHS is unnecessary. The Coast Guard has met with members of the local maritime industry including Carnival Cruise Lines, Entergy, the New Orleans Port Commission, pilots associations, owners of waterfront facilities located within or adjacent to the zone as well as agents and shipping companies to discuss safety concerns associated with the transit and measures to reduce the impact of the safety zone on the local maritime community.

This rule only affects maritime traffic for short periods of time. The impact on routine navigation is expected to be minimal as the safety zone will only be in effect for two hours, twice each week. Additionally, this safety zone will only be enforced when the Carrolton gauge reads 10 feet or higher. The Captain of the Port New Orleans or a designated representative may permit movements within the safety zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the safety zone.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects the following entities, some of which may be small entities: the owners or operators of crew boats, towing vessels, deep draft vessels, and occasional commercial fishing vessels intending to transit or anchor between mile marker 88.1 and mile marker 90.4, Lower Mississippi River, Above Head of Passes, while the C/S CONQUEST is transiting this area upbound or downbound. This safety zone does not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule would only be enforced when the river stage at the Carrollton gauge reads 10 feet or higher, (2) The safety zone would only be enforced during the period of time it takes the C/S CONQUEST to transit the area of the safety zone, which is estimated to take approximately two hours in each direction, (3) The C/S CONQUEST normally makes these transits once a week, usually on Sunday, and (4) the Captain of the Port New Orleans or a designated representative may permit movements within the zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the zone.

If you are a small business entity and are significantly affected by this regulation please contact LT Richard Paciorka, Marine Safety Office New Orleans, at (504) 589–4222.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

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

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Reinstate and revise temporary § 165.T08–090 to read as follows:

**§ 165.T08–090 Safety Zone; Lower Mississippi River, Mile Marker 88.1 to 90.4, Above Head of Passes, New Orleans, LA.**

(a) *Location.* The following area is a safety zone: the entire width of the Lower Mississippi River, Above Head of Passes, beginning at mile marker 88.1, which is the location of the lower end of the Algiers Lock fore bay, and ending at mile marker 90.4, which is the location of the Chalmette Slip and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock.

(b) *Effective dates.* This section is effective from February 16, 2004 to February 16, 2005.

(c) *Enforcement period.* This rule will be enforced only when the Carrollton gauge reads 10 feet or higher during the effective period. When the Carrollton gauge reads 10 feet or higher, this section will be enforced every Sunday from 1:45 a.m. to 3:45 a.m. and from 4:30 p.m. to 6:30 p.m. These periods of enforcement are based on the predicted cruise schedule for the C/S CONQUEST and are subject to change. The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all people, mariners and vessels 30 minutes prior to the C/S CONQUEST's arrival at the power cables, unless authorized by the Captain of the Port New Orleans.

(2) Vessels are prohibited from anchoring in the New Orleans Emergency Anchorage or the New Orleans General Anchorage below mile marker 90.4, which is the location of the Chalmette Slip, and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock. This prohibition is effective two hours prior to the arrival and departure of the C/S CONQUEST or until it safely passes under the power cables.

(3) Moored vessels are permitted to remain within the safety zone.

(4) The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(5) Vessels requiring entry into or passage through the zone during the enforcement period must request permission from the Captain of the Port New Orleans or a designated representative. Designated representatives include the Vessel Traffic Center (VTC) and on-scene U.S. Coast Guard patrol personnel. The VTC may be contacted on VHF Channel 67 or by telephone at (504) 589–2780. On-scene U.S. Coast Guard patrol personnel may be contacted on VHF channel 67.

(6) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans, the Vessel Traffic Center, and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 22, 2003.

**R.W. Branch,**

*Captain, U.S. Coast Guard, Captain of the Port New Orleans.*

[FR Doc. 04–3397 Filed 2–13–04; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 284–0429; FRL–7620–9]**

### Partial Removal of Direct Final Rule Provisions Concerning the California State Implementation Plan, Bay Area Air Quality Management District

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

**ACTION:** Partial removal of direct final rule provisions.

**SUMMARY:** On October 30, 2003 (68 FR 61753), EPA published a direct final approval of a revision to the California State Implementation Plan (SIP). This revision concerned the following Bay Area Air Quality Management District (BAAQMD) rules: Rule 8–14—Surface Preparation and Coating of Large Appliances and Metal Furniture; BAAQMD Rule 8–19—Surface Preparation and Coating of Miscellaneous Metal Parts and Products; BAAQMD Rule 8–31—Surface Preparation and Coating of Plastic Parts and Products; and, BAAQMD Rule 8–43—Surface Preparation and Coating of Marine Vessels. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by December 1, 2003, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments. Consequently, with this revision, we are removing the direct final approval of BAAQMD Rules 8–14 and 8–19. EPA will either address the comments in a subsequent final action based on the parallel proposal also published on October 30, 2003 (68 FR 61782), or repropose an alternative action. As stated in the parallel proposal, EPA will not institute a second comment period on the subsequent final action. The other rules approved in the October 30, 2003, direct final action, BAAQMD Rules 8–31 and 8–43, are not affected by this partial removal and are incorporated into the SIP as of the effective date of the October 30, 2003, direct final action.

**EFFECTIVE DATE:** February 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, EPA Region IX, at (415) 947–4111, or via e-mail at *wamsley.jerry@epa.gov.*

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

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

Dated: January 27, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Accordingly, 40 CFR 52.220, as amended in the **Federal Register** on October 30, 2003 (68 FR 61753), effective on December 29, 2003, is further amended.

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

### PART 52—[AMENDED]

### Subpart F—California

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

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

■ 2. Section 52.220 is amended by revising paragraph (c)(315)(i)(A)(*2*) to read as follows:

* * * * *

(c) * * *

(315) * * *

(i) * * *

(A) * * *

(*2*) Rule 8–31 adopted on September 7, 1983 and amended on Ocotober 16, 2002; and Rule 8–43 adopted on November 23, 1988 and amended on October 16, 2002.

* * * * *

[FR Doc. 04–3076 Filed 2–13–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 295–0434a; FRL–7614–9]**

### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen ($NO_X$) emissions from residential water heaters. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on April 19, 2004 without further notice, unless EPA receives adverse comments by March 18, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** 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 revision, EPA's technical support document (TSD), 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:

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

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

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, 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 Web site and may not contain the same version of the rule that was submitted to EPA.

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

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

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## I. The State's Submittal

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

Table 1 lists the rule we are approving with the dates that it was 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 | 4902 | Residential Water Heaters | 06/17/93 | 11/04/03 |

On December 23, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of This Rule?*

There are no previous versions of Rule 4902 in the SIP.

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

$NO_X$ helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control $NO_X$ emissions. Rule 4902 limits emissions of oxides of nitrogen, specifically nitrogen oxide ($NO_2$), from residential gas-fired water heaters and applies to all water heaters with a rated heat input less than or equal to 75,000 Btu/hr manufactured after December 17, 1993. The TSD has more information about this rule.

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

*A. How Is EPA Evaluating the Rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). Residential water heaters are not major sources, so Rule 4902 does not need to fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the $NO_X$ Supplement), 57 FR 55620, November 25, 1992.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

*B. Does the Rule Meet the Evaluation Criteria?*

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rule*

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

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by March 18, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 19, 2004. This will incorporate this rule into the federally enforceable SIP.

**III. Statutory and Executive Order Reviews**

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

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

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

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: January 8, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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

## PART 52—[AMENDED]

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

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

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(321) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(321) New and amended regulations for the following APCDs were submitted on November 4, 2003, by the Governor's designee.

(i) Incorporation by reference.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4902, adopted on June 17, 1993.

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[FR Doc. 04–3220 Filed 2–13–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[SC–112L–2004–1–FRL–7623–8]**

### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of South Carolina

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA), South Carolina Department of Health and Environmental Control (SC DHEC) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. The Environmental Protection Agency had reviewed this request and had found that it satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is hereby granting SC DHEC the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the State's alternative requirements.

**DATES:** This direct final rule is effective April 19, 2004, without further notice, unless EPA receives adverse comment by March 18, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written Comments must be submitted to Lee Page, Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier by following the detailed instructions described in (part (I)(B)(1)(i) through (iii)) of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9131. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file for this action under SC–112L–2004–1 that is available for inspection at the Regional Office. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

2. Copies of the State submittal and supporting documents are also available for public inspection during normal business hours, by appointment at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published

in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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

*B. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking SC–112L–2004–1" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *page.lee@epa.gov*. Please include the text "Public comment on proposed rulemaking SC–112L–2004–1" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulation.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking SC–112L–2004–1" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Lee Page; Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*D. What Should I Consider as I Prepare My Comments for EPA?*

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

**II. Background**

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (see 63 FR 18504) which was codified in 40 CFR part 63, subpart S, "National Emission Standards for Hazardous Air Pollutants

from the Pulp and Paper Industry". (Pulp and Paper MACT I). The International Paper Georgetown Mill in Georgetown, South Carolina, is one of seven pulp and paper mills operating in the State and subject to subpart S.

On November 21, 2003, South Carolina Department of Health and Environmental Control (SC DHEC) requested delegation of subpart S under § 63.94 for the International Paper Georgetown Mill. EPA received the request on November 25, 2003. SC DHEC requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart S under the process outlined in 40 CFR 63.94. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 standards, SC DHEC also requested approval of its demonstration that SC DHEC has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

## III. Analysis of State's Submittal

Under CAA section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of State and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (see 65 FR 55810, dated September 14, 2000). Under these regulations, a State or local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (see 40 CFR 63.94(a) and (b)) is the "up-front approval" of the State EBP program. The second step (see 40 CFR 63.94(c) and (d)) is EPA review and approval of the State alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (see 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into a specific title V permit and the title V permit issuance process itself. The final approval of the State alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the "up-front approval" of the EBP program, is three fold: (1) It ensures that SC DHEC meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for SC DHEC to replace the otherwise applicable Federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which SC DHEC will be accepting delegation under the EBP option.

Under §§ 63.94(b) and 63.91, SC's request for approval is required to include the identification of the sources and the source categories for which the State is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources.

## IV. Final Action

After reviewing the request for approval of SC DHEC's EBP program for subpart S, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. Accordingly, EPA approves SC DHEC's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Georgetown Mill for subpart S. This action is contingent upon SC DHEC including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the sources and the "applicable requirement" for title V purposes remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the section 112(l) provisions should adverse comments be filed. This rule will be effective April 19, 2004, without further notice unless the Agency receives adverse comments by March 18, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 19, 2004, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## V. Statutory and Executive Order Reviews

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Also, this action is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

### *B. Executive Order 13175*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule

### *C. Executive Order 13132*

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various

levels of Government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State program implementing a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but simply allows the State to implement and enforce permit terms in place of Federal requirements that the EPA is already imposing. Therefore, because this 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.

*E. Unfunded Mandates*

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action allows South Carolina to implement equivalent alternative requirements to replace pre-existing requirements under Federal 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.

*F. Submission to Congress and the Comptroller General*

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

*G. National Technology Transfer and Advancement Act*

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

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 63**

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

Dated: February 5, 2004.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

## PART 63—[AMENDED]

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

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

## Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(40) to read as follows:

**§ 63.99 Delegated Federal authorities.**

(a) * * *

(40) South Carolina

(i) [Reserved]

(ii) South Carolina Department of Health and Environmental Control (SC DHEC) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Georgetown Mill, Georgetown, South Carolina, for subpart S of this part—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. This action is contingent upon SC DHEC including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 04–3370 Filed 2–13–04; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### 42 CFR Part 102

**RIN 0906–AA61**

### Smallpox Vaccine Injury Compensation Program: Administrative Implementation; Correction

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Corrections to interim final rule.

**SUMMARY:** This document contains corrections to the interim final rule published on Tuesday, December 16, 2003, (68 FR 70080). The regulations related to the administrative implementation of the Smallpox Vaccine Injury Compensation Program.

**EFFECTIVE DATE:** December 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Paul T. Clark, Director, Smallpox Vaccine Injury Compensation Program, telephone 1–888–496–0338. This is a toll-free number. Electronic inquiries should be sent to *smallpox@hrsa.gov*.

**SUPPLEMENTARY INFORMATION:** This document corrects interim final regulations that implement the Smallpox Vaccine Injury Compensation Program. This program is designed to provide benefits and/or compensation to certain persons harmed as a direct result of receiving smallpox covered countermeasures or as a result of exposure to vaccinia. As published, the final regulations contain editorial errors that are in need of correction.

### Correction of Publication

■ Accordingly, the interim final rules published on December 16, 2003 are corrected as follows:

On page 70096, in the second column, instruction 4 is corrected to read as follows:

■ "4. In part 102, add §§ 102.30–102.92 to read as follows:"

### Technical Amendments

**§ 102.3 [Amended]**

Section 102.3 is amended as follows:

■ 1. Paragraphs (g)(2)(A) and (g)(2)(B) are correctly designated as paragraphs (g)(2)(i) and (g)(2)(ii).

■ 2. Paragraphs (bb)(2)(A) and (bb)(2)(B) are correctly designated as paragraphs (bb)(2)(i) and (bb)(2)(ii).

**§ 102.51 [Amended]**

Section 102.51 is amended as follows:

■ 3. Paragraphs (a)(2)(A) and (a)(2)(B) are correctly designated as paragraphs (a)(2)(i) and (a)(2)(ii).

■ 4. In paragraph (b) the cross-reference "(a)(2)(A)–(B)" is revised to read "(a)(2)(i) and (ii)".

**§ 102.81 [Amended]**

■ 5. In § 102.81, paragraphs (a)(1)(A) and (a)(1)(B) are correctly designated as paragraphs (a)(1)(i) and (a)(1)(ii).

**§ 102.82 [Amended]**

Section 102.82 is amended as follows:

■ 6. Paragraphs (b)(2)(A) and (b)(2)(B) are correctly designated as paragraphs (b)(2)(i) and (b)(2)(ii).

■ 7. Paragraphs (d)(2)(A) and (d)(2)(B) are correctly designated as paragraphs (d)(2)(i) and (d)(2)(ii).

■ 8. In paragraph (d)(3) the cross-reference "(d)(3)(A)" is revised to read "(d)(3)(i)'.

■ 9. In paragraph (d)(3), paragraphs (d)(3)(A), (i), (ii), (iii), and (B) are correctly designated as paragraphs (d)(3)(i), (A), (B), (C), and (ii) respectively.

Dated: February 10, 2004.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 04–3331 Filed 2–13–04; 8:45 am]

**BILLING CODE 4165–15–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

**[DA 04–62]**

### Commission Organization

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission's rules state that the organization and functions of its major staff units are described in the rules. The Office of Communications Business Opportunities is a major staff unit of the Commission, but the Office's functions and delegation of authority are not currently described in the rules. This action corrects that omission by adding the Office's functions and delegation of authority to the rules.

**DATES:** Effective February 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Fleming Williams, 202–418–0990.

**SUPPLEMENTARY INFORMATION:** This action was taken by order of the Managing Director on authority delegated by the Commission. The Order (DA 04–62) was released on January 22, 2004, and the full text of the Order is available for public inspection on-line at *http://www.fcc.gov* or in the Reference Center of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. This Order amends part 0 of the Commission's rules to add the functions and delegation of authority of the Office of Communications Business Opportunities which was established in October 1994.

Since this addition pertains to agency organization, procedure, and practice, it is not subject to review by the U.S. General Accounting Office under the Congressional Review Act, and the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) are not applicable.

### List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

**Andrew S. Fishel,**

*Managing Director.*

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

## PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Add § 0.101 and revise the undesignated center heading to read as follows:

OFFICE OF COMMUNICATIONS BUSINESS OPPORTUNITIES

**§ 0.101 Functions of the office.**

(a) The Office of Communications Business Opportunities (OCBO), as a staff office to the Commission, develops, coordinates, evaluates, and recommends to the Commission, policies, programs, and practices that promote participation by small entities, women, and minorities in the communications industry. A principal function of the Office is to lead, advise, and assist the Commission, including all of its component Bureau/Office managers, supervisors, and staff, at all levels, on ways to ensure that the competitive concerns of small entities, women, and minorities, are fully considered by the agency in notice and comment rulemakings. In accordance with this function, the Office:

(1) Conducts independent analyses of the Commission's policies and practices

to ensure that those policies and practices fully consider the interests of small entities, women, and minorities.

(2) Advises the Commission, Bureaus, and Offices of their responsibilities under the Congressional Review Act provisions regarding small businesses; the Report to Congress regarding Market Entry Barriers for Small Telecommunications Businesses (47 U.S.C. 257); and the Telecommunications Development Fund (47 U.S.C. 614).

(b) The Office has the following duties and responsibilities:

(1) Through its director, serves as the principal small business policy advisor to the Commission;

(2) Develops, implements, and evaluates programs and policies that promote participation by small entities, women and minorities in the communications industry;

(3) Manages the Regulatory Flexibility Analysis process pursuant to the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act to ensure that small business interests are fully considered in agency actions;

(4) Develops and recommends Commission-wide goals and objectives for addressing the concerns of small entities, women, and minorities and reports of achievement;

(5) Acts as the principal channel for disseminating information regarding the Commission's activities and programs affecting small entities, women, and minorities;

(6) Develops, recommends, coordinates, and administers objectives, plans and programs to encourage participation by small entities, women, and minorities in the decision-making process;

(7) Promotes increased awareness within the Commission of the impact of policies on small entities, women, and minorities;

(8) Acts as the Commission's liaison to other federal agencies on matters relating to small business.

■ 3. Add § 0.371 and an undesignated center heading to read as follows:

OFFICE OF COMMUNICATIONS BUSINESS OPPORTUNITIES

**§ 0.371 Authority delegated.**

The Director, Office of Communications Business Opportunities, or his/her designee, is hereby delegated authority to:

(a) Manage the Commission's compliance with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act;

(b) Develop the Commission's goals and objectives regarding increased opportunities for small entities, women, and minorities;

(c) Collect and analyze data on the Commission's efforts toward ensuring full consideration of the interests of small entities, women, and minorities;

(d) Prepare and release reports on the opportunities available and obstacles faced by small entities, women, and minorities in the communications industry;

(e) Conduct studies and collect data on the issues and problems faced by small entities, women, and minorities in the communications industry;

(f) Assume representational role on behalf of the Commission before other federal agencies and at conferences, meetings, and hearings regarding small entities, women, and minorities in the communications industry;

(g) Develop programs and strategies designed to increase competition, employment opportunities and diversity of viewpoint through the promotion of ownership by small entities, women, and minorities;

(h) Manage the Commission's efforts to increase the awareness of small entities, women, and minorities and to ensure that all available information is accessible to the same.

[FR Doc. 04–3361 Filed 2–13–04; 8:45 am]
BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 69, No. 31
Tuesday, February 17, 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 TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–61–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG Models G103 Twin ASTIR, G103 Twin II, G103 Twin III ACRO, and G103 C Twin III SL Sailplanes

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG (Grob) Models G103 Twin ASTIR, G103 Twin II, G103 Twin III ACRO, and G103 C Twin III SL sailplanes. This proposed AD would require you to replace the center of gravity (CG) release hook attachment brackets with brackets of improved design. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent abnormal or uncontrolled sailplane release due to cracked CG release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

**DATES:** We must receive any comments on this proposed AD by March 29, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–61–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–61–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–61–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–61–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

### Discussion

*What events have caused this proposed AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Grob Models G103 Twin ASTIR, G103 Twin II, G103 Twin III ACRO, and G103 C Twin III SL sailplanes. The LBA reports incidents of cracks found in the center of gravity (CG) release hook attachment brackets.

Grob has manufactured new improved design CG release hook attachment brackets that are less susceptible to such cracking.

*What are the consequences if the condition is not corrected?* A cracked CG release hook attachment bracket, if not prevented, could lead to abnormal or uncontrolled sailplane release. This condition could result in reduced or loss of sailplane control.

*Is there service information that applies to this subject?* Grob has issued Service Bulletin No. MSB869–22, dated January 22, 2002, and Service Bulletin No. MSB315–62, dated January 21, 2002. The service bulletins include procedures for inspecting and replacing the CG release hook attachment brackets.

*What action did the LBA take?* The LBA classified these service bulletins as mandatory and issued the following to ensure the continued airworthiness of these sailplanes in Germany:

- German AD No. 2002–066, effective date: March 21, 2002; and
- German AD No. 2002–067, effective date: March 21, 2002.

*Did the LBA inform the United States under the bilateral airworthiness agreement?* These Grob Models G103 Twin ASTIR, G103 Twin II, G103 Twin III ACRO, and G103 C Twin III SL sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

### FAA's Determination and Requirements of This Proposed AD

*What has FAA decided?* We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Grob Models G103 Twin ASTIR, G103 Twin II, G103 Twin III ACRO, and G103 C Twin III SL sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent abnormal or uncontrolled sailplane release due to cracked CG release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

*What would this proposed AD require?* This proposed AD would require you to replace the CG release hook attachment brackets with brackets of improved design.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Costs of Compliance**

*How many sailplanes would this proposed AD impact?* We estimate that this proposed AD affects 105 sailplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes?* We estimate the following costs to do this proposed replacement:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 workhours at $65 per hour = $130 | $50 per sailplane | $180 per sailplane | $18,900 |

**Regulatory Findings**

*Would this proposed AD impact various entities?* We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–61–AD" in your request.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG:** Docket No. 2003–CE–61–AD.

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by March 29, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Sailplanes Are Affected by This AD?**

(c) This AD affects the following model and serial number sailplanes that are certificated in any category:

| Models | Serial numbers |
|---|---|
| (1) G103 Twin ASTIR | 3000 through 3291. |
| (2) G103 Twin II | 3501 through 3720. |
| (3) G103 Twin III ACRO. | All serial numbers beginning with 34101. |
| (4) G103 C Twin III SL. | 35002 through 35051. |

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions of this AD are intended to prevent abnormal or uncontrolled sailplane release due to cracked center of gravity (CG) release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace the CG release hook attachment brackets with improved design brackets, as follows:<br>(i) *For the Models G103 Twin ASTIR, G103 Twin II, and G103 Twin III ACRO sailplanes:* part number (P/N) 103B–2360.01/1 and P/N 103B–2360.02/1; and<br>(ii) *For the Model G103 C Twin III SL sailplane:* P/N 103B–2360.01/2 and P/N 103B–2360.02/2. | Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done. | Follow Grob Service Bulletin No. MSB869–22, dated January 22, 2002; and Grob Service Bulletin No. MSB315–62, dated January 21, 2002. |

| Actions | Compliance | Procedures |
|---|---|---|
| (2) Do not install any CG release hook attachment bracket that is not a part number referenced in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, as applicable. | As of the effective date of this AD ..... | Not applicable. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**May I Get Copies of the Documents Referenced in This AD?**

(g) You may get copies of the documents referenced in this AD from BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Is There Other Information That Relates to This Subject?**

(h) German AD No. 2002–066, effective date: March 21, 2002; and German AD No. 2002–067, effective date: March 21, 2002, also address the subject of this AD.

Issued in Kansas City, Missouri, on February 10, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–3354 Filed 2–13–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–59–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Models Ventus–2a, Ventus–2b, Discus–2a, and Discuss–2b Sailplanes

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Schempp-Hirth Flugzeugbau GmbH (Schempp-Hirth) Models Ventus–2a, Ventus–2b, Discus–2a, and Discuss–2b sailplanes. This proposed AD would require you to inspect and modify the elevator mass balance. For Models Discus–2a and Discus–2b sailplanes only, this proposed AD would also require you to replace the elevator pushrod. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to detect and correct problems within the sailplane elevator control system before they lead to flutter and sailplane instability. This could eventually result in loss of sailplane control.

**DATES:** We must receive any comments on this proposed AD by March 25, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–59–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–59–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Schempp-Hirth Flugzeugbau GmbH, Postfach 14 43, D–73230 Kirchheim/Teck, Federal Republic of Germany; telephone: 011 49 7021 7298–0; facsimile: 011 49 7021 7298–199.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–59–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–59–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

### Discussion

*What events have caused this proposed AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on Schempp-Hirth Models Ventus–2a, Ventus–2b, Discus–2a, and Discuss–2b sailplanes. The LBA reports that the potential exists for elevator mass balance problems on the referenced sailplanes.

*What are the consequences if the condition is not corrected?* Elevator mass balance problems, if not detected and corrected, could lead to flutter and sailplane instability. This could eventually result in loss of sailplane control.

*Is there service information that applies to this subject?* Schempp-Hirth has issued the following:

| Service Document | Models Affected | Procedures |
|---|---|---|
| Technical Note No. 360–19, dated December 20, 2002 .. | Discus–2a and Discus–2b .. | Adding a mass balance to the elevators; and installing an elevator pushrod in the vertical fin. |
| Technical Note No. 349–28 (No. 360–20, No. 863–8), dated September 16, 2003. | Ventus–2a, Ventus–2b, Discus–2a, and Discus–2b. | Modifying the mass balance weights. |

*What action did the LBA take?* The LBA classified these technical notes as mandatory and issued the following to ensure the continued airworthiness of these sailplanes in Germany:

- German AD No. 2003–048, effective date: March 6, 2003; and
- German AD No. 2003–280, effective date: October 2, 2003.

*Did the LBA inform the United States under the bilateral airworthiness agreement?* These Schempp-Hirth Models Ventus–2a, Ventus–2b, Discus–2a, and Discus–2b sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

**FAA's Determination and Requirements of This Proposed AD**

*What has FAA decided?* We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Schempp-Hirth Models Ventus–2a, Ventus–2b, Discus–2a, and Discus–2b sailplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct problems within the sailplane elevator control system before they lead to flutter and sailplane instability. This could eventually result in loss of sailplane control.

*What would this proposed AD require?* This proposed AD would require you to incorporate the actions in the previously-referenced technical notes.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Costs of Compliance**

*How many sailplanes would this proposed AD impact?* We estimate that the actions specified in Schempp-Hirth Technical Note No. 360–19 would affect 15 sailplanes in the U.S. registry and the actions specified in Schempp-Hirth Technical Note No. 349–28 would affect 51 sailplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes?* We estimate the following costs to accomplish the proposed actions:

| Affected technical note | Labor cost | Parts cost | Total cost per sailplane | Total cost U.S. operators |
|---|---|---|---|---|
| No. 360–19 ..... | 17 workhours at $65 per hour = $1,105 ..... | $135 per sailplane ..... | $1,240 per sailplane ..... | $18,600 |
| No. 349–28 ..... | 4 workhours at $65 per hour = $260 ..... | No cost for parts ..... | $260 per sailplane ..... | $13,260 |

**Regulatory Findings**

*Would this proposed AD impact various entities?* We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–59–AD" in your request.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Schempp-Hirth Flugzeugbau GmbH:** Docket No. 2003–CE–59–AD.

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by March 25, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Sailplanes Are Affected by This AD?**

(c) This AD affects the following model and serial number sailplanes that are certificated in any category:

| Group | Models | Serial numbers |
|---|---|---|
| (1) Group 1 Sailplanes .. | Discus-2a and Discus-2b sailplanes that do not have Shempp-Hirth Technical Note No. 360–16 incorporated. | 13 through 22, 24, 27, 30 through 48, 50, 51, 53, 54, 55, 57 through 63, 65, 67, 68, 71 through 79, 81, and 82. |
| (2) Group 2 Sailplanes .. | Ventus-2a, Ventus-2b, Discus-2a, and Discus-2b sailplanes. | *Ventus-2a and Venus–2b:* 1, 2, 31, 32, 48, 54, 71, 117, 124 through 151, and 153; and all serial numbers that incorporate Modification Bulletin 349–42 or are equipped with a new tail unit per Shempp-Hirth Technical Note No. 349–27. *Discus-2a and Discus-2b:* 1 through 185, 187, 188, and 189. |

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions of this AD are intended to detect and correct problems within the sailplane elevator control system before they lead to flutter and sailplane instability. This could eventually result in loss of sailplane control.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) *For Group 1 sailplanes:* Add a mass balance to the elevators and install an elevator pushrod in the vertical fin. | Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done. | Follow Schempp-Hirth Technical Note No. 360–19, dated December 20, 2002. |
| (2) *For Group 2 sailplanes:* Modify the mass balance weights. | Within the next 25 hours TIS after the effective date of this AD, unless already done. | Follow Schempp-Hirth Technical Note No. 349–28 (No. 360–20, No. 863–8), dated September 16, 2003. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**May I Get Copies of the Documents Referenced in This AD?**

(g) You may get copies of the documents referenced in this AD from Schempp-Hirth Flguzeugbau GmbH, Postfach 14 43, D–73230 Kirchheim/Teck, Federal Republic of Germany; telephone : 011 49 7021 7298–0; facsimile: 011 49 7021 7298–199. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Is There Other Information That Relates to This Subject?**

(h) German AD No. 2003–048, effective date: March 6, 2003, and German AD No. 2003–280, effective date: October 2, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on February 10, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–3353 Filed 2–13–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–62–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Glasflugel Models Mosquito and Club Libelle 205 Sailplanes

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Glasflugel Models Mosquito and Club Libelle 205 sailplanes. This proposed AD would require you to replace the rudder actuator arm with an improved design rudder actuator arm. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent the rudder attachment actuator arm from failing due to ground handling damage. This failure could eventually result in reduced or loss of sailplane control.

**DATES:** We must receive any comments on this proposed AD by March 22, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–62–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–62–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Federal Republic of Germany; telephone: 011 49 7382 1032.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–62–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–62–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

**Discussion**

*What events have caused this proposed AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Glasflugel Models Mosquito and Club Libelle 205 sailplanes. The LBA reports incidents of rudder actuator arm failure. This failure is occurring through lifting the fuselage by the rudder.

Glasflugel has manufactured a new improved design rudder actuator arm that is less susceptible to such damage.

*What are the consequences if the condition is not corrected?* Rudder attachment actuator arm failure could eventually result in reduced or loss of sailplane control.

*Is there service information that applies to this subject?* Glasflugel has issued Technical Note No. 205–22 and No. 206–21, dated October 14, 2002 (German original dated October 11, 2002). The technical note includes procedures for replacing the rudder actuator arm with an improved design rudder actuator arm.

*What action did the LBA take?* The LBA classified this technical note as mandatory and issued German AD No. 2003–004, effective date: January 9, 2003, to ensure the continued airworthiness of these sailplanes in Germany.

*Did the LBA inform the United States under the bilateral airworthiness agreement?* These Glasflugel Models Mosquito and Club Libelle 205 sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

**FAA's Determination and Requirements of This Proposed AD**

*What has FAA decided?* We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Glasflugel Models Mosquito and Club Libelle 205 sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent the rudder attachment actuator arm from failing due to ground handling damage. This failure could eventually result in reduced or loss of sailplane control.

*What would this proposed AD require?* This proposed AD would require you to incorporate the actions in the previously-referenced technical note.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Costs of Compliance**

*How many sailplanes would this proposed AD impact?* We estimate that this proposed AD affects 80 sailplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes?* We estimate the following costs to accomplish this proposed replacement:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 3 workhours at $65 per hour = $195 | $90 per sailplane | $285 per sailplane | $22,800 |

**Regulatory Findings**

*Would this proposed AD impact various entities?* We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–62–AD" in your request.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Glasflugel:** Docket No. 2003–CE–62–AD.

*When Is the Last Date I Can Submit Comments on This Proposed AD?*

(a) We must receive comments on this proposed airworthiness directive (AD) by March 22, 2004.

*What Other ADs Are Affected by This Action?*

(b) None.

*What Sailplanes Are Affected by This AD?*

(c) This AD affects the Models Mosquito and Club Libelle 205 sailplanes, all serial numbers, that are certificated in any category:

*What Is the Unsafe Condition Presented in This AD?*

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions of this AD are intended to prevent the rudder attachment actuator arm from failing due to ground handling damage. This failure could eventually result in reduced or loss of sailplane control.

*What Must I do to Address This Problem?*

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace the rudder actuator arm (manufactured following drawing No. 203–45–10) with an improved design arm that is manufactured following drawing No. 203–45–10–2. | Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done. | Follow Glasflugel Technical Note No. 205–22 and No. 206–21, dated October 14, 2002 (German original dated October 11, 2002). |
| (2) Do not install any rudder actuator arm that is not manufactured following drawing No. 203–45–10–2. | As of the effective date of this AD ..... | Not Applicable. |

*May I Request an Alternative Method of Compliance?*

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

*May I Get Copies of the Documents Referenced in This AD?*

(g) You may get copies of the documents referenced in this AD from Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Federal Republic of Germany; telephone: 011 49 7382 1032. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

*Is There Other Information That Relates to This Subject?*

(h) German AD No. 2003–004, effective date: January 9, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on February 10, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–3352 Filed 2–13–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–126967–03]**

**RIN 1545–BC20**

## Value of Life Insurance Contracts When Distributed From a Qualified Retirement Plan

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations under section 402(a) of the Internal Revenue Code regarding the amount includible in a distributee's income when life insurance contracts are distributed by a qualified retirement plan and the treatment of property sold by a qualified retirement plan to a plan participant or beneficiary for less than fair market value. This document also contains proposed amendments to the regulations under sections 79 and 83 conforming the language in those regulations to the language in the proposed amendments to the section 402(a) regulations. These regulations will affect administrators of, participants in, and beneficiaries of qualified employer plans. These regulations also provide guidance to employers who provide group-term life insurance to their employees that is includible in the gross income of the employees and to employers who transfer life insurance contracts to persons in connection with the performance of services. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by May 17, 2004. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 9, 2004, at 10 a.m., must be received by May 19, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–126967–03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–126967–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed amendments to the section 79 regulations, Betty Clary at (202) 622–6080; concerning the proposed amendments to the section 83 regulations, Robert Misner at (202) 622–6030; concerning the proposed amendments to the 402 regulations, Linda Marshall at (202) 622–6090; concerning submissions and the hearing and/or to be placed on the building access list to attend the hearing, Robin Jones at (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the Income Tax

Regulations (26 CFR part 1) under section 402(a) of the Internal Revenue Code (Code) relating to the amount includible in a distributee's income when a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection is distributed by a retirement plan qualified under section 401(a) of the Code and to the sale of property by a retirement plan to a plan participant or beneficiary for less than the fair market value of the property. This document also contains proposed amendments to the regulations under sections 79 and 83 relating, respectively, to employer-provided group-term life insurance and life insurance contracts transferred in connection with the performance of services.

Section 402(a) provides generally that any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72.

Section 1.402(a)–1(a)(1)(iii) of the current regulations provides, in general, that a distribution of property by a section 401(a) plan shall be taken into account by the distributee at its "fair market value." Section 1.402(a)–1(a)(2) of the regulations provides, in general, that upon the distribution of an annuity or life insurance contract, the "entire cash value" of the contract must be included in the distributee's income. The current regulations do not define "fair market value" or "entire cash value" and questions have arisen regarding the interaction between these two provisions and whether "entire cash value" includes a reduction for surrender charges.

Prohibited Transaction Exemption (PTE) 77–8 (1977–2 C.B. 425), subsequently amended and redesignated as Prohibited Transaction Exemption 92–6, was jointly issued in 1977 by the Department of Labor and the Internal Revenue Service. PTE 77–8 permits an employee benefit plan to sell individual life insurance contracts and annuities to (1) a plan participant insured under such policies, (2) a relative of such insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan, or (4) another employee benefit plan, for the cash surrender value of the contracts, provided the conditions set forth in the exemption are met.

The preamble to PTE 77–8 (citing Rev. Rul. 59–195; 1959–1 C.B. 18) notes that, for Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value, and that a purchase of an insurance policy at its cash surrender value may therefore be a purchase of property for less than its fair market value. The regulations under section 402 do not address the consequences of a sale of property by a section 401(a) plan to a plan participant or beneficiary for less than the fair market value of that property. In this regard, the preamble to PTE 77–8 states that the Federal income tax consequences of such a bargain purchase must be determined in accordance with generally applicable Federal income tax rules but that any income realized by a participant or relative of such participant upon such a purchase under the conditions of PTE 77–8 will not be deemed a distribution from the plan to such participant for purposes of subchapter D of chapter 1 of the Internal Revenue Code (*i.e.*, sections 401 to 424 of the Code) relating to qualified pension, profit-sharing, and stock bonus plans.

Section 79 of the Code generally requires that the cost of group-term life insurance coverage provided by an employer on the life of an employee that is in excess of $50,000 of coverage be included in the income of the employee. Pursuant to § 1.79–1(b) of the regulations, under specified circumstances, group-term life insurance may be combined with other benefits, referred to as permanent benefits. A permanent benefit is defined in § 1.79–0 of the regulations as an economic value extending beyond one policy year (for example, a paid-up or cash surrender value) that is provided under a life insurance policy. The regulations further provide that certain features are not permanent benefits, including (a) a right to convert (or continue) life insurance after group life insurance coverage terminates, (b) any other feature that provides no economic benefit (other than current insurance protection) to the employee, and (c) a feature under which term life insurance is provided at a level premium for a period of five years or less.

Permanent benefits provided to an employee are subject to taxation under rules described in § 1.79–1(d) of the regulations. Under those rules, the cost of the permanent benefits, reduced by the amount paid for those benefits by the employee, is included in the employee's income. The regulations provide the cost of the permanent benefits can be no less than an amount determined under a formula set forth in the regulations. One of the factors used in this formula is "the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the cash value of the policy at the end of that policy year."

Section 83(a) provides that when property is transferred to any person in connection with the performance of services, the service provider must include in gross income (as compensation income) the excess of the fair market value of the property, determined without regard to lapse restrictions, and determined at the first time that the transferee's rights in the property are either transferable or not subject to a substantial risk of forfeiture, over the amount (if any) paid for the property. Section 1.83–3(e) of the regulations generally provides that in the case of "a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered to be property."

In TD 9092, published in the **Federal Register** on September 17, 2003 (68 FR 54336), relating to split-dollar life insurance arrangements, § 1.83–3(e) was amended to add the following sentence: "Notwithstanding the previous sentence, in the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, that is part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) that is entered into, or materially modified (within the meaning of § 1.61–22(j)(2)), after September 17, 2003, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section."

**Explanation of Provisions**

*A. Overview*

These proposed amendments to the regulations under section 402(a) clarify that the requirement that a distribution of property must be included in the distributee's income at fair market value is controlling in those situations where the existing regulations provide for the inclusion of the entire cash value. Thus, these proposed regulations provide that, in those cases where a qualified plan distributes a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the fair market value of such a contract (*i.e.*, the value of all rights under the contract, including any supplemental agreements

thereto and whether or not guaranteed) is generally included in the distributee's income and not merely the entire cash value of the contracts.

These proposed regulations also provide that if a qualified plan transfers property to a plan participant or beneficiary for consideration that is less than the fair market value of the property, the transfer will be treated as a distribution by the plan to the participant or beneficiary to the extent the fair market value of the distributed property exceeds the amount received in exchange. Thus, in contrast to the statement to the contrary in the preamble to PTE 77–8, any bargain element in the sale would be treated as a distribution under section 402(a). It is also intended that any bargain element would be treated as a distribution for other purposes of the Code, including the limitations on in-service distributions from certain qualified retirement plans and the limitations of section 415.

These proposed regulations also amend the current regulations under sections 79 and 83 to clarify that fair market value is also controlling with respect to life insurance contracts under those sections and, thus, that all of the rights under the contract (including any supplemental agreements thereto and whether or not guaranteed) must be considered in determining that fair market value. With respect to section 79, these proposed regulations would amend § 1.79–1(d) to remove the term *cash value* from the formula for determining the cost of permanent benefits and substitute the term *fair market value*. With respect to section 83, these proposed regulations would amend § 1.83–3(e) generally to apply the definition of property for new split-dollar life insurance arrangements to all situations involving the transfer of life insurance contracts. Section 83(a) requires that the excess of the fair market value of the property over the amount paid for the property be included in income. The current definition of property outside the context of a split-dollar life insurance arrangement may lead taxpayers to believe that it is appropriate upon receiving a transfer of a life insurance contract to include only its cash surrender value on the day of the transfer when, due to supplemental agreements, the fair market value of the transferred property is much greater. The purpose of the changes to these regulations is to clarify that, unless specifically excepted from the definition of permanent benefits or fair market value, the value of all features of a life insurance policy providing an economic benefit to a service provider (including, for example, the value of a springing cash value feature) must be included in determining the employee's income.

The proposed regulations will not affect the relief granted by the provisions of Section IV, paragraph 4 of Notice 2002–8 (2002–1 C.B. 398) to the parties to any insurance contract that is part of a pre-January 28, 2002, split-dollar life insurance arrangement. Also, consistent with the effective date of the final split-dollar life insurance regulations, § 1.61–22, these proposed regulations will not apply to the transfer of a life insurance contract which is part of a split-dollar life insurance arrangement entered into on or before September 17, 2003, and not materially modified after that date. However, taxpayers are reminded that, in determining the fair market value of property transferred under section 83, lapse restrictions (such as life insurance contract surrender charges) are ignored.

*B. Determination of Fair Market Value*

As noted above, § 1.402(a)–1(a)(1)(iii) does not define fair market value. In Rev. Rul. 59–195, the Service ruled that, in situations similar to those in which an employer purchases and pays the premiums on an insurance policy on the life of one of its employees and subsequently sells such policy, on which further premiums must be paid, the value of such policy for computing taxable gain in the year of purchase should be determined under the method of valuation prescribed in § 25.2512–6 of the Gift Tax Regulations. Under this method, the value of such a policy is not its cash surrender value but the interpolated terminal reserve at the date of sale plus the proportionate part of any premium paid by the employer prior to the date of the sale which is applicable to a period subsequent to the date of the sale. Section 25.2512–6 of the Gift Tax Regulations also provides that if "because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used." Thus, this method may not be used to determine the fair market value of an insurance policy where the reserve does not reflect the value of all of the relevant features of the policy.

In Q&A–10 of Notice 89–25 (1989–1 C.B. 662), the IRS addressed the question of what amount is includible in income under section 402(a) when a participant receives a distribution from a qualified plan that includes a life insurance policy with a value substantially higher than the cash surrender value stated in the policy. The Notice noted the practice of using cash surrender value as fair market value for these purposes and concluded that this practice is not appropriate where the total policy reserves, including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc., represent a much more accurate approximation of the policy's fair market value.

Since Notice 89–25 was issued, life insurance contracts have been marketed that are structured in a manner which results in a temporary period during which neither a contract's reserves nor its cash surrender value represent the fair market value of the contract. For example, some life insurance contracts may provide for large surrender charges and other charges that are not expected to be paid because they are expected to be eliminated or reversed in the future (under the contract or under another contract for which the first contract is exchanged), but this future elimination or reversal is not always reflected in the calculation of the contract's reserve. If such a contract is distributed prior to the elimination or reversal of those charges, both the cash surrender value and the reserve under the contract could significantly understate the fair market value of the contract. Thus, in some cases, it would not be appropriate to use either the net surrender value (*i.e.* the contract's cash value after reduction for any surrender charges) or, because of the unusual nature of the contract, the contract's reserves to determine the fair market value of the contract. Accordingly, Q&A–10 of Notice 89–25 should not be interpreted to provide that a contract's reserves (including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc.) are always an accurate representation of the contract's fair market value.

For example, it would not be appropriate to use a contract's reserve or the net surrender value of the contract as fair market value at the time of distribution if under that contract those amounts are significantly less than the aggregate of: (1) The premiums paid from the date of issue through the date of distribution, plus (2) any amounts credited (or otherwise made available) to the policyholder with respect to those premiums (including interest, dividends, and similar income items), or, in the case of variable contracts, all adjustments made with respect to the premiums paid during that period that reflect investment return and the current market value of segregated asset accounts, minus (3) reasonable mortality charges and reasonable charges (other

than mortality charges) actually charged from the date of issue to the date of distribution and expected to be paid.

The following example provides an illustration of a contract where it would not be appropriate to use a contract's reserve or its net surrender value as its fair market value:

A participates in a plan intended to satisfy the requirements of section 401(a). In Year 1, the plan acquires a life insurance contract on A's life that is not a variable contract and with a face amount of $1,400,000. In that year and for the next four years, the plan pays premiums of $100,000 per year on the contract. The contract provides for a surrender charge that is fixed for the first five years of the contract and decreases ratably to zero at the end of ten years. The contract also imposes reasonable mortality and other charges as defined by section 7702(c)(3)(B)(i) and (ii) of the Code.

The contract provides a stated cash surrender value for each of the first ten years (the first five years are guaranteed), as set forth in the table below. The reserves under the contract, including life insurance reserves and reserves for advance premiums, dividend accumulations, etc. (calculated using the rules in section 807(d) of the Code) at the end of the fifth year are $150,000.

| Year | Premium | Net surrender value | Cash value determined without reduction for surrender charges |
|---|---|---|---|
| 1 | $100,000 | | |
| 2 | 100,000 | | |
| 3 | 100,000 | | |
| 4 | 100,000 | | |
| 5 | 100,000 | $100,000 | $450,000 |
| 6 | | 195,000 | 475,000 |
| 7 | | 290,000 | 500,000 |
| 8 | | 385,000 | 525,000 |
| 9 | | 480,000 | 550,000 |
| 10 | | 575,000 | 575,000 |

At the end of Year 5, A retired and received a distribution of the insurance contract that was purchased on his life.

These regulations clarify that the contract is included in A's income at its fair market value rather than the $100,000 cash surrender value. Furthermore, A could not treat the $150,000 reserve as of the end of the fifth year as the fair market value, because this amount is less than the amount a willing buyer would pay a willing seller for such a contract, with neither party being under a compulsion to buy and sell and both having reasonable knowledge of the relevant facts.

**Proposed Effective Dates**

The amendments to § 1.402(a)–1(a)(2) of the regulations are proposed to be applicable to any distribution of a transferable retirement income, endowment, or other life insurance contract occurring on or after February 13, 2004. The amendment to § 1.79–1 is proposed to be applicable to permanent benefits provided on or after February 13, 2004. The amendment to § 1.83–3(e) is proposed to be applicable to any transfer occurring after February 13, 2004. The amendments to § 1.402(a)–1(a)(1)(iii) of the regulations are proposed to be applicable to any transfer of property by a plan to a plan participant or beneficiary for less than fair market value where the transfer occurs on or after the date of publication in the **Federal Register** of the final regulations adopting these amendments. Taxpayers may rely upon these proposed regulations for guidance pending the issuance of final regulations.

**Interim Guidance for Determining Fair Market Value**

The IRS and the Treasury recognize that taxpayers could have difficulty determining the fair market value of a life insurance contract after the clarification in this preamble that Notice 89–25 should not be interpreted to provide that a contract's reserves (including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc.) are always an accurate representation of the contract's fair market value. Accordingly, in connection with this guidance, the IRS has issued Rev. Proc 2004–16 (2004–10 IR.B.), which provides interim rules under which the cash value (without reduction for surrender charges) of a life insurance contract distributed from a qualified plan may be treated as the fair market value of that contract. The interim rules in Rev. Proc. 2004–16, permit the use of values that should be readily available from insurance companies, because the cash value (without reduction for surrender charges) is an amount that, in the case of a flexible insurance contract (including a variable contract), is generally reported in policyholder annual statements, and in the case of traditional insurance contracts, is fixed at issue and provided in the insurance contract.

Under those interim rules, a plan may treat the cash value (without reduction for surrender charges) as the fair market value of a contract at the time of distribution provided such cash value is at least as large as the aggregate of: (1) The premiums paid from the date of issue through the date of distribution, plus (2) any amounts credited (or otherwise made available) to the policyholder with respect to those premiums, including interest, dividends, and similar income items (whether under the contract or otherwise), minus (3) reasonable mortality charges and reasonable charges (other than mortality charges), but only if those charges are actually charged on or before the date of distribution and are expected to be paid.

In those cases where the contract is a variable contract (as defined in section 807(d)) a plan may treat the cash value (without reduction for surrender charges) as the fair market value of the contract at the time of distribution provided such cash value is at least as large as the aggregate of: (1) The premiums paid from the date of issue through the date of distribution, plus (2) all adjustments made with respect to those premiums during that period (whether under the contract or otherwise) that reflect investment return and the current market value of segregated asset accounts, minus (3) reasonable mortality charges and reasonable charges (other than mortality charges), but only if those charges are actually charged on or before the date of distribution and are expected to be paid.

Applying those interim rules to the example above, A could treat the cash value (without reduction for surrender charges) of $450,000 as the fair market value of the contract as of the end of the fifth year, because, in this example, that amount exceeds the aggregate of the five $100,000 premiums ($500,000), plus the amounts credited to A with respect to those premiums, minus the reasonable mortality and other charges actually imposed and expected to be paid.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. In addition, the Treasury Department and the IRS specifically request comments regarding the interim rules set forth in Rev. Proc. 2004–16 and proposals for appropriate permanent methods for valuing life insurance contracts when distributed from qualified retirement plans and for valuing such contracts for purposes of sections 79 and 83, including appropriate discounts which take into account the probability that contracts will be surrendered during the period during which surrender charges apply. The IRS and the Treasury are also reviewing other types of contracts, such as annuities, which have cash surrender value but where that cash surrender value may not reflect the fair market value of the contracts. Accordingly, the IRS and the Treasury also request comments regarding the valuation of these other contracts. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, June 9, 2004, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written (signed original and eight (8) copies) or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by Wednesday, May 19, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal authors of these regulations are Robert M. Walsh, Employee Plans, Tax Exempt and Government Entities Division, and Linda Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

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

## PART 1—INCOME TAXES

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

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

**Par. 2** Section 1.79–1, paragraph (d)(3) is revised to read as follows:

**§ 1.79–1 Group-term life insurance—general rules.**

* * * * *

(d) * * *

(3) *Formula for determining deemed death benefit.* The deemed death benefit (DDB) at the end of any policy year for any particular employee is equal to:

R/Y

where—

R is the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the fair market value of the policy at the end of that policy year; and

Y is the net single premium for insurance (the premium for one dollar of paid-up, whole life insurance) at the employee's age at the end of that policy year.

* * * * *

**Par. 3.** In § 1.83–3, paragraph (e), the last two sentences are revised to read as follows:

**§ 1.83–3 Meaning and use of certain terms.**

(e) * * * In the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section. However, in the case of the transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, which was part of a split-dollar arrangement (as defined in § 1.61–22(b)) entered into (as defined in § 1.61–22(j)) on or before September 17, 2003, and which is not materially modified (as defined in § 1.61–22(j)(2)) after September 17, 2003, only the cash surrender value of the contract is considered to be property.

* * * * *

**Par. 4.** Section 1.402(a)–1 is amended by:

1. Revising paragraph (a)(1)(iii).

2. Revising the last two sentences of paragraph (a)(2).

The revisions read as follows:

**§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).**

(a) * * *

(1) * * *

(iii) Except as provided in paragraph (b) of this section, a distribution of property by a trust described in section 401(a) and exempt under section 501(a) shall be taken into account by the distributee at its fair market value. In the case of a distribution of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed) are included in determining the fair market value of the contract. In addition, where a trust described in section 401(a) and exempt under section 501(a) transfers property to a plan participant or beneficiary in exchange for consideration and where the fair market value of the property transferred exceeds the amount received by the trust, then the excess of the fair market value of the property transferred by the trust over the amount received by the trust is treated as a distribution by the trust to the distributee.

* * * * *

(2) * * * If, however, the contract distributed by such exempt trust is a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the fair market value of such contract at the time of distribution must be included in the distributee's income in accordance with the provisions of

section 402(a), except to the extent that, within 60 days after the distribution of such contract, all or any portion of such value is irrevocably converted into a contract under which no part of any proceeds payable on death at any time would be excludable under section 101(a) (relating to life insurance proceeds). If the contract distributed by such trust is a transferable annuity contract, a life insurance contract, a retirement income contract, endowment contract, or other contract providing life insurance protection (whether or not transferable), then notwithstanding the preceding sentence, the fair market value of the contract is includible in the distributee's gross income, unless within such 60 days such contract is also made nontransferable.

* * * * *

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–3402 Filed 2–13–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–163974–02]**

**RIN 1545–BB38**

## Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts; Hearing

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

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document contains a notice of public hearing on proposed regulations to diversification requirements for variable annuity, endowment, and life insurance contracts.

**DATES:** The public hearing is being held on Thursday, April 1, 2004, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by March 18, 2004.

**ADDRESSES:** The public hearing is being held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the main entrance on Constitution Avenue. In addition, all visitors must present photo identification to enter the building.

Mail submissions to: CC:PA:LPD:PR (REG–163974–02), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–163974–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at: *http://www.irs.gov/regs.*

**FOR FURTHER INFORMATION CONTACT:** Concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor of the Publications and Regulations branch, Associate Chief Counsel, (Procedure and Administration) at (202) 622–3693 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed regulations (REG–163974–02) that was published in the **Federal Register** on Wednesday, July 30, 2003 (68 FR 44689).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and (8) copies) by March 18, 2004.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**Cynthia E. Grigsby,**

*Acting Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures & Administration).*

[FR Doc. 04–3401 Filed 2–13–04; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 295–0434b; FRL–7614–8]**

## 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 a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen ($NO_X$) emissions from residential water heaters. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by March 18, 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 revision, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revision 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, 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 Web site and may not contain the same version of the rule that was submitted to EPA.

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

**SUPPLEMENTARY INFORMATION:** This proposal addresses SJVUAPCD Rule 4902. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not

controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

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

Dated: January 8, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 04–3221 Filed 2–13–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[OAR–2003–0119; FRL–7623–6]

RIN 2060–AF91

## Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial or Industrial Solid Waste Incineration Units

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

**ACTION:** Notice of proposed rule; supplemental solicitation of comments.

**SUMMARY:** This document solicits public comment on definitions of "solid waste," "commercial and industrial waste," and "commercial and industrial solid waste incineration unit," for purposes of EPA's new source performance standards (NSPS) and emission guidelines (EG) for commercial and industrial solid waste incineration (CISWI) units under section 129 of the Clean Air Act (CAA).

On December 1, 2000, EPA promulgated final rules for CISWI units. After promulgation of the final CISWI rule, EPA accepted a voluntary remand, without vacature, in response to a petition for review challenging the final CISWI rule. Because the final rule was not vacated, the requirements of the final CISWI rule remain in effect during the remand. Also, subsequent to promulgation of the final CISWI rule, EPA granted a petition for reconsideration related to the definitions of "solid waste" and "commercial and industrial waste" in the CISWI final rule. This notice provides for additional proceedings related to these definitions, consistent with EPA's grant of the earlier petition for reconsideration.

**DATES:** *Comments.* Comments must be received on or before March 18, 2004.

**ADDRESSES:** *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention, Docket ID No. OAR–2003–0119, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket ID No. OAR–2003–0119, Room B–102, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. We request a separate copy of each public comment be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

*Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2003–0119 and Docket ID No. A–94–32. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460, Room B–102, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Fred Porter at (919) 541–5251, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**SUPPLEMENTARY INFORMATION:** *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2003–0119 and Docket ID No. A–94–32. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant 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 U.S. EPA, 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460. 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. The telephone number for the Air Docket is (202) 566–1742.

*Electronic Access.* An electronic version of 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 review public comments, access the index 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 confidential business information (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. The 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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this notice.

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

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

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify

the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

*Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The 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. Once in the system, select "search" and then key in Docket ID No. OAR–2003–0119. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention: Docket ID No. OAR–2003–0119. 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 mailing address identified in this notice. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

*By mail.* Send your comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention: Docket ID No. OAR–2003–0119, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

*By Hand Delivery or Courier.* Deliver your comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, Attention: Docket ID No. OAR–2003–0119, U.S. EPA, 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this notice. We request that a separate copy also be sent to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*By Facsimile.* Fax your comments to: (202) 566–1741, Attention: Docket ID No. OAR–2003–0119.

*CBI.* Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, Attention: Docket ID No. OAR–2003–0119. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*Outline.* The information presented in this document is organized as follows:

I. Background
A. Statutory Background
B. Regulatory Background
II. Discussion
A. What Is the Significance of EPA's Definitions?
B. What Is EPA's Rationale for Its Definitions?
III. Request for Comment
IV. Future Action

## I. Background

### *A. Statutory Background*

Section 129 of the CAA, entitled "Solid Waste Combustion," requires EPA to promulgate emissions standards and other requirements for "each category of solid waste incineration unit." Section 129(a)(1) identifies five categories of solid waste incineration units:

(1) Units with a capacity of greater than 250 tons per day combusting municipal waste,

(2) Units with a capacity equal to or less than 250 tons per day combusting municipal waste,

(3) Units combusting hospital, medical and infectious waste,

(4) Units combusting commercial or industrial waste, and

(5) Unspecified "other categories of solid waste incineration units."

For each category of incineration unit identified under Section 129, EPA must establish numerical emission limits for at least nine specified pollutants (particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans), and for opacity as appropriate. Section 129 provides EPA with the discretion to establish emission limitations for other pollutants as well.

Section 129 of the CAA directs EPA to set maximum achievable control technology (MACT) type standards for incinerators. Accordingly, EPA's standards under section 129 must "reflect the maximum degree of reduction in emissions of [the listed] air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category." (See CAA section 129(a)(2).) However, the standards for new units must not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, and the standards for existing sources must not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category.

Additionally, the statute identifies, to some degree, which units EPA should and should not regulate. Section 129(g)(1) of the CAA defines the term "solid waste incineration unit" as a unit "which combusts any solid waste material." Also, that section identifies several types of units that are not solid waste incineration units, including units required to have a permit under section 3005 of the Solid Waste Disposal Act (SWDA); materials recovery facilities; certain qualifying small power production facilities or qualifying cogeneration facilities which burn homogeneous waste; and certain air curtain incinerators that meet opacity limitations established by EPA. In

addition, section 129(g)(6) states that the term "solid waste * * * shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act (SWDA)."

Finally, Section 129(h) of the CAA states that "no solid waste incineration unit subject to performance standards under this section and section 111 shall be subject to standards under section 112(d) of this Act."

*B. Regulatory Background*

One important part of EPA's rulemaking process is determining what universe of sources will be subject to regulation. With regard to CISWI units, the statutory provisions of sections 129(a), (g) and (h) of the CAA make it clear that EPA must determine, as a part of the regulatory process, where to draw the line between combustion units subject to regulation under section 129 and combustion units subject to regulation under other statutory authority (such as CAA section 112(d)). For example, the reference in section 129(g)(1) to a permit issued under section 3005 of the SWDA, refers to units burning hazardous solid wastes. This effectively limits the scope of EPA's authority under section 129 to the regulation of solid waste incineration units that burn nonhazardous solid waste. Similarly, the language of CAA section 129(h) makes clear the Congressional intent for EPA to regulate nonhazardous combustion sources under either CAA section 129 or CAA section 112, but not both. Thus, for the CISWI category, EPA must determine which sources to regulate as commercial and industrial solid waste incineration units under section 129, and which to regulate as combustion units under section 112 (*e.g.*, boilers and process heaters).

The EPA proposed regulations for CISWI units on November 30, 1999 (64 FR 67092). The proposal included emissions limitations and a detailed definition of "solid waste" that was intended to distinguish between nonhazardous solid wastes and other materials (*e.g.*, hazardous solid waste and fuel) burned in combustion units at commercial and industrial facilities. The definition served to identify those units that would be considered commercial and industrial nonhazardous solid waste incineration units, and, therefore, subject to the proposed regulations. In addition, consistent with CAA section 129(h), these definitions also helped to identify those units which would not be subject to emission standards under section 112. In the November 1999 proposal, to distinguish between hazardous solid wastes, nonhazardous solid wastes, fuels, and other materials not considered solid waste, EPA defined solid waste as follows:

*Solid waste* means, for the purpose of this subpart only, any solid, liquid, semisolid, or contained gaseous material, which is combusted, including but not limited to materials listed in paragraph (1) of this definition. Solid waste excludes fuels defined in paragraph (2) of this definition and materials specifically listed in paragraph (3) of this definition.

(1) The following materials are solid wastes, regardless of the provisions in paragraph (2) of this definition:

(i) Any material which is combusted without energy recovery (*i.e.*, where the material displaces other fuels to produce useful heat), except as provided in paragraph (3) of this definition.

(ii) Municipal solid waste, as defined in 40 CFR part 60, subpart Ea, subpart Eb, subpart AAAA and subpart BBBB.

(iii) Hospital waste, as defined in 40 CFR part 60, subpart Ec.

(iv) Medical/infectious waste, as defined in 40 CFR part 60, subpart Ec.

(v) Resource Conservation and Recovery Act hazardous wastes, as defined in 40 CFR part 261.

(2) The following materials are fuels when combusted in a device that incorporates energy recovery as part of its integral design (*e.g.*, for the production of hot water or steam). The combustion chamber and the energy recovery system must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the energy recovery system are joined only by ducts or connections carrying flue gas is not integrally designed.

(i) Biomass fuel, coal, natural gas, and oil, as defined elsewhere in this section;

(ii) Materials that have a heat content of 5,000 Btu/lb or more as fired. This criterion applies to each individual feed stream to a combustion unit.

(3) The following materials are not solid waste when combusted for the primary purpose of recovering chemical constituents: pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process; spent sulfuric acid used to produce virgin sulfuric acid; and wood and coal feedstock for the production of charcoal.

The EPA explained the reasoning behind the proposed definition of solid waste as follows:

[T]he basic structure of a definition of nonhazardous solid waste that emerges follows this premise: Materials that are burned are not nonhazardous solid waste if they are hazardous solid waste, if they are fuels burned to recover energy, or if they are certain identified materials burned to recover their chemical constituents. All other materials, when burned, are nonhazardous solid waste.

With a definition of hazardous waste available, a definition of those materials that are fuels (when burned to recover energy) is the next piece necessary to develop this definition of nonhazardous waste, for the purpose of regulations developed under section 129.

Some materials, when burned to recover energy (*e.g.*, for the production of hot water or steam), have a long history of being considered fuels. These materials are coal, oil, gas, and biomass (*e.g.*, wood and other vegetative agricultural and silvicultural materials). Burning coal, oil, gas, and biomass produces the majority of the energy consumed in the United States. In addition to these materials, other materials are often burned as fuel to recover energy and meet the needs of consumers, as well as industrial, manufacturing, and commercial operations.

As mentioned earlier, the prime indicator of whether materials could be used as fuel (*i.e.*, can be burned to recover energy) is their heat value—the British thermal units (Btu) of energy released from burning a pound (lb) of these materials. With continuing advances in combustion technology, materials with lower and lower heat value can be burned to recover energy; however, those materials with a "high" heat value are the best fuels, and it is these types of materials that are commonly and widely viewed as fuels. Thus, for the purpose of regulations developed under section 129 of the CAA, the Administrator proposes that materials with high heat value, when burned to recover energy, are fuels. (When materials are burned without heat recovery, regardless of their heat value, they are considered wastes.)

A delineator of high heat value emerges when considering the heat values of those materials mentioned above, which are clearly fuels when burned to recover energy (*i.e.*, gas, oil, coal, and biomass). Heat values for gas are the highest and frequently above 20,000 Btu/lb; those for oil can range from about 17,000–20,000 Btu/lb; those for coal can range from about 6,000–15,000 Btu/lb; and those for biomass can range from about 5,000–10,000 Btu/lb. Thus, a heat value of 5,000 Btu/lb serves to delineate between materials with high heat value and materials with low heat value. The Administrator proposes that materials with a heat value of 5,000 Btu/lb or more, when burned to recover energy, are fuel (subject to regulation under section 112) and not nonhazardous solid waste subject to regulation under section 129.

Thus, the proposal would not have identified a combustion unit with energy recovery (*i.e.*, heat recovery) at a commercial or industrial facility, which burned certain identified or listed materials with a heat content of 5000 British thermal units per pound (Btu/lb) or greater, as a CISWI unit, because such a unit would not be burning "solid waste."

After receiving public comment on this approach, EPA determined that this definition of "solid waste" was unworkable for purposes of identifying CISWI units. The EPA published its final CISWI rule on December 1, 2000 (65 FR 75338) and explained the following in the final rule:

[W]e agree that several of today's combustion technologies, including some

emerging technologies, may be capable of burning materials with a heat value of less than 5,000 Btu/lb to recover energy. Therefore, we have deleted the requirement from the definition of solid waste in the final NSPS and EG.

As we indicated in the preamble to the November 1999 proposal, the main purpose of the proposed definition of nonhazardous solid waste was to identify which materials when burned by CISWI units would be subject to regulations developed under section 129, and which materials when burned would be subject to regulations to be developed under section 112. Consideration of the above comments led us to conclude that the proposed definitions of "CISWI unit" and "solid waste" created the potential for overlap with rules we are developing under section 112, such as the boiler MACT.

The primary difference between incinerators and boilers is that incinerators burn materials for the purpose of disposal, whereas boilers burn materials for the purpose of recovering energy. Thus, we believe the concept of energy recovery is the key to distinguishing between CISWI units (which will be regulated under section 129) and boilers (which will be regulated under section 112). Specifically, commercial and industrial units burning materials without energy recovery are disposing of the materials, that is, they are treating such materials as commercial or industrial waste, and they should be regulated as CISWI units under section 129. In contrast, commercial and industrial units burning materials with energy recovery, that is, treating such materials as fuel, should be regulated under section 112.

Instead of adopting the proposed definition of "solid waste," EPA adopted a general definition of "solid waste" that closely mirrors the definition of solid waste found at section 6903(27) of the SWDA and in several places in EPA's regulations under that statute:

> Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014). For purposes of this subpart and subpart CCCC, only, solid waste does not include the waste burned in the fifteen types of units described in section 60.2555.

The EPA also adopted more specific definitions of "commercial and industrial waste" and "commercial and industrial solid waste incineration unit," to identify more precisely those units at commercial and industrial facilities that EPA considered appropriate for regulation under the final CISWI rule. These definitions are as follows:

> Commercial and industrial waste means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.
>
> Commercial and industrial solid waste incineration (CISWI) unit means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:
>
> (1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.
>
> (2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Thus, under the final CISWI rule, a material burned at a commercial or industrial facility in a combustion unit with heat recovery is not considered a commercial and industrial waste, nor is the combustion unit considered a commercial and industrial solid waste incineration unit for purposes of the CISWI rule.[1]

After promulgation of the final CISWI rule, EPA received a petition for reconsideration of the final rule. The petition argued that the final rule was procedurally defective because EPA had failed to provide adequate notice and an opportunity to comment on the definitions adopted in the final rulemaking. Additionally, an environmental organization filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit. Also, after promulgation of the final CISWI rule, the D.C. Circuit issued its decision in *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d 855 (D.C. Cir. 2001). In this decision, the Court rejected certain common elements of EPA's MACT methodology. As a result, EPA requested a voluntary remand of the final CISWI rule, in order to address concerns related to the issues that the Court had raised in the *Cement Kiln* decision. Additionally, EPA decided to grant the petition for reconsideration related to the definitional issues, and provide further opportunity for public comment. Today's notice solicits comment on the definitions of solid waste, commercial and industrial waste, and commercial and industrial solid waste incineration unit, and initiates the additional proceedings on these issues to which EPA committed in its grant of the petition for reconsideration. The EPA expects to take further action on these definitions, and respond to any comments received, in conjunction with EPA's response to the voluntary remand.

## II. Discussion

### *A. What Is the Significance of EPA's Definitions?*

The definitions of solid waste, commercial and industrial waste, and commercial and industrial solid waste incineration unit define the scope of applicability of the final CISWI rule. Since any unit regulated under CAA section 129 can not be subject to any rule developed under section 112 of the CAA, these definitions also help to clarify the scope of applicability of certain other rules that EPA has or will develop for other types of combustion units. In general, those combustion units that are not covered by rules developed under section 129 will be covered by rules developed under section 112. In this case, combustion units that are not covered by the final CISWI rule may be subject to regulation, for example, under EPA's rule for commercial, industrial and institutional boilers and process heaters (boilers rule).[2] That is, many of the combustion

[1] In addition, EPA adopted a number of specific exemptions and additional definitions in the final CISWI rule, to ensure that the emission limitations did not apply to units that should not be considered commercial and industrial solid waste incineration units. These exemptions and definitions served to identify and exempt: (1) Pathological solid waste incineration units; (2) agricultural solid waste incineration units: (3) municipal solid waste incineration units; (4) hospital, medical and infectious solid waste incineration units; (5) qualifying small power production facilities; (6) qualifying cogeneration facilities; (7) hazardous solid waste incineration units; (8) material recovery units; (9) certain air curtain incinerators; (10) cyclonic barrel burners; (11) rack, part, and drum reclamation units; (12) cement kilns; (13) sewage sludge incinerators; (14) chemical recovery units; and (15) laboratory analysis units.

[2] Alternatively, such units might be subject to regulation under any number of other EPA regulations, such as: regulations promulgated pursuant to Section 112(k) to control emissions from industrial, commercial and institutional

Continued

units at commercial and industrial facilities (*e.g.*, boilers or steam generating units, process heaters, furnaces, and incinerators) burn "solid" materials. If the solid materials in question are considered commercial and industrial waste, the units will be regulated as CISWI units under CAA section 129. Conversely, if the materials are not considered commercial and industrial waste (*e.g.*, they are hazardous solid waste, fuel, solid materials burned for chemical or material recovery, etc.), the units will be regulated under CAA section 112 or other statutory authority. Thus, collectively, in the process of responding to the remand of the final CISWI rule, promulgating emissions standards for boilers and process heaters, developing rules for area source boilers, promulgating requirements for electric utility steam generating units, and establishing rules applicable to other combustion sources, EPA will map the regulatory boundaries that identify which units are subject to which requirements.[3]

The process of determining the regulatory dividing line between different rules is not unique to CISWI. Nor does the identification of the scope of one rule, necessarily define the scope of another, or preclude EPA from adjusting the regulatory division in a subsequent rule.

*B. What Is EPA's Rationale for Its Definitions?*

Defining solid waste. The EPA adopted a general definition of solid waste in the final CISWI rule. In doing so, EPA concluded that the definition of solid waste located at 40 CFR 261.2, which defines solid waste specifically for purposes of identifying hazardous solid waste, could not serve as a regulatory definition for purposes of identifying nonhazardous solid waste under CAA section 129.[4] Rather, EPA looked to the definition of solid waste in the SWDA (42 U.S.C. 6903), and to other definitions of solid waste that EPA has adopted under the authority of that statute, and that do apply to various types of nonhazardous solid wastes (*e.g.*, 40 CFR 240.100, 243.1010, 246.101, 257.2, and 258.2).

The fact that the language of the individual regulatory definitions of solid waste vary somewhat from definition to definition in the provisions cited above, indicates that the Administrator has not adopted a single authoritative definition to identify nonhazardous solid waste under the SWDA. Rather, the Administrator has adopted a variety of slightly different definitions of nonhazardous solid waste depending on the particular regulatory circumstances.

Since the Administrator has not adopted a single authoritative, and generalizable, definition of nonhazardous solid waste pursuant to the SWDA, it is reasonable for EPA to adopt an appropriate definition of nonhazardous solid waste, for purposes of the final CISWI rule, so long as this definition is not inconsistent with EPA's discretion under the SWDA. Thus, the Administrator may adopt (pursuant to the SWDA, as well as the CAA) a definition of solid waste that serves only to identify nonhazardous solid wastes for purposes of regulating commercial and industrial waste incineration units under CAA section 129. The definition of solid waste on which EPA solicits comment today is consistent with both the SWDA definition and EPA's existing regulatory definitions.

Defining Commercial and Industrial Waste. It is particularly difficult to draw an appropriate distinction between commercial and industrial waste and solid materials that should not be considered commercial and industrial waste, as well as between CISWI units and non-CISWI combustion units.[5] For example, there is general agreement that the coal burned in a coal-fired boiler or steam generating unit is not a solid waste. This is because coal is commonly thought of as a fuel. Coal is considered a fuel because it is customarily burned to recover energy (*i.e.*, heat) for some useful purpose such as to heat water or generate steam. However, there is no such general agreement, for example, about a solid material such as bagasse when it is burned in a boiler at a sugar plant to produce the heat needed to refine sugar from sugar cane.[6] In the context of the final CISWI rule, the question is whether the bagasse is a commercial and industrial waste, and whether the combustion unit burning the bagasse is subject to the emission limits of the final CISWI rule. Some consider the bagasse a "by-product" or "residual material" left over from the production process, and therefore a solid waste. Others do not consider the bagasse a solid waste, but a "co-product" or "additional material" resulting from the production process.

From EPA's point of view, the origin of a material that is burned in a unit at a commercial or industrial facility is less important than how that material is burned. In the example, bagasse is burned to generate the heat necessary to evaporate the water in the sugar cane juice. If the bagasse were not burned to generate this heat, then the facility would instead burn another material such as coal. Like the coal, the bagasse is burned for a useful purpose—to heat the sugar cane juice and concentrate the sugar. Therefore, EPA feels that it is reasonable to consider the bagasse in this second example—as the coal in the first example—to be a solid fuel and distinct from commercial and industrial waste. Thus, for purposes of distinguishing commercial and industrial waste from solid fuel, its status is determined by its use, as well as by its origin.

On the other hand, if the bagasse were burned in a combustion unit without heat recovery, its combustion would serve no useful purpose other than to effectuate destruction or disposal of an unwanted material. The EPA would then consider it appropriate to identify the bagasse as commercial or industrial waste, and regulate the combustion unit under CAA section 129 as a CISWI unit. Similarly, if a material (that is not hazardous waste) is burned in a combustion unit at a commercial or industrial facility with heat recovery, for reasons that do not include the recovery

boilers that are area sources; regulations promulgated pursuant to Section 112(n) for hazardous air pollutants from electric utility steam generating units; and various other regulations developed under Section 112 which cover combustion units burning solid materials to recover their chemical or other material constituents (*e.g.*, black liquor boilers or furnaces at kraft pulp mills covered under the national emission standards for hazardous air pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills).

[3] We note that finalization of these definitions for purposes of the final CISWI rule is not a prerequisite for EPA to finalize other rules that regulate combustion sources, such as the boiler rule. We will reasonably consider the broader implications of our applicability decisions in each relevant rule.

[4] In fact 40 CFR 261.1(b)(1) states that this definition of solid waste applies only to wastes that are also hazardous for purposes of implementing subtitle C of RCRA.

[5] In many cases, such as municipal solid waste incinerators, and hospital, medical and infectious solid waste incinerators, the identification of the relevant wastes and the relevant units is sufficiently clear that EPA need not address the issue at length in its rule. Indeed, CAA section 129 provides specific guidance for EPA's definitions of municipal waste and medical waste, as well as municipal waste incineration units. See section 129(g)(5) and (6) of the CAA. In addition, there is broad and general agreement between EPA, the regulated community, and other stakeholders regarding what materials are municipal waste and hospital, medical and infectious waste, and which combustion units belong in the respective regulatory categories.

[6] Bagasse is a product of sugar cane processing. Sugar cane is harvested and crushed at the plant to extract the juice present in the sugar cane. The crushed sugar cane is referred to as bagasse. To produce raw sugar from the sugar cane juice, the juice is heated to evaporate the water present and concentrate the sugar. This heating requires energy which, in turn, is supplied by burning the bagasse.

of heat for useful purposes, that material would be commercial or industrial waste and the unit would be a CISWI unit.

Thus, in general, if a solid material (which is not a hazardous solid waste) is burned with heat recovery at a commercial or industrial facility to generate heat for a useful purpose, EPA feels that it is appropriate to consider that material not to be commercial or industrial waste, and not to regulate the device as a CISWI unit under CAA section 129.[7]

Statutory basis for EPA's definitions. The CAA requires regulation of commercial and industrial solid waste incinerators under CAA section 129, and regulation of non-CISWI commercial and industrial combustion units, such as boilers and process heaters, under CAA section 112. In order to effectively implement the statute, EPA must decide how to distinguish between these source categories. While EPA is not without some statutory guidance in determining where to draw the regulatory dividing line, there is considerable ambiguity regarding how to group certain categories of sources.

The CAA broadly identifies "solid waste incineration unit" for purposes of CAA section 129 as follows:

> The term "solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the SWDA [42 U.S.C. 6925]. The term "solid waste incineration unit" does not include:
>
> (a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals,
>
> (b) Qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or
>
> (c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

This language suggests that EPA has considerable discretion to regulate a variety of sources as solid waste incinerators. As outlined earlier, however, this definition also specifically identifies several types of combustion units that should not be treated as "solid waste incineration units" under Section 129, including combustion units burning hazardous solid waste, materials recovery facilities, certain small power production facilities, certain cogeneration facilities, and certain air curtain incinerators. However, as explained below, this definition on its own does little to identify where EPA should draw the regulatory dividing line between CISWI units and other combustion units.

The CAA identifies the term "solid waste" as having the same meaning as established by the Administrator under the SWDA. However, as discussed earlier, EPA's only comprehensive definition of that term under the SWDA specifically identifies only hazardous solid waste, and is not useful for purposes of identifying nonhazardous solid waste. Therefore, in the final CISWI rule, EPA defined "solid waste" in a manner that is consistent with both the SWDA itself, and with general definitions adopted by the Administrator under various provisions of the SWDA. Again, this definition provides EPA with broad discretion for identifying units that burn solid wastes, but it is not determinative of the scope of applicability of EPA's final CISWI regulations.

While the CAA specifically addresses the definitions of solid waste and solid waste incineration unit, CAA section 129 does not require regulations that apply to every device that might be considered a solid waste incineration unit.[8] Rather, section 129(a) directs EPA to regulate solid waste incineration units that burn several particular categories of solid waste. These include municipal waste, hospital, medical and infectious waste, commercial or industrial waste, and other solid waste.[9] The statute specifically defines "municipal waste," (in section 129(g)(5)),[10] and identifies "medical waste" as having the same meaning as established by the Administrator under the SWDA.[11] However, the CAA does not define the other categories of solid waste for regulation, including commercial or industrial waste.[12] Inherent in EPA's implementation of this section must be the discretion to reasonably define what constitutes each un-defined type of solid waste. Thus, the CAA does not specifically foreclose EPA's ability to reasonably define the scope of its regulations applicable to commercial and industrial combustion units.

Thus, EPA may define commercial or industrial waste in order to identify which units are commercial and industrial solid waste incineration units subject to regulation under section 129 (as opposed to units regulated under section 112 or other authority). In doing so, EPA must determine when to treat combustion units at commercial and industrial facilities like incinerators, and when to treat them like non-incineration combustion units. For reasons discussed in detail below, EPA has determined that for purposes of CISWI units, the critical consideration in determining whether the unit is burning commercial or industrial waste is the primary function of the combustion unit; and the primary indicator of function is whether or not a unit is designed and operated to recover heat for a useful purpose.

That is, if the unit located at a commercial or industrial facility combusts material without heat

[7] As pointed out earlier, the regulatory dividing line does not determine whether a combustion unit is regulated or unregulated, but rather, whether it is regulated under section 129 or under section 112.

[8] Significantly, unlike section 112(d), section 129(a) does not direct EPA to establish a list for regulation of all solid waste combustion sources that emit hazardous air pollutants (HAP). Rather, the 1990 amendments identified the general categories of solid waste incineration units that EPA is to regulate, and set schedules for EPA to promulgate appropriate regulations for units within these categories—municipal waste combustors (MWC) with a capacity greater than 250 tons per day within 12 months of enactment; MWC with a capacity equal to or less than 250 tons per day and hospital, medical and infectious waste incinerators (HMIWI) within 24 months; and CISWI within 48 months. Section 129(a)(1) of the CAA.

[9] Section 129 also directs EPA to establish regulation for "other categories of solid waste incineration units," although the CAA neither sets a time frame for such regulations nor identifies which "other categories" EPA should regulate. "Not later than 18 months after the date of enactment * * * the Administrator shall publish a schedule for the promulgation of standards * * * applicable to other categories of solid waste incineration units." Section 129(a)(1)(E) of the CAA.

[10] This definition itself includes some limitations, in that "(A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste * * * if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste."

[11] This definition of "medical/infectious waste" is contained in 40 CFR 60.51c, the hospital/medical/infectious waste rules established under section 129.

[12] Significantly, the statute does not direct EPA to regulate all solid waste incineration units at commercial or industrial facilities, but rather to regulate those "solid waste incineration units combusting commercial or industrial waste." See CAS section 129(a)(1).

recovery (functions primarily as an incineration unit), then the material burned in that unit is commercial or industrial waste. Similarly, if a material is burned in a unit at a commercial or industrial facility for reasons that do not include the recovery of heat for useful purposes, that material is commercial or industrial waste and the unit is a CISWI unit. However, if the unit combusts material with heat recovery for a useful purpose, then the material burned is not commercial and industrial waste, and the combustion unit would not be subject to the final CISWI rule.

The EPA's decision in this regard is reflected in its definition of commercial and industrial waste in the final CISWI rule. By specifically defining CISWI units to include only units that behave primarily like incinerators, EPA can appropriately identify the scope of regulation of combustion units at commercial and industrial facilities under section 129 of the CAA.

Conceptually, as outlined above, EPA believes that it is reasonable to define commercial or industrial waste, for purposes of identifying commercial and industrial solid waste incineration units subject to regulation under section 129 of the CAA, as follows: solid materials burned at commercial and industrial facilities are commercial or industrial waste unless they are (1) hazardous solid wastes, (2) subject to one of the exemptions included in section 129 of the CAA (*e.g.*, material recovery facility, qualifying small power production facility), or (3) burned with heat recovery and for a useful purpose. Fundamentally, EPA believes this definition is effective, straightforward, and easy to implement, and that it is a reasonable approach for distinguishing between commercial or industrial waste and other solid materials, and between commercial and industrial solid waste incineration units and other combustion units.

Since promulgation of the CISWI rule and proposal of the boiler rule, however, EPA has discovered a "gap" in coverage of combustion units between rules developed under section 129 and rules developed under section 112. As a result, EPA is requesting comment on definitions to close this gap.

Specifically, as promulgated, the final CISWI rules cover combustion units at commercial and industrial sites that burn solid materials without heat recovery. As proposed, the boiler rule covers combustion units at commercial and industrial sites that burn solid materials and recover heat in the combustion firebox. Under this approach, combustion units at commercial and industrial sites that burn solid materials and do not recover heat in the combustion firebox, but do recover waste heat from the hot combustion gases following the combustion firebox, would not to be covered by either the final CISWI rule or the boiler rule. In addition, EPA believes it is not appropriate to regulate such units as boilers or process heaters.[13] This is an oversight EPA intends to correct, as follows: if a material is burned in a unit at a commercial or industrial facility which is followed by external waste heat recovery only (*i.e.*, no heat recovery in the combustion firebox), that material is commercial or industrial waste and the unit is a CISWI unit.

Incineration units are designed to discard materials by burning them at high temperatures and leaving as little residue as possible. Incineration units do not have heat recovery in the combustion firebox, but they may be followed by waste heat recovery units. Unlike a boiler (which is specifically designed to recover the maximum amount of heat from a material's combustion), waste heat recovery units are designed to cool the exhaust gas stream, and/or to recover, indirectly, the useful heat remaining in the exhaust gas from a combustion unit that has some other primary purpose (such as an incineration unit, combustion turbine or internal combustion engine). The presence of a waste heat recovery unit on the exhaust gas does not change the fact that the unit combusting the material is primarily an incineration unit. Thus, a combustion unit with no heat recovery in the combustion firebox is still considered an incineration unit (*i.e.*, used primarily to dispose of solid waste), whether the incineration unit is followed by a waste heat recovery unit or not. Such incineration units just happen to have an external device (the waste heat recovery unit) that is recovering some of the waste heat from the incineration unit's exhaust gas.

To address this regulatory "gap," the term "commercial or industrial waste" could be expanded to include materials that are combusted with only waste heat recovery (*i.e.*, no heat recovery in the combustion firebox), as well as materials that are combusted with no heat recovery.

This approach would expand the scope of coverage of the final CISWI rule by including combustion units located at commercial and industrial sites burning solid materials with no heat recovery in the combustion firebox, but with external heat recovery units (*i.e.*, incineration units with waste heat recovery units).

[13] These units are often referred to as incinerators with waste heat recovery units or incinerators with waste heat boilers.

## III. Request for Comment

We request public comment on the definitions described below, including "solid waste," "commercial and industrial waste," and "commercial and industrial solid waste incinerator," and on the appropriateness of these definitions for identifying units that will be regulated as CISWI units under CAA section 129. This request for public comment is consistent with EPA's commitment to engage in further proceedings regarding these definitions.

*Solid waste* means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

*Commercial or industrial waste* means solid waste (as defined in this subpart) combusted for reasons that do not include the recovery of heat for a useful purpose, or combusted without heat recovery or with only waste heat recovery (*i.e.*, no heat recovery in the combustion firebox), in an enclosed unit using controlled flame combustion that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air); or solid waste combusted in an air curtain incinerator that is a distinct operating unit of any commercial or industrial facility.

*Commercial and industrial solid waste incineration (CISWI) unit* means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits

under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: (1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and (2) the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in section 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

*Waste heat recovery* means the process of recovering heat from the combustion flue gases by convective heat transfer only.

### IV. Future Action

Our expectation is that we will take final action on the definitions discussed and issues addressed in today's notice when we take final action in response to the voluntary remand of the final CISWI rule.

Dated: February 10, 2004.

**Jeffrey R. Holmstead,**

*Assistant Administrator, Office of Air & Radiation.*

[FR Doc. 04–3366 Filed 2–13–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[SC–112L–2004–1–FRL–7623–9]**

### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of South Carolina

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA), South Carolina Department of Health and Environmental Control (SC DHEC) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. In the Rules section of this **Federal Register**, EPA is granting SC DHEC the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements. A detailed rationale for this approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before March 18, 2004.

**ADDRESSES:** Comments may be submitted by mail to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** section [Part (I)(B)(1)(i) through (iii)] which is published in the Rules Section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9141. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: February 5, 2004.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. 04–3369 Filed 2–13–04; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 15 and 90

**[ET Docket No. 03–108 and ET Docket No. 00–47; FCC 03–322]**

### Cognitive Radio Technologies and Software Defined Radios

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document we are seeking to facilitate opportunities for flexible, efficient, and reliable spectrum use employing cognitive radio technologies. We are seeking comment generally on how we should modify our rules to enable more effective use of cognitive radio technologies, including potential applications across a variety of scenarios involving both licensed spectrum and unlicensed devices. By initiating this proceeding, we recognize the importance of new cognitive radio technologies, which are likely to become more prevalent over the next few years and which hold tremendous promise in helping to facilitate more effective and efficient access to spectrum. We seek to ensure that our rules and policies do not inadvertently hinder development and deployment of such technologies, but instead enable a full realization of their potential benefits.

**DATES:** Comments must be filed on or before May 3, 2004, and reply comments must be filed on or before June 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail: *HughVanTuyl@fcc.gov*, or James Miller, (202) 418–7351 TTY (202) 418–2989, e-mail: *jjmiller@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making and Order*, ET Docket No. 03–108 and ET Docket No. 00–47, FCC 03–322, adopted December 17, 2003 and released December 30, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the 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://www.fcc.gov*. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 3, 2004, and reply comments on or before June 1, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

**Summary of Notice of Proposed Rulemaking and Order**

1. The growth of wireless services over the past several years demonstrates the vast and growing demand of American businesses, consumers, and government for spectrum-based communication links. Spectrum access, efficiency, and reliability have become critical public policy issues. Advances in technology are creating the potential for radio systems to use spectrum more intensively and more efficiently than in the past. Among these advances are cognitive radio technologies that can make possible more intensive and efficient spectrum use by licensees within their own networks, and by spectrum users sharing spectrum access on a negotiated or an opportunistic basis. These technologies include, among other things, the ability of devices to determine their location, sense spectrum use by neighboring devices, change frequency, adjust output power, and even alter transmission parameters and characteristics. Cognitive radio technologies open spectrum for use in space, time, and frequency dimensions that until now have been unavailable. Such technologies are employed today in applications such as wireless LANs and mobile wireless service networks, and promise greater future benefits.

2. The ability of cognitive radio technologies to adapt a radio's use of spectrum to the real-time conditions of its operating environment offers regulators, licensees, and the public the potential for more flexible, efficient, and comprehensive use of available spectrum while reducing the risk of harmful interference. The important potential of these technologies emerges at a crucial time, as the Commission addresses increasingly more complex questions of improving access to and increasing usage of the finite spectrum available, while also seeking to maintain efficiency and reliability in spectrum use. The Spectrum Policy Task Force ("SPTF"), in its 2002 Report, concluded, among other things, that smart radio technologies can enable better and more intensive access to spectrum and recommended that the Commission strive to remove regulatory barriers to their use.

3. We undertake this proceeding to explore all the uses of cognitive radio technology to facilitate the improved spectrum use made possible by the emergence of the powerful real-time processing capabilities of cognitive radio technologies. We also seek comment on how our rules and enforcement policies should address possible regulatory concerns posed by authorizing spectrum access based on a radio frequency (RF) device's ability to reliably gather and process real-time information about its RF environment or on the ability of device and/or users to cooperatively negotiate for spectrum access. We propose and seek comment on rules intended to allow a full realization of the potential of these technologies under all our regulatory models for spectrum based services.

4. In the *NPRM* we first consider in some detail the technical capabilities that are or could be incorporated into cognitive radio systems and seek comment on possible additional capabilities. We then address several specific applications of these technologies. Among the various areas in which cognitive radio technologies may provide potential benefits are: permitting the use of higher power by unlicensed devices in rural or other areas of limited spectrum use, facilitating secondary markets in spectrum, enabling possible real-time frequency coordination (such as between NGSO satellite and other services), facilitating interoperability among different radio systems, and allowing for more extensive deployment of mesh networks. We finally consider our equipment authorization rules, and whether changes should be made to these rules to reflect the growing importance of cognitive radio technologies.

5. In a number of areas, we propose specific rule changes to help enable devices using cognitive radio technologies. For instance, we set out a proposal under which unlicensed devices employing certain cognitive radio capabilities would be permitted to transmit at higher power levels in rural areas and other areas of limited spectrum use. We also include a detailed technical model for spectrum leasing based on cognitive radio capabilities that would assure a licensee that it would be able to interrupt a lessee's use and reclaim spectrum in real time when the need arises. Such a model would appear to be most directly applicable to leasing by public safety entities if we decide to permit such leasing, but also important to other

licensees interested in leasing spectrum. We also set out proposals: to streamline our rules that require that a copy of certain devices' radio software be supplied to the Commission, to clarify when devices must be certified under the software defined radio rules, and to allow unlicensed devices to automatically select their transmit frequency band based upon the country of operation. Finally, in light of the initiation of this proceeding, we are closing the Software Defined Radio proceeding in ET Docket No. 00–47.

6. In the NPRM, we first explore the benefits of cognitive radio technology use for spectrum management and regulation and the broad capabilities that such technology could encompass. We intend to use this framework for further analysis of specific applications of this technology. We also seek comment and set forth proposals regarding specific applications: rural markets and unlicensed devices, public sector spectrum leasing, dynamically coordinated spectrum sharing, interoperability between communication systems, and mesh networks. We are further proposing changes to our equipment authorization processes to accommodate software-defined radios and cognitive radio systems.

**Cognitive Radio Capabilities**

7. Cognitive radio technologies have the potential to provide a number of benefits that would result in increased access to spectrum and also make new and improved communication services available to the public. A cognitive radio could negotiate cooperatively with other spectrum users to enable more efficient sharing of spectrum. A cognitive radio could also identify portions of the spectrum that are unused at a specific time or location and transmit in such unused "white spaces," resulting in more intense, more efficient use of the spectrum while avoiding interference to other users. Cognitive radio technology could also be used to facilitate interoperability between or among communication systems in which frequency bands and/or transmission formats differ. For example, cognitive radio could select the appropriate operating frequency and transmission format, or it could act as a "bridge" between two systems by receiving signals at one frequency and format and retransmitting them at a different frequency and format. Cognitive radio technology can also help advance specific Commission policies, such as facilitating the use of secondary markets in spectrum and improving access to spectrum in rural areas.

8. Cognitive radio systems can be deployed in network-centric, distributed, ad hoc, and mesh architectures, and serve the needs of both licensed and unlicensed applications. For example, cognitive radios can function either by employing cognitive capabilities within a network base station that in turn controls multiple individual handsets or by incorporating capabilities within individual devices.

9. There are a number of capabilities that can be incorporated into cognitive radios. A first is frequency agility, which is the ability of a radio to change its operating frequency, combined with a method to dynamically select the appropriate operating frequency based on the sensing of signals from other transmitters or on some other method. A second is adaptive modulation that can modify transmission characteristics and waveforms to exploit opportunities to use spectrum. A third capability is transmit power control, which allows transmission at the allowable limits when necessary, but reduces the transmitter power to a lower level to allow greater sharing of spectrum when higher power operation is not necessary. A fourth capability that a cognitive radio could incorporate is the ability to determine its location and the location of other transmitters, and then select the appropriate operating parameters such as the power and frequency allowed at its location. Fifth, a cognitive radio could incorporate a mechanism that would enable sharing of spectrum under the terms of an agreement between a licensee and a third party. Parties may eventually be able to negotiate for spectrum use on an ad hoc or real-time basis, without the need for prior agreements between all parties. In addition to these capabilities, any SDR, including a cognitive radio, could incorporate security features to permit only authorized use and prevent unauthorized modifications. We seek comment on what other features and capabilities a cognitive radio could incorporate.

10. While cognitive radios could incorporate all of the capabilities listed above and possibly others, the types of technologies that would need to be employed in a particular device would vary based on the frequency bands where the equipment is deployed and the types of services authorized to operate in those bands. Multiple capabilities may in all likelihood be used simultaneously in cognitive processing. For example, devices sensing unused spectrum may rely on frequency agility in selecting their band of operations and adaptive modulation techniques in setting the power, frequency and type of signal transmitted. Devices might further manage their signals with the location of themselves and other transmitters in mind. Negotiations and exchanges with other users might also occur, contributing to the increased efficiency and reduction of interference for all spectrum users. We review each of these capabilities in the NPRM and seek comment how cognitive radio capabilities might function together to achieve spectrum access, efficiency and interference mitigation. (See paragraphs 24 through 30 of the NPRM).

11. We seek comment on all issues related to the application of cognitive radio technology, including the frequency bands and services that are most likely to benefit from this technology. We conclude that we should continue to prohibit unlicensed devices from emitting in designated restricted bands, which include many bands used for Federal Government operations, and seek comment on this tentative conclusion.

12. The capabilities that can be employed in cognitive radios could be applied in a variety of specific applications and could bring about significant changes in how people approach the use of spectrum. Some applications could make more efficient use of spectrum and others could facilitate the introduction of new uses. Some applications could likely be introduced under existing rules, whereas other applications may require specific rule changes.

**Application: Rural Markets and Unlicensed Devices**

13. In its Report, the Spectrum Policy Task Force recommended that the Commission explore ways to improve access to spectrum in rural areas. The Commission recently adopted a *Notice of Proposed Rule Making in Facilitating the Provision of Spectrum Based Service to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum Based Services (Rural Services NPRM)*, 68 FR 64050, November 11, 2003, to consider proposals for facilitating access to spectrum based services in rural areas. This *Rural Services NPRM* addresses licensed spectrum use, and states that the Commission will consider unlicensed spectrum use in rural areas in a separate proceeding. We note that the *Rural Services NPRM* seeks comment on a definition of rural areas.

14. The lower population density and the greater distances between people in

rural areas can make it difficult for certain types of unlicensed operations at the current part 15 limits to provide adequate signal coverage. Such operations include Wireless Internet Service Providers (WISPs) and wireless LANs operated between buildings or other locations with a large separation between transmitters. These operations could potentially benefit from higher power limits in rural areas, which would result in greater transmission range. Because spectrum is generally not as intensively used in rural areas, it may be possible for unlicensed devices to operate at higher power levels in those areas without causing harmful interference to authorized services. The application of cognitive radio technology could help ensure that devices limit their higher power operation to only rural areas.

15. Devices such as transmitters used by WISPs and wireless LANs often operate under the part 15 spread spectrum rules in § 15.247. In addition, any type of operation (*e.g.*, cordless phones, wireless cameras, fleet management devices) is permitted in certain bands under § 15.249. The power limits currently permitted vary depending on the frequency band and in some cases the signal characteristics, such as the number of hopping channels for spread spectrum devices.

16. Permitting unlicensed devices to operate at higher power levels in rural areas could help provide improved access to spectrum in those areas by permitting greater transmission range and therefore greater coverage areas. Accordingly, we propose to allow higher power operation for certain types of unlicensed devices in certain circumstances, that should benefit consumers in rural areas. We note that while licensed devices are typically licensed for use in a specified geographic area at a specific maximum power level, unlicensed devices generally have no geographic restrictions on operation and can be used in any location. Because spectrum use in rural areas is generally extremely low, measuring spectrum occupancy is a method that could potentially be used to determine when a device is in a rural area and is eligible to operate at higher power. We propose to permit higher power operation by unlicensed devices in any area that has limited spectrum use, provided the device has capabilities to determine whether it is in an area with limited spectrum use. This proposal will benefit persons living in rural areas as well as persons living in other areas that may be underserved by spectrum based services.

17. We propose to implement these changes by adding a new rule section that applies specifically to cognitive radio devices operating in the industrial, scientific and medical (ISM) bands on the frequencies specified in §§ 15.247 and 15.249 of the rules. This proposed rule section would permit higher power operation for cognitive devices than these sections currently allow, provided that the devices meet all the other requirements of §§ 15.247 and 15.249, and that the devices incorporate certain features to determine that they are in an area with limited spectrum use. We also propose to require that unlicensed devices capable of higher power operation in areas of limited spectrum use incorporate TPC capabilities that, when the device is operating at greater than 1 Watt, will limit its power output to the minimum level necessary for reliable communications. We do not propose any changes to the current §§ 15.247 and 15.249 for non-cognitive radio devices. The proposed rule for cognitive devices references all the current requirements in these sections at this time, which include requirements for spread spectrum systems to use specific channel spacings, channel bandwidths, power spectral density or number of hopping channels. These requirements were established to facilitate spectrum sharing with licensed services and between unlicensed operations. However, in areas where spectrum use is low, all of the current requirements in the spread spectrum rules to facilitate spectrum sharing may not be necessary due to the limited number of users in such areas. Because cognitive devices could determine when spectrum is in use and avoid transmission on those frequencies, it may be possible to relax some of the current requirements in the rules in addition to raising the maximum power for cognitive devices operated in areas with limited spectrum use without causing interference to other users.

18. We propose to allow a transmitter power increase of up to 6 times (approximately 8 dB) higher than the current limits in the 902–928 MHz, 2400–2483.5 MHz and 5725–5850 MHz bands under § 15.247 of the rules, and in the 902–928 MHz, 2400–2483.5 MHz, 5725–5875 MHz and 24.0–24.25 GHz bands under § 15.249 of the rules. This increase is consistent with the Commission's recent proposal in ET Docket 03–201 to permit a power increase of 8 dB for spread spectrum systems using sectorized antennas. This proposal would increase the signal range by a factor of up to 2.5 and increase the coverage area by a factor of six as compared to the current limits, which would be particularly beneficial for wireless LAN and WISP uses. Specifically, the proposed maximum transmitter power levels or maximum field strength levels in areas with limited spectrum use would be:

a. Spread Spectrum Devices (§ 15.247):

- 6 watts for digital transmission systems and the following frequency hopping systems: Systems in the 2400–2483.5 MHz band using at least 75 hopping channels, all systems in the 5725–5850 MHz band and systems in the 902–928 MHz band using at least 50 hopping channels
- 1.5 watts for frequency hopping systems in the 902–928 MHz band using at least 25, but fewer than 50 hopping channels
- 0.75 watts for frequency hopping systems in the 2400–2483.5 MHz band using fewer than 75 hopping channels

b. Unlicensed operation in the 900 MHz, 2.4 GHz, 5.8 GHz and 24 GHz bands (§ 15.249):

- 125 millivolts per meter at a distance of 3 meters in the 902–928 MHz, 2400–2483.5 MHz and 5725–5875 MHz bands
- 625 millivolts per meter at a distance of 3 meters in the 24.0–24.25 GHz band.

19. We note that all of the bands where higher power operation is proposed are allocated on a primary basis for ISM equipment, which is generally not susceptible to interference from other devices. However, each of these bands is also used by licensed services that are entitled to protection from interference by part 15 devices. For example, the 902–928 MHz band is used by the Location and Monitoring Service (LMS), and all of these bands are used by Amateur Radio licensees. Because we are proposing to both limit higher power operation to areas with limited spectrum use and require devices to sense spectrum use before commencing transmissions, we believe that implementation of this proposal would not significantly increase the interference potential to licensed services that operate in one or more of the subject ISM bands. We seek comment on this view. We also seek comment on whether any particular licensed uses of these bands or portions thereof should receive greater protection or be excluded from this proposal?

20. We seek comment on these proposals, including whether higher power operation should be permitted in all frequency bands under §§ 15.247 and 15.249 of the rules, and whether there should be any restrictions on the

applications or types of devices that may operate at higher power. We also seek comment on whether there are any requirements currently in the rules that could be relaxed or eliminated for cognitive radio devices. For example, in addition to the requirements for spread spectrum devices, § 15.247(h) contains a provision that prohibits the synchronization of the timing of hop sets in a non-cognitive way to prevent a group of devices from monopolizing the use of the spectrum and blocking other devices from transmitting. Could this section be eliminated for cognitive devices without adversely affecting spectrum sharing? We also seek comment on whether we should exempt devices operating under the control of a master controller from complying with DFS or other requirements.

21. We further seek comment on whether higher power operation should be permitted for devices operating under any other sections in part 15. For example, § 15.209 allows operation at a low level in almost any frequency band other than the TV bands and certain designated restricted bands. Should higher power operation be allowed under that section? We seek comment on whether the increased levels we are proposing are sufficient to be of benefit to WISPs, wireless LANs or other unlicensed operations in areas with limited spectrum use, and how much of an increase in service area these levels would allow in practice. We also seek comment on whether these power increases are likely to result in interference to other users, and the sufficiency of our proposal that TPC be used to ensure that these higher power unlicensed devices satisfy the applicable power limits—both inside and outside areas of limited spectrum use.

22. We propose that devices operating under the new rule section comply with the same harmonic and out-of-band emission limits as devices operating under §§ 15.247 and 15.249 of the rules. The current harmonic emission limits for devices operating under § 15.249 are independent of the in-band power. Theses limits are 500 microvolts per meter at a distance of three meters for devices operating in the 902–928 MHz, 2400–2483.5 MHz and 5725–5875 MHz bands, and 2500 microvolts per meter at a distance of three meters for devices operating in the 24.0–24.25 GHz band. The out-of-band emission limit for devices operating under § 15.249, 50 dB below the in-band emission limit, is a function of the in-band field strength. For devices operating under § 15.247, the limit for out-of-band emissions that fall within designated restricted bands is also independent of the in-band power. However, the Section 15.247 limit for out-of-band emissions that fall outside restricted bands, 20 dB below the in-band power, is a function of the in-band power. We seek comment on whether we should adjust the limits so that out-of-band emissions from equipment operating at higher power levels are no greater than the current rules allow. Additionally, we note that the 2400–2483.5 MHz band is adjacent to the mobile satellite service downlink band at 2483.5–2500 MHz. We seek comment on the effect that raising the power of unlicensed devices could have on satellite receive terminals in the adjacent band.

23. Also, we note the presence of federal radiolocation operations in the 5725–5925 MHz frequency band. The Department of Defense operates fixed, transportable and mobile radars that are used primarily for surveillance, test range, instrumentation, airborne transponders, and experimental testing. These radars are used extensively in support of national and military test range operations in the tracking and control of manned and unmanned airborne vehicles. Many of the installations where these radars operate are located in rural areas. We seek comment on the potential effects of our proposal, including its cognitive radio safeguards, on such federal radiolocation operations.

24. We propose that unlicensed devices be permitted to operate at higher power in areas with limited spectrum use. We propose that limited spectrum use be defined as the authorized band of operation, *e.g.*, the 2400–2483.5 MHz band, having a certain percentage of spectrum unused. We propose to define "unused spectrum" for this purpose as spectrum with a measured aggregate noise plus interference power no greater than 30 dB above the calculated thermal noise floor within a measurement bandwidth of 1.25 MHz, which is the same value specified for unlicensed PCS devices. We also propose that a device must be able to sense across the entire authorized band of operation to determine spectrum occupancy before commencing transmissions at higher power. We seek comment on these proposals, including the specific percentage of spectrum that must be vacant for a band to be considered "empty enough" to allow higher power transmission. We seek comment on the specific 30 dB monitoring threshold level proposed in these bands. Because some devices that operate in the spread spectrum bands hop frequency and may not be on a particular frequency at a given instance in time, we seek comment on how long a device must sense a band of spectrum to determine it is unused before the device can transmit at higher power. We also seek comment on the type of receive antenna that should be used in measuring spectrum occupancy, whether the proposed monitoring threshold is reasonable and how wide a frequency band should be monitored to make this determination. We further seek comment on the capabilities a device needs to determine when spectrum is empty enough, whether the required capabilities are achievable now or in the near future, and whether they could be economically incorporated into devices.

25. We propose to require that unlicensed devices operating at higher power levels continue to comply with the current RF safety requirements. We recognize that although it may be relatively easy for a WISP provider to increase its power, for instance, from a central base station, a user's ability to increase its power on the return path may be constrained due to battery or RF safety issues. However, the use of properly designed sectorized receive antennas, coupled with their inherent gain, at the central site could overcome this perceived limitation. We seek comment on whether there are any possible problems with unlicensed devices operating at higher power levels meeting the RF safety limits.

26. It seems apparent that allowing some devices in a band to operate with higher power could block the use of lower power devices, resulting in a situation where certain devices would not be able to operate. We therefore seek comment on whether a device operating at higher power should have to re-sense spectrum use at periodic intervals to determine whether other users are attempting to transmit. If so, how often should it re-sense? Would such a requirement have undesirable effects, such as requiring a WISP to lower power or turn off completely, and possibly lose a connection when another device such as a cordless telephone comes on the air, or causing users of lower power devices to simply cease operating if they received interference? Alternatively, should there be a requirement for devices operating at a higher power level to shut down for some period of time at a set interval to allow an opportunity for other devices to access spectrum? If so, what would be the appropriate time intervals?

27. We seek comment on alternative methods, such as geo-location, that a device could use to determine if it is in a rural area, and whether a combination of techniques should be required. If a

cognitive radio device relied on geo-location, we would defer to WTB Docket No. 03–202 for an appropriate definition of rural area. We seek comment in this docket on the positional accuracy necessary if a geo-location technology such as GPS were used. How would a device using geo-location access a table or database showing where operation is permitted, and who would be responsible for maintaining the database? Should the geo-location technology be required to be incorporated within the device? How would the device react if it were unable to determine its exact position, for example, if it were to be indoors? Could some surrogate method, such as measuring the number of AM or FM broadcast signals in an area prove useful as an alternative optional method for identifying an area that is sparsely populated from a spectrum perspective where higher power operation could be permitted? We also seek comment on whether alternative approaches such as registration should be permitted to authorize operation under higher power limits in rural areas. Finally, we seek comment on whether there are any special enforcement issues when cognitive radio technologies are used to permit the higher power operation we have proposed.

*Application: Secondary Markets*

28. We recently took several steps in the *Secondary Markets Report and Order*, 68 FR 66252, November 25, 2003 and *Further NPRM* (Secondary Markets Order), 68 FR 66232, November 25, 2003, to facilitate and streamline the ability of spectrum users to gain access to licensed spectrum by entering into spectrum leasing arrangements on reasonable market-driven terms between the private parties. Specifically, we adopted rules to remove regulatory uncertainty and establish clear policies and rules concerning leasing arrangements. In many Wireless Radio Services, licensees are now free to enter into voluntary leasing transactions with spectrum users seeking access to a licensee's spectrum. While the flexible framework facilitating spectrum leasing arrangements does not impose any special technical requirements or constraints on such transactions, in some cases these arrangements may be made easier through the use of emerging technologies like cognitive radio. As discussed in our *Secondary Markets Order*, the ability of potential spectrum lessees to identify available leasing opportunities and negotiate with licensees, *e.g.*, *access mechanism*, is important for successful secondary market transactions. Also, mechanisms to ensure that licensees can reclaim their spectrum from spectrum lessees, *e.g.*, *reversion mechanisms*, are an important consideration for many licensees. The *Further NPRM* portion of the *Secondary Markets Order* seeks comment on changes needed in licensing policies or in the provision of licensing information to facilitate development of such a secondary marketplace in spectrum. The *Further NPRM* also acknowledged the Commission's plans to conduct a separate proceeding on cognitive radio that might, *inter alia*, address the issue of technical requirements for possible leasing of public safety spectrum.

29. Licensees and potential lessees could exchange information via a communication link identifying the spectrum that would be leased as well as the then current terms and conditions for its use. The licensee could, in this manner, control access to and keep track of third party use of leased spectrum by, for example, an exchange of "tokens" sent to the lessee's devices. Security of such transactions can be reinforced using technologies like the modern Public Key Infrastructure (PKI) mechanisms used widely by industry today. We seek comment on technical methods that might be used to provide information necessary for leasing and how a device would "enforce" the terms of the lease. Although the Commission may not need to adopt specific technical requirements for these mechanisms, we seek comment on whether the Commission could reduce uncertainties that may inhibit leasing transactions by encouraging voluntary technical standards for access to a licensee's spectrum. What approaches to facilitating spectrum leasing transactions could best achieve the goals of our flexible and market-driven policies for spectrum leasing?

**Interruptible Spectrum Leasing**

30. In the NPRM, we seek comment on potential mechanisms for lessees to access spectrum by means of cognitive radio technology that would provide licensees with the ability to rapidly regain the use of the spectrum when needed. Technology that provides licensees with highly reliable and near-instant access to leased spectrum could be beneficial to a wide variety of spectrum users, such as satellite, cellular, PCS and private radio network licensees, and we accordingly are seeking comment generally on what steps might facilitate the use of this technology. For instance, specifying the technical methods of accessing and reclaiming spectrum could benefit both licensees and potential lessees by standardizing equipment designs, thus lowering equipment, and therefore transaction, costs. An important potential application of this framework is to possible public safety spectrum leasing, where access to, as well as reliable and secure use of, spectrum are critical and the public interest may require strong technical assurances. Therefore, with respect to that particular application, we are seeking comment *inter alia* on whether, if we decide to permit public safety leasing, we should identify one or more specific technical approaches in its rules to be employed by lessees, either at the discretion of the public safety licensee or on a mandatory basis under our rules.

31. We focus here on technical measures for ensuring return of spectrum to the primary licensee under pre-designated conditions. Cognitive radio technologies can be used both to identify spectrum that is available for leased use and to ensure that it reverts to the licensee under the prescribed conditions. In particular, we set forth the details of a "beacon" approach that would ensure that licensees would retain real-time access to their leased spectrum. Of course, the beacon and other approaches described in paragraphs 56 and 57 of the NPRM are not necessarily the only ones that could facilitate leased access to spectrum while providing licensees with the ability to reclaim it quickly with ultra-high reliability. We therefore seek comment on other methods that could achieve the same goals, and how these methods should be reflected in our rules.

32. We seek particular comment on the beacon approach, which appears to provide the reliability necessary for some leasing arrangements, and can incorporate features needed for secure access, yet offers reasonable cost and acceptable complexity to implement and maintain. For example, applying this approach to a public safety leasing scenario, the public safety licensee would have control of the beacon and thus could directly regain control of the spectrum when needed. The beacon approach also allows a licensee to incorporate both access and reversion techniques into a technical solution, if it so desires. The lessee's device would have to incorporate the capability to check for the beacon signal at prescribed intervals. If the lessee's transmitter failed to receive a properly authenticated beacon signal for a prescribed time period, it would be programmed to assume access is no longer authorized and would cease use of the leased spectrum. The licensee would have the ability to reclaim the

use of its spectrum after the prescribed listening period. In addition, the licensee's access, return, or reversion of its spectrum would not be impeded by unfavorable signal propagation because no explicit order to the lessee is necessary to terminate the lessee's use.

33. We also seek comment on how information about permissible leased uses of spectrum could be exchanged via a technical mechanism, such as a beacon signal, and on the cognitive capabilities that equipment used by a lessee must have, such as DFS, TPC and geo-location determination, to work with the chosen technical mechanism. For example, the negotiation of spectrum leasing opportunities would most likely require information about spectrum availability, *e.g.*, which channels, scope of authorized service area, and the characteristics of the spectrum available, *e.g.*, modulation, power limits. Other necessary information might include the amount of spectrum available, its expected duration, and perhaps its cost. Different technical information would be needed depending on the nature of the service, frequency bands employed, mininum acceptable quality of service requirements, and other characteristics of licensed and leased spectrum users. We recognize that some of this information might be provided in the negotiation of a long-term leasing agreement. However, cognitive radio technology could be designed to allow licensees to make this information available on a real-time basis and allow automated negotiation of the terms of leased access. In any case, any access mechanism would have to be consistent with the legal framework providing for secondary market transactions in spectrum that we adopt in our separate proceeding on secondary markets.

34. We seek comment on technical methods that might be used by a beacon approach, including those associated with a real-time automated negotiation of leased use rights. In this regard, we describe below several specific technical proposals for a beacon mechanism and the equipment that could be used by the spectrum lessees. As noted above, the beacon need not necessarily be in the form of an RF signal, but could be a physical connection like fiber, copper or coaxial cable and achieve the same results because the key factor of the beacon is the presence of the encrypted signal controlled by the licensee. First, under our proposal, the beacon signal would be sent either constantly or no less frequently than once per second so equipment used by lessees will be able to quickly detect the absence of an authorized beacon signal. Second, to protect against unauthorized use of spectrum, the beacon would contain information on the channel(s) available to prevent unauthorized use of channels by lessees. In addition, the beacon would include the time of day and an electronic signature to prevent "spoofing," whereby an unauthorized third-party originates a rogue beacon signal or retransmits an earlier beacon signal. The beacon's electronic signature should be sufficiently robust to make generating a rogue signal extremely difficult, *e.g.*, use 128-bit encryption, but we seek comment on what level of security would be needed to protect against unauthorized use. While we seek comment on the need for the Commission to define the technical requirements of beacon signatures in order to avoid possible harm from licensees using duplicitous signatures, we recognize that ongoing industry efforts towards standards, such as for public safety communications, might address such issues without need for regulatory oversight. We also seek comment whether multiple beacons should be required in the event that a licensee wishes to make multiple channels or frequency bands available to multiple lessees.

35. Under such a beacon proposal, cognitive devices used by spectrum lessees could incorporate these and other technical safeguards to ensure that use of the spectrum by the licensee would not be compromised. For example, devices would be capable of frequency agility to allow operation only on the channels or frequencies designated as available by the licensee and avoid operation on any other frequencies. We seek comment on other approaches that might be used to constrain leased use to authorized channels. We thus seek comment on all of the proposals regarding access/reversion and on alternatives that may provide similar levels of reliability, security, and implementation complexity.

36. Public Safety Leasing. In addition to seeking comment on the application of technical access/reversion models to possible public safety leasing, we also seek comment here on particular technical issues that would appear to have particular relevance to possible public safety leasing. For example, would changes in modulation type or other parameters as opposed to a cessation of transmission be sufficient in the event a public safety licensee needs to reclaim spectrum? We also anticipate that transmitters operated on leased public safety frequencies would incorporate TPC so the public safety licensee could specify the appropriate operating power, and would be programmed to detect a properly authenticated public safety beacon within two seconds or cease use of the leased spectrum. We seek comment on these proposals, as well as on alternatives to the proposed signal and reversion times that could offer acceptable reversion capability to the public safety licensee. Additionally, other cognitive radio technologies may offer alternative approaches to the proposed beacon approach. We seek comment on any alternatives that may also achieve our goals, *e.g.*, reliability, security, rapid reversion, etc., for public safety spectrum leasing.

37. The speed with which a public safety licensee can reclaim access to its licensed spectrum will be an important consideration in any reliable public safety reversion mechanism. In many instances, public safety use, for example, may not spike within a few seconds in response to emergencies but is more likely to grow at a rapid non-linear rate. Under such usage, instantaneous reversion may be unnecessary, and an appropriate reversion return time may be identified. We seek comment on whether and how cognitive radio technologies could be employed to permit the "tiering" of leased channels, which could make some channels available under a system with fast turnaround and other channels with slower turnaround. We also seek comment on public safety use and what appropriate minimums for time to return and at what rates are needed from usage patterns. We seek comment on whether beacon technology would best be implemented in multiple-channel trunked base stations; and whether one or more channels in such base stations could serve the beacon function. We also seek comment on how use of beacon-based technology could guard against interference when, on occasion, radios in a given system operate in the direct mode, *i.e.*, a mobile or portable radio communicating directly with another mobile or portable radio without the signals going through the base station.

38. We also seek comment specifically on how the goals for public safety access to spectrum should be achieved, including any alternative features that proposed technical solutions should employ, and on other considerations important to addressing the technical aspects of public safety spectrum leasing transactions. In this regard, we recognize that although public safety licensees would want to retain control of any cognitive based technology used to ensure the reversion of leased

spectrum, the acquisition of the technology may be funded by lessee(s), subject to the terms of a negotiated lease.

39. Although these specific issues may be of particular import to possible public safety leasing, we also seek comment on them in the context of interruptible leasing by licensees other than public safety entities.

40. Other Issues. We also seek comment on how to ensure that lessees of spectrum do not inadvertently transmit outside the licensee's authorized area and cause harm to other users. In general, we assume that a beacon transmitting in a licensed public safety frequency band at the same power level normally used in the band would provide coverage over the public safety entity's licensed area. This should act as a safeguard against lessee operation beyond the licensed service area because the lessee's radio will not be able to receive the beacon beyond a certain distance. However, because the coverage area of a beacon may not precisely match the licensee's service area and could extend beyond the service area, it may be possible for a lessee to receive a beacon signal outside the authorized service area. We seek comment on whether there are technical mechanisms that could be used to ensure that lessees operate only within the geographic limitations of the license.

**Other Applications of Cognitive Radio Technology**

*Dynamically Coordinated Spectrum Sharing*

41. *Coordination of Licensed Operations.* Under current policies, co-frequency spectrum sharing among licensed services is usually accomplished with formalized procedures. These "prior coordination" procedures generally require applicants and licensees to identify and address the interference potential of their proposed spectrum use with incumbent users in an engineering analysis performed prior to filing an application. Typically these engineering analyses are based on "worst case" assumptions, even if the "worst case" occurs relatively infrequently. Prior coordination approaches are generally practical and spectrally efficient when sharing conditions do not change significantly over time. Prior coordinated sharing in the C-Band between GSO FSS and terrestrial fixed services (FS) did not result in significant underutilized spectrum because early GSO earth stations operated with a limited number of transponders on a single satellite and both the earth station and the FS facilities' directionality remained constant. Today GSO earth stations are usually coordinated for more than one satellite orbit position and transponder configuration, often called "full-band, full-arc" to support business models that supply satellite capacity on demand, such as with "teleport" providers, and also ensure systems can rapidly respond to satellite failures without interference. Such coordination scenarios may offer opportunities for dynamically coordinated spectrum reuse. (See discussion in paragraphs 70 through 72 in the NPRM).

42. We seek comment on ways that we may encourage the use of dynamic coordination approaches. For example, what incentives or regulatory frameworks for dynamic coordination approaches might facilitate satellite and terrestrial coordinated sharing. What coordination procedures would be appropriate for terrestrial to terrestrial sharing? Could satellite providers employ a spectrum reversion mechanism discussed above to permit real-time coordinated use without unreasonable risk of interference to their operations? Would financial incentives encouraging dynamic coordination approaches be warranted? Could our secondary market spectrum leasing provide a framework for such financial incentives? Would explicitly making dynamic coordination an option in our existing coordination procedures be in the public interest?

**Facilitating Interoperability Between Communication Systems**

43. An important focus of the Commission has been the facilitation of interoperability among non-federal public safety entities. Cognitive radio technologies offer urgently needed solutions to the increasingly crucial interoperability demands facing first-responders and other licensed users. The Act and our rules currently provide a regulatory framework for interoperability. This framework includes various Commission efforts to facilitate interoperability between non-federal entities at the national, regional, state-wide and local level. Also of importance is interoperability between non-federal public safety entities and federal government first responders. Cognitive radio technologies addressed in this proceeding offer a new means of reducing risks to safety of life and national security by increasing the opportunities for first responders interoperability.

44. Both industry and government bodies are actively addressing the complex issues posed by the need for interoperable communication between public safety entities. The Public Safety National Coordination Committee (NCC) recently made recommendations on interoperability and other related issues in their report to the Commission. The Commission's Office of Homeland Security is also exploring potential changes to the Commission's technical rules, policies, procedures, or practices that would facilitate development of cognitive radio technology to enhance public safety communications.

45. Cognitive radio devices' capability to automatically or with some user input identify systems and users that need bridging, could facilitate interoperability under our existing regulatory framework. Devices capable of sensing and identifying signals could dynamically respond to new jurisdictions seeking to deploy interoperable systems. Devices could, in real time, adapt waveforms received from one system and change their modulation formats (such as APCO25 to FM) and frequencies and facilitate interoperability with other systems. For example, during their response to the Pentagon attack, Arlington County Fire's ability to communicate with firemen reporting from other jurisdiction would not have been limited to their supply of radios to distribute. A device could simply have bridged communications from any jurisdictions arriving with their own radios. Cognitive radio devices could also be used to connect to password protected databases available for public safety use that could help identify the kinds of frequencies and waveforms that dynamic interoperability would need to bridge. Devices could also perform this interoperability bridging using encryption technology when secure communications are required. Such a feature might be very useful for federal entities utilizing secure communications systems that assume responsibility for coordinating rescue and response efforts. FBI entities who assume control of coordinating such efforts may need to bridge from secure communication systems in order to communicate with certain non-federal entities. Cognitive radios may also contribute to the provision of E911 by providing a bridge between systems using different air interfaces to provide wireless E911 services. We seek comment on how cognitive radio technologies can facilitate interoperability between systems. We also seek comment on any rule changes necessary to take advantage of these benefits for interoperability between systems. We also seek comment on how

cognitive radio technologies can provide support to wireless E911 services.

**Mesh Networks**

46. Emerging technologies, such as "mesh" networks, rely on each node in an RF network to collect and disseminate information and optimize spectrum use by relaying messages through the RF network. We seek comment on the application of this technology and possible rule changes needed to facilitate the use of these technologies.

47. In a mesh network, each transmitter interacts on a peer-to-peer basis with other nearby transmitters, while also sending and receiving messages mimicking a router that relays messages to and from neighboring transmitters. Through this relaying process, a message can be routed through other transmitters to its destination based on the current conditions of the network. The received power at an antenna is reduced as the distance from a transmitter increases, and thus more power is required to transmit to a receiver farther away. Mesh networks function by "whispering" at low power to a neighbor rather than "yelling" at a high-power to a node far away. This approach may be spectrally more efficient than simply transmitting directly to a desired receiver at some distance and provide for better sharing scenarios. We seek comment how such techniques could be applied to facilitate our goals of improved spectrum sharing.

48. Mesh networks can allow radio use to expand to areas beyond the reach of network base stations, yet enable multiple users to avoid interference to each other. This capability could make it possible to deploy operations in areas where line of site is obstructed or unavailable and the propagation characteristics of the band would otherwise require unobstructed line of site. For example, such a capability could be helpful for both licensed and unlicensed operations in the microwave bands where common obstructions such as trees limit the ability to deploy services with low power. We seek comment how this technology might serve our efforts to facilitate broadband communication services to consumers, and any rule changes that might be necessary. We also seek comment on the impact that mesh networks will have on the aggregate interference to licensed services.

49. The ability of mesh networks to "self-heal" by responding to failures in the network may offer important benefits for ensuring network reliability. If one link in a mesh network fails, a message can be routed to its destination through alternate links. In this way all transmissions from the nodes of a mesh network operate in coordinated manner, in the same manner that Internet routers intelligently respond to outages by routing traffic around failures. We seek comment on how such capabilities could improve the reliability of wireless operations.

**SDR and Cognitive Radio Equipment Authorization Rule Changes**

50. Although the SDR rules were adopted over two years ago, to date no manufacturers have filed applications to certify a device under our new SDR rules. However, devices have been certified that would meet the Commission's broad definition of an SDR, but the manufacturer did not choose to declare them as such at the time of certification. We, therefore, do not know whether these devices incorporate features to prevent unauthorized changes to the operating parameters because there is no requirement to incorporate security features in a transmitter that is not declared as an SDR. Thus, we are concerned about the potential for parties to make unauthorized changes to software programmable radios after they are manufactured and first sold which could result in harmful interference to authorized services. Further, we note that manufacturers are now developing transmitters that are "partitioned" into two or more physical sections connected by wires, where one section houses the control software and another contains the RF transmission functions. We, therefore, believe it is time to revisit the SDR rules to determine if changes are needed concerning whether the SDR rules should be permissive or mandatory; the types of security features that an SDR must incorporate, and the approval process for SDRs that are contained in modular transmitters.

**Proposals for Part 2 Rule Changes**

51. *Submission of radio software.* The rules require the applicant, grantee, or other party responsible for compliance of an SDR to submit a copy of the software source code that controls the device's radio frequency operating parameters to the Commission upon request. This requirement is analogous to the requirement to supply photographs and circuit diagrams for hardware based devices and was added to assist in enforcement by allowing the Commission's staff to obtain information it could examine to determine if unauthorized changes had been made.

52. Because of the expected complexity and variations in the programming languages of the software used to control radio operating parameters, examining radio software is unlikely to be an effective way to determine whether unauthorized changes have been made to a device. Source code generally cannot be directly compared to the software loaded within a device because the source code is compiled before loading and additional changes to the code may be made in the loading process. Even if there were a way to compare software, manufacturers are permitted to make changes to the software that have no effect on the operating parameters at any time without notice to the Commission, and it could prove difficult for the Commission's staff to determine whether such changes affect the compliance of a device. A high level description of the radio software and flow diagram of how it works would be more useful in understanding the operation of a device than a copy of the software. We therefore propose to delete the requirement that grantees or applicants supply a copy of their radio software upon request, and propose to add a less burdensome requirement that applicants supply a description and flow diagram of the software that controls the radio operating parameters. The existing requirement in the rules that certified equipment must comply with the applicable technical rules appears to be a sufficient safeguard against unauthorized changes to equipment. Further, the rules require that an applicant or grantee supply a sample of a device to the Commission upon request that we can test to determine if a device is compliant. Grantees are also required to maintain records of equipment specifications and any changes that may affect compliance, which must be made available for inspection by the Commission.

53 *Applicability of SDR Rules.* The current rules allow a manufacturer to declare that a particular radio is an SDR when the application for equipment authorization is filed, but currently do not require this declaration. By not declaring a radio as an SDR, the manufacturer is not required to incorporate the necessary security features to ensure that only software that is part of an approved hardware/software combination can be loaded. This means that a radio can be potentially modifiable, and perhaps easily so, to operate with parameters not permitted by the rules, or to operate outside those that were approved for the device, thus increasing the risk of

interference to authorized radio services. However, not all radios that meet the broad definition of an SDR are easily modifiable after manufacture. We seek comment on the need for a requirement that manufacturers/importers declare certain equipment as SDRs, including the benefits of such a requirement in reducing interference and its possible burdens on manufacturers. We also seek comment on the types of devices to which this requirement should apply, including how the rules should distinguish between transmitters that must be identified as SDRs and those that need not be. Our goal for such a requirement is to minimize the possibility of unauthorized operation of software programmable radios, yet avoid imposing new requirements on manufacturers whose equipment meet the definition of SDR but are designed in a manner such that the transmission control software is not easily modified. For example, should we require that transmitters into which software can be loaded to change the operating parameters after manufacture be declared as SDRs, and that they comply with the requirements for SDRs, including incorporation of a means to prevent unauthorized software changes? Should this requirement apply to transmitters in which the software can be modified through means such as a physical interface to a personal computer or other device, an over-the-air download, use of a keypad or buttons on the device, or by replacing a board, card or chip that is not permanently attached to the device? Should this requirement apply to radios that can only be reprogrammed by the manufacturer or service center using proprietary software that has some form of security protection?

54. We further seek comment on whether a requirement to declare certain devices as SDRs should apply to transmitter modules. The Commission recently proposed in a separate proceeding providing manufacturers additional flexibility for authorization of transmitter modules that are partitioned into separate radio front ends and firmware provided they use digital keys to ensure that only a radio front end and firmware that have been certified together may operate together. Would the proposed partitioning and digital key requirements for transmitter modules be sufficient to protect against unauthorized software modifications of modules and eliminate the need to require modules to be declared as SDRs?

55. Equipment used by amateur radio operators is generally exempt from a certification requirement. We have maintained this policy to encourage innovation and experimentation in the Amateur Radio Service. However, we are concerned that it may be possible for parties to modify SDRs marketed as amateur equipment to operate in frequencies bands not allocated to the Amateur Radio Service if appropriate security measures are not employed. However, we do not wish to prevent licensed amateurs from building or modifying equipment, including SDRs that operate only in amateur bands in accordance with the rules. Accordingly, we propose that manufactured SDRs that are designed to operate solely in amateur bands are exempt from the mandatory declaration and certification requirements, provided the equipment incorporates features in hardware to prevent operation outside of amateur bands. We seek comment on this proposal.

56. At present there is a clear distinction between radio transmitter technology, regulated under § 2.801(a) of our rules and various radio service rules, and personal computer technology, regulated in a much less restrictive way under Subpart B of part 15 of our rules. However, increasing computer speeds and speeds of digital-to-analog converters (DAC) may well blur this distinction. A general purpose computer capable of outputting digital samples at rates in the million sample/seconds range or higher could be connected to a general purpose high-power, high-speed DAC card which could effectively function as a radio transmitter. The marketing of such computers, DACs, and software to make them interact could undermine our present equipment authorization program at the risk of increasing interference to legitimate spectrum users since none of them would be subject to the normal authorization requirements. At present this is not a problem, but we wish to consider modest steps now to help ensure that this scenario does not become a serious problem.

57. While such high-speed DACs are presently marketed to the scientific community at high unit costs, we are not aware of any which are marketed as consumer items. We seek comment on whether we need to restrict the mass marketing of high-speed DACs that could be diverted for use as radio transmitters and whether we can do so without adversely affecting other uses of such computer peripherals or the marketing of computer peripherals that cannot be misused. We seek comment on one possible approach as well as welcoming alternative proposals. Would it make sense to require that digital-to-analog converters marketed as computer peripherals that (1) operate at more than one million digital input samples/second, (2) have output power levels greater than 100 mW and, (3) have an output connector for the analog output be limited in marketing to commercial, industrial and business users as we require for Class A digital devices? Would it be preferable to characterize such systems in terms of output frequency and bandwidth rather than input sampling rate? What sampling rate and power limits would be needed to avoid impacting DACs that might have a legitimate consumer use such as, for video systems and other media applications? Is there a practical way to incorporate security features that would limit the frequency range or other operating parameters of these devices? We also seek comment on the specific types of devices that would be affected and the potential burden on manufacturers.

58. *Security and authentication requirements.* The rules require that manufacturers take steps to ensure that only software that is part of an approved hardware/software combination can be loaded into an SDR. The software must not allow the user to operate the transmitter with frequencies, output power, modulation types or other parameters outside the range of those that were approved. Manufacturers may use authentication codes or any other means to meet these requirements, and must describe the methods in their application for equipment authorization. In adopting these requirements, the Commission stated that it may have to specify more detailed security requirements at a later date as SDR technology develops.

59. We seek comment on whether any modifications are necessary to the security and authentication requirements in the rules. Specifically, we seek comment on whether the current rules provide adequate safeguards against unauthorized modifications to SDRs. We also seek comment on whether more explicit security requirements are necessary, such as requiring electronic signatures in software to verify the software's authenticity. We further seek comment on what should happen in the event that reasonable security methods ultimately are broken. Should there be limits to a manufacturer's responsibility if, for example, the manufacturer follows an accepted industry standard for security? If manufacturers' responsibility is limited, how would the Commission enforce its rules, *e.g.*, if interference occurs, against the users of unauthorized software or the creators/

distributors of unauthorized software? At least one party has proposed rule changes to clarify how a manufacturer can comply with the requirements of § 2.932(e) of our rules, and to define the standard of care to be applied. We seek comment whether defining compliance using "commercially reasonable measures," or some other standard, such as "industry accepted practice," would appropriately balance our goals for ensuring compliance with our rules and burdens on manufacturers. As described, device with cognitive capabilities may be subject to new forms of abuse to which other devices are not susceptible. Of course, devices with cognitive capabilities would generally require certification by the Commission, and thus are subject to the marketing and use restrictions of § 2.803. We seek comment on how we can enable the use of cognitive radio technologies, but prevent abuses. Are there features that could be incorporated into devices to help detect attempts to physically tamper with spectrum sensing and geo-location technologies built into devices? Could devices be designed to detect alterations to control software or databases and cease operation if such alterations are detected?

**Proposals for Part 15 Rule Changes**

60. *Automatic frequency selection for unlicensed devices.* Many frequency bands where unlicensed operation is permitted are not harmonized worldwide. For example, in the United States, unlicensed operation is permitted in the 2400–2483.5 MHz band, while in other countries operation is permitted in the 2400–2500 MHz band. The 2483.5–2500 MHz band is used for the Mobile Satellite Service (MSS) in the United States and is a restricted band under part 15, therefore unlicensed devices are not permitted to transmit in that band to prevent interference to the MSS. Unlicensed transmitters are now being manufactured in which the frequency range of operation can be software selectable. However, a transmitter can not be approved in the United States unless it is capable of complying with the technical requirements of the rule part under which it will be operated. Therefore, an unlicensed transmitter that is capable of operation outside permitted bands of operation under part 15 of the rules cannot be certified for operation in the United States.

61. Manufacturers would like the ability to certify devices to operate over a wider frequency range than is permitted in the United States, provided the devices incorporate some sort of technology that selects the appropriate operating frequency ranges based on the country in which they are used. A device could limit its operation to authorized frequencies when used in the United States, but could operate on additional frequencies as permitted in other countries. This approach could allow the production of devices that could be used worldwide, or at least in a number of different countries, and eliminate the need for manufacturers to produce multiple versions of a device for use in different countries.

62. Allowing certification of frequency selectable wireless devices could benefit consumers and manufacturers by reducing production costs and allowing production of devices that can be used in both the United States and other countries. We therefore propose to allow certification of part 15 devices that are capable of operating on non-part 15 frequencies. We propose to require that such devices incorporate DFS to select the appropriate operating frequency based on the country of operation and must operate on only part 15 frequencies when used in the United States. In addition, we propose that such devices must incorporate a means to determine the country of operation. There are several methods that a device could use to make this determination. One is to incorporate geo-location capability, such as GPS, combined with a database, to determine the device's geographic location. Alternatively, a device could rely on information provided by another device to determine the country of operation or the permissible frequency band. For example, a device such as a wireless LAN card could rely on a network access point to select the appropriate operating frequency band. Under that scenario, it would be necessary to assure that the network access point is capable of determining its location and communicating that information to a connected device. We seek comment on this proposal; in particular, the means that a device should employ to determine its country of operation and select the appropriate operating frequency range. Are there methods other than the ones described above that could be employed? How should a device respond if it is unable to determine its geographic location? If the frequency band or country of operation is determined by an external device such as a network access point, what specific requirements should apply to different types of devices used in a system such as wireless LAN cards and network access points? We also seek comment on how to assure that users cannot select an unauthorized frequency range or easily modify devices to operate in unauthorized frequency ranges. Consistent with our proposals above, we seek comment on whether devices in which the operating frequency range can be selected through software should be required to be declared as SDRs, and therefore required to meet the security and authentication requirements for SDRs to prevent unauthorized modifications.

**Pre-Certification Testing Requirements for Cognitive Radios**

63. Transmitters must be tested to show compliance with the applicable technical requirements before they can be certified. For unlicensed transmitters, both the technical requirements and the test procedures are specified in part 15 of the rules. For transmitters used in licensed services, the technical requirements are contained in the rule part for a particular service, and the test procedures are specified in part 2 of the rules. The types of tests specified in these procedures include field strength, output power, spurious emissions, occupied bandwidth and frequency stability. We seek comment on the new types of tests that will be required in two broad areas—unlicensed and licensed transmitters.

64. *Tests required for unlicensed devices.* We are proposing to allow unlicensed transmitters to operate at higher power levels in areas with limited spectrum use. In order to make the determination as to when higher power operation is permissible, the transmitter must have the ability to scan the spectrum to determine occupancy. To verify whether a device has the capabilities that we ultimately decide are necessary, there are potentially a number of specific tests that may have to be performed on a specific device. These tests would include:

- Determine the frequency range that can be scanned by device.
- Measure the scanning resolution bandwidth.
- Determine the sensitivity of the scanning receiver used to examine spectrum occupancy.
- Test the ability of the device to correctly determine spectrum occupancy based on presence of various standardized input test signals.
- Determine time period to monitor before declaring that the spectrum is not occupied.
- Ensure transmitter power control adjusts to the correct level.
- Time to revisit a portion of the spectrum to ensure that it is still unused.

• Response time to vacate a portion of the spectrum when it is determined that the spectrum is being used.

65. We seek comment on the above tests as well as on any other tests that may be needed to assure compliance by unlicensed devices with the SDR and any new cognitive radio rules, as well as a more detailed description of the measurement procedures that could be used. For testing a device's response to various standardized input signals, we seek comment on the frequencies, types and levels of the signals that should be used. Should there be a series of input signal tests required, and if so, what should they be? We also seek comment on whether the Commission should develop such test procedures or whether they should be developed through an industry standards organization such as ANSI.

66. *Tests required for interruptible radios.* We previously discussed that cognitive radios could conceivably share spectrum with other services, such as public safety or commercial users. Such sharing could be facilitated by use of a reversion mechanism, as proposed for public safety frequencies, that causes the cognitive radio to cease transmission when the primary user of the spectrum needs to use it. The reversion mechanism could be the loss of a beacon signal or there could be some other control signal telling the cognitive radio to cease transmission. In order to assure that the reversion mechanism works properly, certain new tests may be needed for radios using one of these technologies. We seek comment on the testing criteria may be appropriate for an RF beacon based system. Likewise, we seek comment on what testing criteria may be appropriate for beacon systems whose signal is not delivered over the air. We seek comment on whether these tests are appropriate, and whether additional tests should be required:

• Ability of the radio to sense a beacon or other control signal on the appropriate frequency or from another source.

• Minimum receive sensitivity for the control signal.

• Response time to vacate channel when beacon signal is lost or other control signal orders cessation of transmission.

67. *Other required tests specific to cognitive radios.* In addition to the specific cases described above, there may be a need to establish a more general framework for testing cognitive radios. We seek comment on the need for the following tests for different types of cognitive radio technology.

68. Listen-before-talk systems scan one or more frequency ranges to determine whether there are any other users present before transmission. The following tests may be appropriate for listen-before-talk systems:

• Determining the frequency band that is scanned by device.

• Measuring the scanning resolution bandwidth.

• Sensitivity of the scanning receiver used to determine spectrum occupancy.

• Ability of the device to select an operating frequency and power level based the presence of various standardized test input signals.

• Determine time period to monitor before declaring that the spectrum is not occupied.

• Time to revisit a portion of the spectrum to ensure that it is still unused.

• Response time to vacate a portion of the spectrum when it is determined that the spectrum is being used.

We seek comment on the need for these tests and on any other tests that may be needed for listen-before-talk systems. For testing a device's response to various standardized input signals, we seek comment on the frequencies, types and levels of the signals that should be used. Should we require a series of input signal tests, and if so, how many?

69. Geo-location systems use GPS or some other method to determine the transmitter's location. A database can be used to determine the transmitter's proximity to other devices that need to be protected from interference. The following tests may be necessary for devices that use geo-location. We seek comment on the need for these tests and for any other tests that may be required for radios that incorporate geo-location technology:

• Ability to correctly identify its location based on GPS or some other method.

• Ability to access database to correctly determine location and authorized operating parameters of other transmitters in the vicinity.

• Device response when geo-location signal is lost or can not be found.

70. Cognitive radios may allow transmissions using new or novel formats. For example, it may be possible to divide a signal so transmissions occur simultaneously using multiple non-contiguous frequency blocks. Such waveforms could potentially result in more efficient use of spectrum by allowing small unused blocks of spectrum to be "combined" into larger, more useful blocks of spectrum. However, this type of technology raises some novel measurement issues because the Commission did not envision its use when developed the rules. We therefore seek comment on the following questions related to this technology.

• How should the transmit power be measured to determine compliance with the power limits? Should the measurement be of the power per channel, the total power over all channels, or some other measurement?

• How can the bandwidth be measured?

• How should the modulation type be defined?

**Initial Regulatory Flexibility Analysis**

71. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 11 of the NRPM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

*A. Need for, and Objectives of, the Proposed Rules*

72. In the Notice of Proposed Rule Making, we propose several changes to parts 2, 15, 90 and other parts of the rules. Specifically, we propose to:

(1) Eliminate the requirement for applicants and grantees of equipment authorization to supply a copy of the software that controls the operating parameters of a software defined radio, but add a new requirement that applicants for equipment authorization supply a description and flow diagram showing how the radio software operates

(2) Require that certain radios that meet the definition of a software defined radio must be declared as such at the time of filing the certification application, and that they must incorporate a means to prevent unauthorized software changes that could change the operating parameters of the radio.

(3) Permit certification of wireless LAN cards that incorporate additional

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

frequency bands for use in other countries, but limit their operation to authorized frequencies in the United States,

(4) Permit certain unlicensed devices to operate at higher power levels in areas with limited spectrum use;

(5) Allow equipment to be developed that could allow public safety entities to lease spectrum on a temporary basis but reclaim it immediately when necessary.

73. These proposals, if adopted, will prove beneficial to manufacturers and users of unlicensed technology, including those who provide services to rural communities. Specifically, we note that a growing number of wireless internet service providers (WISPs) are using unlicensed devices within wireless networks to serve the needs of consumers. WISPs around the country are providing an alternative high-speed connection in areas where cable or DSL services have been slow to arrive. The higher power limits proposed herein will help to foster a viable last mile solution for delivering Internet services, other data applications, or even video and voice services to underserved, rural, or isolated communities.

74. These proposals could also benefit public sector entities by allowing the development of "smart" equipment that could enable the leasing of public sector spectrum to generate needed revenue, but would contain safeguards that allow the spectrum to be reclaimed by the public sector entity in the event of an emergency.

*B. Legal Basis*

75. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

76. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[4] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets may additional criteria established by the Small Business Administration (SBA).[5]

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers

77. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition application to manufacturers of Radio and Television Broadcasting and Communications Equipment. Under the SBA's regulations, a Radio and Television Broadcasting and Wireless Communications Equipment Manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[6] Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[7] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are at least 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment, and possibly there are more that operate with more than 500 but fewer than 750 employees.

WISPs and Other Wireless Telecommunication Service Providers

78. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees.[8] According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year.[9] Of this total, 965 firms had employment of 1,000 employees or more.[10] Thus, under this size standard, the majority of firms can be considered small.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

79. Both licensed and unlicensed transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation, and the proposals in this proceeding would not change that requirement. There would, however, be several changes to the compliance requirements.

80. Software defined radios in which the software can be easily changed after manufacture would have to be declared as software defined radios at the time the application for certification is filed. This would be a change from the current process, in which declaring a device as a software defined radio is optional. A software defined radio must incorporate security features to prevent unauthorized software changes that affect the operating parameters, and the applicant must describe them in the certification application. We do not expect that this would be a significant compliance burden because manufacturers of radios that would be affected by this requirement generally already take steps to ensure the security of the radio software.

81. Unlicensed transmitters that would be permitted to operate at higher power in rural and other areas with limited spectrum would have to incorporate sensing capabilities to ensure that higher power operations could occur only in areas where it is permitted. The applicant for certification would have to demonstrate in the application that the equipment meets the requirements.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

82. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements

[3] *See* U.S.C. 603(b)(3).

[4] *Id.* 601(3).

[5] *Id.* 632.

[6] 13 CFR 121.201, NAICS code 334220.

[7] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[8] 13 CFR 121.201, NAICS code 517212 (changed from 513322 in October 2002).

[9] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization), "Table 5, NAICS code 513322 (issued October 2000).

[10] *Id.* The census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[11]

83. If the rules proposed in this notice are adopted, we believe they would have a significant economic impact on a substantial number of small entities because the rules will impose the following costs: (1) Compliance with equipment technical requirements, such as incorporating cognitive capabilities into devices capable of higher power or multi-band operation or using a beacon or other mechanism to enable leased use of spectrum, and (2) compliance with reporting requirements, such as declaring certain radios as software defined radios and supplying certain information about the equipment to the Commission. However, the burdens for complying with the proposed rules would be the same for both large and small entities. Therefore, there would be no differential and adverse impact on smaller entities. Further, the proposals in this *NPRM* are beneficial to both large and small entities. Because we believe that the economic impact of the proposed rules on smaller entities would be, in this setting, beneficial rather than adverse, we believe it would be premature to consider specific alternatives to the proposed rules. However, we solicit comment on any such alternatives commenters may wish to suggest for the purpose of facilitating the Commission's intention to minimize any adverse impact on smaller entities.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

84. None.

**Ordering Clauses**

85. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(r) and 307, this Notice of Proposed Rule Making is hereby adopted.

86. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r) and 307, ET Docket No. 00–47 is terminated.

87. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, Including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

[11] 5 U.S.C. 603(c)(1)–(c)(4).

**List of Subjects in 47 CFR Parts 2, 15 and 90**

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15 and 90 to read as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303 and 336, unless otherwise noted.

2. Section 2.944 is revised to read as follows.

**§ 2.944 Submission of radio software description.**

Applications for certification of software defined radios must include a description and flow diagram of the software that controls the radio frequency operating parameters.

3. Section 2.1033 is amended by adding paragraphs (b)(12), (b)(13) and (c)(17) to read as follows:

**§ 2.1033 Application for certification.**

* * * * *

(b) * * *

(12) Applications for certification of software defined radios must include the information required by §§ 2.932(e) and 2.944.

(13) Applications for certification of radios operated pursuant to § 90.xxx must demonstrate compliance with the requirements in § 90.yyy.

(c) * * *

(17) Applications for certification of software defined radios must include the information required by §§ 2.932(e) and 2.944.

* * * * *

## PART 15—RADIO FREQUENCY DEVICES

4. The authority citation of part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

5. Add § 15.202 to read as follows:

**§ 15.202 Certified operating frequency range.**

Certification may be obtained for a device that is capable of operating on frequencies not permitted by this part, provided the device incorporates DFS and operates on only United States frequencies when operated in the United States.

6. Add § 15.206 to read as follows:

**§ 15.206 Cognitive radio devices.**

(a) Devices operating under the provisions of § 15.247 may operate with a power level six times greater than the maximum permitted in these sections under the conditions specified in paragraph (c) of this section.

(b) Devices operating under the provisions of § 15.249 may operate with a field strength level 2.5 higher than the maximum permitted in this section under the conditions specified in paragraph (c) of this section.

(c) Intentional radiators operating may operate at the higher power limits specified in paragraphs (a) and (b) of this section subject to the following conditions:

(1) Devices must incorporate a mechanism for monitoring the entire band that its transmissions are permitted to occupy.

(2) Devices must monitor for signals exceeding a monitoring threshold of 30 dB above the thermal noise power within a measurement bandwidth of 1.25 MHz.

(3) Devices may operate at higher power if signals exceeding the monitoring threshold are detected in less than XX% of the band in which they are permitted to operate.

(4) Devices must incorporate transmit power control to limit their power output to no greater than the maximum normally permitted in §§ 15.247 or 15.249 when the criteria in paragraph (c)(3) is not met or when higher power operation is not necessary for reliable communications.

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

7. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

8. Add § 90.xxx to read as follows:

**§ 90.XXX Secondary Leasing of a Public Safety License.**

Secondary Leasing of a Public Safety License shall operate subject to the following minimum reversion technical requirements:

(1) Devices operating under this rule must employ mechanisms for the immediate, reliable, and secure preemption by and reversion to the

primary public safety licensee. Devices must employ such mechanisms as required to ensure they operate lawfully and in compliance with the leasing agreements authorized in this part.

(2) Devices employing a Beacon Signal Detector mechanism as provided in § xx.xxx of this part shall be in compliance with the minimum reversion technical requirements of this rule.

9. Add § 90.yyy to read as follows:

**§ 90.yyy Technical Requirements: Beacon Signal Detector Leasing Operations.**

Operations conducted under the rules governing secondary leasing agreements in § xx.xxx of this part may operate subject to a beacon system satisfying the following criteria:

(1) Public Safety licensees shall transmit a beacon signal no less frequently than once per second specifying the frequency or frequencies available for use, the time of day and a secure identifying signature of the Public Safety Licensee Leasor.

(2) Devices operating under § xx.xxx of this part must detect the Public Safety Licensee's beacon signal or cease operations within two seconds. Devices must also incorporate a means to select the transmission frequency specified in the Public Safety Licensee's beacon signal.

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BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 600

**[I.D. 021004B]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: the Gulf of Maine (GOM) Rolling Closure Areas; and the minimum fish size requirements, for the temporary retention of undersized fish for data collection purposes. All experimental work would be monitored by a Research Specialist from the Woods Hole Oceanographic Institution (WHOI).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this document must be received on or before March 3, 2004.

**ADDRESSES:** Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA398@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on MWRA Harbor and Outfall Monitoring Project-Flounder Survey." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on MWRA Harbor and Outfall Monitoring Project-Flounder Survey." Comments may also be sent via facsimile (fax) to (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

**SUPPLEMENTARY INFORMATION:** On January 26, 2004, NMFS received an application for an EFP from the WHOI in support of a Massachusetts Water Resources Authority (MWRA) project entitled "MWRA Harbor and Outfall Monitoring Project Phase 4--Flounder Survey." Since 1991, Michael J. Moore of the WHOI has been contracted by the MWRA to conduct an annual survey of winter flounder health in the month of April. In 2003, a high prevalence of blind-side ulcers were observed in flounders from western Massachusetts Bay. Review of these data by the MWRA Outfall Monitoring Science Assessment Panel has led to the need to add to the sampling stations for 2004. In particular, it was deemed necessary to add three stations in Federal waters that are upstream from the Boston Outfall. These stations would be located in 30–minute square block numbers 123 and 124.

The experimental fishing trip would be an estimated 5 days in duration, covering a total of nine sampling stations: the three new stations in Federal waters, plus six stations in state waters. Sampling would consist of collecting 50 winter flounder larger than 12 inches (30.5 cm) in total length from each station. Once the target sample is reached, the vessel would move onto the next station until nine samples of 50 winter flounder have been reached. The researcher requests that the chartered research vessel be allowed to land legal-sized fish, caught during the execution of this project, for which the vessel is currently permitted. The estimated catch for all nine stations would be 3,600 lb (1,633 kg) of yellowtail flounder; 1,800 lb (816 kg) of cod; and 1,350 lb (612 kg) of winter flounder. The vessel would not be authorized to receive exemptions from days-at-sea regulations or possession limits for this EFP.

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

**Peter H. Fricke,**

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

[FR Doc. 04–3392 Filed 2–13–04; 8:45 am]
BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 600

**[I.D. 021004C]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant

Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow exemptions from the FMP as follows: the Days-At-Sea (DAS) notification requirements, the effort-control program, the fishing restrictions imposed by the Gulf of Maine (GOM) rolling closure areas, the minimum mesh size requirements specified for the GOM Regulated Mesh Area, and the minimum fish size requirements for the temporary retention of undersized fish for data collection purposes. The EFP would allow these exemptions for not more than 25 days of sea trials. All experimental work would be monitored by University of New Hampshire (UNH) Cooperative Extension scientists/observers.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this document must be received on or before March 3, 2004.

**ADDRESSES:** Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA391@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on UNH Cooperative Extension Codend Mesh Size Selectivity Study." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Cooperative Extension Codend Mesh Size Selectivity Study." Comments may also be sent via facsimile (fax) to (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

**SUPPLEMENTARY INFORMATION:** The UNH Cooperative Extension submitted an application for an EFP on January 14, 2004. The application was complete as received. This EFP would complete the final year's testing of a 2–year study. The EFP application requests authorization to use one commercial fishing vessel to conduct sea trials utilizing a 3–inch (7.6 cm) mesh hydrodynamic codend cover. The codend cover would be used to determine species and size selectivity of different trawl codend mesh sizes in the GOM multispecies fishery. Furthermore, the proposal seeks to determine fish retention in large mesh codends for GOM cod, haddock, whiting, and flounder (winter, witch, and American plaice). The experiment would compare the selectivity of 6.5–inch (16.5 cm) diamond mesh, 6.5–inch (16.5 cm) square mesh, 7–inch (17.8 cm) diamond mesh, and 7–inch (17.8 cm) square mesh codends against the 6–inch (15.2 cm) diamond mesh specified in the regulations as the minimum allowable mesh size. Underwater video technology would be employed to observe the codend, the cover, and the fish escaping from the net. The biological impact of mesh size increases, including fishing mortality and discard rates of regulated multispecies would be analyzed. The results of this mesh selectivity study would then be made available to the New England Fishery Management Council and NMFS.

The at-sea portion of the experiment would last no longer than 25 days between May 1, 2004, and April 30, 2005. The activity would occur in Federal waters off the coast of New Hampshire, excluding the Western GOM closure area. A total of 75, 1–hour tows at 2.8 knots would be conducted (three per day). UNH researchers would be required to be aboard the vessel at all times during the experimental work. All undersized fish would be returned to the sea as quickly as possible after measurement and examination. However, legal-sized fish that otherwise would have to be discarded would be allowed to be retained and sold, within applicable GOM possession limits. The participating vessel would be required to report all landings in its Vessel Trip Report. The catch levels are not expected to have a detrimental impact on the NE multispecies resources. Estimated total landings for the 25 DAS, based upon the previous year's results, are: Yellowtail flounder 9,790 lb (4,441 kg); American plaice 4,405 lb (1,998 kg); witch flounder 7,132 lb (3,235 kg); winter flounder 469 lb (213 kg); cod 9,901 lb (4,491 kg); and haddock 13,478 lb (6,114 kg). Because the vessel would be fishing with a 3–inch (7.6 cm) codend cover, total discards are expected to exceed that of normal fishing operations. Total discards are estimated to be: Yellowtail flounder 7,046 lb (3,196 kg); American plaice 4,404 lb (1,998 kg); witch flounder 6,230 lb (2,826 kg); winter flounder 678 lb (308 kg); cod 18,670 lb (8,469 kg); haddock 5,055 lb (2,293 kg); spiny dogfish 5,000 lb (2,268 kg); thorny skates 5,000 lb (2,268 kg); red hake 5,000 lb (2,268 kg); and whiting 7,000 lb (3,175 kg). Researchers will take precautions to avoid areas where there are concentrations of undersized fish.

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

Dated: February 11, 2004.

**Peter H. Fricke,**

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

[FR Doc. 04–3391 Filed 2–13–04; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

Federal Register
Vol. 69, No. 31
Tuesday, February 17, 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

### Agricultural Research Service

### Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

**DATES:** March 8–9, 2004, 8:30 a.m. to 5 p.m. both days. Written request to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

**ADDRESSES:** Oasis Room at the Sphinx Club, 1315 K Street, NW., Washington, DC 20005. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building, 12th and Independence Avenues, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The fourth meeting of the AC21 has been scheduled for March 8–9, 2004. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as "ex officio" members. The Committee meeting will be held from 8:30 a.m. to 5 p.m. on each day. The AC21 at this meeting will continue its work to develop a report examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years, specifically: to review a draft report introduction prepared by USDA staff; to review the progress of two work groups, one on potential issues, concerns, and benefits, and one on scenario-setting; to provide guidance to work groups in adapting the information they have developed into chapters of the committee report; and to consider preliminary presentations and introductory discussions related to trends in public versus private biotechnology research and implications for public research. The AC21 will also discuss the progress of a work group drafting a separate report for the committee's consideration on the issue of the proliferation of traceability and mandatory labeling regimes for biotechnology-derived products in other countries, the implications of those regimes, and what industry is doing to attempt to address those requirements for products shipped to those countries.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html.* On March 8, 2004, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

**Edward B. Knipling,**
*Acting Administrator, ARS.*
[FR Doc. 04–3299 Filed 2–13–04; 8:45 am]
BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### San Juan National Forest; Colorado; Durango Mountain Resort 2004 Master Development Plan

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the anticipated environmental effects of the Durango Mountain Resort (DMR) 2004 Master Development Plan. The MDP includes plans to upgrade and expand DMR within the existing Special Use Permit (SUP) area to achieve a balance of guest service facilities and skiing opportunities with existing and proposed visitation, thereby enhancing the quality of the recreation experience.

The major aspects of the Proposed Action include:

- Replace existing lifts 2 and 8 with higher capacity lifts along their existing alignments, and shorten Lift 6 along its same alignment while utilizing the same lift equipment.
- Install one six-person lift (Lift 11), five three or four-person chairlifts (lists 12, 13, 14, 16 and 17), one surface beginner lift (Lift 15), and three lateral surface (transfer lifts—T1, T2, and T3).
- Construct new roads to access Lift 11 top terminal (1,000 feet), Lift 2 bottom terminal (250 feet), Lift 14 top terminal (800 feet), and Lift 16 bottom terminal (200 feet). Bury power line from the top of Lift 4, down Salvation trail to the base of Lift 11, and along lifts T2 and T3 to service new lifts.
- Create 17 new trails primarily in the areas associated with new lifts to improve the overall terrain distribution by skier ability level and to better meet the skier market demand.
- Improve four trails within the existing trail network and develop two gladed areas.
- Re-route the existing snowmobile access route.

- Install snowmaking infrastructure, make snow on the first 400 feet of the proposed re-route, and groom the re-route periodically to create a smooth ridable surface for snowmobile riders of all ability levels.
- Develop a snowmobile parking/staging area along Hermosa Park Road, north of Purgatory Village on the east side of Highway 550, which would accommodate cars, trucks, and trailers.
- Relocate the existing snowmobile outfitter and guide to the top of the Twilight Lift (Chair 4).
- Expand snowmaking coverage on 14 existing trails and two proposed trails (detailed below) by approximately 149 acres for a resort total of 364 acres.

Styx
Lower Hades
Lower Catharsis
Mercy
The Bank
Upper Hermosa
Angel's Tread
Columbine
Divinity
Pinkerton Toll Road
Nirvana
Peace
Dead Spike
Legends
Proposed Run
Proposed Snowmobile Re-route

- Expand the existing Powderhouse Restaurant by approximately 11,000 square feet to include a restaurant with 419 additional seats, restrooms, a ski school desk, retail services, and public lockers. Expand the on-site septic system.
- Expand the existing Dante's Restaurant by 1,200 square feet to include a restaurant with 473 additional seats and guest services similar to those at the Powderhouse. This facility would continue to operate during the winter season and is proposed for summer use as well. Re-drill two existing wells to produce a higher water flow for domestic water needs. Upgrade the on-site septic system.
- Construct a new 13,500 square foot lodge adjacent to the top terminal of Twilight Lift (#4) to include a 444-seat restaurant, restrooms, a ski school desk, retail services, and public lockers. This facility is proposed for winter and summer use. Haul domestic water from existing storage tanks or proposed well and develop an on-site septic system.
- Drill one additional well along the Pinkerton Toll Road ski trail to provide additional domestic water for the resort.
- Double the size of the aboveground fuel storage tanks at the mid-mountain maintenance building.

**DATES:** Comments concerning the scope of the analysis must be received by March 18, 2004.

**ADDRESSES:** Written comments concerning this notice should be addressed to Richard Speegle at the San Juan Public Lands Center, 15 Burnett Court, Durango, CO 81301. Comments may also be sent via e-mail to *richard_speegle@co.blm.gov* or via facsimile to (970) 375–1243.

**FOR FURTHER INFORMATION CONTACT:** Richard Speegle, Supervisory Recreation Planner, at the Public Lands Center via telephone at (970) 375.3310. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Proposed Action addresses issues related to the recreation experience. Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the Forest Service and administered by the San Juan National Forest. All elements of the proposal remain within the existing SUP boundary area. The proposed improvements are consistent with the San Juan National Forest Land and Resource Management Plan (Forest Plan). The proposed improvements are considered necessary in light of current resort deficiencies and projected future visitation.

**Purpose and Need for Action**

The Forest Service and Durango Mountain Resort (DMR) cooperatively identified a purpose for this proposal, which is to upgrade and expand DMR within the existing Special Use Permit (SUP) are to achieve a balance of guest service facilities and skiing opportunities with existing and proposed visitation, thereby enhancing the quality of the recreation experience.

*Responsible Official:* The responsible official is Mark Stiles, Forest Supervisor for the San Juan National Forest, Public Land Center, 15 Burnett Court, Durango, CO 81301. The responsible official wll document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

**Nature of Decision To Be Made**

Based on the analysis that will be documented in the forthcoming EIS, the responsible official for this project, the Forest Supervisor of the San Juan National Forest, will decide whether or not to implement, in whole or in part, the Proposed Action or another alernative developed by the Forest Service.

**Scoping Process**

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to DMR's proposal. To assist the Forest Service identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

An open house will be held on Wednesday, March 3, 2004 from 4:30 pm until 8:30 pm at the San Juan Lands Center. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the Draft EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures, or analyze environmental effects.

*Preliminary Issues:* Identified preliminary issues include:

- Water quantity and quality.
- Wetlands.
- Wildlife and vegetation (Threatened, Endangered, and Sensitive species).
- Quality of the recreation experience.

**Comment Requested**

This notice of intent initiates the scoping process which guides the development of the draft environmental impact statement, including the identification of the range of alternatives to be considered. While public Participation is strictly optional at this stage, the Forest Service believes that it is important to give reviewers notice of several court rulings related to public participation in the subsequent environmental review process. First, reviewers of draft statements must structure their participation int he environmental review of the proposal so that it is meaninful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in

this proposed action participate by the close of the 45 day draft environmental impact statement comment period so that substantive coments and objections are made available to the Forest Servie at a tiine when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments also may address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality regulations which implement the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Dated: February 9, 2004.

**Pauline E. Ellis,**

*Columbine District Ranger. San Juan National Forest.*

[FR Doc. 04–3343 Filed 2–13–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Umatilla National Forest, Oregon, Rimrock Ecosystem Restoration Projects

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement.

**SUMMARY:** The Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Rimrock Ecosystem Restoration Projects was listed in the **Federal Register** on June 6, 2003 (68 FR 33934). On August 14, 2003, the decision to implement commercial and non-commercial thinning within the C3 winter range was withdrawn from the ROD. All other aspects of the June 6th ROD are being implemented. There is a need to amend the Umatilla National Forest Land and Resource Management Plan (LRMP) in order to implement the commercial and non-commercial thinning within the C3 Management area. The FEIS will be supplemented to inform and support a new decision on the C3 area of the Rimrock Ecosystem Restoration Projects.

**DATES:** Comments concerning the scope of the analysis must be received by March 15, 2004. The supplemental draft environmental impact statement is expected April 2004 and the final supplemental environmental impact statement is expected July 2004.

**ADDRESSES:** Send written comments to the Responsible Official, Jeff Blackwood, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, OR 97801. Send electronic comments to *comments.pacificnorthwest.umatilla@fs.fed.us*. For further information, mail correspondence to David Kendrick, Project Team Leader, Heppner Ranger District, PO Box 7, Heppner, OR 97836.

**FOR FURTHER INFORMATION CONTACT:** See address above.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

The purpose of this supplement to the Rimrock FEIS is to consider new information on the commercial and non-commercial thinning treatments in the C3 management area. The existing habitat effectiveness index for the Monument winter range is 67. Implementation of the commercial and non-commercial thinning portion of the Rimrock Ecosystem Restoration Project within the C3 management area in the proposed action or alternative actions (Rimrock FEIS pages 26–36) would result in a habitat effectiveness index of 67 for the Monument winter range. Although there is no change in habitat effectiveness index, an index of no less than 70 was not achieved as stated in the LRMP (page 4–152). Therefore, to fully address the original purpose and need for the project and implement the proposed action or alternative actions within the C3 management area, an amendment to the LRMP would be required. The purpose of the amendment is to permit implementation of the commercial and non-commercial thinning in the C3 management area of the Rimrock Ecosystem Restoration Projects.

**Proposed Action**

In addition to the proposed commercial and non-commercial activities as described in the Rimrock FEIS (pages 26–37), the Forest Supervisor proposes to amend the LRMP following procedures described in Forest Service Handbook 1909.12, Chapter 5 *Forest Plan Implementation and Amendment Process*. The amendment will allow a project specific change to the wildlife standard on page 4–152 for all action alternatives. The standard reads: "Elk habitat will be managed on designated big game winter ranges to achieve a habitat effectiveness index of no less than 70, including discounts for roads open to motorized vehicular traffic as described in *Wilflife Habitats in Managed Forests* (Thomas and others, 1979). The habitat effectiveness standard will be measured on an individual winter range basis." The amendment will allow an HEI of 67 for the Monument winter range only for the site-specific project called Rimrock Ecosystem Restoration Projects.

**Possible Alternatives**

All alternatives described in Chapter 2 of the FEIS remain unchanged except for an amendment to only change the HEI to 67 for the wildlife standard on LRMP page 4–152 for this site-specific project. The alternatives are described in detail on pages 23 to 37 in the Rimrock FEIS. In addition to these alternatives, one action alternative that does not amend the LRMP will be considered.

**Responsible Official**

Jeff Blackwood, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, OR 97801.

**Nature of Decision To Be Made**

Whether or not to implement the proposed commercial and non-commercial thinning activities in the C3 management area as described in the Rimrock Ecosystem Restoration Projects FEIS and amend the LRMP habitat effectiveness standard to 67 for this site-specific project only.

**Scoping Process**

The formal scoping period opened with publication of the Notice of Intent to produce an Environmental Impact Statement, which first appeared in the **Federal Register** on February 25, 1999 (Vol. 64, No. 37, page 9310–9311). Notification of the Draft Environmental Impact Statement was printed in the **Federal Register** on September 1, 2000 (Vol. 65, No. 171, page 53295). A Notice of Availability of the Final Environmental Impact Statement (FEIS) was printed in the **Federal Register** on June 6, 2003 (Vol. 68, No. 109, page 33934). On August 15, 2003, a letter was mailed to 156 stakeholders and agency representatives, to notify that the commercial and precommercial thinning activities in the C3 management area had been withdrawn from the decision. An additional scoping period is being conducted to examine the need for an LRMP amendment for the HEI in the C3 Monument Winter Range.

**Issues**

Issues are described in detail on pages 13 to 16 in the Rimrock FEIS and include: (1) Vegetation removal as a management tool and (2) Water Quality and Fish Habitat.

**Comment Requested**

This notice of intent initiates the scoping process that guides the development of the supplement to the environmental impact statement. We are seeking comments on a forest plan amendment to change the HEI of 70 to 67 within the C3 Management Area on the site-specific project of the Rimrock Ecosystem Restoration Projects on the Umatilla National Forest. All comments previously received during scoping and in response to the DEIS will remain part of the project record.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A supplemental draft environmental impact statement will be prepared for comment. The comment period on the supplemental draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the supplemental draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the supplemental draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 6, 2004.

**Jeff D. Blackwood,**

*Forest Supervisor.*

[FR Doc. 04–3047 Filed 2–13–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Lincoln County Resource Advisory Committee Meeting

**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 Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on March 3, 2004 at 6 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

**DATES:** March 3, 2004.

**ADDRESSES:** The meetings will be held at the Forest Supervisor's Office, 1101 US Highway 2 West, Libby.

**FOR FURTHER INFORMATION CONTACT:** Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda topics include decisions on Forest Service recreation projects that may need funding, RAC logo and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: February 9, 2004.

**Bob Castaneda,**

*Forest Supervisor.*

[FR Doc. 04–3344 Filed 2–13–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Alpine County, CA, Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Alpine County Resource Advisory Committee (RAC) will meet on Monday, March 1, 2004, at 18:00 at the Diamond Valley School for business meetings. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self-Determination Act of 2000 (Payment to States) and expenditure of Title II funds. The meetings are open to the public.

**DATES:** Monday, March 1, 2004, at 18:00 hours.

**ADDRESSES:** The meeting will be held at the Diamond Valley School, 35 Hawkside Drive, Markleeville, California 96120. Send written comments to Franklin Pemberton, Alpine County RAC coordinator, c/o USDA Forest Service, Humboldt-Toiyabe N.F., Carson Ranger District, 1536 So. Carson Street, Carson City, NV 89701.

**FOR FURTHER INFORMATION CONTACT:** Alpine Co. RAC Coordinator, Franklin Pemberton at (775) 884–8150; or Gary Schiff, Carson District Ranger and Designated Federal Officer, at (775) 884–8100, or electronically to *fpemberton@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The Meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the council may file written statements with the Council staff before and after the meeting.

Dated: February 10, 2004.

**Robert L. Vaught,**

*Forest Supervisor.*

[FR Doc. 04–3345 Filed 2–13–04; 8:45 am]

BILLING CODE 3410–11–M

## ARCTIC RESEARCH COMMISSION

### U.S. Arctic Research Commission; Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 69th meeting in Washington, DC on March 16–18, 2004. The business session open to the public will convene at 9 a.m. Tuesday, March 16, the agenda items include:

(1) Call to order and approval of the agenda.

(2) Approval of the minutes of the 70th meeting.

(3) Reports from Congressional liaisons.

(4) Agency reports.

The focus of the meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The business session will reconvene at 9 a.m. Wednesday, March 17, 2003. An executive session will follow adjournment of the business session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

*Contact Person for More Information:* Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

**Garrett W. Brass,**

*Executive Director.*

[FR Doc. 04–3297 Filed 2–13–04; 8:45 am]

BILLING CODE 7555–01–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Massachusetts Advisory Committee will convene at 1 p.m. and adjourn at 2 p.m., Tuesday, March 2, 2004. The purpose of the conference call is to discuss venue, date, panel format/topics and potential panelists to invite for a community forum on the voluntary desegregation plan in Lynn, Massachusetts.

This conference call is available to the public through the following call-in number: 1–800–473–8695, access code: 21892125. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Monday, March 1, 2004.

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

Dated at Washington, DC, February 6, 2004.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 04–3285 Filed 2–13–04; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Short Supply Regulations, Petroleum (Crude Oil).

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0027.

*Type of Request:* Extension of a currently approved collection of information.

*Burden:* 114 hours.

*Average Time Per Response:* 4 to 10 hours per response.

*Number of Respondents:* 15 respondents.

*Needs and Uses:* The information is collected in the form of supporting documentation for license applications to export petroleum (crude oil) and is used by licensing officers to determine the exporter's compliance with the 5 statutes governing this collection.

*Affected Public:* Individuals, businesses or other for-profit institutions.

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

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Forms Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and 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 within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: February 10, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–3294 Filed 2–13–04; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Reporting and Recordkeeping Requirements Under the Wassenaar Arrangement

**ACTION:** Proposed collection: comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 19, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, Management Analyst, Bureau of Industry and Security (BIS), Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The information required by this collection is required semiannually

from all exporters of certain items specified in § 743.1 of the Export Administration Regulations controlled for national security reasons on the Commerce Control List and exported under certain License Exceptions.

**II. Method of Collection**

The information will be collected in electronic and written form.

**III. Data**

*OMB Number:* 0694–0106.

*Form Number:* N/A.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit institutions, small businesses or organizations.

*Estimated Number of Respondents:* 35.

*Estimated Time Per Response:* 1 to 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

*Estimated Total Annual Cost:* No start-up capital expenditures.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 10, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–3293 Filed 2–13–04; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Written Assurances for Exports of Technical Data Under License Exception TSR

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 19, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Office of Projects and Planning, Office of the Chief Information Officer, Bureau of Industry and Security, U.S. Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC, 20230.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

U.S. exporters are required to receive letters of assurance from their foreign importers stating that they will not export or reexport technical data to destinations outlined in the E.A.R. unless they have received prior authorization from BIS.

**II. Method of Collection**

Submitted in written form.

**III. Data**

*OMB Number:* 0694–0023.

*Form Number:* N/A.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Response:* 30 minutes per response.

*Estimated Total Annual Burden Hours:* 104.

*Estimated Total Annual Cost:* No start-up or capital expenditures.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 10, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–3295 Filed 2–13–04; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-588–604]**

### Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan: Amended Final Results of Antidumping Duty Administrative Review Pursuant to Final Court Decision

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

**ACTION:** Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On June 13, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand of the final results of the October 1, 1996 through September 30, 1997 administrative review of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan. *See NTN Bearing Corporation of America, American NTN Bearing Corporation, NTN Bower, Inc. and NTN Corporation v. United States and The*

*Timken Company*, Court No. 98–12–03232, Slip Op. 03–65 (CIT June 13, 2003) (*NTN II*). On August 13, 2003, the respondent, NTN Corporation (NTN), appealed the CIT's decision to the Court of Appeals for the Federal Circuit (Federal Circuit). On October 27, 2003, the Federal Circuit dismissed NTN's appeal. *See NTN Bearing Corporation of America, American NTN Bearing Corporation, NTN Bower, Inc. and NTN Corporation v. United States and The Timken Company*, 03–1592 (Fed. Cir. October 27, 2003) (*NTN CAFC*). Because all litigation has concluded, the Department is now issuing these amended final results reflecting the CIT's decision.

**EFFECTIVE DATE:** February 17, 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:**

**Background**

On November 17, 1998, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A-588–604) and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A-588–054) for the period October 1, 1996 through September 30, 1997. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 63860 (November 17, 1998) (*1996–97 TRBs from Japan*). NTN filed a lawsuit challenging these results[1] and the CIT issued an Order and Opinion dated January 24, 2003, remanding one issue to the Department. *See NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Bower, Inc. and NTN Corporation v. United States and The Timken Company*, 248 F. Supp. 2d 1256 (CIT January 24, 2003) (*NTN I*). Specifically, the CIT remanded the case to the Department to correct a clerical error resulting for the use of the incorrect level of trade adjustment factors for NTN's export price (EP) sales and to adjust the dumping margin accordingly. In accordance with the CIT's order in *NTN I*, the Department filed its remand results on April 14, 2003. On June 13, 2003, the CIT affirmed the Department's final results of remand redetermination and dismissed the litigation for Court No. 98–12–03232. *See NTN II*. On August 13, 2003, NTN appealed the CIT's decision to the Federal Circuit. On October 27, 2003, the Federal Circuit dismissed NTN's appeal. *See NTN CAFC*. Because all litigation has concluded, in accordance with *NTN II*, we are amending our final results of review in this matter and we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries, as appropriate, in accordance with our remand results.

**Amendment to Final Results**

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended, as there is now a final and conclusive court decision, we are now amending the final results of the 1996–97 administrative review of the antidumping duty order on TRBs and parts thereof, finished and unfinished, from Japan to reflect a revised weighted-average margin for NTN. We determine that the following revised weighted-average margin exists for NTN for the period October 1, 1996 through September 30, 1997:

| Producer/Exporter | Period of Review | Weighted-Average Original: | Margin (%) Revised: |
|---|---|---|---|
| NTN | 10/1/1996 - 9/30/1997 | 19.78 | 15.64 |

Accordingly, the Department has determined and CBP will assess appropriate antidumping duties on the relevant entries of the subject merchandise from NTN covered by the review of the period listed above. The Department will issue assessment instructions directly to CBP within 15 days of publication of this notice.

Dated: February 6, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–3388 Filed 2–13–04; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] NTN was not subject to the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C-580–835]**

### Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea

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

**ACTION:** Notice of Amended Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On January 14, 2004, the Department of Commerce (the Department) published in the **Federal Register** its final results of the administrative review of the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea for the period January 1, 2001, through December 31, 2001 (*Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*Final Results*)). On January 13, 2004, we received timely-filed ministerial error allegations from respondents, INI Steel Company (INI)[1] and Sammi Steel Co., Ltd. (Sammi).[2] Based on our analysis of this information, the Department has revised the net subsidy rate for INI and Sammi.

**EFFECTIVE DATE:** February 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Carrie Farley or Darla Brown (202) 482–0395, (202) 482–2849, respectively, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department

[1] Formerly known as Inchon Iron and Steel Co. (Inchon). As of April 2001, Inchon changed its name to INI.

[2] As of April 2002, Sammi changed its name to BNG Steel Co., Ltd. (BNG).

of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Review**

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Arnokrome III" is a trademark of the Arnold Engineering Company.

high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Respondents alleged that the Department made three ministerial errors in calculating the final *ad valorem* rate. Respondents alleged that the Department: (1) applied the wrong benchmark interest rate for certain countervailable loans received by INI and Sammi; (2) incorrectly applied the formula for calculating the number of days for which interest was payable on several of Sammi's interest payments; and (3) inadvertently misplaced aclosing parenthesis in the formula for calculating a benchmark interest rate for uncreditworthy companies, which resulted in the calculation of an incorrect discount rate when calculating the benefit to Sammi from POSCO's purchase of Sammi's Changwon bar and pipe facility.

We agree with respondent that the first two allegations were ministerial in nature, and we have recalculated the benefits under those programs using the corrected data. However, the Department disagrees with respondents' third allegation. Rather, the Department finds that its placement of the closing parenthesis in the formula was correct and that the calculation of the discount rate was also correct. Therefore, we are not making any adjustments to the calculations for this program. *See* the February 10, 2004, memorandum to Jeffrey A. May, Acting Assistant Secretary for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement II. The public version of this memorandum is on file in the Central Records Unit (CRU), room B-099 of the Main Commerce Building.

As a result of our corrections, for the period January 1, 2001, through December 31, 2001, the estimated net countervailable subsidy rate attributable to INI/Sammi decreased from 0.55 percent *ad valorem* to 0.54 percent *ad valorem*.

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries on or after January 1, 2001, and on or before December 31, 2001. The Department will issue liquidation instructions directly to the CBP. The amended cash deposit requirements are effective for all shipments from INI/Sammi of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

These amended final results are issued and published in accordance with sections 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: February 10, 2004.

**Jeffrey A. May,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 04–3389 Filed 2–13–04; 8:45 am]

BILLING CODE 3510–DS–S

[5]specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

[3]"ArnokromCountervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 2113 (January 14, 2004) (*Final Results*).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 032801B]**

### Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Crab Species Covered by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs

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

**ACTION:** Notice of invitation to bid.

**SUMMARY:** The National Marine Fisheries Service issues this notice to inform persons whom it invites to bid in the fishing capacity reduction program for the crab species covered by the Fishery Management Plan for Bering Sea/Aleutian Islands king and tanner crabs.

**ADDRESSES:** Direct any questions about this notice to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

Any person who wants to contact the National Marine Fisheries Service's Restricted Access Management Program (which issues crab species licenses) may do so at: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable, (301) 713–2390.

**SUPPLEMENTARY INFORMATION:** Section 144(d) of Division B of Public Law 106–554, as amended, authorized this fishing capacity reduction program (program). The program's objective is reducing harvesting capacity in the Bering Sea/Aleutian Islands crab fishery. This will help financially stabilize this limited-entry fishery and manage its fish.

The National Marine Fisheries Service (we) published proposed program regulations on December 12, 2002 (67 FR 76329). We published final program regulations on December 12, 2003 (68 FR 69331 *et seq.*). We published a notice of qualifying bidders and voters on December 22, 2003 (68 FR 71082).

Interested persons should carefully review these documents for full details about the program. Interested persons may obtain the documents from Michael L. Grable (see **ADDRESSES**). The documents are also posted on our Alaska Regional Office's website at *http://www.fakr.noaa.gov/sustainablefisheries/crab/faq.htm.*

The final program regulations require us to publish this notice.

This is a voluntary program. In exchange for reduction payments, accepted bidders will permanently relinquish their fishing licenses and their fishing vessels' catch histories and fishing privileges.

The program's maximum cost cannot exceed $100 million. A 30–year loan will finance 100 percent of whatever the cost turns out to be. Future crab landing fees will repay the loan.

We attach, as addendum 1, a facsimile of the invitation to bid (invitation) which we will use to invite bids from persons on our list of qualifying bidders. We also attach, as addendum 2, a facsimile of the bidding form and terms of capacity reduction agreement (reduction contract) which qualifying bidders will use to make bid offers. These addenda state all other applicable bid submission requirements and procedures. All bidders must bid in strict accordance with the invitation and reduction contract. We may reject any bids which do not.

Bidding will open on March 5, 2004. Bidding will close on April 23, 2004. Bidders should not bid before bidding opens. We will not accept bids which our Financial Services Division in Silver Spring, MD, first receives after bidding closes.

After publishing this notification but before bidding opens, we will mail a bidding package to each person then on, and at the address in, our qualifying bidder list. We will mail the bidding packages not later than February 27, 2004. Each bidding package will contain the invitation and the reduction contract, as well as questions and answers about bidding and other program details. We will reject any bid a bidder submits on any form other than the bidding form portion of the reduction contract in the bidding package which we send to the bidder.

Before mailing bidding packages, we will update our qualifying bidders list to include all intervening changes in the Restricted Access Management (RAM) Program's crab license database (upon which our list is based).

Bidders who first become qualifying bidders after we send our bidding packages may request a bidding package by contacting Michael L. Grable (see **ADDRESSES**).

After receiving bidding packages and bidding opens, qualifying bidders (along with co-bidders where appropriate) who wish to bid must submit their irrevocable bid offers to our Silver Spring, MD, Financial Services Division in time for that Division to have received them before bidding closes.

We will score each bid amount against the dollar value of the bidder's documented crab harvests during the bid scoring period. We will get each bidder's documented crab harvest data directly from the State of Alaska, and no bidder need attempt to include any crab harvest data in its bid. We will, in a reverse auction, then accept each bid whose amount is the lowest percentage of the bidder's ex-vessel revenues until either the $100 million is fully committed or no other responsive bid remains to be accepted. Bid acceptances create reduction contracts between the United States and the bidders.

Next, we will conduct a referendum about the crab landing fees required to repay the potential reduction loan. We will mail a voting package to each person then on, and at the address in, our qualifying voter list. This will include a detailed synopsis of accepted bids (e.g., capacities reduced, reduction costs, and prospective loan repayment fees) by area/species endorsement categories. It will also include a ballot as well as questions and answers about voting and other program details.

Reduction contracts will become inoperable unless at least two thirds of the referendum votes cast approve the landing fee.

If the referendum is successful, we will then mail a bid acceptance notice to each accepted bidder. This will be the bidder's first advice that we accepted its bid. The notice will also state that a successful referendum fulfilled the one condition to reduction contract performance.

We will also publish a 30–day reduction payment tender notice in the **Federal Register**. Afterwards, we will tender reduction payments to accepted bidders and complete the program.

Any bid whose bidder we have not previously notified of the bid's acceptance or rejection will, in any event, expire on September 17, 2004. We will, however, have notified all bidders well before this date.

If the referendum is unsuccessful, we will consider whether circumstances warrant issuing another invitation.

Our notice of qualifying bidders and voters included only one license holder name and mailing address for each crab license listed. We note that some crab licenses are co-held by more than one person, corporation, or partnership. Where this is the case, our notice included only the co-holder, and its mailing address, whom the RAM Program's crab license database inferred as the designated contact for the other co-holders.

Nevertheless, all co-holders must sign each bid involving a co-held license. Even if a qualifying bidder's crab license is co-held, we will mail the bidding package only to the designated contact co-holder at the address specified in our notice. We will, however, notify the other co-holders that we have done so. Each designated contact co-holder will be responsible to ensure that all co-holders sign the bid as the qualifying bidder. We will reject any bid involving a co-held license unless all co-holders sign the bid as the qualifying bidder.

Do not confuse the terms "co-holder" and "co-owner" with the term "co-bidder". Co-bidders are involved only when a bid's reduction/privilege vessel is owned by someone other than the qualifying bidder who holds the crab license included in the bid as the crab reduction permit. In each bid involving a co-bidder, the crab license holder or co-holders must sign the bid as the qualifying bidder and the reduction/privilege vessel owner or co-owners must sign the bid as a co-bidder. Like qualifying bidders who are co-owned, co-bidders who are co-owned must also have all co-owners sign the bid.

**Authority:** 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117.

[The addenda will not be codified in the Code of Federal Regulations]

BILLING CODE 3510–22–S

**ADDENDUM 1**

# INVITATION TO BID: FISHING CAPACITY REDUCTION PROGRAM FOR THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN FOR BERING SEA / ALEUTIAN ISLANDS KING AND TANNER CRABS

## I. Invitation:

The United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (herein referenced as "NMFS") hereby extends to qualifying bidders this invitation to bid (herein referenced as the "Bid Invitation") in the fishing capacity reduction program (herein referenced as the "Program") for the crab species covered by the fishery management plan for Bering Sea/Aleutian Islands king and tanner crabs

## II. Definitions:

When used in the Bid Invitation and in the document entitled "FISHING CAPACITY REDUCTION PROGRAM BID AND TERMS OF AGREEMENT FOR CAPACITY REDUCTION: BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRABS" (herein referenced as the "Reduction Contract"), the following terms have the same meaning as in 50 CFR § 600.1018, published on December 12, 2003, at 68 FR 69331-69342 (herein referenced as the "Final Rule"):

(a) Acceptance,

(b) Bid,

(c) Bid amount,

(d) Bidder,

(e) Bid crab,

(f) Bid score,

(g) Co-bidder,

(h) Crab,

(i) Crab license,

(j) Crab reduction permit,

(k) Non-crab reduction permit,

(l) Qualifying bidder,

(m) Reduction fishing interest,

(n) Reduction fishing privilege,

(o) Reduction/history vessel,

(p) Reduction/privilege vessel,

(q) Referendum, and

(r) Replacement vessel.

**III. Governing Laws and Regulations:**

§ 144 of Pub. Law 106-554, § 2201 of Pub. Law 107-20, and § 205 of Pub. Law 107-117 specifically authorize the Program. 16 U.S.C. §1861a (b)-(e) authorizes fishing capacity reduction programs in general. The Final Rule specifically governs the Program. 50 CFR §600.1000 et seq. are framework regulations governing fishing capacity reduction programs in general.

The Program, the Bid Invitation, and the Reduction Contract are subject to the laws and regulations this section III cites.

Prospective bidders should read these law and regulations, particularly the Final Rule which governs the Program's specific procedures and requirements.

**IV. Bidder:**

Each bid must have a qualifying bidder.

If the bid's reduction/history vessel is the same vessel as the bid's reduction/privilege vessel and the qualifying bidder is the owner of record of the reduction/privilege vessel, the qualifying bidder must bid alone.

If the bid's reduction/history vessel is not the same vessel as the bid's reduction/privilege vessel but the qualifying bidder is the owner of record of both vessels, the qualifying bidder must also bid alone.

If the bid's reduction/history vessel is not the same vessel as the bid's

reduction/privilege vessel and the qualifying bidder is not the reduction/privilege vessel's owner of record, the reduction/privilege vessel's owner of record is the co-bidder and must bid together with the qualifying bidder.

If the qualifying bidder or a co-bidder is co-owned by different persons or other legal entities, each of the qualifying bidder's co-owners must sign the bid on behalf of the qualifying bidder and each of the co-bidder's co-owners must sign the bid on behalf of the co-bidder.

**V. Bidding Period:**

Bidding opens on March 5, 2004, and closes on April 23, 2004.

Bidders may not submit bids before bidding opens on March 5, 2004.

Bidders must submit bids sufficiently before bidding closes on April 23, 2004, for NMFS (at the address specified in Bid Invitation section VI) to have marked its receipt of the bids no later than 5:00 P.M., Eastern Standard Time, on April 23, 2004.

In the event of a Washington, DC, area emergency affecting U.S. mail or other deliveries to NMFS, NMFS will, in its sole discretion, make such accommodation of late bids as NMFS deems reasonably appropriate to the emergency's timing and nature and the degree of bid lateness.

**VI. Bid Delivery:**

Bidders must deliver bids to the following NMFS address:

Michael L. Grable
Chief, Financial Services Division
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Room 13100
1315 East-West Highway
Silver Spring, MD 20910

Bidders may deliver bids only by: U.S. mail, express or other delivery service, or personal delivery. NMFS assumes no risk of bid non-delivery or late delivery.

Bids delivered to NMFS must be original bids with original bidder signatures.

**VII. Bid Completion:**

No bid may be made on any form other than the one (herein referenced as the "Bid Form") entitled "Fishing Capacity Reduction Bid Submission Form" and provided as

Reduction Contract section 50.

No bidder should complete any Bid Form other than the one in the bidding package which NMFS will, before the date on which bidding opens, mail to each qualifying bidder then on NMFS' list of qualifying bidders.

Each bidding package will contain the Reduction Contract with the qualifying bidder's Bid Form, as well as detailed questions and answers about completing the Bid Form and the bidding process in general.

Bidders may not alter, revise, or in any other way attempt to change the Reduction Contract terms and conditions. The Reduction Contract terms and conditions are non-negotiable, and NMFS will reject as non-responsive any bid which attempts to change them.

As otherwise specified in, and exactly in accordance with, the Reduction Contract, each bidder must complete the Bid Form by:

(a) Inserting, in the place provided at section 50.II.(a), the qualifying bidder's name(s) and the co-bidder's name(s) (if the bid requires a co-bidder),

(b) Inserting, in the place provided at section 50.II.(b), each bidder's address of record,

(c) Inserting, in the place provided at section 50.II.(c), each bidder's telephone number,

(d) Inserting, in the place provided at section 50.II.(d), each bidder's electronic mail address (if the bidder has one),

(e) Inserting, in the place provided at section 50.III, the bid's crab reduction permit number and including a photocopy of the permit,

(f) Inserting, in the place provided at section 50.IV, the bid's non-crab reduction permit number(s) (if the bid requires a non-crab reduction permit(s)) and the fishery(s) involved and including a photocopy of the permit(s),

(g) Inserting, in the place provided at section 50.V, the requested fishing history information for the bid's crab reduction permit and non-crab reduction permit(s),

(h) Inserting, in the place provided at section 50.VI, the official name and official number of the bid's reduction/privilege vessel and including a photocopy of the vessel's certificate of documentation,

(i) Inserting, in the place provided at section 50.VII, a bid amount, and

(j) Signing, in the place provided at section 50.VIII, the Reduction Contract and having a notary acknowledge and certify each signature.

**VIII. Bid Submission And Effect:**

After completing the Bid Forms, bidders must submit the full Reduction Contracts to NMFS. This includes the completed Bid Form together with the remainder of the Reduction Contract preceding the Bid Form. Each Bid Form is subject to the Reduction Contract's full terms and conditions.

Delivering a Reduction Contract with a completed Bid Form to NMFS constitutes bid submission.

NMFS will deem each bid to have been submitted as of the receipt time and date which NMFS marks on each bid which NMFS receives at the address specified in Bid Invitation section VI.

Each bid submitted to NMFS constitutes the bidder's irrevocable offer to NMFS in accordance with the Reduction Contract's terms and conditions.

Once each bidder initiates bid delivery, NMFS will neither intercept the bid and return it to the bidder nor comply with the bidder's request either to regard the bidder as not having submitted the bid or to return the bid unsubmitted to the bidder. Once a bidder submits its bid, NMFS will either accept the bid or reject the bid.

No bidder should initiate delivery of its bid unless the bidder then fully intends to make an irrevocable bid offer to NMFS.

NMFS will regard as non-responsive each bid which a Bidder does not complete, submit, and deliver fully in accordance with the Bid Invitation and the Reduction Contract. Although NMFS has no obligation to do so, NMFS nevertheless may, in its sole discretion, contact any bidder in an attempt to remedy any bid deficiency which NMFS deems reasonably capable of remedy.

Any bidder's submission of a bid containing false information may subject the bidder to the substantial penalties provided in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801, et seq., and other applicable law.

Bidders are solely responsible for being aware of and understanding bidding's full legal effect. Before bidding, NMFS strongly suggests that bidders review with their legal advisers the governing law and regulations, the Bid Invitation, and the Reduction Contract. Bidders' failure to do so does not, however, affect the irrevocable nature of their bids.

**IX. After Bid Submission:**

After bidding closes, NMFS will, in the manner which the Final Rule provides:

(a) Score bids;

(b) Accept or reject bids (but not, at this point, advise bidders);

(c) Conduct a referendum; and

(d) If the referendum is successful:

(1) Advise bidders of the referendum's results,

(2) Advise each bidder whether NMFS accepted or rejected its bid, and

(3) Complete the Program by:

(i) Publishing a reduction payment tender notice in the Federal Register,

(ii) Tendering reduction payment to accepted bidders,

(iii) Revoking, restricting, withdrawing, invalidating, or extinguishing by other means (as the case may be) each element of the reduction fishing interest,

(iv) Disbursing reduction payments in accordance with accepted bidders' written payment instructions, and

(v) Instituting, for post-reduction fish sellers and fish buyers in the reduction fishery, reduction loan fee payment and collection; or

(e) If the referendum is unsuccessful,

(1) Cease further Program activity, or

(2) Issue a new Bid Invitation and repeat the Program process following an invitation to bid.

All bid scoring, rejections, and acceptances constitute final agency action at the time NMFS scores, rejects, and accepts.

After bidding, bidders must continue to be the owners, holders, or retainers (as the case may be) of record of each element of the reduction fishing interests in their bids unless or until:

(a) If the post-bidding referendum is unsuccessful, NMFS notifies the bidders that the referendum was unsuccessful, in which case no bidder need continue in this capacity;

(b) If the post-bidding referendum is successful, NMFS notifies rejected bidders that NMFS has rejected their bids, in which case no rejected bidder need continue in this capacity but each accepted bidder must continue in this capacity until NMFS revokes, restricts, withdraws, invalidates, or extinguishes by other means each element of the reduction fishing interest; or

(c) The irrevocable bid offers expire before either (a) or (b) occurs, in which case no bidder need continue in this capacity.

When, following a successful referendum, NMFS notifies each accepted bidder of NMFS' previous acceptance of the bidder's irrevocable bid offer, the Reduction Contract is then unconditional and all Reduction Contract parties must fulfill their Reduction Contract obligations.

When NMFS tenders reduction payment to each accepted bidder, all fishing with respect to each element of the accepted bidder's reduction fishing interest must forever cease and each accepted bidder must immediately retrieve all fishing gear, whether or not the accepted bidder owns such gear, which anyone previously deployed from the accepted bidder's reduction/privilege vessel.

Each bid will expire on September 17, 2004, unless NMFS has before such date notified the bidder in writing at the bidder's address of record that NMFS accepted the bidder's bid.

**ADDENDUM 2**

(OMB Control No. 0648-0376, Expiring 07/31/05)

## FISHING CAPACITY REDUCTION PROGRAM BID AND TERMS OF AGREEMENT FOR CAPACITY REDUCTION: BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRABS

**THIS AGREEMENT,** is entered into by and between the party or parties named in the portion of this document (herein referenced as the "Reduction Contract") entitled, "Fishing Capacity Reduction Bid Submission Form" (otherwise herein referenced as the "Bid Form"), as the qualifying bidder and as the co-bidder (if there is a co-bidder) (herein collectively referenced as the "Bidder") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (herein referenced as "NMFS"). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Bidder's offer.

**WITNESSETH:**

**Whereas**, NMFS has sent an Invitation to Bid (herein referenced as the "Bid Invitation") for the Fishing Capacity Reduction Program (herein referenced as the "Program") to qualifying bidders holding non-interim crab license limitation program licenses for one or more reduction endorsement fisheries and issued under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs;

**Whereas**, NMFS implements the Program pursuant to § 144 of Pub. Law 106-554; § 2201 of Pub. Law 107-20; § 205 of Pub. Law 107-117; as well as 16 U.S.C. §1861a (b)-(e) and other applicable law;

**Whereas**, in accordance with such authority, NMFS published a final Program rule (50 CFR § 600.1018) in the Federal Register (68 FR 69331-69342) (hereinafter referenced as the "Final Rule");

**Whereas,** NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Program, (50 CFR §600.1000 et seq.);

**Whereas**, the term "Reduction Fishery" is statutorily defined for the Program;

**Whereas**, NMFS can complete the Program only after a referendum approves an industry fee system for the Reduction Fishery;

**Whereas,** in direct response to the Bid invitation, the Bidder completes the Bid Form, the Bidder submits the Bid Form to NMFS, and the Bid Form is expressly subject to the requirements of: the Reduction Contract terms and conditions, the Bid Invitation, the Final Rule, the framework regulations, and applicable law; and

**Whereas,** the Program's express objective is to permanently reduce harvesting capacity in the Reduction Fishery.

**NOW, THEREFORE**, for good and valuable consideration and the premises and covenants hereinafter set forth, the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. Incorporation of Final Rule. The Final Rule is expressly incorporated herein by this reference. In the event of conflicting language, the rule takes precedence over the Reduction Contract.

3. Bid Invitation. The Bid Invitation requirements are expressly incorporated herein by this reference.

4. Bid Form. By completing the Bid Form and submitting the Reduction Contract of which the Bid Form is a part to NMFS in the manner the Bid Invitation requires, the Bidder hereby irrevocably offers to relinquish its reduction fishing interest and comply with all provisions of the Final Rule. If NMFS discovers any deficiencies in the Bidder's submission to NMFS, NMFS may, at its sole discretion, contact the Bidder in an attempt to correct such bid deficiency.

5. Crab Reduction Permit. In the Bid Form, the Bidder specifies, as a crab reduction permit, a valid non-interim crab license for one or more reduction endorsement fisheries and issued under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. The Bidder expressely acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke this crab reduction permit as well as any present or future claims of eligibility for any fishery privilege based upon the crab reduction permit.

6. Non-crab Reduction Permit(s). In the Bid Form, the Bidder specifies, as a non-crab reduction permit(s), any and all Federal permit(s), license(s), area and species endorsement(s), harvest authorization(s), or fishery privilege(s) for which the qualifying bidder was the holder of record on December 12, 2003, and which NMFS issued based on the fishing history of the Bidder's reduction/history vessel. The Bidder represents and warrants that the Bid Form includes every

such permit for which the qualifying bidder was the holder of record on December 12, 2003. The Bidder hereby acknowleges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke the non-crab reduction permit(s), as well as any present or future claims of eligibility for any fishery privilege based upon the non-crab reduction permit(s).

7. Reduction Permit(s) Held by Qualifying Bidder. The Bidder represents and warrants that the qualifying bidder is the holder of record, according to NMFS' official fishing license records, at the time of bidding of the crab reduction permit and non-crab reduction pemit(s) which the Bidder specifies in the Bid Form.

8. Reduction/privilege Vessel. In the Bid Form, the Bidder specifies, as the reduction/privilege vessel, the vessel which was on December 12, 2003, designated on the crab reduction permit which the bidder also specifies in the Bid Form. The Bidder represents and warrants that the reduction/privilege vessel is neither lost nor destroyed at the time of bidding and that either the qualifying bidder or the co-bidder (if there is a co-bidder) is the vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of bidding.

9. Reduction Fishing Privilege. If the reduction/privilege vessel which the Bidder specifies in the Bid Form is Federally documented, the Bidder offers to relinquish and surrender the reduction/privilege vessel's reduction fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the reduction/privilege vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control--including the reduction/privilege vessel's: fisheries trade endorsement under 46 U.S.C. §12108; eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. §808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world. If the reduction/privilege vessel specified in the Bid Form is not a Federally documented vessel, the Bidder offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.

10. Retention of Reduction Fishing History. The Bidder expressly states, declares, affirms, attests, represents, and warrants to NMFS that the Bidder retains, and is fully and legally entitled to offer and dispose of hereunder, full and complete rights to the reduction/history vessel's full and complete reduction fishing history necessary to fully and completely comply with the requirements of section 11 hereof.

11. Reduction Fishing History. The Bidder surrenders, relinquishes, and consents to NMFS' permanent revocation of the following reduction fishing history:

I. Reduction vessels same. If the reduction/privilege vessel the Bidder specifies in the Bid Form is the same vessel as the qualifying bidder's reduction/history vessel and the qualifying bidder is bidding alone without a co-bidder, the reduction fishing history is:

(a) The reduction/history vessel's full and complete documented harvest of crab,

(b) The reduction/history vessel's full and complete documented harvest of the non-crab species involved in the non-crab reduction permit(s) of which the qualifying bidder was the holder of record on December 12, 2003, and

(c) For any documented harvest of the reduction/history vessel, other than and in addition to that specified in this (a) and (b) of this subsection I, the qualifying bidder's right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and additional documented harvest which could ever qualify the qualifying bidder for any future limited access system fishing license, permit, and other harvest authorization of any kind; but without prejudice to any party unrelated to the qualifying bidder who before December 12, 2003, may have for value independently acquired the fishing history involving any such other and additional documented harvest; and

II. Reduction vessels different. If the reduction/privilege vessel the Bidder specifies in the Bid Form is not the same vessel as the qualifying bidder's reduction/history vessel and regardless of whether the qualifying bidder is bidding alone or jointly with a co-bidder, the reduction fishing history is:

(a) The reduction/history vessel's full and complete documented harvest of crab,

(b) The reduction/history vessel's full and complete documented harvest of the non-crab species involved in the non-crab reduction permit(s) of which the qualifying bidder was the holder of record on December 12, 2003,

(c) For any documented harvest of the reduction/history vessel, other than and in addition to that specified in (a) and (b) of this subjection II, the qualifying bidder's right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and additional documented harvest which could ever qualify the qualifying bidder for any future limited access system fishing license, permit, and other harvest authorization of any kind; but without prejudice to any party unrelated to the qualifying bidder who before December 12, 2003, may have for value independently acquired the fishing history involving any such other and additional documented harvest, and

(d) The reduction/privilege vessel's full and complete documented harvest of crab during the period in which either the reduction/privilege vessel was the

vessel designated on the crab reduction permit or the crab reduction permit was otherwise used to authorize the reduction privilege/vessel's harvesting of crab.

12. Bid Amount. In the Bid Form, the Bidder specifies a bid amount in U.S. dollars. NMFS' payment to the bidder of a reduction payment in the exact amount of the bid amount is full and complete consideration for the Bidder's offer.

13. Additional Bid Form Elements. The bidder shall include with its bid an exact photocopy of the bid's reduction/privilege vessel's official vessel documentation or registration (i.e., the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issues for Federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the bid's crab reduction permit and non-crab reduction permit(s), The Bidder shall also include with the bid all other information the Bid Form requires and otherwise comply with all other Bid Form requirements.

14. Use of Official Fishing License or Permit Databases. The Bidder expressly acknowledges that NMFS shall use the appropriate, offical, governmental fishing license or permit database to: determine the Bidder's address of record, verify the Bidder's qualification to bid, determine the holder of record of the bid's crab reduction permit and non-crab reduction permit(s), and verify the Bidder's inclusion in the bid of all such reduction permits associated with the reduction/history vessel and required to be offered in the bid.

15. Use of National Vessel Documentation Center Database. The Bidder expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a Federally documented reduction/privilege vessel and the appropriate State records to determine the owner of record of a non-Federally documented reduction/privilege vessel.

16. Bidder to Ensure Accurate Records. The Bidder shall, to the best of its ability, ensure that the records of the databases relevant to sections 14 and 15 hereof are true, accurate, and complete.

17. Bid Submissions Are Irrevocable. The parties hereto expressly acknowledge as the essence hereof that the Bidder voluntarily submits to NMFS this firm and irrevocable bid offer. The Bidder expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of its bid and that the receipt date and time which NMFS marks on the bid constitutes the date and time of the bid's submission.

18. Bidder Retains Bid Elements. After submitting a bid, the Bidder shall continue to hold, own, or retain unimpaired every aspect of the reduction fishing interest specified in the Reduction Contract until such time as: NMFS rejects the bid,

NMFS notifies the bidder that the referendum was unsuccessful, NMFS tenders the reduction payment and the Bidder complies with its obligations under the Reduction Contract, NMFS otherwise excuses the Bidder's performance, or the bid expires without NMFS first having notified the Bidder in writing that NMFS accepted the bid.

19. Bid Rejection. NMFS shall reject a bid which NMFS deems is in any way unresponsive or not in conformance with the Bid Invitation, the Reduction Contract, and the applicable law or regulations unless the Bidder corrects the defect and NMFS, in its sole discretion, accepts the correction.

20. Notarized Bidder Signature(s) Required. NMFS shall deem as nonresponsive and reject a bid whose Bid Form does not contain the notarized signatures of all persons required to sign the Bid Form on behalf of the Bidder.

21. Bid Rejections Constitute Final Agency Action. NMFS's bid rejections are conclusive and constitute final agency action as of the rejection date.

22. Effect of Bid Submission. Submitting a bid constituting an irrevocable offer and conforming to the requirements stated in the Bid Invitation and herein entitles the Bidder to have NMFS consider accepting the bid.

23. Acceptance by Reverse Auction. In accordance with applicable requirements, such as those stated in the the Bid Invitation, the Reduction Contract, the Final Rule and other regulations, and the applicable law, NMFS shall accept bids using a reverse auction. If the referendum is successful, NMFS shall formally notify the Bidder in writing whether NMFS accepted or rejected the bid.

24. Reduction Contract Formed. The Bidder expressly acknowledges that NMFS' formal acceptance of the bid forms a binding Reduction Contract in accordance with the terms and conditions herein, including the Bid Invitation requirements which are incorporated herein by reference exactly as if they had been fully and exactly stated herein.

25. Reduction Contract Binding. Upon NMFS' bid acceptance notice, the Reduction Contract becomes enforceable against, and binding on, the Reduction Contract parties. The parties shall abide by the Reduction Contract terms and conditions unless NMFS provides the Bidder with written notice that an unsuccessful referendum excuses the Bidder's and NMFS' performance.

26. Reduction Contract Subject to Federal Law. The Reduction Contract is subject to Federal law.

27. Notice to Creditors. Upon NMFS' bid acceptance notice to the Bidder, the Bidder agrees to notify all parties with secured interests in the reduction/privilege vessel,

the crab reduction permit, and the non-crab reduction permit(s) that the Bidder has entered into the Reduction Contract.

28. Referendum. The Bidder acknowledges that referendum approval of the industry fee system is an occurrence over which NMFS has no control.

29. Referendum Results. After holding a referendum, NMFS shall inform the Bidder in writing of the referendum's results and whether NMFS had accepted or rejected the Bidder's bid.

30. Unsuccessful Referendum Excuses Performance. An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Bidder need not surrender and relinquish or allow the revocation or restriction of any element of the reduction fishing interest specified in the Bid Form. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

31. Bidder Responsibilities upon Successful Referendum. Upon NMFS' notifiying the Bidder that the referendum was successful and that NMFS had accepted the Bidder's bid, the Bidder shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the: crab reduction permit, non-crab reduction permit(s), reduction fishing privilege, and reduction fishing history.

32. Written Payment Instructions. After a successful referendum, NMFS shall tender reduction payment by requesting the Bidder to provide to NMFS, and the Bidder shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Bidder or to the Bidder's order.

33. Request for Written Payment Instructions Constitutes Tender. NMFS' request to the Bidder for written payment instructions constitutes reduction payment tender, as specified in 50 C.F.R. 600.1011.

34. Bidder Responsibilities upon Tender. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) its: crab reduction permit, non-crab reduction permit(s), reduction fishing privilege, and reduction fishing history. The Bidder must then return the originals of its crab reduction permit and non-crab reduction permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Bidder shall forever cease all fishing for any species with the reduction/privilege vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the reduction/privilege vessel.

35. Reduction/privilege Vessel Lacking Federal Documentation. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall immediately scrap any vessel which the Bidder specified as a reduction/privilege vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Bidder shall scrap such vessel at the Bidder's expense. The Bidder shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Bidder shall conclude such scrapping within a reasonable time.

36. Future Harvest Privilege and Reduction Fishing History Extinguished. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use or holdership of the crab reduction permit and the non-crab reduction permit(s), from the use or ownership of the reduction/history vessel and the reduction/privilege vessel (subject to, and in accordance with, however, the provisions of section 11 hereof), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Bidder for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

37. Post Tender Use of Federally Documented Reduction Vessel. After NMFS' reduction payment tender to the Bidder, the Bidder may continue to use a Federally documented reduction/privilege vessel for any lawful purpose except fishing and may transfer--subject to all restrictions in the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law--the vessel to a new owner. The Bidder or any subsequent owner shall only operate the reduction/privilege vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Bidder fails to abide by such restrictions, the Bidder expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the reduction/privilege vessel and scrapping it at the Bidder's expense.

38. NMFS' Actions upon Tender. Contemporaneously with NMFS' reduction payment tender to the Bidder, and without regard to the Bidder's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: permanently revoke the Bidder's crab reduction permit and non-crab reduction permit(s); notify the National Vessel Documentation Center to permanently revoke the reduction/privilege vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the reduction/privilege vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the reduction fishing history represented by any documented harvest fishing history accrued on, under, or as a result of the reduction/history vessel and the

reduction/privilege vessel (subject to, and in accordance with, however, the provisions of section 11 hereof), the crab reduction permit, and the non-crab reduction permit(s) which could ever qualify the Bidder for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

39. Material Disputes to be Identified. Members of the public shall, up until NMFS receives the Bidder's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted bid. Such a material dispute shall neither relieve the Bidder of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

40. Reduction Payment Disbursement. Once NMFS receives the Bidder's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Bidder. Reduction payment disbursement shall be in strict accordance with the Bidder's written payment instructions. Unless the Bidder's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Bidder. If the qualifying bidder bids with a co-bidder, both the qualifying bidder and the co-bidder must approve and sign the written payment instructions.

41. Reduction Payment Withheld for Scrapping or for Other Reasons. In the event that a reduction/privilege vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Bidder has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Bidder performs in accordance with the Reduction Contract terms and conditions.

42. Bidder Assistance with Restriction. The Bidder shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the bid's reduction fishing interest in accordance with the requirments of the Bid Invitation, the Reduction Contract terms and conditions, the Final Rule, other applicable regulations, and the applicable law.

43. Recordation of Restrictions. Upon the reduction fishing privilege's revocation, the Bidder shall do everything reasonably necessary to ensure that such revocation is

recorded on the reduction/privilege vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the reduction/privilege vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term "fishing" includes the full range of activities defined in 16 U.S.C. §1802.

44. Reduction Element Omission. In the event NMFS accepts the bid and the Bidder has failed, for any reason, to specify in the Bid Form any crab reduction permit, non-crab reduction permit(s), reduction/privilege vessel, reduction fishing history, or any other element of the reduction fishing interest which the Bidder should under the Bid Invitation, the Reduction Contract, the Final rule, other applicable regulations, and the applicable law have specified in the Bid Form, such omitted element shall nevertheless be deemed to be included in the Bid Form and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not be omitted shall apply as if such element had not been omitted. Upon the Bidder discovering any such omission, the Bidder shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Bidder discovering any such omission, the Bidder shall act in accordance with the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law.

45. Remedy for Breach. Because money damages are not a sufficient remedy for the Bidder breaching any one or more of the Reduction Contract terms and conditions, the Bidder explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law.

46. Waiver of Data Confidentiality. The Bidder consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Program requirements, including any information provided in the Bid Form or by any other means associated with, or necessary for evaluation of, the Bidder's bid if NMFS finds that the release of such information is necessary to achieve the Program's authorized purpose. The Bidder hereby explicitly waives any claim of confidentiality otherwise afforded to financial, catch, or harvest data, as well as trade secrets, fishing histories, or other personal information, otherwise protected from release under 16 U.S.C. §1881a(b) or any other law. In the event of such information release, the Bidder hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties,

causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act, or event arising from, out of, or in any way related to, the release of any information associated with the Program.

47. Oral Agreements Invalid. The Bid Invitation and Reduction Contract contain the final terms and conditions of the Reduction Contract between the Bidder and NMFS and represent the entire and exclusive agreement between them. NMFS and the Bidder forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

48. Severable Provisions. The Reduction Contract provisions are severable; and, in the event any portion ot the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Bidder and NMFS.

49. Disputes. Any and all disputes involving the Bid Invitation, the Reduction Contract, and any other Program aspect affecting them shall in all respects be governed by the Federal laws of the United States; and the Bidder and all other parties claiming under the Bidder irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

50. Fishing Capacity Reduction Bid Submission Form.

I. Completion and submission. The Bidder must fully, faithfully, and accurately complete the Bid Form in this section 50 and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Bid Invitation and the Reduction Contract. If completing the Bid Form requires inserting more information than the Bid Form places provided for the insertion of such information provides, the Bidder should attach an addendum to the Bid Form which: includes and identifies the additional information, states that the addendum is a part of the Bid Form portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Bid Form's crab reduction permit, and is signed by all persons who signed the Bid Form as the Bidder.

II. Bidder information.

(a) Bidder name(s). Insert in the place this subsection II.(a) provides the name(s) of the qualifying bidder and of the co-bidder (if there is a co-bidder), and check the appropriate column row for each name listed.

Each name the Bidder inserts must be the full and exact legal name of

record of each person, partnership, or corporation bidding. If any reduction fishing interest element is co-owned by more than one person, partnership, or corporation, the Bidder must insert each co-owner's name.

In each case, the qualifying bidder is the holder of record, at the time of bidding, of the crab reduction permit and the non-crab reduction permit(s). A co-bidder is not allowed for either the crab reduction permit or the non-crab reduction permit(s). If the qualifying bidder is also the owner or record, at the time of bidding, of the reduction/privilege vessel, the qualifying bidder is the sole Bidder. If, however, the owner of record, at the time of bidding, of the reduction/privilege vessel is not exactly the same as the qualifying bidder, then the diffferent owner of record is the co-bidder; and the qualifying bidder and the co-bidder jointly bid together as the Bidder.

| **BIDDER NAME(S)**<br>If qualifying bidder or co-bidder consists of more than one owner, use one row of this column to name each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder. | Check appropriate column below for each name listed in 1st column | |
|---|---|---|
| | Qualifying bidder | Co-Bidder (if any) |
| (1) | | |
| (2) | | |
| (3) | | |
| (4) | | |
| (5) | | |
| (6) | | |

(b) Bidder address(s) of record. Insert in the place provided in this subsedtion II.(b) the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact address(s) of record, and check the appropriate column row for each address listed.

| **BIDDER ADDRESS(S)**<br><br>**If qualifying bidder or co-bidder consists of more than one co-owner, use one row of this column for address of each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder.**<br><br>***Always use same row order as in Bidder name table in section 50.II.(a) above (i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.)*** | **Check appropriate column below for each address listed in 1st column** | |
|---|---|---|
| | **Qualifying bidder** | **Co-Bidder (if any)** |
| **(1)** | | |
| **(2)** | | |
| **(3)** | | |
| **(4)** | | |
| **(5)** | | |
| **(6)** | | |

*[Rest of page No. 13 intentionally left blank; continue to page No.14]*

(c) Bidder business telephone number(s). Insert in the place this subsection II.(c) provides the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact business telephone number(s), and check the appropriate column row for each number listed.

| **BIDDER TELEPHONE NUMBER(S)**<br>If qualifying bidder or co-bidder consists of more than one co-owner, use one row of this column for telephone number of each co-owner. If not, use only one row for qualifying bidder and one row for co-bidder (if any).<br>*Always use same row order as in Bidder name table in section 50.II.(a) above (i.e., telephone number (1) is for name (1), telepone number (2) is for name (2), telephone number (3) is for name (3), etc.)* | Check appropriate column below for each number listed in 1st column | |
|---|---|---|
| | Qualifying bidder | Co-Bidder (if any) |
| (1) | | |
| (2) | | |
| (3) | | |
| (4) | | |
| (5) | | |
| (6) | | |

*[Rest of page No. 14 intentionally left blank; continue to page No.15]*

(d) Bidder electronic mail address(s) (if available). Insert in the place this subsection II.(d) provides the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact electronic mail address(s), and check the appropriate column row for each address listed.

| **BIDDER ELECTRONIC MAIL ADDRESS(S)**<br>If qualifying bidder or co-bidder consists of more than one co-owner, use one row of this column for e-mail address of each co-owner. If not, use only one row for qualifying bidder and one row for co-bidder (if any).<br>*Always use the same row order as in the Bidder name table in section 50.II.(a) above (i.e., e-mail address (1) is for name (1), e-mail address (2) is for name (2), e-mail address (3) is for name (3) etc.)* | Check appropriate column below for each address listed in 1st column | |
|---|---|---|
| | Qualifying bidder | Co-Bidder (if any) |
| (1) | | |
| (2) | | |
| (3) | | |
| (4) | | |
| (5) | | |
| (6) | | |

III. Crab license number for crab reduction permit. Insert in the place this subsection III provides the full and exact license number which NMFS designated on the crab license which the qualifying bidder specifies in the Bid Form as the crab reduction permit. Enclose with the Bid Form an exact photocopy of such license.

| LICENSE NUMBER OF CRAB LICENSE SPECIFIED AS BID'S CRAB REDUCTION PERMIT |
|---|
| |

*[Rest of page No. 15 intentionally left blank; continue to page No.16]*

IV. License number(s) for non-crab reduction permit(s) (if there is a non-crab reduction permit(s)). Insert in the place this subsection IV provides the fishery(s) involved in, and the full and exact license number(s) which NMFS designated on the license(s) which the qualifying bidder specifies in the Bid Form as the non-crab reduction permit(s). Enclose with the Bid Form an exact photocopy of each such license.

| LICENSE NUMBER(S) AND FISHERY(S) OF LICENSE(S) SPECIFIED AS NON-CRAB REDUCTION PERMIT(S) | |
|---|---|
| **License Number(s)** | **Fishery(s)** |
| | |
| | |
| | |
| | |
| | |
| | |

V. Reduction Fishing History. For all reduction fishing history which the Reduction Contract requires the Bidder to include in the bidder's reduction fishing interest, insert in the place this subsection V provides the chronological and other information which each column heading therein requires. The information required does not include any actual landing data. Any bidder whose crab reduction permit is a crab license whose issuance NMFS based on the crab fishing history of a lost or destroyed vessel plus a replacement vessel must insert information meeting the requirements of Final Rule section 600.1018(i)(2). Any bidder whose crab reduction permit is a crab license whose issuance NMFS in any part based on the crab license holder's acquisition of crab fishing history from another party must insert information meeting the requirements of Final Rule section 600.1018(i)(3).

| LICENSE NO. OF EACH CRAB AND EACH NON-CRAB REDUCTION PERMIT IN SECTION 50. III AND 50.IV | FOR EACH PERMIT IN 1ST COLUMN: FROM/TO DATE OF EACH FISHING HISTORY BIDDER POSSESSES | FOR EACH FISHING HISTORY IN 2ND COLUMN | |
|---|---|---|---|
| | | If Bidder owned vessel giving rise to fishing history, name(s) and official number(s) of each vessel involved | If Bidder acquired fishing history from another party, name of party, manner in which acquired, and date acquired |
| (1) | | | |
| (2) | | | |
| (3) | | | |
| (4) | | | |
| (5) | | | |
| (6) | | | |

VI. Reduction/privilege vessel. Insert in the place this subsection VI provides the full and exact official name and official number which the National Vessel Documentation Center designated for the reduction/privilege vessel which the qualifying bidder or the co-bidder (if there is a co-bidder) specifies in the Bid Form, and check the column appropriate for the vessel's ownership of record. Enclose with the Bid Form an exact photocopy of such vessel's official certificate of doumentation.

| REDUCTION/PRIVILEGE VESSEL | | Check appropriate ownership column below | |
|---|---|---|---|
| Official Name | Official Number | Qualifying bidder | Co-bidder (if any) |
| | | | |

VII. Bid Amount. Insert in the place this subsection VII provides the Bidder's full and exact bid amount, both in words and in numbers.

| BID AMOUNT (U.S. DOLLARS) | |
|---|---|
| In words | In numbers |
| | |

VIII. Reduction Contract signature.

In compliance with the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law, the Bidder submits the Bid Form and the Reduction Contract of which the Bid Form is a part as the Bidder's irrevocable bid offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawl, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the crab reduction permit, any non-crab reduction permit(s), the reduction/privilege vessel's reduction fishing privilege, and the reduction/history vessel's reduction fishing history--all as identified in the Bid Form and the Reduction Contract or as required under the Final Rule, other applicable regulations, or the applicable law..

The Bidder expressly acknowledges that NMFS' acceptance of the Bidder's bid offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same about as the bid amount specified in subsection VII of this section (less any sum withheld for scrapping any reduction/privilege vessel lacking Federal documentation or for any other purpose) to the Bidder shall, among other things, render the reduction/privilege vessel permanently ineligible for any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments,

limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete reduction fishing interest and any other fishery privileges or claims associated with the crab reduction permit, any non-crab reduction permit(s), the reduction/history vessel, the reduction/privilege vessel, and the reduction fishing history--all as more fully set forth in the Bid Invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law.

By completing and signing the Bid Form, the Bidder expressly acknowledges that the Bidder has fully and completely read the entire Bid Invitation and Reduction Contract. The Bidder expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Bidder is fully able to enter into the Reduction Contract and that the bidder legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full reduction fishing interest which the Reduction Contract specifies and the Bid Invitation, the Final Rule, the other applicable regulations, and the applicable law requires. Any person or entity completing the Bid Form and/or signing the Bid Form on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Bidder expressly attests, warrants, and represents to NMFS that every co-owner of the Bidder necessary to constitute the Bidder's full and complete execution of the Reduction Contract has signed the Reduction Contract in the place this subsection VIII provides. The Bidder expressly attests, warrants, and represents to NMFS that the Bidder: fully understands the consequences of submitting the completed Bid Form and the Reduction Contract of which it is a part to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Bidder's breach of the Reduction Contract or submission of a bid which fails to conform with the Bid invitation, the Reduction Contract, the Final Rule, other applicable regulations, and the applicable law. The Bidder expressly attests, warrants, and represents to NMFS that all information which the Bidder inserted in the Bid Form is true, accurate, complete, and fully in accordance with the Bid Invitation, the Bid Form instructions for such insertions, the Reduction Contract of which the Bid Form is a part, the Final Rule, other applicable regulations, and the applicable law.

**IN WITNESS WHEREOF**, the Bidder has, in the place this subsection VIII provides, executed the Bid Form (and, accordingly, the Reduction Contract) either as a qualifying bidder bidding alone or as a qualifying bidder and a co-bidder (if there is a co-bidder) jointly bidding together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Bidder's offer by signing the Reduction Contract.

The qualifying bidder and the co-bidder (if there is a co-bidder) must each sign the Bid Form exactly as instructed herein. Each co-owner (if there is a co-owner) of each qualifying bidder or co-bidder (if there is a co-bidder) must also sign the Bid

Form exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Bidder, complete and sign the acknowledgement and certification provision associated with each such person or entity's Bid signature.

(a) Qualifying bidder's and co-bidder's (if there is a co-bidder) signature(s) and notary's acknowledgement(s) and certification(s).

| BIDDER'S SIGNATURE AND NOTARY'S ACKNOWLEDGEMENT AND CERTIFICATION. | | | |
|---|---|---|---|
| If qualifying bidder or co-bidder consists of more than one owner, use one row of 1st column for each co-owner's signature. If not, use only one row for qualifying bidder and one row for co-bidder (if any). *Always use same Bidder row order as in Bidder name table in section 50.ii.(a) above (i.e., signature (1) is for name (1), signature (2) is for name (2), signature (3) is for name (3), etc.)* | | | |
| **BIDDER SIGNATURE** (1) Sign. (2) Print: (a) signer's name, (b) signer's title (if signing for corporation or partnership), and (c) signing date. | Check appropriate column for each signature in 1st column | | NOTARY SIGNATURE (1) Sign. (2) Print: (a) name, (b) signing date, (3) date commission expires, and (4) state and county. Each notary signature attests to following: *"I certify that I know or have satisfactory evidence that the person who signed in the 1st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged he/she did so freely and voluntarily."* |
| | Qualifying bidder | Co-bidder (if any) | |
| (1) | | | |
| (2) | | | |

| ----------CONTINUED, WITH SAME COLUMN HEADINGS, FROM SUBSECTION VIII.(a) TABLE ON PAGE NO. 20-------- | | | |
|---|---|---|---|
| (3) | | | |
| (4) | | | |
| (5) | | | |
| (6) | | | |

(b) United States of America's signature.

United States of America,
Acting by and through the Secretary of Commerce,
National Oceanic and Atmospheric Administration,
National Marine Fisheries Service,
Financial Services Division

By: _____ Dated: _____
Michael L. Grable, Chief
Financial Sevices Division



Dated: February 10, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 04–3393 Filed 2–13–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 020504E]**

### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Snapper Grouper Committee, Scientific and Statistical Committee, Mackerel Committee, and Shrimp Committee. In addition, there will be a meeting of the full Council.

**DATES:** The meetings will be held on March 2–5, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meeting will be held at Sea Palms, 5445 Frederica Road, St. Simons Island, GA 31522; telephone: (1–800) 841–6268 or (912) 638–3351.

*Council address:* South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

Copies of documents are available from Kim Iverson at the Council.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC–10; fax: 843–769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:**

#### Meeting Dates

1. *Snapper Grouper Committee Meeting: March 2, 2004, 8:30 a.m.- 5:30 p.m. and March 3, 2004, 8:30 a.m.- 10:30 a.m.*

The Snapper Grouper Committee will receive an update on the Southeastern Data, Assessment and Review (SEDAR) process and the status of Amendment 13A to the Snapper/Grouper Fishery Management Plan (FMP). The Committee will receive preliminary results from informational public hearings regarding Amendment 14 to the Snapper/Grouper FMP and receive a report on the Atlantic Large Whale Take Reduction Team. In addition, the Committee will discuss and develop recommendations for the Council on Amendment 13B to the Snapper Grouper FMP.

2. *Scientific and Statistical Selection Committee Meeting: March 3, 2004, 10:30 a.m. - 12 noon.*

The Scientific and Statistical Selection Committee will review current members of the Scientific and Statistical Committee (SSC), discuss interest in expanding the role of the SSC and subcommittees, and develop recommendations for the Council.

3. *Mackerel Committee Meeting: March 3, 2004, 1:30 p.m. until 5:30 p.m.*

The Mackerel Committee will receive an update on the SEDAR for mackerel and receive a report on the Atlantic Large Whale Take Reduction Team. The Committee will also discuss and develop recommendations for the Council on Scoping Documents for Amendment 15 and Amendment 16 to the Coastal Migratory Pelagics FMP. In addition, the Committee will receive a presentation on the Marine Stewardship Council.

*4. Shrimp Committee Meeting: March 4, 2004, 8:30 a.m. - 12 noon*

The Shrimp Committee will receive an update on timing for the development of Amendment 6 to the Shrimp FMP and develop recommendations for the Council. The Committee will also receive a report from NOAA Fisheries on observer work and the Bycatch Data Collection Plan and develop recommendations for the Council. In addition, the Committee will review the options paper for Amendment 6 to the Shrimp FMP and develop alternatives for the Council to consider.

*Council Session: March 4, 2004, 1:30 p.m. - 6 p.m. and March 5, 2004 from 8 a.m. until 1 p.m.*

*March 4, 2004*

*From 1:30 p.m. - 1:45 p.m.*, the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the December 2003 meeting minutes.

*From 1:45 p.m. - 2:15 p.m.*, the Council will address the transfer of management of red drum to the Atlantic States Marine Fisheries Commission (ASMFC), including the process for transfer and Essential Fish Habitat (EFH) considerations. The Council will take action as necessary.

*From 2:15 p.m. - 2:45 p.m.*, the Council will receive a striped bass consultation including background information and possible need for action. The Council will take action as necessary.

*From 2:45 p.m. - 5 p.m.*, the Council will hear a report from the Snapper Grouper Committee and take action on Committee recommendations as necessary. The Council will also receive a presentation on the final red porgy project report.

*From 5 p.m. - 6 p.m.*, the Council will hear a report from the Mackerel Committee. The Council will take action on issues related to the SEDAR process for mackerel as well as scoping documents for both Amendment 15 and Amendment 16 to the Coastal Migratory Pelagics FMP.

*March 5, 2004*

*From 8 a.m. - 8:30 a.m.*, the Council will receive a briefing on litigation and other legal issues affecting the Council (CLOSED SESSION).

*From 8:30 a.m. - 9:30 a.m.*, the Council will hear a report from the Shrimp Committee and take action regarding timing issues for Amendment 6 to the Shrimp FMP and NOAA Fisheries' Bycatch Data Collection Plan. The Council will also take action regarding the Options Paper for Amendment 6 to the Shrimp FMP.

*From 9:30 a.m. - 10 a.m.*, the Council will hear a report from the Ecosystem-Based Management Committee and take action as necessary.

*From 10 a.m. - 10:30 a.m.*, the Council will receive a Joint Law Enforcement Committee and Advisory Panel report and take action as necessary.

*From 10:30 a.m. - 11 a.m.*, the Council will hear a report from the SSC Selection Committee and take action on Committee recommendations as necessary.

*From 11 a.m. - 11:30 a.m.*, the Council will receive a report on the upcoming Council Chairmen's meeting to be held in April 2004.

*From 11:30 a.m. - 12:30 a.m.*, the Council will hear status reports from NOAA Fisheries regarding small tooth sawfish, National Standard 1 Guidelines, the Dolphin/Wahoo FMP and Final Rule, Snapper Grouper Amendment 13A and Final Rule, Highly Migratory Species management, implementation of the Atlantic Coast Cooperative Statistics Program in the Southeast Region, and hear landings reports regarding Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, greater amberjack, and south Atlantic ocotocorals.

*From 12:30 p.m. - 1 p.m.*, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication

of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by March 1, 2004.

Dated: February 11, 2004.

**Peter H. Fricke,**

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

[FR Doc. 04–3394 Filed 2–13–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 013004E]**

### Endangered Species; File No. 1295

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

**ACTION:** Correction.

**SUMMARY:** Notice is hereby given that this corrects the document published on February 5, 2004, announcing that the NMFS Northeast Fisheries Science Center (Responsible Official- Dr. John Boreman), 166 Water Street, Woods Hole, MA 02543–1097, had applied in due form to modify Permit No. 1295 to take additional sea turtles for purposes of scientific research.

**DATES:** This action is effective February 17, 2004.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the offices listed in the original document published on February 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay, (301)713–1401 or Ruth Johnson, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The last sentence of the last paragraph under **SUPPLEMENTARY INFORMATION** in document 69 FR 5508 is revised to read as follows, "The research will be conducted in the shelf waters of the Atlantic Ocean from the Gulf of Maine to Florida."

Dated: February 10, 2004.

**Stephen L. Leathery,**

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

[FR Doc. 04–3395 Filed 2–13–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**[Docket No. 981203295–4044–09]**

### Technology Opportunities Program

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of availability of funds.

**SUMMARY:** Pursuant to the Consolidated Appropriations Act, 2004, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, issues this notice describing the conditions under which applications will be received by the Technology Opportunities Program (TOP) and how NTIA will select applications for funding.

As an agency of the U.S. Department of Commerce, NTIA is the Executive Branch's principal voice on domestic and international telecommunications and information technology issues. NTIA works to spur innovation, encourage competition, help create jobs and support policies that provide consumers with more choices and better quality telecommunications products and services at lower prices. TOP is a highly competitive, merit-based matching grant program that supports this mission through funding demonstrations of new telecommunications and information technology applications for the provision of educational, health care, or public information in the Nation's public and non-profit sectors.

**DATES:** Applications must be either postmarked no later than April 27, 2004, or hand-delivered no later than 5 p.m. Eastern Standard Time on April 27, 2004.

**ADDRESSES:** Completed applications must be mailed, shipped, or sent overnight express to: Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., HCHB, Room 4096, Washington, DC 20230; or hand-delivered to Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, HCHB, Room 1874, 1401 Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION, CONTACT:** Wayne Ritchie (*see* **ADDRESSES**) or by phone at 202–482–2048 ext. 5515, or fax to: (202) 501–8009, or via Internet at *writchie@ntia.doc.gov*. The full Federal Funding Opportunity Announcement (Announcement) for the TOP program is available via Web site: *http://www.ntia.doc.gov/top* or by contacting the program official identified above. This full Announcement will also be available through Grants.gov at *http://www.Grants.gov*.

**SUPPLEMENTARY INFORMATION:** *Funding Availability:* Approximately $12.9 million in grants is available for federal assistance under this program. In Fiscal Year 2003, NTIA received 569 applications collectively requesting more than $269 million in federal funds. The Department of Commerce announced 28 awards totaling $13.95 million in federal funds.

**Statutory Authority:** Pub. L. 108–199.

*CFDA:* 11.552, Technology Opportunities Program.

*Program Description:* TOP is a highly competitive, merit-based matching grant program that promotes the use of advanced telecommunications and information technologies in the non-profit and public sectors. TOP provides organizations with the opportunity to explore the possibilities that new interactive technologies offer to improve the provision of "educational, health care, or public information." These projects encourage the deployment of broadband infrastructure, services, and applications throughout the Nation.

With respect to educational information, TOP will support projects that expand training and learning opportunities or create innovative educational or training methods through the use of network technologies. In health care, TOP will support projects that use network technologies to improve the efficiency of, effectiveness of, or access to health-related services. TOP will support projects that enable the sharing and creation of a broad range of public information including, but not limited to, economic development opportunities; state, tribal, and local government services; community-based services; arts and humanities; and resources that promote self-sufficiency and an improved quality of life.

All funded projects must be interactive and foster the exchange and

sharing of information among individuals and/or groups, as opposed to one-way or broadcast systems. These projects are expected to serve as national models, even though the applicant may propose to pilot the project at the local level. Funded projects must evidence a strong probability of replication in other communities throughout the United States. Accordingly, priority will be given to projects that address problems of national significance, expand economic opportunities, enhance productivity, increase worker skills, and create jobs for American workers.

Priority also will be given to projects demonstrating the use of new telecommunications and information technologies. NTIA is especially interested in applications of wireless technologies including, but not limited to, WI–FI, unlicensed spectrum devices, and projects demonstrating the potential application of 3rd generation or Advanced Wireless Services. All projects are expected to advance the body of knowledge and expand service availability and effectiveness in their respective content areas.

*Eligibility:* Eligible applicants are non-profit entities, public sector organizations as well as state, local and tribal governments.

*Cost Sharing Requirements:* Grant recipients under this program will be required to provide matching funds toward the total project cost. Applicants must document their capacity to provide matching funds. Matching funds may be in the form of either cash or in-kind contributions. NTIA will provide up to 50 percent of the total project cost, unless the applicant can document extraordinary circumstances warranting a grant of up to 75 percent. Grant funds under this program are usually released in direct proportion to the documented expenditure of matching funds.

*Evaluation and Review Process:* The selection process involves four stages outlined below.

1. During the first stage, each eligible application will be reviewed by a panel of at least three outside peer reviewers who have demonstrated expertise in both the programmatic and technological aspects of the application. The peer review panel members will evaluate applications according to the review criteria provided in this notice and provide individual ratings to the program staff.

2. Upon completion of the external peer review process, program staff will analyze applications considered for award to assess: (1) Whether a proposed project meets the program's funding scope; (2) the eligibility of costs and matching funds included in an application's budget; and (3) the extent to which an application complements or duplicates projects previously funded or under consideration by NTIA or other federal programs. The TOP Director then prepares and presents a slate of recommended grant awards to the Office of Telecommunications and Information Applications' (OTIA) Associate Administrator for review and approval. The Director's recommendations and the Associate Administrator's review and approval will take into account the selection factors listed below.

3. Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the selection factors described below and the program's stated purposes as set forth in the section entitled "Program Description." In making the selection, the Administrator may consult with senior officials in the Office of the Secretary to ensure that such selection factors and the program's stated purposes have been met.

4. After applications have been selected in this manner, negotiations will take place between TOP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TOP proposes to fund and, if necessary, to clarify items in the application. Not all applicants who are contacted for negotiation will necessarily receive a TOP award. Upon the conclusion of negotiations, final selections made by the Assistant Secretary will be based upon the recommendations of the TOP Director and the OTIA Associate Administrator and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled "Program Description."

*Evaluation Criteria:* Applications will be evaluated on the basis of the following evaluation criteria at the indicated weights:

1. *Project Purpose (20%).* This criterion assesses the degree to which the applicant clearly describes and convincingly links three major elements: the problem(s) to be addressed, the proposed solution, and the anticipated outcomes of the project.

2. *Innovation (30%).* This criterion assesses the degree to which the application demonstrates new technologies and/or how applications of new technology can be creatively used to address the needs of the non-profit and public sectors.

3. *Community Involvement (10%).* This criterion assesses the degree to which the applicant includes linkages among unaffiliated organizations, targeted end users, and a variety of community stakeholders and assesses the commitment of these community partners to the long term sustainability of the project after the federal grant period.

4. *Evaluation (10%).* This criterion assesses the evaluation design.

5. *Project Feasibility (20%).* This criterion assesses the technical approach, the qualifications of the project staff, and the implementation schedule; and assesses plans for protecting privacy, sustaining the project beyond the grant period, and disseminating the lessons learned.

6. *Project Budget (10%).* This criterion assesses the budget for clarity, cost-effectiveness, reasonableness and sufficiency.

*Selection Factors:* The Selecting Official shall award in the rank order unless the application is justified to be selected out of rank order based upon the following factors:

1. The evaluations of the outside peer reviewers;

2. The analysis of program staff;

3. The degree to which the proposed grants meet the program's purpose as described in the section entitled "Program Description;'

4. The degree to which the proposed grants use technology to expand economic opportunities, enhance productivity, increase worker skills, and create jobs for American workers;

5. The geographic distribution of the proposed grant awards;

6. The variety of technologies and diversity of uses of the technologies employed by the proposed grant awards;

7. The provision of access to and use of telecommunications and information technologies by underserved groups and local communities suffering from economic downturns;

8. The expansion of commercial entities to enable local communities to attract commercial investment to spur growth of American jobs, especially in the areas of education, health care, and public information;

9. Avoidance of redundancy and conflicts with the initiatives of other federal agencies; and,

10. The availability of funds.

*Universal Identifier:* All applicants (nonprofit, state, local government,

universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

*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 **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

*Limitation of Liability:* In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

*Intergovernmental Review:* TOP applications are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the first two pages of the Application Form, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The names and addresses of the SPOC offices are listed on the TOP Web site and at the Office of Management and Budget's Home page at *http://www.whitehouse.gov/omb/grants/spoc.html*.

*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, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other 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 Paperwork Reduction Act, 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 E.O. 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 E.O. 13132.

*Administrative Procedure Act/ Regulatory Flexibility Act:* Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytic 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 10, 2004.

**Bernadette McGuire-Rivera,**

*Associate Administrator, Office of Telecommunications and Information Applications.*

[FR Doc. 04–3296 Filed 2–13–04; 8:45 am]

BILLING CODE 3510–60–P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### United States Patent Applicant Survey

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 19, 2004.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at *susan.brown@uspto.gov;* or by facsimile at 703–308–7407.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Barrett J. Riordan, Senior Economist, Office of Corporate Planning, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone 703–305–8475; or by e-mail at *barry.riordan@uspto.gov*.

**SUPPLEMENTARY INFORMATION**

**I. Abstract**

For several years the USPTO has supported an ongoing econometric and statistical forecasting program. While this has improved workload forecasting, it still falls short of the type of accuracy required by the USPTO. The Senate Appropriations Report 106–404 (September 8, 2000) directed the USPTO to "develop a workload forecast with advice from a representative sample of industry and the inventor community." A patent application survey will allow the USPTO to accurately estimate future patent application activity on a continuing basis.

Consequently, the USPTO has developed the United States Patent Applicant Survey as part of a continuing effort to obtain information on customer filing intentions that will assist the USPTO in predicting future growth rates in patent applications. The purpose of this survey is to determine the number of applications that the USPTO can expect to receive over the next four years from patent-generating entities, ranging from large domestic corporations to independent inventors.

Previously, the rate of patent application submissions to the USPTO steadily increased with the expanding technological innovations over the past decade. However, in recent years there has been a decrease in the growth rate of patent applications that are being submitted to the USPTO. Due to these circumstances, it is necessary for the USPTO to conduct this Patent Applicant Survey to obtain data that will allow the agency to anticipate demand and estimate future revenue flow more reliably; to identify input and output triggers and allocate resources to meet and understand customer needs; and to re-assess output and capacity goals and re-align organization quality control measures with workload demand by division.

The Patent Applicant Survey is a mail survey, although respondents also have the option to complete the survey electronically. A survey packet, containing the survey, a cover letter explaining the purpose of the survey and outlining instructions for completing the survey electronically, and a postage-paid, pre-addressed return envelope, will be mailed to all survey groups. The USPTO plans to survey four groups of respondents: large

domestic corporations (including those with 500+ employees), small and medium-size businesses, universities and other not-for-profit organizations, and independent inventors. The USPTO does not plan to survey foreign entities and will rely on the European Patent Office (EPO) and the Japanese Patent Office (JPO) to provide forecasts of filings by foreign entities. Due to variances in filing and the varying needs of the different patent-filing populations, the USPTO has developed three versions of the survey: one for the large domestic corporations and small entities, one for universities, and another for independent inventors.

Since the initial survey, administered in late 2002, the USPTO gathered additional information, which was used to redesign the survey so that it eliminates difficulties discovered in the previous survey and coordinates more easily with parallel surveys conducted concurrently by the European and Japanese Patent Offices. The USPTO plans to expand the survey to additional groups in 2004 so that the population of patent-generating entities is fully represented.

The initial survey was reviewed and approved by OMB under OMB Control Number 0651–0038 Customer Input, Patent and Trademark Customer Surveys, the USPTO's generic customer survey clearance. However, due to the USPTO's stated purpose of using this survey to predict workload and revenue flow, the fact that this survey is part of a continuing pilot project, and since the survey methodology is fully developed, the USPTO is submitting this survey separately to OMB for review and approval, instead of submitting it under the generic clearance.

These surveys do not have USPTO form numbers associated with them and once they are approved, they will carry the OMB Control Number and the expiration date.

**II. Method of Collection**

By mail or electronically over the Internet when respondents elect the on-line option to complete the survey.

**III. Data**

*OMB Number:* 0651–00XX.

*Form Number(s):* N/A.

*Type of Review:* New information collection.

*Affected Public:* Individuals or households; business or other for profit; not-for-profit institutions; Federal Government; and state, local or tribal Government.

*Estimated Number of Respondents:* 450 total responses per year. Of this total, 225 surveys of large domestic corporations (500+ employees), 100 surveys of small and medium size businesses, 25 surveys of universities, and 100 surveys of independent inventors will be conducted per year. The USPTO expects that 150 surveys will be completed using the on-line option.

*Estimated Time Per Response:* The USPTO estimates that it will take approximately 30 minutes (0.5 hours) each to complete the mail and electronic surveys of large domestic corporations (500+ employees), small and medium size businesses, and universities; and approximately 7 minutes (0.12 hours) to complete the mail and electronic surveys of independent inventors.

*Estimated Total Annual Respondent Burden Hours:* 189 hours per year.

*Estimated Total Annual Respondent Cost Burden:* $44,415. The USPTO estimates that 75% of the respondents completing these surveys will be associate attorneys and that the remaining 25% of respondents will be paraprofessionals/paralegals. Using a typical professional hourly rate of $286 for associate attorneys in private firms and the paraprofessional/paralegal rate of $81 for paralegals/legal assistants in private firms, the USPTO believes that the average hourly rate for those completing these surveys will be $235 per hour. Therefore, the USPTO estimates that the salary costs for the respondents completing these surveys will be $44,415 per year.

| Item | Estimated time for response (minutes) | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Large Domestic Corporations | 30 | 150 | 75 |
| Large Domestic Corporations (electronic surveys) | 30 | 75 | 38 |
| Small and Medium Size Businesses | 30 | 67 | 34 |
| Small and Medium Size Businesses (electronic surveys) | 30 | 33 | 17 |
| Universities and Non-Profits | 30 | 16 | 8 |
| Universities and Non-Profits (electronic surveys) | 30 | 9 | 5 |
| Independent Inventors | 7 | 67 | 8 |
| Independent Inventors (electronic surveys) | 7 | 33 | 4 |
| Total | | 450 | 189 |

*Estimated Total Annual Non-Hour Respondent Cost Burden:* $0. There are no capital start-up, maintenance, or recordkeeping costs or filing fees associated with this information collection. The USPTO provides postage-paid, pre-addressed return envelopes for the completed mail surveys so there are no postage costs associated with this information collection.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 10, 2004.

**Susan K. Brown,**

*Records Officer, United States Patent and Trademark Office, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.*

[FR Doc. 04–3346 Filed 2–13–04; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by March 18, 2004.

*Title, Form, and OMB Number:* Health Insurance Claim Form (HCFA 1500); OMB Number 0720–0001.

*Type of Request:* Reinstatement.

*Number of Respondents:* 22,400,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 5,600,000.

*Average Burden Per Response:* 15 minutes.

*Annual Burden Hours:* 5,600,000.

*Needs and Uses:* This information collection is used by TRICARE to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE beneficiaries. The requested information is used to determine beneficiary eligibility, appropriations and costs of care, other health insurance liability, and whether services received are benefits. Use of this form continues TRICARE's commitment to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

February 9, 2004.

**L.M. Bynum,**

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

[FR Doc. 04–3290 Filed 2–13–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency Advisory Board Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

**DATES:** February 25–26, 2004, 8:30 a.m. to 5 p.m.

**ADDRESSES:** ANSER Conference Center, 2900 S. Quincy Street, Suite 800, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jane McGehee, Program Manager/ Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328, (703) 693–9567.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(l), title 5 of the U.S.C, and therefore will be closed to the public. The Board will receive briefings and discuss several current critical intelligence issues in order to advise the Director, DIA.

Dated: February 10, 2004.

**L.M. Bynum,**

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

[FR Doc. 04–3292 Filed 2–13–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Enabling Joint Force Capabilities will tentatively meet in closed session on March 5, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review the current state of assigned responsibilities and accountability for joint capabilities to quickly bring combat forces together and focus them on joint objectives across a wide spectrum of possible contingencies and will help identify unfilled needs and areas where assigned responsibility and accountability calls for further clarification and/or organizational arrangements.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will identify specific characteristics and examples of organizations that could be capable of accepting responsibility and accountability for delivering the capability with needed responsiveness, and will recommend further steps to strengthen the joint structure ability to quickly integrate service-provided force capabilities into effective joint forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: February 9, 2004.

**L.M. Bynum,**

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

[FR Doc. 04–3291 Filed 2–13–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; DynCorp Technical Services, LLC, A CSC Company

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy gives notice of its intent to grant to DynCorp Technical Services, LLC, A CSC Company, a revocable, non-assignable, exclusive license to practice the Government-owned inventions, as defined in U.S. Patent Number 6,249,241 entitled "Marine Vessel Traffic System", Navy Case No. 76518, Inventors Jordan et al, Issue Date 19 June 2001, in the field of port and waterways surveillance and security systems.

**DATES:** Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than fifteen (15) days after date of publication in the **Federal Register**.

**ADDRESSES:** Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building

304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, telephone (301) 342–5586, fax (301) 342–1134, or E-Mail: *paul.fritz@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: February 5, 2004.

**J.T. Baltimore,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 04–3373 Filed 2–13–04; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Notice; Energy Information Administration Surveys Conducted in Accordance With the Provisions of the Confidential Information Protection and Statistical Efficiency Act of 2002

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Notice; Energy Information Administration surveys conducted in accordance with the provisions of the Confidential Information Protection and Statistical Efficiency Act of 2002.

**SUMMARY:** The Energy Information Administration (EIA) is announcing those surveys that are being designated to collect information in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (title 5 of Public Law 107–347). Survey information collected in accordance with CIPSEA is treated as confidential and should not be disclosed in identifiable form for any use other than an exclusively statistical purpose, except with the informed consent of the respondent. As defined in CIPSEA section 502, the term statistical purpose "(A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and (B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A)." Without a survey respondent's informed consent, information collected in accordance with CIPSEA should not be used in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent. Also, such survey information should not be disclosed under section 552 of Title 5, United States Code (popularly known as the Freedom of Information Act).

**DATES:** Comments must be filed by March 18, 2004.

**ADDRESSES:** Requests for additional information or comments about this action should be directed to Jay Casselberry. Contact by FAX (202–287–1705), e-mail (*jay.casselberry@eia.doe.gov*), or telephone (202–287–1717) is recommended to expedite receipt and response. The mailing address is Statistics and Methods Group (ATTN: Jay Casselberry), EI–70, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Mr. Casselberry at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions

#### I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to the dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to support EIA's mission.

EIA currently conducts the surveys listed below in accordance with CIPSEA. Unless noted otherwise, all survey elements are collected under CIPSEA.

- EIA–28, Financial Reporting System;
- EIA–851A, Domestic Uranium Production Report—Annual (majority of survey elements collected in accordance with CIPSEA);
- EIA–851Q, Domestic Uranium Production Report—Quarterly (majority of survey elements collected in accordance with CIPSEA);
- EIA–858, Uranium Marketing Annual Survey (majority of survey elements collected in accordance with CIPSEA);
- EIA–863, Petroleum Product Sales Identification Survey;
- EIA–871, Commercial Buildings Energy Consumption Survey;
- EIA–878, Motor Gasoline Price Survey;
- EIA–888, On-Highway Diesel Fuel Price Survey.

Beginning with the next reporting period after April 1, 2004, EIA will conduct the additional surveys listed below in accordance with CIPSEA:

- EIA–457, Residential Energy Consumption Survey;
- EIA–910, Monthly Natural Gas Marketers Survey;
- EIA–912, Weekly Underground Natural Gas Storage Report.

In addition to publishing this notice, EIA will notify the persons and companies selected for inclusion in the affected surveys that the information will be considered as confidential, used for exclusively statistical purposes, and treated in accordance with CIPSEA.

#### II. Current Actions

EIA announces that surveys EIA–28, 457, 851A, 851Q, 858, 863, 871, 878, 888, 910, and 912 have been designated to collect information in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (title 5 of Pub. L. 107–347). Survey information collected in accordance with CIPSEA is treated as confidential and is not disclosed in identifiable form for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.

In the future EIA may modify the list of surveys designated to collect information in accordance with CIPSEA. Any changes will be addressed in **Federal Register** notices, and cleared with the Office of Management and Budget through the processes of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**Statutory Authority:** Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, February 10, 2004.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 04–3342 Filed 2–13–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Policy Statement. Solicitation of Comments on the Disclosure Limitation Policy for Statistical Information Based on Renewable Fuels Survey Data

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Policy Statement. Solicitation of Comments on the Disclosure Limitation Policy for Statistical Information Based on Renewable Fuels Survey Data.

**SUMMARY:** The EIA is requesting comments on the disclosure limitation policy for statistical information based on renewables fuels data collected on Forms EIA–63A ("Annual Solar Thermal Collector Manufacturers Survey"), EIA–63B ("Annual Photovoltaic Module/Cell Manufacturers Survey"), and EIA–902 ("Annual Geothermal Heat Pump Manufacturers Survey"). EIA's policy will be to only apply disclosure limitation methods to statistics based on financial data reported on those forms. For statistics based on nonfinancial data reported on the forms, EIA will not apply disclosure limitation methods. EIA will continue to protect information collected under a pledge of confidentiality by not publicly releasing respondent-level survey data directly linked to names or other identifiers. This proposed policy is based on EIA's mandate for carrying out a central, comprehensive, and unified energy data and information program responsive to users' needs for credible, reliable, and timely energy information that will improve and broaden understanding of energy in the United States.

**DATES:** Comments must be filed by March 18, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Comments on this policy should be directed to Fred Mayes, Chief of EIA's Renewables Information Team. To ensure receipt of the comments by the due date, submission by FAX (202–287–1964) or e-mail (*fred.mayes@eia.doe.gov*) is recommended. The mailing address is Renewables Information Team (EI–52), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0650. Alternatively, Mr. Mayes may be contacted by telephone at (202) 287–1750.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Mr. Mayes at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

## I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to the dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to support EIA's mission.

EIA sponsors three surveys that collect information about the manufacturer and distribution of renewable fuels equipment. Statistics based on data from these three surveys are used to analyze the renewables fuels situation in the U.S.

Form EIA–63A collects data on shipments of solar thermal collectors by end use and market sector. Collector types include low-temperature, medium-temperature air, medium-temperature liquid, high temperature, and other. EIA–63A respondents are manufacturers, importers, and exporters of solar thermal collectors.

Form EIA–63B collects data on shipments of photovoltaic modules/cells by end use and market sector. Module/cell types include crystalline silicon, thin film, concentrator, and "other". EIA–63B respondents are manufacturers, importers, and exporters of photovoltaic modules/cells.

Form EIA–902 collects data on shipments of geothermal heat pumps by type, end use, and sector. EIA–902 respondents are geothermal heat pump manufacturers.

Forms EIA–63A, 63B, and 902 are collected under a pledge of confidentiality. EIA does not publicly release the names or other identifiers of the survey respondents linked to their submitted data. For statistics based on financial data (*e.g.*, value of shipments), EIA applies disclosure limitation. However, for all statistics based on nonfinancial data (*e.g.*, number of units shipped), EIA does not apply disclosure limitation.

When used, disclosure limitation methods are designed to minimize the possibility that individually-identifiable information reported by a survey respondent may be inferred from published statistics. By not using disclosure limitation methods, a statistic based on nonfinancial data reported by fewer than three respondents or dominated by nonfinancial data from one or two large respondents may be used by a knowledgeable person to estimate data reported by a specific respondent.

Data collected on Forms EIA–63A, 63B, and 902 are used to meet EIA's mandates and energy data users' needs for credible, reliable, and timely energy information on renewable fuels. Adequate evaluation of renewable fuels issues requires detailed, comprehensive data. Data collected on the three surveys are used to create statistics disseminated by EIA in various information products available on EIA's Web site at *http://www.eia.doe.gov/fuelrenewable.html*.

EIA's renewable fuels statistics provide Congress, other government agencies, businesses, trade associations, and private research and consulting organizations with information for analysis, projections, and monitoring purposes. To be most effective, EIA's renewable fuels statistical information must be available by various breakdowns including unit type, customer type, and economic sector categories.

Given the relatively small number of respondents to each of the three surveys, certain statistics based primarily on data reported by a few respondents with large operations, and the need for detailed renewable fuels statistics, the use of disclosure limitation methods would result in a large amount of detailed, nonfinancial statistics being suppressed from public dissemination. The suppressed nonfinancial statistics would then be

unavailable to public and private analysts interested in renewable fuels. Forms EIA–63A, EIA–63B, and EIA–902 respondents have indicated to EIA staff that financial data are sensitive and estimation of respondent-level financial data has more potential to cause competitive harm than for nonfinancial data.

### II. Current Actions

The EIA is requesting comments on the disclosure limitation policy for statistical information based on renewables fuels data collected on Forms EIA–63A ("Annual Solar Thermal Collector Manufacturers Survey"), EIA–63B ("Annual Photovoltaic Module/Cell Manufacturers Survey"), and EIA–902 ("Annual Geothermal Heat Pump Manufacturers Survey"). EIA proposes to only apply disclosure limitation methods to statistics based on financial data reported on those forms. For statistics based on nonfinancial data reported on the forms, EIA will not apply disclosure limitation methods. EIA will continue to protect information collected under a pledge of confidentiality by not publicly releasing respondent-level survey data directly linked to names or other identifiers. This policy will result in EIA providing the maximum amount of renewable fuels information to the public, and will facilitate public understanding of the renewable fuels situation in the U.S. However, it also means that a knowledgeable person may be able to estimate the value of selected nonfinancial data reported by specific respondents.

### III. Request for Comments

The public should comment on the actions discussed in item II. The questions below are the issues on which EIA is seeking public comments.

A. Does EIA's proposed policy to only use disclosure limitation methods for statistics based on financial data reported on Forms EIA–63A, EIA–63B, and EIA–902 maximize the utility of the renewable fuels statistics to data users?

B. Is the possibility that a knowledgeable user might be able to estimate a respondent's contribution to a nonfinancial statistic an acceptable risk to Form EIA–63A, EIA–63B, and EIA–902 respondents?

Comments submitted in response to this notice will be considered by EIA. The comments will also become a matter of public record.

After consideration of the comments, EIA will issue its policy regarding the use of disclosure limitation methods for renewable fuels statistical information based on Forms EIA–63A, EIA–63B, and EIA–902 survey data. The policy will be announced in a **Federal Register** notice issued by EIA.

**Statutory Authority:** Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, February 10, 2004.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 04–3340 Filed 2–13–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Policy Statement; Solicitation of Comments on the Disclosure Limitation Policy for Statistical Information Based on Alternative Fueled Vehicles and Alternative Transportation Fuels Survey Data

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Policy statement; solicitation of comments on the disclosure limitation policy for statistical information based on alternative fueled vehicles and alternative transportation fuels survey data.

**SUMMARY:** The EIA is requesting comments on the disclosure limitation policy for statistical information based on alternative fueled vehicles and alternative transportation fuels survey data collected on Form EIA–886, "Annual Survey of Alternative Fueled Vehicle Suppliers and Users." EIA policy will be to only apply disclosure limitation methods to statistics based on projected data reported on Form EIA–886. For statistics based on historical data reported on Form EIA–886, EIA will not apply disclosure limitation methods. EIA will continue to protect information collected under a pledge of confidentiality by not publicly releasing respondent-level survey data directly linked to names or other identifiers. This proposed policy is based on EIA's mandate for carrying out a central, comprehensive, and unified energy data and information program responsive to users' needs for credible, reliable, and timely energy information that will improve and broaden understanding of energy in the United States.

**DATES:** Comments must be filed by March 18, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Comments on this policy should be directed to Fred Mayes, Chief of EIA's Renewables Information Team. To ensure receipt of the comments by the due date, submission by fax (202–287–1964) or e-mail (*fred.mayes@eia.doe.gov*) is recommended. The mailing address is Renewables Information Team (EI–52), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0650. Alternatively, Mr. Mayes may be contacted by telephone at (202) 287–1750.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Mr. Mayes at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

### I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to the dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to support EIA's mission.

Form EIA–886, "Annual Survey of Alternative Fueled Vehicle Suppliers and Users," is an annual survey collecting information on the number of alternative fuel vehicles (AFVs) made available, the distribution of AFVs in use, and alternative transportation fuels (ATFs) consumed. Respondents are AFV manufacturers, importers, and conversion companies, as well as consumers of ATFs.

Form EIA–886 is collected under a pledge of confidentiality. EIA does not publicly release the names or other

identifiers of EIA–886 survey respondents linked to their submitted data. For statistics based on projected data (*e.g.*, data on alternative fueled vehicles that will be supplied in the upcoming calendar year) reported on Form EIA–886, EIA applies disclosure limitation. However, for all statistics based on historical Form EIA–886 data (*e.g.*, data on alternative fueled vehicles supplied during the report year), EIA does not apply disclosure limitation.

When used, disclosure limitation methods are designed to minimize the possibility that individually-identifiable information reported by a survey respondent may be inferred from published statistics. By not using disclosure limitation methods, a statistic based on historical data reported on Form EIA–886 by fewer than three respondents or dominated by historical data from one or two large respondents may be used by a knowledgeable person to estimate data reported by a specific respondent.

Data collected on Form EIA–886 are used to meet EIA's mandates and energy data users' needs for credible, reliable, and timely energy information on the types of ATVs supplied, projections of the types ATVs that will be supplied in the upcoming year, the location of ATVs in operation, and the types and amounts of ATFs consumed. Adequate evaluation of ATV/ATF issues requires detailed, comprehensive data. Data collected on Form EIA–886 are used to create statistics disseminated by EIA in various information products available on EIA's Web site at *http://www.eia.doe.gov/fuelalternate.html.*

EIA's ATV/ATF statistics provide Congress, other government agencies, businesses, trade associations, and private research and consulting organizations with information for analysis, projections, and monitoring purposes. To be most effective, EIA's ATV/ATF statistical information must be available by various breakdowns including vehicle, supplier, and user categories.

Given the relatively small number of Form EIA–886 respondents, certain statistics based primarily on data reported by a few respondents with large operations, and the need for detailed ATV/ATF statistics, the use of disclosure limitation methods would result in a large amount of detailed, historical statistics being suppressed from public dissemination. The suppressed historical statistics would then be unavailable to public and private analysts interested in ATVs and ATFs. Form EIA–886 respondents have indicated to EIA staff that projected data are sensitive and estimation of respondent-level projections has more potential to cause competitive harm than for historical data.

## II. Current Actions

The EIA is requesting comments on the disclosure limitation policy for statistical information based on alternative fueled vehicles and alternative transportation fuels survey data collected on Form EIA–886, "Annual Survey of Alternative Fueled Vehicle Suppliers and Users." EIA proposes to only apply disclosure limitation methods to statistics based on projected data reported on Form EIA–886. For statistics based on historical data reported on Form EIA–886, EIA will not apply disclosure limitation methods. EIA will continue to protect information collected under a pledge of confidentiality by not publicly releasing respondent-level survey data directly linked to names or other identifiers. This policy will result in EIA providing the maximum amount of ATV/ATF information to the public, and will facilitate public understanding of the ATF/ATV situation in the U.S. However, it also means that a knowledgeable person may be able to estimate the value of selected historical data reported by specific respondents.

## III. Request for Comments

The public should comment on the actions discussed in item II. The questions below are the issues on which EIA is seeking public comments.

A. Does EIA's proposed policy to only use disclosure limitation methods for statistics based on projected data reported on Form EIA–886 maximize the utility of the ATV/ATF statistics to data users?

B. Is the possibility that a knowledgeable user might be able to estimate a respondent's contribution to a historical statistic an acceptable risk to Form EIA–886 respondents?

Comments submitted in response to this notice will be considered by EIA. The comments will also become a matter of public record.

After consideration of the comments, EIA will issue its policy regarding the use of disclosure limitation methods for alternative fueled vehicles and alternative transportation fuels statistical information based on Form EIA–886 survey data. The policy will be announced in a **Federal Register** notice issued by EIA.

**Statutory Authority:** Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, February 10, 2004.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 04–3341 Filed 2–13–04; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC04–512–000, FERC–512]**

## Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

February 10, 2004.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No.104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due by April 16, 2004.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–512–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing" and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's E-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or

toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873 and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** *Abstract:* The information collected under the requirements of FERC–512, "Application for Preliminary Permit" (OMB No. 1902–0073) is used by the Commission to implement the statutory provisions of sections 4(f), 5 and 7 of the Federal Power Act (FPA), 16 U.S.C. Sections 797, 798 and 800. The purpose of obtaining a preliminary permit is to maintain priority of the application for a license for a hydropower facility while the applicant conducts surveys to prepare maps, plans, specifications and estimates; conducts engineering, economic and environmental feasibility studies; and making financial arrangements. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for a license submitted by another party can be accepted. The term of the permit is three years. The information collected under the designation FERC–512 is in the form of a written application for a preliminary permit which is used by Commission staff to determine an applicant's qualifications to hold a preliminary permit, review the proposed hydro development for feasibility and to issue a notice of the application in order to solicit public and agency comments. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.31–4.33, 4.81–4.83.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents (1) | Annual responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 50 | 1 | 73 | 3,650 |

Estimated cost burden to respondents is $188,089 (*i.e.*, 3,650 hours divided by 2,080 hours per full time employee per year multiplied by $107,185 per year equals $188,089).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–291 Filed 2–13–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC04–588–000; FERC–588]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

February 10, 2004.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c) (2) (a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due by April 16, 2004.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–588–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERConlineSupport@ferc.gov* or

toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–588 "Emergency Natural Gas Transportation, Sale and Exchange Transactions" (OMB No. 1902–0144) is used by the Commission to implement the statutory provisions of sections 7(c) of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, section 7(c) exempts from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, or local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies file the necessary information with the Commission so that it may determine if the transaction/operation qualifies for exemption. A report within 48 hours of the commencement of the transportation, sale or exchange, a request to extend the sixty-day term of the emergency transportation, if needed, and a termination report are required. The data required to be filed for the 48 hour report is specified by 18 CFR 284.270.

*Action:* The Commission is requesting a three-year approval of the collection of data. This is a mandatory information collection requirement.

*Burden Statement:* Public reporting burden for this collection is estimated as follows:

| Number of respondents annually | Number of responses per respondent | Average burden hours per response | Total annual burden hours |
|---|---|---|---|
| (1) | (2) | (3) | (1)×(2)×(3) |
| 8 | 1 | 10 | 80 |

The estimated total cost to respondents is $4,123.00 (80 hours divided by 2,080 hours per employee per year times $107,185 per year average salary per employee = $4,123.00 (rounded)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–292 Filed 2–13–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–127–001]**

### Algonquin Gas Transmission Company; Notice of Compliance Filing

February 9, 2004.

Take notice that on February 4, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub Fourth Revised Sheet No. 654, effective February 1, 2004.

Algonquin states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on January 29, 2004 (January 29 Order).

Algonquin states that it is making changes in Section 18 of its General Terms and Conditions, Billing and Payments, as required by Paragraph 3 of the January 29 Order. Specifically, Algonquin is providing its customers with (i) e-mail notification of the posting of final electronic invoices, and (ii) an opportunity to designate an agent to receive electronic invoices and e-mail notifications.

Algonquin states that copies of its filing have been served on all affected customers, interested state commissions, and all parties on the Commission's official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. E4–284 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–158–000]**

### Algonquin Gas Transmission Company; Notice of Tariff Filing

February 10, 2004.

Take notice that on February 6, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 930 and Third Revised Sheet No. 935, to be effective March 7, 2004.

Algonquin states that the purpose of this filing is to modify the pro forma LINK System Agreement contained in its tariff. In particular, Algonquin suggest that the filing seeks to modify the list of parties to the agreement and the signature block to reflect the corporate name change from Egan Hub Partners, L.P. to Egan Hub Storage, LLC that became effective on January 1, 2004.

Algonquin states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–297 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–38–001]**

### Cheniere Sabine Pass Pipeline Company; Notice of Amendment to Application for Certificate of Public Convenience and Necessity

February 10, 2004.

Take notice that on February 6, 2004, Cheniere Sabine Pass Pipeline Company (Cheniere Sabine ), 717 Texas Avenue, Suite 3100, Houston, Texas 77002, filed an amendment to its Application for a Certificate of Public Convenience and Necessity, filed on December 22, 2003 pursuant to Section 7(c) of the Natural Gas Act (NGA). The amended Application reflects a shortening and redesign of the originally proposed pipeline route.

This amendment is on file with the Commission and open to public inspection. The 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; add the sub-docket–001 to look only at the amendment. 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. Any initial questions regarding this amendment should be directed to Keith M. Meyer, 333 Clay Street, Suite 3400, Houston, Texas. Phone: (713) 659–1361.

Cheniere Sabine says that its pipeline proposal has now changed from about 120 miles to about 16 miles in length. Cheniere Sabine notes that it had also modified the diameter of the proposed pipeline from 48-inches to 42-inches and changed in the maximum capacity of the proposed pipeline from 2.7 Bcf per day to 2.6 Bcf per day. The amended Cheniere Sabine pipeline route will follow the first 16 miles of the route proposed in the December 22 filing, at which point it will terminate at Johnson Bayou, Louisiana—the site of multiple gas processing facilities and pipeline interconnects. Accordingly, Cheniere Sabine states that the route will terminate at milepost (MP) 16.0, rather than MP 119.7, as originally proposed. Included in the amendment are various revised exhibits which supercede the relevant part of the exhibits in the December 22 filing to reflect the changes in the location, size, design, cost, and rate derivation of the amended proposal. Cheniere Sabine says that this shorter pipeline route is being proposed, in large part, for environmental reasons in order to minimize impacts to sensitive wetlands. Finally, Cheniere Sabine says it will conduct a 60-day open season beginning in the next few weeks for the purpose of obtaining binding commitments for firm transportation capacity.

Persons who filed motions to intervene in the applications filed on December 22, 2003 do not need to refile a motion to intervene in response to this amendment, but may file additional comments by the comment date, below.

Otherwise, there are two ways to become involved in the Commission's review of this amendment. First, any person wishing to obtain legal status by becoming a party to the proceeding for this amendment 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 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 amendment. 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 amendment provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 285.2001(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 25, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–301 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER04–381–000]**

### DC Energy, LLC; Notice of Issuance of Order

February 9, 2004.

DC Energy, LLC (DC Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy, and ancillary services at market-based rates. DC Energy also requested waiver of various Commission regulations. In particular, DC Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the DC Energy.

On February 5, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by DC Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 8, 2004.

Absent a request to be heard in opposition by the deadline above, DC Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of DC Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of DC Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–272 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–140–001]**

### Dominion Cove Point LNG, LP; Notice of Compliance Filing

February 10, 2004.

Take notice that on February 6, 2004, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 263, with an effective date of February 12, 2004.

Cove Point states that the purpose of this filing is to comply with the Commission's Letter Order issued February 2, 2004 in Docket No. RP04–140–000 requiring Cove Point to include tariff language stating that e-mail notification will be sent to customers contemporaneously with the finalization and posting of billing and imbalance statements to Cove Point's electronic bulletin board.

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. E4–294 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–124–001]**

### East Tennessee Natural Gas Company; Notice of Compliance Filing

February 9, 2004.

Take notice that on February 4, 2004, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub Sixth Revised Sheet No. 132, effective February 1, 2004.

East Tennessee states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on January 29, 2004 (January 29 Order). East Tennessee states that it is making changes in Section 16.1 of its General Terms and Conditions, Invoicing and Payments, as required by Paragraphs 7 and 9 of the January 29 Order. East Tennessee states that it is providing its customers with (i) an opportunity to change the election of electronic invoicing or U.S. mail delivery method, (ii) e-mail notification of the posting of final electronic invoices, and (iii) an opportunity to designate an agent to receive electronic invoices and e-mail notifications.

East Tennessee states that copies of its filing have been served on all affected customers, interested state commissions, and all parties on the Commission's service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. E4–281 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–160–000]**

### East Tennessee Natural Gas Company; Notice of Tariff Filing

February 10, 2004.

Take notice that on February 6, 2004, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 266 and Fifth Revised Sheet No. 270, to be effective March 7, 2004.

East Tennessee states that the purpose of this filing is to modify the pro forma LINKr System Agreement contained in its tariff. In particular, East Tennessee suggest that the filing seeks to modify the list of parties to the agreement and the signature block to reflect the corporate name change from Egan Hub Partners, L.P. to Egan Hub Storage, LLC that became effective on January 1, 2004.

East Tennessee states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–299 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–126–001]**

### Egan Hub Storage, LLC; Notice of Compliance Filing

February 9, 2004.

Take notice that on February 4, 2004, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 143, effective February 1, 2004.

Egan Hub states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on January 29, 2004 (January 29 Order).

Egan Hub states that it is making changes in section 14 of its General Terms and Conditions, Billings and Payments, as required by paragraph 3 of the January 29 Order. Specifically, Egan Hub is providing its customers with (i) e-mail notification of the posting of final electronic invoices, and (ii) an opportunity to designate an agent to receive electronic invoices and e-mail notifications.

Egan Hub states that copies of its filing have been served on all affected customers, interested state commissions, and all parties on the Commission's official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the

docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–283 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–157–000]**

### Gas Transmission Northwest Corporation; Notice of Refund Report

February 10, 2004.

Take notice that on February 6, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing a Refund Report which reports GTN's refund of revenues collected under its Competitive Equalization Surcharge mechanism, in compliance with Section 35 of GTN's FERC Gas Tariff.

GTN further states that a copy of this filing has been served on all affected 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, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This 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.

*Comment Date:* February 18, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–296 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–18–010]**

### Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rates

February 9, 2004.

Take notice that on February 5, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 7, proposed to become effective February 5, 2004.

Iroquois states that the revised tariff sheets reflect a negotiated rate between Iroquois and Reliant Energy Services, Inc. for transportation under Rate Schedule RTS beginning February 5, 2004, through February 5, 2014.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–271 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–136–001]**

### Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

February 9, 2004.

Take notice that on February 4. 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirtieth Revised Sheet No. 4, proposed to become effective on February 5, 2004.

Iroquois states that in the January 30 Order in this proceeding, the Commission required Iroquois to submit a revised tariff sheet which reflects that the initial rate for service on the Eastchester system is the currently effective Part 284 rate of $0.4234 per Dth (100% load factor). Iroquois further states that because Sheet No. 4C, relating to service to Eastchester Shippers, has been suspended until July 1, 2004. Iroquois is submitting a Thirtieth Revised Sheet No. 4 setting forth the initial rate for service to Eastchester Shippers.

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. E4–286 Filed 2–13–04; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–125–001]**

### Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

February 9, 2004.

Take notice that on February 4, 2004, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Second Revised Sheet No. 283, effective February 1, 2004.

Maritimes states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on January 29, 2004 (January 29 Order). Maritimes states that it is making changes in section 15.1 of its General Terms and Conditions, Invoices and Payments, as required by paragraph 3 of the January 29 Order. Maritimes states that it is providing its customers with (i) e-mail notification of the posting of final electronic invoices, and (ii) an opportunity to designate an agent to receive electronic invoices and e-mail notifications.

Maritimes states that copies of its filing have been served on all affected customers, interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. E4–282 Filed 2–13–04; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–272–052]**

### Northern Natural Gas Company; Notice of Negotiated Rates

February 9, 2004.

Take notice that on February 4, 2004, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 28 Revised Sheet No. 66A, to correct the pagination for the tariff sheet filed on January 29, 2004, in this proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–287 Filed 2–13–04; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–156–000]**

### Northwest Pipeline Corporation; Notice of Petition for Grant of Temporary Limited Waiver of Tariff

February 10, 2004.

Take notice that on February 5, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Temporary Limited Waiver of Tariff.

Northwest petitions the Commission to grant a temporary limited waiver of section 3.5 of the General Terms and Conditions of Northwest's FERC Gas Tariff to the extent necessary to allow Northwest to use new mainline meter facilities, to be installed at the expense of Piceance Natural Gas Inc. Northwest maintains that this would facilitate Northwest's receipt and blending of natural gas that fails to meet Northwest's gas quality specifications solely from the Foundation Creek receipt point, for a period of one year from the in-service date of the new meter facilities.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–295 Filed 2–13–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–60–000]**

### Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

February 9, 2004.

Take notice that on January 30, 2004, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, located at 9 E. Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP04–60–000 a request pursuant to §§ 157.205, 157.208 and 157.211 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), for authorization to construct a lateral pipeline and delivery point to facilitate gas transportation services to a new delivery point in Massachusetts (known as the Tewksbury-Andover Lateral), under Tennessee's blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it will construct 5.31 miles of eight-inch lateral pipeline from its Concord Lateral in Middlesex County eastward to a new delivery point in Essex County. Tennessee states that the Tewksbury-Andover Lateral is estimated to cost approximately $7,321,000, excluding allowance for funds used during construction. Tennessee further states that the lateral pipeline and delivery point are required to provide firm service of 17,000 Dth/day requested by Bay State Gas Company and an additional 8,000 Dth/day requested by Wyeth Pharmaceuticals, Inc.

Any questions concerning this request may be directed to Jacques A. Hodges, Attorney, Tennessee Gas Pipeline Company, 9 East Greenway Plaza, Houston, Texas 77046, at (832) 676–5509 or fax (832) 676–2251 or Cynthia Hornstein Roney, Certificates & Regulatory Compliance, at (832) 676–3535 or fax (832) 676–2231.

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 call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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 interveners to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

*Comment Date:* March 26, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–288 Filed 2–13–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–128–001]**

### Texas Eastern Transmission, LP; Notice of Compliance Filing

February 9, 2004.

Take notice that on February 4, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Sub Second Revised Sheet No. 602 and Original Sheet No. 602A, effective February 1, 2004.

Texas Eastern states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on January 29, 2004 (January 29 Order). Texas Eastern states that it is making changes in section 10.2 of its General Terms and Conditions, Billing and Payment, as required by paragraphs 7 and 9 of the January 29 Order. Texas Eastern states that it is providing its customers with (i) an opportunity to change the election of electronic invoicing or U.S. mail delivery method, (ii) e-mail notification of the posting of final electronic invoices, and (iii) an opportunity to designate an agent to receive electronic invoices and e-mail notifications.

Texas Eastern states that copies of its filing have been served on all affected customers, interested state commissions, and all parties on the Commission's official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. E4–285 Filed 2–13–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–480–007]**

### Texas Eastern Transmission, LP; Notice of Compliance Filing

February 10, 2004.

Take notice that on February 5, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, effective January 29, 2004:

Sub Second Revised Sheet No. 200
Sub Fourth Revised Sheet No. 211
Sub Second Revised Sheet No. 223
Sub First Revised Sheet No. 281
Sub First Revised Sheet No. 291
Sub Second Revised Sheet No. 644

Texas Eastern states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on January 29, 2004 (January 29 Order).

Texas Eastern states that it is modifying section 2.2 of Rate Schedules FT–1, CDS, SCT, LLFT and VKFT to provide that Texas Eastern may agree to differing MDQ levels during a contract year "on a not unduly discriminatory basis." In addition, Texas Eastern states that it is removing all language relating to the treatment of differing MDQ levels as a "discount," as directed in the January 29 Order.

Texas Eastern states that copies of its filing have been served on all affected customers, interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. E4–289 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–159–000]**

### Texas Eastern Transmission, LP; Notice of Tariff Filing

February 10, 2004.

Take notice that on February 6, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Second Revised Sheet No. 1071 and Second Revised Sheet No. 1075, to be effective March 7, 2004.

Texas Eastern states that the purpose of this filing is to modify the pro forma LINKr System Agreement contained in its tariff. In particular, Texas Eastern suggest that the filing seeks to modify the list of parties to the agreement and the signature block to reflect the corporate name change from Egan Hub Partners, L.P. to Egan Hub Storage, LLC that became effective on January 1, 2004.

Texas Eastern states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–298 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–161–000]**

### Texas Gas Transmission, LLC; Notice of Tariff Filing

February 10, 2004.

Take notice that on February 6, 2004, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff, sheets to become effective April 1, 2004:

First Revised Original Sheet No. 2
First Revised Sheet No. 10
First Revised Sheet No. 146
First Revised Sheet No. 156
Sheet Nos. 184—188
First Revised Sheet No. 279
Sheet No. 502

Texas Gas states that the purpose of this filing is to make clear that Texas Gas does not have a sales operating unit and does not provide an unbundled sales service under subpart J of part 284 of the Commission's regulations, and therefore is not engaged in the marketing, sales, or brokering of natural gas, by removing Texas Gas' unbundled sales service under Rate Schedule GaS from its tariff. Upon cancellation of Rate Schedule GaS, Texas Gas' states that its unbundled sales certificate will no longer be effective because it will not have any tariff sheets on file implementing service under that blanket certificate.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on Texas Gas' official service list, to Texas Gas' jurisdictional customers, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's

rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the 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. E4–300 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC04–63–000, et al.]**

## Crescent Ridge LLC, et al.; Electric Rate and Corporate Filings

February 9, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Crescent Ridge LLC and Eurus Combine Hills I LLC

[Docket No. EC04–63–000]

Take notice that on February 6, 2004, Crescent Ridge LLC and Eurus Combine Hills I LLC (the Applicants), submitted an application pursuant to section 203 of the Federal Power Act, seeking authorization for a transaction that would result in the transfer of indirect control of Applicants' jurisdictional facilities, including interconnection facilities, rate schedules for sales of power at wholesale and jurisdictional books and records. Applicants request expedited consideration of their Application and certain waivers.

Applicants state that the Transaction will have no effect on competition, rates or regulation and is in the public interest.

*Comment Date:* February 27, 2004.

### 2. Rock River, I, LLC

[Docket No. ER01–2742–002]

Take notice that on January 27, 2004, the Rock River, I LLC (Rock River), tendered for filing Three-Year Market Analysis Update.

*Comment Date:* February 17, 2004.

### 3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–527–000]

Take notice that on February 4, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2002), an Interconnection and Operating Agreement among Roquette America, Midwest ISO and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was served on all parties.

*Comment Date:* February 25, 2004.

### 4. PacifiCorp

[Docket No. ER04–528–000]

Take notice that on February 4, 2004, PacifiCorp, tendered for filing a Notice of Cancellation of PacifiCorp's Rate Schedule No. 366 with Avista Corporation (formerly known as Washington Water Power Company).

PacifiCorp states that copies of this filing were supplied to Avista Corporation, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

*Comment Date:* February 25, 2004.

### 5. Rolling Hills Landfill Gas, LLC

[Docket No. ER04–529–000]

Take notice that on February 4, 2004, Rolling Hills Landfill Gas, LLC (Rolling Hills) tendered for filing , pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for authorization to make sales, as power marketers of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; to resell firm transmission rights; to waive certain of the Commission's regulations promulgated under the FPA; and to grant certain blanket approvals under other such regulations.

*Comment Date:* February 25, 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. E4–302 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 11891–001, et al.]**

## Symbiotics, LLC, Berlin Dam Hydro, LLC, Lexington Hydro, LLC, Fern Ridge Hydro, LLC, Little Grass Valley Hydro, LLC, Lost Creek Hydro, LLC, Clear Lake Hydro, LLC, Chatfield Hydro, LLC, Elk City Hydro, LLC, Twitchell Hydro, LLC, Allen-Chivery Hydro, LLC, De Cordova Hydro, LLC, Eagle Mountain Hydro, LLC, Felsenthal Hydro, LLC, Nevada Creek Hydro, LLC, Hannibal Hydro, LLC; Notice of Surrender of Preliminary Permits

February 9, 2004.

Take notice that the permittees for the subject projects have requested to surrender their preliminary permits. Investigations and feasibility studies have shown that the projects would not be economically feasible.

| Project No. | Project Name | Stream | State | Expiration Date |
|---|---|---|---|---|
| 11891–001 | Hyrum Reservoir | Bear River | UT | 07–31–2004 |
| 11920–001 | Angostura Dam | Cheyenne River | SD | 07–31–2004 |
| 11926–001 | John Redmond Dam | Neosho River | KS | 06–30–2004 |
| 11927–001 | Kachess Dam | Kachess River | WA | 06–30–2004 |
| 11929–001 | Glen Elder | Solomon River | KS | 06–30–2004 |
| 11930–001 | Perry Dam | Delaware River | KS | 06–30–2004 |
| 11931–001 | Milford Dam | Republican River | KS | 06–30–2004 |
| 11946–001 | Unity Dam | Burnt River | OR | 06–30–2004 |
| 11948–001 | Agency Valley Dam | North Fork Malheur River | OR | 07–31–2004 |
| 11961–002 | Clearwater Dam | Black River | MO | 06–30–2004 |
| 11966–001 | Keyhole Dam | Belle Fourche River | WY | 06–30–2004 |
| 11979–001 | Wright Patman Dam | Sulphur River | TX | 08–31–2004 |
| 11980–001 | Belton Lake | Leon River | TX | 08–31–2004 |
| 11981–001 | Ferrells Bridge Dam | Cypress Creek | TX | 08–31–2004 |
| 11982–001 | Stillhouse Hollow Dam | Lampasas River | TX | 08–31–2004 |
| 11986–001 | Seven Oaks Dam | Santa Ana River | CA | 08–31–2004 |
| 12034–001 | Como Dam | Rock Creek | MT | 08–31–2004 |
| 12035–001 | Greys River | Greys River | WY | 08–31–2004 |
| 12038–001 | Lake Sherburne Dam | Swiftcurrent Creek | MT | 04–30–2005 |
| 12050–001 | Pine Creek | Pine Creek | WY | 08–31–2004 |
| 12059–001 | Tongue River | Tongue River | MT | 08–31–2004 |
| 12066–001 | Painted Rocks Dam | West Fork Bitterroot River | MT | 11–30–2004 |
| 12112–001 | Vanadium | Bear Creek | CO | 01–31–2005 |
| 12115–001 | Wilson | Bilk Creek | CO | 04–30–2005 |
| 12163–001 | Berlin Dam | Mahoning Creek | OH | 09–30–2005 |
| 12174–001 | Lexington | Los Gatos Creek | CA | 12–31–2005 |
| 12175–001 | Fern Ridge Dam | Long Tom River | OR | 09–30–2005 |
| 12177–001 | Little Grass Valley | Slate Creek | CA | 09–30–2005 |
| 12194–001 | Lost Creek | Lost Creek | UT | 12–31–2005 |
| 12196–001 | Clear Lake Dam | Lost River | CA | 10–31–2005 |
| 12199–001 | Chatfield Dam | South Platte River | CO | 09–30–2005 |
| 12202–001 | Elk City | Elk City Creek | KS | 12–31–2005 |
| 12210–001 | Twitchell Dam | Cuyama River | CA | 11–30–2005 |
| 12215–001 | Allen Chivery Dam | Bayou Bourbeaux | LA | 09–30–2005 |
| 12222–001 | De Cordova Dam | Brazoz River | TX | 10–31–2005 |
| 12224–001 | Eagle Mountain | West Fork Trinity River | TX | 01–31–2006 |
| 12225–001 | Felsenthal Lock and Dam | Owachita River | AR | 01–31–2006 |
| 12236–001 | Nevada Creek Dam | Nevada Creek | MT | 09–30–2005 |
| 12264–001 | Hannibal Lock and Dam | Ohio River | OH | 12–31–2005 |

The permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–273 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 9, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 2146–102.

c. *Date Filed:* January 27, 2004.

d. *Applicant:* Alabama Power Company, Alabama.

e. *Name of Project:* Coosa River Project.

f. *Location:* The project is located on the Coosa River in Calhoun, St. Clair, and Etowah Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 18 CFR §§ 4.38(a)(4)(v).

h. *Applicant Contact:* Alan Peeples, Alabama Power Company, 600 North 18th Street, Birmingham, AL 35291–8180.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 12, 2004.

k. *Description of Request:* The Alabama Power Company is requesting an extension of the temporary variance to the Neely Henry Dam rule curve approved in the Commission's February 26, 2001 Order. The revised rule curve allows Alabama Power to keep the reservoir elevation at 507 feet mean sea level (msl) from December 1 through March 1, two feet higher than allowed in Article 50 of the license. The February 26, 2001 Order allowed Alabama Power to operate under this revised rule curve for a trial period of three years, which will expire February 26, 2004. Alabama Power plans to include this revised rule curve in its application for a new license, and is seeking to extend the trial period, until the Commission issues a decision on their relicense application. The current license expires on July 31, 2007.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in

the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–274 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application To Remove Parcel of Land From the Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

February 9, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to remove project land from the project boundary.

b. *Project No.:* 2306–030.

c. *Date Filed:* January 16, 2004.

d. *Applicant:* Citizens Communications Company.

e. *Name of Project:* Clyde River Hydroelectric Project.

f. *Location:* The project is located on the Clyde River near Newport, Orleans County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. William J. Madden, Jr., Winston & Straw, 1400 L Street, NW., Washington, DC 20005, (202) 371–5715 or Kevin Perry, Citizens Communications Company, P.O. Box 604, Newport, VT 05855, (802) 334–0326.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Shaffer at (202) 502–8944, or e-mail address: *Robert.Shaffer@ferc.gov.*

j. *Deadline for filing comments and/or motions:* March 12, 2004.

k. *Description of Request:* Citizens Communications Company (Citizens) is proposing to remove from the project boundary a 0.38-acre parcel that includes a non-project switchyard.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at *http://www.ferc.gov* under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–275 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license.

b. *Project No.:* 2543–061.

c. *Date Filed:* December 30, 2003.

d. *Applicant:* Clark Fork and Blackfoot, LLC.

e. *Name of Project:* Milltown Hydroelectric Project.

f. *Location:* On the Clark Fork River in Missoula County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Michael J. Young, Clark Fork and Blackfoot, LLC, 123 S. Dakota Avenue, Sioux Falls, SD 57104, (605) 978–2836.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Deadline for filing responsive documents:* March 12, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission. 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2543–061) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The licensee requests that its license be amended to extend the expiration date of the license one year, from December 31, 2008, to December 31, 2009. The licensee also filed, on December 30, 2003, a notice of intent to relicense the Milltown Project, with the understanding that its notice would become moot if its request to extend the term of the license is granted.

l. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The *http://www.ferc.gov* filing may also be viewed on the Web at using the "eLibrary" link. Enter the docket number excluding the last three digits (P–2543) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list for this project should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all comments or protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number of the application to which the filing refers. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–276 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2686–032]**

### Duke Power; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

February 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2686–032.

c. *Date Filed:* January 26, 2004.

d. *Applicant:* Duke Power—Nantahala Area.

e. *Name of Project:* West Fork Hydroelectric Project.

f. *Location:* On the West Fork of the Tuckasegee River, in Jackson County, North Carolina. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407, or *carolyn.holsopple@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the

application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or March 26, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing West Fork Project operates in a peaking mode and is comprised of two developments: Thorpe and Tuckasegee. The Thorpe development consists of the following features: (1) A 900-foot-long, 150-foot-tall rockfill dam (Glenville Dam), with a 410-foot-long, 122-foot-tall earth and rockfill saddle dam located approximately 500 feet from the main dam left abutment; (2) a spillway for Glenville Dam located at the right abutment; (3) a 1,462-acre reservoir, with a normal reservoir elevation of 3,491.8 feet National Geodetic Vertical Datum and a storage capacity of 72,000-acre-feet; (4) a concrete and brick powerhouse containing one generating unit having an installed capacity of 15.5 megawatts (MW); and (5) appurtenant facilities.

The Tuckasegee development consists of the following features: (1) A 254-foot-long, 61-foot-high concrete arch dam (Tuckasegee Dam), with 24 steel flashboards; (2) a 233.5-foot-long spillway; (3) a 7.9-acre reservoir, with a normal reservoir elevation of 2,778.75 feet National Geodetic Vertical Datum and a storage capacity of 35-acre-feet; (4) a concrete powerhouse containing one generating unit having an installed capacity of 2.6 MW; and (5) appurtenant facilities.

o. A copy of the application 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 (P–2686), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule And Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

| Action | Tentative date |
|---|---|
| Issue Deficiency Letter .. | March 2004. |
| Issue Acceptance letter | June 2004. |
| Issue Scoping Document 1 for comments. | July 2004. |
| Request Additional Information. | September 2004. |
| Notice of application is ready for environmental analysis. | October 2004. |
| Notice of the availability of the final EA. | April 2005. |
| Ready for Commission's decision on the application. | July 2005. |

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

| Action | Tentative date |
|---|---|
| Notice of the availability of the final EA. | July 2005. |
| Ready for Commission's decision on the application. | September 2005. |

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–277 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2698–033]**

### Duke Power; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

February 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2698–033.

c. *Date Filed:* January 26, 2004.

d. *Applicant:* Duke Power (Nantahala Area).

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* On the East Fork of the Tuckasegee River, in Jackson County, North Carolina. There are 23.15 acres of United States Forest Service land (Nantahala National Forest) within the boundary of the project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407, or *carolyn.holsopple@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status

should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or March 26, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing East Fork Project operates in a peaking mode and is comprised of three developments: Cedar Cliff, Bear Creek and Tennessee Creek. The Cedar Cliff development consists of the following features: (1) A 590-foot-long, 173-foot-tall earth core and rockfill dam (Cedar Cliff Dam); (2) a service spillway excavated in rock at the right abutment; (3) a 221-foot-long emergency spillway located at the left abutment; (4) a 121-acre reservoir, with a normal reservoir elevation of 2,330 feet National Geodetic Vertical Datum and a storage capacity of 6,200-acre-feet; (5) a concrete powerhouse containing one generating unit having an installed capacity of 6.1 megawatts (MW); and (6) appurtenant facilities.

The Bear Creek development consists of the following features: (1) A 760-foot-long, 215-foot-tall earth core and rockfill dam (Bear Creek Dam); (2) a spillway on the right abutment; (3) a 473-acre reservoir, with a normal reservoir elevation of 2,560 feet National Geodetic Vertical Datum and a storage capacity of 34,650-acre-feet; (4) a concrete powerhouse containing one generating unit having an installed capacity of 8.2 MW; and (5) appurtenant facilities.

The Tennessee development consists of the following features: (1) a 385-foot-long, 140-foot-tall earth core and rockfill dam (Tanasee Creek Dam) with a 225-foot-long, 15-foot-tall earth and rockfill saddle dam located 600 feet south of the Tanasee Creek Dam left abutment; (2) a spillway located in a channel excavated in the right abutment; (3) a 810-foot-long, 175-foot-tall earth core and rockfill dam (Wolf Creek Dam); (4) a spillway located in a channel excavated in the right abutment; (5) a 40-acre reservoir (Tanasee Creek Lake), with a normal reservoir elevation of 3,080 feet National Geodetic Vertical Datum and a storage capacity of 1,340-acre-feet; (6) a 176-acre reservoir (Wolf Creek Lake), with a normal reservoir elevation of 3,080 feet National Geodetic Vertical Datum and a storage capacity of 10,040-acre-feet; (7) a concrete powerhouse containing one generating unit having an installed capacity of 8.75 MW.

o. A copy of the application 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 (P–2698), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

| Action | Tentative date |
|---|---|
| Issue Deficiency Letter .. | March 2004. |
| Issue Acceptance letter | June 2004. |
| Issue Scoping Document 1 for comments. | July 2004. |
| Request Additional Information. | September 2004. |
| Notice of application is ready for environmental analysis. | October 2004. |
| Notice of the availability of the final EA. | April 2005. |
| Ready for Commission's decision on the application. | July 2005. |

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

*Notice of the availability of the final EA:* July 2005.

*Ready for Commission's decision on the application:* September 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–278 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

February 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Minor License.

b. *Project No.:* 8615–024.

c. *Date Filed:* January 27, 2004.

d. *Applicant:* Fiske Hydro, Inc.

e. *Name of Project:* Fiske Mill Hydroelectric Project.

f. *Location:* The project is located on the Ashuelot River in Cheshire County, New Hampshire. No federal lands would be affected.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Howard M. Moffett, Orr & Reno, P.A., One Eagle Square, Concord, NH 03301, (603) 223–9132.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing comments and or motions:* March 12, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–8615–024) on any comments or motions filed.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

l. *Description of Request:* Fiske Hydro proposes to surrender the license for the 810-kilowatt Fiske Mill Project. As part of its request, Fiske Hydro proposes to remove a 140-foot section of the spillway to natural streambed to provide permanent fish passage. A 25-foot section of the dam, adjacent to the powerhouse on the north bank of the river, will remain intact to preserve evidence of the design and construction of the historic structure. The partial removal of the dam will result in a lowering of the Fiske Mill impoundment directly upstream of the dam by as much as 15 feet. The partial dam removal will make the Ashuelot River basin available as riverine habitat to anadromous fish using the Connecticut River basin.

m. *Location of the Application:* This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web *http://wwww.ferc.gov* at using the "eLibrary" link. Enter the docket number, here P–8615, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above and at the Town Hall in Hinsdale, New Hampshire.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–279 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 10, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License Application.

b. *Project No.:* 12063–001.

c. *Date filed:* October 17, 2003.

d. *Applicant:* William Arkoosh.

e. *Name of Project:* Little Wood River Ranch II Hydroelectric Project.

f. *Location:* On the Little Wood River, near the Town of Shoshone, Lincoln County, Idaho. No lands of the United States would be affected.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* William Arkoosh, 2005 Highway 26, Gooding, Idaho 83330, (208) 934–5387.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 502–6032, or e-mail at: *gaylord.hoisington@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The proposed new construction run-of-river project would consist of: (1) A 10-foot-high, 220-foot-long rock rubble diversion dam; (2) a 2,800-foot-long open feeder canal; (3) a concrete intake structure having two parallel 5-foot-diameter, 250-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis turbines with a total installed capacity of 1,500 kilowatts; (5) a 3,500-foot-long tailrace channel; (6) a 10,500-foot-long, 12.5-kilovolt transmission line; (7) an access road and (8) appurtenant facilities.

m. A copy of the application is available for review at the Commission

in the Public Reference Room or may be viewed on the Commission's website 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–293 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–49–000]**

### Dominion Transmission, Inc.; Notice of Site Visit for the Proposed Fink Capacity Maintenance Project

February 10, 2004.

The OEP staff will conduct a site visit on February 25, 2004, and if needed February 26, 2004, to inspect Dominion Transmission, Inc.'s (DTI) proposed route and potential alternative routes for the Fink Capacity Maintenance Project.

The areas will be inspected by automobile. Representatives of DTI will accompany the OEP staff. Anyone interested in participating in the site visit should meet at Jackson's Mill Assembly Hall, Jackson Mill Road, Weston, West Virginia 26452, at 12 p.m. Participants must provide their own transportation.

For additional information, contact the Commission's Office of External Affairs at 1–866–208–FERC.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–290 Filed 2–13–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the Record Communications; Public Notice

February 9, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are 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 for TTY, contact (202) 502–8659.

| Docket No. | Date filed | Presenter or requester |
|---|---|---|
| Prohibited: | | |
| 1. Project Nos. 20–000, 2401–000 and 472–000 | 1–23–04 | Monte Garrett. |
| 2. Project No. 2342–000 | 1–30–04 | Britt Lind. |
| 3. Project No. 2342–000 | 2–06–04 | Liz Lundberg. |
| 4. Project No. 2342–000 | 2–06–04 | Sherry Horne Taylor. |
| 5. Project No. 2342–000 | 2–09–04 | Ellen Dickinson. |
| 6. EC03–131–000 | 2–3–04 | Don Glenn. |
| Exempt: 1. Project No. 2174–000 | 2–03–04 | Cindy Whelan. |

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E4–280 Filed 2–13–04; 8:45 am]
BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7622–7]**

### Clean Air Act Advisory Committee; Notice of Meeting

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific and enforcement policy issues.

*Open Meeting Notice:* Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Wednesday, March 24, 2004, from approximately 8:30 a.m. to 3 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis. Three of the CAAAC's four Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Tuesday, March 23, 2004 from approximately 9:30 a.m. to 5 p.m. at the Renaissance Mayflower Hotel, the same location as the full Committee. The Mobile Source Technical Subcommittee will not meet at this time. The Economic Incentives and Regulatory Innovations Subcommittee is scheduled to meet from 9:30 a.m. to 11:30; the Linking Energy, Land Use, and Transportation, and Air Quality Concerns Subcommittee is scheduled to meet from 12:15 p.m. to 2:15 p.m.; and the Permits/NSR/Toxics Subcommittee is scheduled to meet from 2:15 p.m. to 4:45 p.m. There will be a presentation of the Clean Air Act Excellence Awards from 5 p.m. to 7 p.m. following the subcommittee meetings.

*Inspection of Committee Documents:* The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–566–1742; FAX 202–566–1741.

For further information concerning this meeting of the full CAAAC, please contact Pat Childers, Office of Air and Radiation, US EPA (202) 564–1082, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; and (2) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667.

Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *http://www.epa.gov/oar/caaac/.*

Dated: February 9, 2004.

**Robert D. Brenner,**
*Principal Deputy Assistant Administrator.*
[FR Doc. 04–3365 Filed 12–13–04; 8:45 am]
BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0037; FRL–7345–8]**

### Availability of Court Orders in Washington Toxics Coalition v. EPA Litigation

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

**ACTION:** Notice.

**SUMMARY:** This notice announces to the public the availability of Orders issued by a federal district court affecting certain aspects of the sale, distribution and use of pesticides and instructs certain entities about their responsibility to inform others of these Orders. In response to a citizen suit filed under the Endangered Species Act against EPA by the Washington Toxics Coalition and other public interest groups, the United States District Court for the Western District of Washington issued an Order granting interim injunctive relief on January 22, 2004. The Order (with some exceptions) enjoins, vacates and sets aside EPA's authorization of certain pesticides' uses within 20 yards for ground applications and 100 yards for aerial applications, adjacent to salmon supporting waters in California, Oregon and Washington, effectively establishing buffer zones around those waters. The Court also ordered EPA to notify a variety of entities in the affected states of this injunction, and of previous Orders issued by the Court in this case, and to instruct registrants and the affected states to inform certain persons who sell, distribute and use pesticides of the Order. Unit II. of this Notice provides in detail the list of persons and entities to whom this notification and instruction apply. Further, the Court ordered EPA to develop and facilitate the availability of a point of sale notification in urban areas in the three states, for certain products containing any of 7 active ingredients. The Court's January 22 Order, which carries an effective date of February 5, 2004, and other related materials, including the Court's previous Orders, are available on EPA's web site (See Unit I.B.3. of the **SUPPLEMENTARY INFORMATION** for the web site address).

**FOR FURTHER INFORMATION CONTACT:** Arty Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5239; fax number: 703–308–3259; e-mail address: *williams.arty@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to certain pesticide registrants, states, certified applicators, and licensed pesticide dealers. This Notice may also be of particular interest to persons in California, Oregon and Washington who may wish to use a pesticide near salmon supporting waters. The Court has defined salmon supporting waters in its January 22, 2004 Order. This action may also be of particular interest to distributors, retail sales businesses, and pesticide applicators in California, Oregon and Washington and registrants of pesticides containing the active ingredients subject to the Court's injunction. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0037. The official public docket consists of the documents specifically referenced in this notice, and other information related to this notice. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

3. *EPA Web site.* You may also find these documents on EPA's endangered species Web site at *http://www.epa.gov/espp.*

**II. Background**

*A. What Action is the Agency Taking?*

EPA is notifying the public of certain Court Orders affecting pesticide use in California, Oregon and Washington. On January 30, 2001, the Washington Toxics Coalition and a number of other public interest groups filed suit against the U.S. Environmental Protection Agency (*WTC* v. *EPA*) alleging EPA had failed to assess the potential of certain pesticides to harm federally listed endangered and threatened species, and to consult with the National Marine Fisheries Service (NMFS) on whether those pesticides posed jeopardy to 26 federally listed endangered and threatened Pacific salmon and steelhead. Under the Endangered Species Act, EPA must ensure that its registration of pesticides is not likely to jeopardize the continued existence of species listed as endangered and threatened, or to adversely modify habitat critical to those species' survival. In addition to the obligation to ensure that its actions do not jeopardize listed species, the Agency must consult, as appropriate, with the U.S. Fish and Wildlife Service or NMFS if a pesticide's use may affect listed species or designated critical habitat for a listed species.

The Chief Judge of the United States District Court for the Western District of Washington issued an opinion on July 2, 2002, ordering EPA to review pesticides containing any of 55 active ingredients, for their potential effects on these listed species and to consult with NMFS as appropriate. EPA has reviewed over half of those pesticides and is consulting with NMFS on certain determinations. Chief Judge Coughenour issued the January 22, 2004 Order in response to the Plaintiffs' motion for injunctive relief to establish buffer zones as an interim measure to "substantially reduce the likelihood of jeopardy" to 26 species of Pacific salmon and steelhead, until EPA and, where appropriate, NMFS have completed an evaluation of the potential impacts of these 55 pesticides on endangered Pacific salmon and steelhead.

As of February 10, 2004, no stay request has been filed and no stay has been issued in either the District Court or the Court of Appeals. Accordingly, the Order became effective on February 5, 2004. Until further judicial proceedings occur, EPA cannot determine the extent to which the Order will remain effective. If, however, the Order remains in effect EPA intends to provide information on the above Web site that will assist pesticide users and others in understanding the requirements created by the January 22 Order, where and to whom those requirements apply, and when any of those requirements is lifted or modified.

Because of EPA's reviews and effects determinations on many of the 55 pesticides, the Court's Order effectively applies only to the following 38 pesticides:

1. 1,3-Dichloropropene
2. 2,4-D
3. Acephate
4. Azinphos-methyl
5. Bensulide
6. Bromoxynil
7. Captan
8. Carbaryl
9. Carbofuran
10. Chlorothalonil
11. Chlorpyrifos
12. Coumaphos
13. Diazinon
14. Diflubenzuron
15. Dimethoate
16. Disulfoton
17. Diuron
18. Ethoprop
19. Fenamiphos
20. Fenbutatin-oxide
21. Lindane (gamma-BHC and HCH)
22. Linuron
23. Malathion
24. Methamidophos
25. Methidathion
26. Methomyl
27. Methyl parathion
28. Metolachlor
29. Metribuzin
30. Naled
31. Oxyfluorfen
32. Pendimethalin
33. Phorate
34. Prometryn
35. Propargite
36. Tebuthiuron
37. Triclopyr BEE
38. Trifluralin

In addition, as explained in detail in the Court's Order, the provisions concerning buffer zones do not apply to all uses of the above pesticides in all parts of California, Oregon and Washington. Rather, the Order applies only in certain circumstances. A determination of the applicability of the Order requires consideration of: (1) Which active ingredient is in the pesticide product; (2) how the pesticide product is intended to be used; and (3) where the product is intended to be used. Further, the Order provides that changes in certain circumstances would affect the applicability of the Order, for example, as EPA makes additional effects determinations, or as NMFS moves ahead in its review of EPA's determinations. Thus, a pesticide user should review, as close as possible to the time of intended use, the Order posted on EPA's Web site (*http://www.epa.gov/espp*), as well as any additional information updating the Order, to ascertain whether the provisions would affect a specific product, use, and location.

In addition to provisions that, in effect, establish buffer zones around salmon supporting waters for certain pesticides and to provisions that require point of sale notification, the January 22, 2004 Order contains provisions imposing requirements on EPA to inform the public and certain specific entities of this and other Orders. Accordingly, by issuance of this Notice, EPA hereby:

1. Informs the public, registrants, states, certified applicators and licensed pesticide dealers of the Court's Orders in this case dated July 2, 2002; July 16, 2003; August 8, 2003; and January 22, 2004. EPA is posting the full text of these Orders on its web site at *http://www.epa.gov/espp*.

2. Instructs registrants of the pesticides to which the January 22, 2004 Order applies, to make pesticide distributors, wholesalers, retailers, brokers, dealers and others in privity with them, aware of the January 22, 2004 Order issued by the Court.

3. Instructs the affected states to inform registrants, certified applicators, and licensed pesticide dealers of the January 22, 2004 Order.

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

This action is taken pursuant to the January 22, 2004 Order of the Court in *Washington Toxics Coalition, et al* v. *EPA*, C01–0132 (W.D. WA).

**List of Subjects**

Environmental protection, Endangered species.

Dated: February 10, 2004.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. 04–3364 Filed 2–13–04; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7623–7]**

### Agreement and Covenant Not To Sue: Union Pacific Railroad Company

**AGENCY:** Environmental Protection Agency.

**ACTION:** Prospective Purchaser Agreement/Agreement and Covenant Not To Sue.

**SUMMARY:** As required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as amended (CERCLA), and the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, as amended (RCRA), notice is hereby given that an Agreement and Covenant Not To Sue ("Agreement") is proposed by the United States ("U.S.") on behalf of the Environmental Protection Agency ("EPA"), the State of Colorado ("State") on behalf of the Colorado Department of Public Health and Environment ("CDPHE"), and the Union Pacific Railroad Company ("Union Pacific") (collectively the "Parties" and singularly "Party"). The following is a list of CERCLA and RCRA sites covered under the Agreement.

1. The Broderick Wood Products Site ("Broderick") is located at 5800 Galapago Street in unincorporated Adams County, Colorado. Broderick consists of approximately 64 acres situated in a primarily industrial area and was operated by Broderick Wood Products Company as a wood treating facility from 1947 until 1982. The Broderick remediation is now managed by the Broderick Investment Company ("BIC").

2. The Sand Creek Site ("Sand Creek") is located at 52nd and Dahlia St., approximately 5 miles northeast of Denver, Colorado in a heavy industrial area. Sand Creek occupies about 550 acres. Sand Creek includes properties that are vacant, industrially developed, and former railroad right-of-ways owned by the Colorado and Eastern Railroad Company or recently transferred to NDSC LLC, subject to a Union Pacific option, and an active rail line and railroad right-of-way owned by the Denver Rock Island Railroad. Sand Creek was listed on the National Priorities List (NPL) in1982 and was deleted from the NPL in 1996.

3. The Chemical Sales Site ("Chemical Sales") is located at 4661 Monaco Street in Denver, Colorado and covers approximately 5 square miles. Chemical Sales is located in a light industrial area of northeast Denver and was first developed in 1962 with construction of a warehouse. Operations have included the storage and repackaging of bulk chemicals. Chemical Sales was listed on the NPL in 1990.

4. The Woodbury Chemical Site ("Woodbury") is located north of 54th Avenue between Harrison and Adams Streets in Commerce City, Colorado. This 15-acre site was operated by Woodbury Chemical Company as a pesticide production facility from the late 1950's until 1971. Remediation was completed in 1992, and Woodbury was deleted from the NPL in 1993.

5. The Koppers Site is an active industrial wood treating operation adjacent and is just east of Broderick. Soil and groundwater contamination has been identified and is being remediated by Koppers.

Union Pacific, a Delaware Corporation organized under the laws of the State of Delaware, with its principal offices at 1416 Dodge Street in Omaha, Nebraska, desires to acquire a perpetual easement or other property interest in the above-described Properties in order to establish a more direct east-west rail corridor through the north Denver area. The Parties agree to undertake all actions required by the terms and conditions of the Agreement and the Statement of Work. The purpose of the Agreement is to settle and resolve, subject to reservations and limitations, the potential liability of Union Pacific for the existing contamination at the Sites, which liability would otherwise result from Union Pacific becoming the owner of, or acquiring a property interest in, the Sites. In consideration of and exchange for the U.S. and the State's Covenant Not To Sue and Removal of Lien, Union Pacific agrees to pay for or perform the remedy repair and replacement work at the Sites and to reimburse EPA and CDPHE for their reasonable oversight costs incurred in the oversight of Union Pacific's performance of such work.

**FOR FURTHER INFORMATION CONTACT:** Richard Sisk, Legal Enforcement Attorney (ENF–L) Legal Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6638. Please contact Sharon Abendschan, Enforcement Specialist at (303) 312–6957 for requests for copies of the Agreement and/or repository location(s) where supporting documentation may be found and reviewed.

Dated: February 5, 2004.

**Carol Rushin,**

*Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.*

[FR Doc. 04–3367 Filed 2–13–04; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 9, 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 19, 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: 3060–0854.

*Title:* Truth-in-Billing Format, CC Docket No. 98–170.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 3,099.

*Estimated Time per Response:* 5 to 465 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total Annual Burden:* 1,565,775 hours.

*Total Annual Cost:* $9,000,000.

*Needs and Uses:* The Commission adopted rules to make consumers' telephone bills easier to read and understand. Telephone bills do not provide necessary information in a user-friendly format. As a result, consumers are experiencing difficulty in understanding their bills, in detecting fraud, in resolving billing disputes, and in comparing carrier rates to get the best values for themselves. Consumers use this information to help them understand their telephone bills. Consumers need this information to protect them against fraud and to help them resolve billing disputes if they wish.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–3358 Filed 2–13–04; 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

February 9, 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 19, 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 Approval Number:* 3060–0698.

*Title:* Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico, ET Docket No. 96–2.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; Not for profit institutions; and State, Local, or Tribal Government.

*Number of Respondents:* 515.

*Estimated Time per Response:* 35 minutes (avg.).

*Frequency of Response:* On occasion reporting requirements; Third party disclosure.

*Total Annual Burden:* 300 hours.

*Total Annual Costs:* None.

*Needs and Uses:* The FCC has established a Coordination Zone for new and modified radio facilities in various communications services that cover the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico. The coordination zone and notification procedures will enable the Arecibo Radio Astronomy Observatory to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Arecibo Observatory's operations and will promote efficient resolution of coordination problems between the applicants and the Arecibo Observatory.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–3359 Filed 2–13–04; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 10, 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 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 (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 18, 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., 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.:* 3060–0511.

*Title:* ARMIS Access Report.

*Report No:* FCC Report 43–04.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 84.

*Estimated Time Per Response:* 153 hours.

*Frequency of Response:* Annual reporting requirement.

*Total Annual Burden:* 12,852 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Access Report is needed to administer the Commission's accounting, jurisdictional separations and access charge rules; to analyze revenue requirements and rates of return; and to collect financial data from Tier 1 incumbent local exchange carriers. The Commission is revising this information collection to add, eliminate and consolidate the number of reporting rows in FCC Report 43–04.

*OMB Control No.:* 3060–0798.

*Title:* FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

*Form No:* FCC Form 601.

*Type of Review:* Revision 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:* 250,520.

*Estimated Time Per Response:* .50—1.25 hours.

*Frequency of Response:* On occasion and every 10 year reporting requirements, recordkeeping requirement and third party disclosure requirement.

*Total Annual Burden:* 219,205 hours.

*Total Annual Cost:* $50,104,000.

*Needs and Uses:* FCC Form 601 is a multi-purpose form used to apply for an authorization to operate radio stations, amend pending applications, modify existing licenses and perform a variety of other miscellaneous tasks in the Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Maritime Services (excluding ships), and Aviation Services (excluding aircraft). In addition to these services, the Commission is now revising the FCC Form 601 to include the "Millimeter Wave" spectrum in the 71–76, 81–86, and 92–95 GHz bands pursuant to Parts 90 and 101 of the FCC's rules. A new Schedule M has been created to accommodate this new spectrum as these services will be integrated into the Universal Licensing System (ULS) and to clarify existing instructions for the general public.

*OMB Control No.:* 3060–0855.

*Title:* Telecommunications Reporting Worksheet.

*Form Nos:* FCC Forms 499, 499A and 499–Q.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit and not-for-profit institutions.

*Number of Respondents:* 5,500 respondents; 15,500 responses.

*Estimated Time Per Response:* 10—13.5 hours.

*Frequency of Response:* On occasion, annual, quarterly, and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

*Total Annual Burden:* 175,487 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Commission seeks OMB approval to modify the FCC Form 499–A to collect information concerning carriers' uncollectible revenue. Pursuant to Sections 54.706, 54.709 and 54.711 of the Commission's rules, the proposed collection is needed to conduct the annual true-up of projected collected revenues against gross revenues report on the FCC Form 499–A. The Commission is also seeking to revise the instructions to the FCC Form 499 to cross-reference recordkeeping requirements outlined in Section 54.711 of the rules, as detailed in prior OMB-filings to modify the FCC Form 499 to conform to requirements established in the *Interim Contribution Methodology Order*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–3360 Filed 2–13–04; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 6, 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 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 (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 18, 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 220554 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.:* 3060–0804.

*Title:* Universal Service—Health Care Providers Universal Service Program.

*Form Nos:* FCC Forms 465, 466, 466–A and 467.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit and not-for-profit institutions.

*Number of Respondents:* 12,800 respondents; 14,400 responses.

*Estimated Time Per Response:* .50–3 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 17,600 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Commission seeks comment on ways to streamline further the application process and expand outreach efforts regarding the rural health care universal service support mechanism. The Commission implemented the rural health care mechanism at the direction of Congress as provided in the Telecommunications Act of 1996 (1996 Act). In past years of its operation, the rural health care mechanism has provided discounts that have facilitated the ability of health care providers to provide critical access to modern telecommunications and information services for medical and health maintenance purposes to rural America. Participation in the rural health care universal service support mechanism, however, has not met the Commission's projections. The Commission finds it appropriate to assess whether our rules and policies require modification.

*OMB Control No.:* 3060–0929.

*Title:* Application for Multipoint Distribution Service (MDS) or Instructional Television Fixed Service (ITFS) Modification to Main Station, Booster Station, Response Station Hub or 125 kHz (I Channel) Station.

*Form No:* FCC Forms 331.

*Type of Review:* Extension (no change) of a currently approved collection.

*Respondents:* Business or other for-profit and not-for-profit institutions and state, local or tribal government.

*Number of Respondents:* 4,000.

*Estimated Time Per Response:* 2–24 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 8,000 hours.

*Total Annual Cost:* $19,465,000.

*Needs and Uses:* FCC Form 331 is required to be used by the licensees of MDS, MMDS, ITFS, or commercial ITFS to apply for modification to a main station, response station hub, high-power signal booster station, notification of low-power signal booster station or 125 kHz (I Channel) point to multipoint transmissions. The data is used by FCC staff to determine whether the applicant meets legal and technical requirements and to ensure that the public interest would be served by grant of the application.

*OMB Control No.:* 3060–0697.

*Title:* Facilitating the Future Development of Paging Systems via Parts 22 and 90.

*Form No.:* N/A.

*Type of Review:* Revision 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:* 417 respondents; 10,032 responses.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement and recordkeeping requirement.

*Total Annual Burden:* 10,032 hours.

*Total Annual Cost:* $150,480.

*Needs and Uses:* The Commission is revising this information collection to consolidate it with OMB Control Number 3060–0765. As a result, the cost and hour burdens in this collection has been modified to reflect the inclusion of information collection 3060–0765, as well as incorporating new licensees who must meet the same recordkeeping requirements.

*OMB Control No.:* 3060–0410.

*Title:* Forecast of Investment Usage Report and Actual Usage of Investment Report.

*Report Nos.:* FCC Reports 495A and 495B.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 96 respondents; 192 responses.

*Estimated Time Per Response:* 40 hours.

*Frequency of Response:* Annual reporting requirement.

*Total Annual Burden:* 7,680 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Commission has revised this information collection to eliminate the mandatory CAM filing and attestation audits or mid-sized carriers. Therefore, the mid-sized carriers are no longer required to file FCC Reports 495A and 495B or the "no data letter." The Commission has adjusted the number of responses by 26 to reflect an increase in the number of respondents.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–3362 Filed 2–13–04; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting

February 5, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 12, 2004, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

| Item no. | Bureau | Subject |
|---|---|---|
| 1 | Wireline Competition | *Title:* Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service (WC Docket No. 03–45). *Summary:* The Commission will consider a Memorandum Opinion and Order concerning Pulver.com's petition for declaratory ruling regarding the classification of its Free World Dialup service. |
| 2 | Wireline Competition | *Title:* IP–Enabled Services. |

| Item no. | Bureau | Subject |
|---|---|---|
| | | *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning issues relating to services and applications making use of the Internet Protocol, including but not limited to "voice over Internet Protocol." |
| 3 | Office of Engineering and Technology | *Title:* Carrier Current Systems, including Broadband over Power Line Systems (ET Docket No. 03–104); and Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems. |
| | | *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning changes to the rules applicable to Access Broadband over Power Line systems. |
| 4 | Wireline Competition | *Title:* Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers (CC Docket No. 00–256); and Federal-State Joint Board on Universal Service (CC Docket No. 96–45). |
| | | *Summary:* The Commission will consider a Report and Order and Second Further Notice of Proposed Rulemaking concerning several interstate access charge and universal service reforms affecting rate-of-return local exchange carriers, on which the Commission sought comment in a previous Notice of Proposed Rulemaking. |
| 5 | Office of Engineering and Technology | *Title:* New Part 4 of the Commission's Rules Concerning Disruptions to Communications. |
| | | *Summary:* The Commission will consider a Notice of Proposed Rulemaking to amend its service disruption reporting requirements. |

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–3458 Filed 2–12–04; 1:38 pm]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2645]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 9, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by March 3, 2004. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of the Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service (ET Docket No. 95–18);

Service Rules for Advanced Wireless Services in the 1.7 GHz band 2.1 GHz Bands (WT Docket No. 02–353);

Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258);

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands (IB Docket No. 01–185).

*Number of Petitions Filed:* 5.

*Subject:* Amendment of the Digital TV Table of Allotments (Corpus Christi, Texas) (MM Docket No. 99–277, RM–9666).

*Number of Petitions Filed:* 1.

*Subject:* Amendment of the Digital TV Table of Allotments (Jackson, Mississippi) (MM Docket No. 01–43, RM–1004).

*Number of Petitions Filed:* 1.

*Subject:* In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands (IB Docket No. 01–185).

*Number of Petitions Filed:* 2.

*Subject:* In the Matter of the Review of Part 15 and other Parts of the Commission's Rules (ET Docket No. 01–278, RM–9375, RM–10051);

Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices (ET Docket No. 95–19);

M/A–COM private Radio Systems, Inc. Petition for Declaratory Ruling.

*Number of Petitions Filed:* 1.

*Subject:* Amendment of the FM Table of Allotments (Ash Fork, Arizona) (MM Docket No. 02–12, RM–10356, RM–10551, RM–10552, RM–10553, and RM–10554).

*Number of Petitions Filed:* 1.

*Subject:* In the Matter of the Rural Health Care Support Mechanism (WC Docket No. 02–60).

*Number of Petitions Filed:* 1.

*Subject:* Amendments of Parts 2, 25 and 87 of the Commission's Rules to Implement Decisions From World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36GHz and to Otherwise Update the Rules in this Frequency Range (ET Docket No. 02–305);

Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum for Government and Non-Government Use in the Radionavigation-Satellite Service (RM–10331).

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–3363 Filed 2–13–04; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting Notice: Change in Date of Open Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 69 FR 5986, February 9, 2004.

**CHANGE OF MEETING TIMES AND DATE:** The open meeting of the Board of Directors, originally scheduled for 10 a.m. on February 11, 2004, is now scheduled to begin at 10 a.m. on Wednesday, February 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov.*

Dated: February 12, 2004.

By the Federal Housing Finance Board.

**John Harry Jorgenson,**

*General Counsel.*

[FR Doc. 04–3439 Filed 2–12–04; 12:25 pm]

BILLING CODE 6725–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 2, 2004.

**A. Federal Reserve Bank of New York** (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

*1. Lindrew Properties and Barry M. Snyder*, both of Buffalo, New York, and Andrew Snyder and Linsey Snyder of New York, New York, together as a group acting in concert, to acquire voting shares of Great Lake Bancorp, Inc., Buffalo, New York, and thereby indirectly acquire shares of Greater Buffalo Savings Bank, Buffalo, New York.

Board of Governors of the Federal Reserve System, February 10, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–3308 Filed 2–13–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://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 12, 2004.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. CBB Bancorp*, Cartersville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Century Bank of Bartow County, Cartersville, Georgia.

*2. The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with P.C.B. Bancorp, Inc., Clearwater, Florida, and thereby indirectly acquire Premier Community Bank of Southwest Florida, Fort Meyers, Premier Community Bank of South Florida, Fort Lauderdale, Florida, Premier Community Bank, Venice, Florida, and Premier Community Bank of Florida, Largo, Florida.

Board of Governors of the Federal Reserve System, February 10, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–3307 Filed 2–13–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL TRADE COMMISSION

**[Docket No. 9306]**

### California Pacific Medical Group, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before March 10, 2004.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Kundig, John Wiegand, or Gwen Fanger, FTC Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 848–5100.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 9, 2004), on the World Wide Web, at "*http://www.ftc.gov/os/2004/02/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

**Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with California Pacific Medical Group, Inc., dba Brown and Toland Medical Group ("Brown & Toland"). The agreement settles charges that Brown & Toland's preferred provider organization ("PPO") physician network violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements among Brown & Toland members on price and other competitively significant terms; refusing to deal with payors except on collectively agreed-upon terms; and negotiating uniform fees and other competitively significant terms in payor contracts and refusing to submit to members payor offers that do not conform to Brown & Toland's standards for contracts.

The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final. The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Brown & Toland that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Commission issued its complaint and notice of contemplated relief in this matter on July, 8, 2003, and the matter was assigned to the agency's Chief Administrative Law Judge, Stephen J. McGuire. During discovery, complaint counsel and counsel for respondent executed a proposed consent agreement. On December 30, 2003, this matter was withdrawn from litigation so that the Commission could consider the proposed consent agreement.

**The Complaint**

As alleged in the Commission's complaint, Brown & Toland is a risk-sharing independent practice association ("IPA") in its contracts with health maintenance organizations ("HMOs") to provide services to HMO enrollees who live or work in San Francisco, California. Approximately 1,500 physicians who provide physician services in San Francisco participate in, or have contracts with, Brown & Toland to provide services to the HMO enrollees under Brown & Toland's contracts with HMOs.

Physicians often enter into contracts with payors that establish the terms and conditions, including fees and other competitively significant terms, for providing health care services to enrollees of payors. Payors may also develop and sell access to networks of physicians. Such payors include, but are not limited to, HMOs and PPOs. Physicians entering into such contracts often agree to reductions in their compensation to obtain access to additional patients made available by the payors' relationship with the enrollees. These contracts may reduce the payors' costs and permit them to lower medical care costs, including the price of health insurance and out-of-pocket medical care expenditures, for enrollees.

Absent agreements among competing physician entities on the terms on which they will provide services to the enrollees of payors, competing physician entities decide unilaterally whether to enter into contracts with payors to provide services to the payor's enrollees, and what prices and other terms and conditions they will accept under such contracts.

Physician entities often are paid for the services they provide to health plan enrollees either by contracting directly with a health plan or indirectly by participating in IPAs. Some physician entities participating in IPAs share the risk of financial loss with other participants if the total costs of services provided to health plan enrollees exceed anticipated levels ("risk-sharing IPA"). Physicians participating in a risk-sharing IPA also typically agree to follow guidelines relating to quality assurance, utilization review, and administrative efficiency.

In order to be competitive in the San Francisco metropolitan area, a payor's health plan should include in its physician network a large number of primary care physicians and specialists who practice in San Francisco. A substantial number of the primary care physicians and specialists who practice in San Francisco are members of Brown & Toland.

In 2001, Brown & Toland formed a PPO physician network to capture revenue from the PPO market segment. The Brown & Toland PPO network comprises approximately one-third of the Brown & Toland HMO physician members. These PPO network physicians do not share financial risk in connection with the provision of services to PPO patients. Rather, the Brown & Toland PPO network physicians provide services to PPO enrollees on a fee-for-service basis. To receive compensation for services, the PPO network physicians directly bill, and get paid by, the PPO enrollee or the PPO payor.

In addition to the lack of financial risk sharing by the PPO network physicians, the Brown & Toland PPO network lacks any significant degree of clinical integration. To the extent that the Brown & Toland physicians may have achieved clinical efficiencies regarding the provision of services under Brown & Toland's risk-sharing contracts, Brown & Toland has no ongoing mechanism to ensure that those potential efficiencies are replicated in services provided by its PPO network. Brown & Toland does not monitor practice patterns and quality of care, or enforce utilization standards regarding services provided by its PPO network. Brown & Toland's PPO network physicians are required to abide by the utilization management guidelines established by payors, not by the guidelines in Brown & Toland's risk-sharing contracts. Brown & Toland also negotiates fees for its PPO network physicians that are different from the fee schedules Brown & Toland employs for its risk-sharing contracts.

Brown & Toland formed the PPO network to promote, among other things, the collective economic interests of the PPO network physicians by increasing their negotiating leverage with health plans. In connection with the formation of its PPO network, Brown & Toland organized meetings among its physician members to agree upon the financial and other competitively significant contractual terms the physicians would like Brown & Toland to achieve for them.

Brown & Toland presented physicians with a choice of two fee schedules when it solicited physicians to join the PPO network. Brown & Toland informed the physicians that by choosing one of the Brown & Toland fee schedules, the physician would be agreeing to be a PPO network physician for fees at or above the specified rate. Both Brown & Toland fee schedules generally represented a significant increase over the rates that physicians were currently receiving for services provided to PPO enrollees.

Once physicians joined the Brown & Toland PPO network and chose a fee schedule, Brown & Toland then began negotiating contracts with health plans on behalf of its PPO physicians. Brown & Toland presented the collective rates to the health plans. To further the contracting efforts, Brown & Toland's PPO network physicians agreed with Brown & Toland to refuse to contract individually, or through an agent, with any payor with which Brown & Toland was negotiating. Under the provider agreement that Brown & Toland's PPO network physicians signed, the physicians also were prohibited from contracting with any payor for less than the Brown & Toland fee schedule that the physician chose.

Brown & Toland directed the physicians in its PPO network to cancel individual contracts the physicians may have had with the health plan when it believed the negotiations were proceeding unfavorably. Most of the PPO network physicians, when directed, did in fact terminate individual contracts. The purpose of the collective terminations was to increase Brown & Toland's negotiating leverage to obtain higher fees and other favorable competitively significant terms for physician services.

Brown & Toland also attempted to devise a strategy where Brown & Toland and another San Francisco IPA would not compete on price or other elements or terms of competition. Brown & Toland contacted this IPA when it learned that the IPA was simultaneously negotiating with at least one payor for rates that were lower than Brown & Toland's PPO rates.

The complaint alleges that as a consequence of Brown & Toland's conduct, payors agreed, among other things, to compensate Brown & Toland PPO network physicians at a higher rate than they would have compensated them absent the conduct. Accordingly, Brown & Toland's acts and practices have restrained trade unreasonably and hindered competition in the provision of physician services in San Francisco, California, in the following ways, among others: price and other forms of competition among Brown & Toland's PPO network physicians were unreasonably restrained; prices for physician services increased; and health plans, employers, and consumers were deprived of the benefits of competition in the purchase of physician services.

Further, the complaint alleges that Brown & Toland's joint negotiations on price and other competitively significant terms for PPO contracts were not reasonably necessary to achieve potential clinical efficiencies for Brown & Toland's PPO network, nor to achieve or to maintain any clinical efficiencies which Brown & Toland's PPO network members may have realized as a consequence of participating in Brown & Toland's risk-sharing HMO products.

Thus, Brown & Toland's conduct has harmed patients and other purchasers of medical services by increasing the price of physician services.

**The Proposed Consent Order**

The proposed consent order is designed to prevent the continuance and recurrence of the illegal concerted actions alleged in the complaint while allowing Brown & Toland and its members to engage in legitimate joint conduct.

Paragraph II.A prohibits Brown & Toland from entering into or facilitating agreements among physicians: (1) To negotiate on behalf of any physician with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms; or (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than Brown & Toland.

Paragraph II.B prohibits Brown & Toland from exchanging or facilitating the transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physicians is willing to deal.

Paragraph II.C prohibits Brown & Toland from attempting to engage in any action prohibited by paragraph II.A or II.B. Paragraph II.D prohibits Brown & Toland from encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by paragraphs II.A–II.C.

Paragraph II contains a proviso that allows Brown & Toland to engage in conduct that is reasonably necessary to the formation or operation of a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." Paragraph II concludes with a provision that Brown & Toland has the burden of proof to demonstrate that the conduct that would otherwise be prohibited is reasonably necessary to the qualified joint arrangement.

Paragraph III requires Brown & Toland, for a period of five years after the order becomes final, to notify the Commission at least sixty days prior to entering into any arrangement with physicians under which Brown & Toland would act as a messenger or agent on behalf of any physicians for any qualified risk-sharing joint arrangement with payors regarding contracts or the terms of dealing with the physicians and payors. This provision will allow the Commission to review any future Brown & Toland policy or practice that Brown & Toland plans to implement with payors before it implements such a policy or practice with respect to any particular payor.

Paragraph IV requires Brown & Toland, for a period of five years after the order becomes final, to notify the

Commission prior to negotiating or entering into any agreement relating to price or other terms of dealing with any payor on behalf of any physician in a Brown & Toland qualified clinically-integrated joint arrangement. Under this provision, Brown & Toland may be required to submit various types of information relevant to an assessment of whether the arrangement is likely to be anticompetitive.

Paragraph V.A requires Brown & Toland to distribute copies of the complaint and order to its past and present members, its officers, directors, managers, and employees who had any responsibility regarding Brown & Toland's PPO network, and all payors with whom it has been in contact, since January 1, 2001, regarding contracting for the provision of physician services, other than those under which it is paid a capitated (per member per month) rate by the payor.

Paragraph V.B requires Brown & Toland to terminate, without penalty, any payor contracts that it had entered into during the collusive period, at any such payor's request. This provision intends to eliminate the effects of Brown & Toland's joint, price setting behavior. Paragraph V.C requires Brown & Toland to send a copy of any payor's request for termination to each physician who participates in Brown & Toland, except for those physicians who participate only in contracts under which Brown & Toland is paid a capitated (per member per month) rate by the payor.

Paragraphs V.D–V.F require Brown & Toland, for a period of five years after the order becomes final, to make the existence of the complaint and order known through several methods. Brown & Toland must distribute copies of the complaint and order to each physician who subsequently begins participating in Brown & Toland, each payor who subsequently contacts Brown & Toland regarding the provision of physicians services, except for those contacts regarding contracts under which Brown & Toland is paid a capitated (per member per month) rate by the payor, and each person who subsequently becomes an officer, director, manager, or employee of Brown & Toland with any responsibility regarding a PPO network. Brown & Toland must also maintain copies of the complaint and order on its website for five years after the order becomes final and publish, for five years after the order becomes final, copies of the complaint and order in each annual report.

The remaining provisions of the proposed order impose reporting and compliance-related requirements. Paragraph VI requires Brown & Toland to file periodic reports with the Commission detailing how it has complied with the order. Paragraph VII authorizes Commission staff to obtain access to Brown & Toland's records and officers, directors, or employees for the purpose of determining or securing compliance with the order. Paragraph VIII mandates that the order shall terminate twenty years from the date it becomes final.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 04–3375 Filed 2–13–04; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

*Pat J. Palmer, University of Iowa:* Based on the report of an investigation conducted by the University of Iowa (UI Report), the respondent's guilty plea in a State criminal case, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Pat J. Palmer, former Assistant Research Scientist at UI, engaged in scientific misconduct (1) in research supported by National Institutes of Health (NIH) grant R01 MH55284 entitled "Collaborative Linkage Study of Autism;" (2) in grant proposals 1 R10 MH55284–01, 2 R01 MH55284–04 (both entitled "Collaborative Linkage Study of Autism"), 1 R01 DC05067–01, and 1 R55 DC05067–01A1 (both entitled "The Genetics of Specific Speech and Language Disorders"); and (3) in obtaining salary support from postdoctoral training grant T32 MH14620. PHS found that Ms. Palmer engaged in scientific misconduct by:

(1) Fabricating interview records for at least six interviews of autism patient families;

(2) Fabricating her claims for a B.S. from the University of Northern Iowa, a M.S./M.P.H. from the University of California at Berkeley, and a Ph.D. in Epidemiology/Bio-statistics from the University of Iowa in biographical sketches that were submitted to NIH in four grant applications (*see* above); and

(3) Fabricating her claim that she obtained a Ph.D. in Epidemiology/Bio-statistics from the University of Iowa in the biographical sketches of a training grant application, so she received salary support from July 1995 through June 1998 for postdoctoral training under NIH training grant T32 MH14620.

Ms. Palmer also engaged in dishonest conduct that demonstrates that she is not presently responsible to be a steward of Federal funds. She falsified that she was a coauthor of several published articles, by inserting her name or replacing another name with her name on 10 articles listed in her biographical sketch for four NIH grant applications (*see* above):

(a) Canby, C.A., [Palmer, P.J.], & Tomanek, R.J. "Role of lowering arterial pressure on maximal coronary flow with and without regression of cardiac hypertrophy." *American Journal of Physiology* 257:H1110–H1118, 1989.

(b) Stegink, L.D., Brummel, M.C., Filer, L.J., Jr, & [Palmer, P.J., replaced Baker, G.L.]. "Blood methanol concentrations in one-year old infants administered grade [sic] doses of aspartame." *Journal of Nutrition* 113:1600–1606, 1983.

(c) Stegink, L.D., Koch, R., [Palmer, P.J., replaced Blaskovics, M.E.], Filer, L.J., Jr., Baker, G.L., & McDonnell, J.E. "Plasma phenylalanine levels in phenylketonuric heterozygous and normal adults administered aspartame at 34mg/kg body weight." *Toxicology* 20:81–90, 1981.

(d) Stegink, L.D., Brummel, M.C., [Palmer, P.J., replaced McMartin, K.], Martin-Amat, G., Filer, L.J., Jr., Baker, G.L., & Tephly, T.R. "Blood methanol concentrations in normal adult subjects administered abuse doses of aspartame." *Journal of Toxicology & Environmental Health* 7:281–290, 1981.

(e) Stegink, L.D., Reynolds, W.A., Pitkin, R.M., Cruikshank, D.P., & [Palmer, P.J.]. "Placental transfer of taurine in rhesus monkeys." *American Journal of Clinical Nutrition* 24:2685–2692, 1981.

(f) Stegink, L.D., Filer, L.J., Jr, Baker, G.L., & [Palmer, P.J., replaced Brummel, M.C.]. "Plasma and erythrocyte amino acid levels of adult humans given l00mg/kg body weight aspartame." *Toxicology* 14:131–140, 1979.

(g) Weiss, N.S., Szekely, D.R., Austin, D.F.. & [Palmer, P.J.]. "Increasing incidence of endometrial cancer in the United States." *New England Journal of Medicine* 294:1259–1262, 1976.

(h) Elwood, E.K., & [Palmer, P.J., replaced Apostolopoulos, A.X]. "Analysis of developing enamel of the rat. II.Electrophoretic and amino acid studies." *Clinical Metabolic Studies*

[sic] [should be *Calcified Tissue Research*] 17:327–335, 1975.

(l) Aronow, W.S., Goldsmith, J.R., Kern, J.C., Cassidy, J, [Palmer, P.J.], Johnson, L.L., Adams, W., & Nelson, W.H. "Effect of smoking cigarettes on cardiovascular hemodynamics." *Archives of Environmental Health* 28, 330–332, 1974.

(j) Seltzer, C.C., Friedman, G.D., Siegelaub, A.B., & [Palmer, P.J., replaced Collen, M.F.]. "Smoking habits and pain tolerance." *Archives of Environmental Health* 29,170–172, 1974.

Ms. Palmer has entered into a Voluntary Exclusion Agreement (Agreement) in which she has voluntarily agreed for a period of three (3) years, beginning on January 26, 2004:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States government and from eligibility or involvement in nonprocurement programs of the United States government referred to as "covered transactions" as defined in the debarment regulations at 45 CFR part 76; and

(2) To exclude herself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852; (301) 443–5330.

**Chris B. Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 04–3336 Filed 2–13–04; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Request for Testing of Integration of the Hospital CAHPS (HCAHPS®) Instrument Prior to the National Implementation

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), DDHS.

**ACTION:** Notice of request.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is inviting hospitals, vendors, and other interested parties to voluntarily test a revised 32-item Hospital CAHPS (HCAHPS®) instrument prior to the national implementation. The purpose of this project is to provide another opportunity to the hospital industry to use the revised draft of the HCAHPS® instrument and a chance to add items to the instrument, if desired, prior to the national implementation. It should be noted that, as a result of the additional testing (*see* FR, Vol. 68, No. 147 published on July 31, 2003 which can be accessed at *http://www.access.gpo.gov/su_docs/fedreg/a030731c.html*) the HCAHPS® instrument may undergo some further refinement prior to finalization for the national implementation effort. In effect, this project provides an occasion to test items that vendors, hospitals, and others wish to add to the HCAHPS® instrument and to evaluate the impact of integrating HCAHPS into the hospital's current instrument as well as to further evaluate the methods of data collection prior to national implementation of HCAHPS®.

For the purposes of this project, up to forty (40) items may be added to the revised draft of HCAHPS® and be tested, however, please be aware that the maximum number of items that may be added to the HCAHPS® instrument for national implementation is currently thirty (30).

After permission to use the instrument is granted by AHRQ, a site or sites may field the instrument until June 2004, with subsequent submission of requested analyses to AHRQ by August 2004 or earlier, if possible.

For more information about this project or to download an application for authorization, please visit the CAHPS Survey User Network Web site at *http://www.cahps-sun.org*. The HCAHPS® pre-national implementation testing Web site will be active until April 15, 2004.

**DATES:** Please submit requests on or before April 19, 2004.

**ADDRESSES:** Applications for permission to use the revised 32-item HCAHPS® instrument, to add items, and field test the instrument may be submitted either in electronic format or via facsimile communication. Applications can be sent in letter form, preferably with an electronic file on a 3½ inch floppy disk as a standard word processing format or as an e-mail with an attachment. Responses should be submitted to:

Marybeth Farquhar, RN, MSN, Agency for Healthcare Research and Quality, Center for Quality Improvement and Patient Safety, 540 Gaither Road, Rockville, MD 20850, E-mail: *hospital-cahps@ahrq.gov*.

In order to facilitate handling of submissions, please include full information about the person requesting permission for testing: (a) Name, (b) title, (c) organization, (d) mailing address, (e) telephone and fax numbers, and (f) e-mail address.

Other requested information includes: (a) List of the hospital in which HCAHPS® will be used (including city and State); (b) sample size for each hospital; (c) intended mode of administration; (d) length of time after discharge the initial contact with the patient will be made; (e) name of vendor that will be administering the HCAHPS® survey; (f) proposed dates for fielding; (g) whether items will be added to the HCAHPS® survey and how many; and (h) a copy of the proposed questionnaire. (Again, please note: Items added to the HCAHPS® survey will be limited to forty (40) for this testing project and can only be placed near the end of the HCAHPS® items and just before the "About You" section of the questionnaire.) Electronic requests are encouraged. To help in the evaluation of the revised 32-item version of HCAHPS®, AHRQ and the Centers for Medicare & Medicaid Services (CMS) are asking participants to submit a brief summary of their experience with administering the HCAHPS® survey, including sampling and survey data collection procedures. An analysis of the psychometrics of the instrument should also be provided. Analytic results should include:

- Participation (response) rates to the survey;
- Item missing data rates;
- Distribution of responses to each item;
- Intercorrelations among items;
- Correlations of items with composites (corrected for overlap where appropriate);
- Internal consistency reliability (Cronbach's alpha);
- Hospital-level reliability (if the survey is fielded with multiple hospitals); and,
- Correlations of items and composites with the global rating items and whether the respondent would recommend the hospital to family and friends (question #24).

**FOR FURTHER INFORMATION CONTACT:** Marybeth Farquhar, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850; Phone: (301) 427–1317; Fax: (301) 427–1341; e-mail: *mfarquha@ahrq.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Agency for Healthcare Research and Quality (AHRQ) has been a leading proponent and supporter of the development of instruments for

measuring patient experiences within the health care system of the United States. As the research partner of the Centers for Medicare & Medicaid Services (CMS), AHRQ is charged with the development of a hospital patient-experience of care instrument as well as the development of reporting strategies to maximize the utility of the survey results.

The mutual goal of AHRQ and CMS is to develop a standardized instrument for use in the public reporting of patients' hospital experiences that is reliable and valid, freely accessible, and that will make comparative non-identifiable information on hospital patients' perspectives on care widely available. While there are many good survey tools available to hospitals, there is currently no nationally used or universally accepted survey instrument that allows comparisons across all hospitals. In response, and at the request of CMS, AHRQ and the CAHPS® II Grantees developed an initial instrument with input from the various stakeholders in the industry. The initial draft of the HCAHPS® instrument was tested as part of a CMS three-State pilot by hospitals in Arizona, Maryland, and New York. Based on an analysis of these data, the instrument was revised and shortened. The revised 32-item HCAHPS® instrument is currently undergoing additional testing as specified in a **Federal Register** Notice published on July 31, 2003 (FR Vol. 68, No. 147, 44951–44953) which can be accessed at *http://www.access.gpo.gov/su_docs/fedreg/a030731c.html*. Based on the results of this additional testing by selected sites and public comments on the current instrument, further revisions to the HCAHPS® instrument may be made.

Once the HCAHPS® instrument is finalized, it will be on the AHRQ and CMS websites for use by interested individuals and organizations. Plans have been made to make the HCAHPS instrument available to "The Quality Initiative: A Public Resource on Hospital Performance," which is a public/private partnership that includes the major hospital associations, governments, consumer groups, measurement and accrediting bodies, and other stakeholders interested in reporting on hospital quality. In the first phase of the partnership (which has already begun), hospitals are voluntarily reporting the results of their performance on ten clinical quality measures for three medical conditions: acute myocardial infarction, heart failure, and pneumonia. HCAHPS® reporting will comprise an additional and differently focused phase of quality of care measurement. For more information or to participate in the Quality Initiative, please visit *http://www.aha.org* under "Quality and Patient Safety, Quality Initiative," or at *http://www.fah.org*, under "Issue/Advisories," or at *http://www.aamc.org* by going to "Government Affairs," "Teaching Hospitals" and then "Quality."

Dated: February 9, 2004.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 04–3332 Filed 2–13–04; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on March 5, 2004, from 9 a.m. to 4 p.m.

*Location*: Hilton Washington DC North/Gaithersburg, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person*: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512396. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss general issues surrounding the use of intraocular lenses for correction of presbyopia after clear lens extraction. The committee will address clinical study design elements including the risk/benefit ratio for patients with various refractive errors, study sample size, the need for control groups, inclusion/exclusion criteria, and the incidence of retinal detachment and other complications. Background information, including the attendee list, agenda, and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 24, 2004. On March 5, 2004, formal oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. Near the end of the committee discussion a second 30-minute open public session will be conducted for interested persons to comment further on the discussion topic. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 24, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at 301–594–1283, ext. 113 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 9, 2004.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–3334 Filed 2–13–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0016]**

### Medical Devices; Revised MedWatch Forms; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the revised MedWatch Voluntary Reporting Form (FDA Form 3500), the revised Mandatory Reporting Form (3500A), and the respective instructions for each form.

**DATES:** The revised MedWatch forms are effective immediately. The forms were approved by the Office of Management and Budget (OMB) on September 12, 2003 (see 68 FR 58691, October 10, 2003); however, reporters may continue to use the prior version of Forms 3500 and 3500A until August 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Press, Center for Devices and Radiological Health (HFZ–531), 1350 Piccard Dr., Rockville, MD 20850, 301–827–2983.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 303 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) amended the Federal Food, Drug, and Cosmetic Act (the act) to require FDA to modify Forms 3500 and 3500A, the MedWatch voluntary and mandatory reporting forms respectively, to facilitate the reporting, by user facilities or distributors, of adverse events involving single-use devices (SUDs) that have been reprocessed for reuse in humans. The following two questions were added to the revised MedWatch forms: (1) Is this a single-use device that was reprocessed and reused on a patient? and (2) If yes, enter the name and address of the reprocessor.

## II. Comments

In the **Federal Register** of April 29, 2003 (68 FR 22716), FDA published a notice requesting public comment on the information collection provisions. FDA received several comments.

One comment stated that there are no affirmative mechanisms that would allow original equipment manufacturers (OEMs) to detect when a single-use device had been reprocessed.

FDA disagrees with this comment. We believe that there are several ways an OEM can ascertain whether a single-use device has been used and reprocessed.

Under § 803.50(b) (21 CFR 803.50(b)), the medical device reporting regulation (MDR), manufacturers are obligated to report information that is reasonably known to them. The information that is reasonably known to a manufacturer includes information that: (1) Can be obtained by contacting the user facility, importer, or other initial reporter; (2) is in the manufacturer's possession, or (3) can be obtained by analysis, testing, or evaluation of the device (see § 803.50(b)).

If an OEM has reason to believe that the SUD has been reprocessed, there are a number of steps the OEM can take to follow up. The OEM can contact either the user facility or the reporter to determine if the SUD was reprocessed and reused on a patient (question D8 of both Forms 3500 and 3500A). This information should be readily available to a user facility since the practice of reusing reprocessed SUDs generally requires the user facility to have in place a written policy, procedure, or contract that supports this practice. In all cases, FDA recommends that requests for information to user facilities or individual reporters be in writing so that the OEM has documentation about its reasonable efforts to determine if the SUD was reprocessed and reused on a patient. In addition, OEMs may already be in possession of information, such as reports from their sales representatives, which will help them determine if an SUD was reprocessed. An OEM can conduct testing and analysis of any SUD that has been returned to them to try to get additional information about whether the device was reprocessed.

FDA believes that there may be occasional situations where an OEM has exhausted all reasonable mechanisms to determine whether the SUD has been reprocessed and is still unable to determine its status. In that event, the OEM should enter "UNK" (unknown) in block D8 and report in block H10 of the 3500A form that it is unable to determine if the suspect device was reprocessed and reused on a patient. The OEM also should describe in block H10, the steps the OEM took to try to obtain the information, including any responses from user facilities or other reporters. The OEM's MDR files should include supporting documentation for what has been reported in block H10.

FDA wishes to emphasize that it considers any entity that reprocesses an SUD for reuse in humans to be the manufacturer of the reprocessed SUD and, accordingly, subject to all the regulatory requirements currently applicable to OEMs, including the responsibility for MDR reporting. Therefore, if an OEM determines that an SUD has been reprocessed for reuse in humans, the OEM has no further MDR obligation for the device involved in this event. The OEM should forward all of the information concerning the event to FDA and state in the cover letter that the SUD was reprocessed. In that case, the SUD is not the OEM's device, but rather is now the reprocessor's device (see § 803.22(b)(2) (21 CFR 803.22(b)(2)).

One comment referred to an apparent conflict between the amended section 303 of MDUFMA and MDR (§ 803.52(f)(11)(i) and (f)(11)(iii)), which requires manufacturers to provide corrected and/or missing data on the MedWatch form. If the data are not provided, the manufacturer is required to explain why the information was not provided and the steps that were taken to obtain the information.

FDA disagrees with this comment. We do not believe that there is a conflict between section 303 of MDUFMA and the MDR regulation. The purpose of section 303 of MDUFMA was to facilitate the reporting of information relating to reprocessed SUDs. We believe that this information will come primarily from user facilities, which generally have in place policies, procedures, or agreements supporting the reuse of reprocessed SUDs. As stated previously, once an OEM determines that the SUD has been reprocessed by either contacting the user facility, reviewing information in the firm's possession, or by testing or evaluating the device itself, the OEM is no longer responsible for reporting the event or any information related to the event.

A comment addressed the redesign of both forms FDA 3500 and FDA 3500A. The comment suggested revising sections F and H of the mandatory MedWatch form (FDA Form 3500A) and section D of the voluntary MedWatch Form (FDA Form 3500).

FDA disagrees with this comment. The MedWatch forms are used by all entities that report to the agency. However, the two new questions pertain only to medical devices. Consequently, we redesigned the forms to limit the changes to those required under MDUFMA. The instructions for completing the revised Forms 3500 and 3500A have been modified accordingly and are available on FDA's MedWatch Web site (see **III. Availability of Forms**).

Some comments requested to extend the deadline to comply with the revised forms. Initially, one comment asked that manufacturers be given until September 30, 2005, to comply with the revised form. A later comment suggested providing a 1-year interim period for industry to modify their reporting systems.

FDA partially agrees with the comments. Congress required FDA to modify the MedWatch forms by April 26, 2003. We agree that a reasonable period of time is needed for medical device reporters to incorporate the two new questions into their reporting systems. In the October 10, 2003, notice, FDA announced that OMB approved the information collection for the MedWatch program. At FDA's request, OMB approved the continued use of the previous forms for 6 months to allow

time for the reporters to make the necessary changes to their computerized systems.

During this transitional period FDA will accept both the newly effective Forms 3500 and 3500A and the prior versions of the forms. Information concerning the reuse of the product (new question D8) and the name and address of the reprocessor (new question D9) can be provided in section H10 on the prior version of form 3500A (OMB approval date, November 2002). Reporters may continue to use the prior version of Forms 3500 and 3500A until [*insert date 6 months after date of publication in the* **Federal Register**]. During this 6-month period, the prior versions and the instructions will be available on FDA's Center for Devices and Radiological Health MDR Web site at *http://www.fda.gov/cdrh/mdr/mdr-forms.html*.

### III. Availability of Forms

The newly revised MedWatch forms are available at FDA Form 3500 *http://www.fda.gov/medwatch/safety/3500.pdf* and FDA Form 3500A *http://www.fda.gov/medwatch/safety/3500a.pdf*.

The instructions for the revised forms are available at FDA Form 3500 *http://www.fda.gov/medwatch/report/consumer/instruct.htm* and FDA Form 3500A *http://www.fda.gov/medwatch/report/instruc.htm*.

Dated: January 30, 2004.

**Beverly Chernaik Rothstein,**

*Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.*

[FR Doc. 04–3333 Filed 2–13–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 1998D–0834]**

## Draft Guidance for Industry on Labeling for Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Prescribing Information for Health Care Providers and Patient Labeling; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Labeling Guidance for Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Prescribing Information for Health Care Providers and Patient Labeling." The draft guidance is intended to assist applicants in developing labeling for new drug applications (NDAs) for such drug products. This is the third draft of the guidance, which initially issued in September 1999.

**DATES:** Submit written or electronic comments on the draft guidance by April 19, 2004. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Margaret Kober, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4243.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Labeling Guidance for Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Prescribing Information for Health Care Providers and Patient Labeling." The draft guidance describes the recommended labeling for health care providers and patient instructions for inclusion in NDAs. A draft of this guidance was first issued on September 27, 1999 (64 FR 52100). However, on September 10, 2002, the agency withdrew the draft guidance (67 FR 57432), pending consideration of the results from the National Institutes of Health (NIH) Women's Health Initiative (WHI). In the **Federal Register** of February 3, 2003 (68 FR 5300), the agency issued a second draft reflecting the agency's thinking after considering the results of the WHI substudy concerning overall risks and benefits of hormone therapy for postmenopausal symptoms.

The agency is issuing this third draft guidance to address comments received, to incorporate new study results from the WHI, and to better inform prescribers and patients regarding the availability of the lowest effective dose for these drug products. This third draft supersedes the second draft and reflects the agency's thinking after considering these issues. Further revisions to the guidance may be necessary as additional information becomes available.

On May 31, 2002, the WHI study of conjugated estrogens 0.625 milligram (mg)/day (CE) plus medroxyprogesterone acetate 2.5 mg/day (MPA) in postmenopausal women was stopped after a mean of 5.2 years of followup because the test statistic for invasive breast cancer exceeded the stopping boundary for this adverse effect and the global index statistic supported risks exceeding benefits. Data on the major clinical outcomes through April 30, 2002, regarding increased risks for invasive breast cancer, heart attacks, strokes, and venous thromboembolism rates, including pulmonary embolism, became available July 17, 2002. On March 17, 2003, additional information was published about health-related quality of life.

The Women's Health Initiative Memory Study (WHIMS), a substudy of the WHI, was published on May 28, 2003. It concluded that women treated in the study with conjugated estrogens 0.625 mg combined with medroxyprogesterone acetate 2.5 mg have a greater risk of developing probable dementia than those on placebo. Detailed information about WHIMS is available at *http://www.nih.gov/PHTindex.htm*.

This third draft of the guidance retains and updates the labeling recommendations regarding the results of the WHI study and recommends adding risk information related to the results of the WHIMS study to appropriate sections of the labeling, including the boxed warning. It also adds to the WARNINGS section that use of estrogen-containing products may increase the risk of mammographic abnormalities. In addition, because it is unknown whether risks for postmenopausal women prescribed estrogen-containing products for the treatment of moderate to severe vasomotor symptoms and moderate to severe symptoms of vulvar and vaginal atrophy differ depending on the dose prescribed, the guidance recommends

that labeling include a statement as to whether or not the lowest effective dose for the product has been identified.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on labeling for noncontraceptive estrogen drug products for the treatment of moderate to severe vasomotor symptoms and moderate to severe vulvar and vaginal atrophy symptoms. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

### III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 9, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–3330 Filed 2–11–04; 11:58 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting. The meeting will be open to the public.

*Name:* Advisory Commission on Childhood Vaccines (ACCV).

*Date and Time:* March 16, 2004, 9 a.m.–1:15 p.m., EST.

*Place:* Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The full ACCV will meet on Tuesday, March 16, from 9 a.m. to 1:15 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–800–619–2521 on March 16 and providing the following information:

*Leader's Name:* Thomas E. Balbier, Jr.

*Password:* ACCV.

*Agenda:* The agenda items for March 16 will include, but is not limited to: a presentation on the draft Tetanus and Diphtheria Vaccine Information Statements; an update on thimerosal lawsuits; a discussion of changes to the Vaccine Injury Table, including addition of Influenza vaccines; and updates from the Division of Vaccine Injury Compensation, the Department of Justice, and the National Vaccine Program Office. Agenda items are subject to change as priorities dictate.

*Public Comments:* Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Special Programs Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857 or by e-mail at *clee@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period on the audio conference call. These persons will be allocated time as time permits.

**FOR FURTHER INFORMATION CONTACT:** Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Special Programs Bureau, Health Resources and Services Administration, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2124 or e-mail: *clee@hrsa.gov*.

Dated: February 10, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–3335 Filed 2–13–04; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Radionuclide Resource for Cancer Applications.

*Date:* March 16–18, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chase Park Plaza, 212–232 North Kingshighway, St. Louis, MO 63108.

*Contact Person:* Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 9, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–3303 Filed 2–13–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, F–344 Rat Colony.

*Dote:* March 15, 2004.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., 2C212, Bethesda, MD 20814. (Telephone conference call.)

*Contoct Person:* Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301–402–7700; *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 9, 2004.

**LaVerne Y. Stringfield**

*Director, Office of Federol Advisory Committee Policy.*

[FR Doc. 04–3301 Filed 2–13–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Insulin in Aging.

*Dote:* February 11, 2004.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7704; crucew@nai.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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 9, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–3302 Filed 2–13–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

*Title:* Building Science & Technology (BS&T) Publications Customer Satisfaction Research.

*OMB Number:* 1660–New.

*Abstract:* Under the mandates of Executive Order 12862, this research project evaluates customer satisfaction with FEMA's BS&T Publications and obtains information on how the publications are used, their impact on building safety and on reducing damage caused by natural and man-made disasters. The study also establishes a baseline for tracking customer satisfaction over time, and provides benchmark data for program planning and management.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or tribal government.

*Number of Respondents:* 1,438.

*Estimated Time per Respondent:* Completion of survey responses is estimated at between 8 to 10 minutes per respondent and 6 hours for selective voluntary participation in follow-up focus group sessions.

*Estimated Total Annual Burden Hours:* 496 hours.

*Frequency of Response:* One-time.

**Comments**

Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA at e-mail address *kflee@omb.eop.gov* or facsimile number (202) 395–7285. Comments must be submitted on or before March 18, 2004. In addition, interested persons may also send comments to FEMA (see contact information below).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, FEMA at 500 C Street, SW, Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov.*

Dated: February 5, 2004.

**Edward W. Kernan,**

*Division Director, Informotion Resources Manogement Division, Information Technology Services Directorate.*

[FR Doc. 04–3337 Filed 2–13–04; 8:45 am]

BILLING CODE 9110–13–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

*Title:* FEMA Public Assistance Program Evaluation and Customer Satisfaction Surveys and Individual Assistance Customer Satisfaction Surveys.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 1660–0036.

*Abstract:* This study fulfills requirements from Executive Order 12862 and the Government Results Act of 1993 (GPRA). By surveying disaster assistance applicants at the individual and state government level, FEMA obtains relevant measurements of their level of satisfaction with various public and individual assistance programs. The information collected also allows the identification of program areas requiring improvement, the documentation of successful business practices in the delivery of disaster assistance, and the ability of applicants to recover from disasters.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, farms, Federal Government, and State, local or tribal government.

*Number of Respondents:* 33,000.

*Estimated Time per Respondent:* Estimated time for completion of individual surveys averages 15 to 18 minutes per response. Voluntary participation in focus group sessions averages 4.6 hours.

*Estimated Total Annual Burden Hours:* 12,210 hours.

*Frequency of Response:* One-time.

**Comments**

Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA at e-mail address *kflee@omb.eop.gov* or facsimile number (202) 395–7285. Comments must be submitted on or before March 18, 2004. In addition, interested persons may also send comments to FEMA (*see* contact information below).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, FEMA at 500 C Street, SW, Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov.*

Dated: February 5, 2004.

**Edward W. Kernan,**

*Division Director, Information Resources Management Division, Information Technology Services Directorate.*

[FR Doc. 04–3338 Filed 2–13–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The submission describes the nature of the information collection, the category of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

*Title:* National Fire Academy Course Evaluation Form.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 1660–0032.

*Abstract:* The National Fire Academy Course Evaluation Form is used to monitor the effectiveness of course materials, the training facilities and instructor delivery. Information collected with the form enables NFA staff to monitor and recommend changes in course materials, subject selection criteria, the training experience and the classroom environment. From the processed data, reports are generated and distributed to management and staff. Without such information, it would be difficult to determine the need for improvements and the degree of student satisfaction with the course experience.

*Affected Public:* Individuals or households.

*Number of Respondents:* 5,800.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1,450.

*Frequency of Response:* On occasion and annually.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA at e-mail address *kflee@omb.eop.gov* or facsimile number (202) 395–7285. Comments must be submitted on or before March 18, 2004. In addition, interested persons may also send comments to FEMA (*see* contact information below).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov.*

Dated: February 5, 2004.

**Edward W. Kernan,**

*Division Director, Information Resources Management Division, Information Technology Services Directorate.*

[FR Doc. 04–3339 Filed 2–13–04; 8:45 am]

**BILLING CODE 9110–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

*Date and Location:* The AMWG will conduct the following public meeting:

Phoenix, Arizona—March 3–4, 2004. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and begin at 8 a.m. and conclude at noon on the second day. The meeting will be held at the Arizona Department of Water Resources, 500 N. 3rd Street, 3rd Floor, Conference Rooms A and B, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be to recommend to the Secretary of the Interior the FY 2005 budget and work plan. Other items for discussion include AMWG operating procedures, environmental compliance on proposed actions, research and monitoring reports, basin hydrology, public outreach, as well as other administrative and resource issues pertaining to the AMP. To view a copy of the draft agenda, please visit the Reclamation web site at: *http://www.usbr.gov/uc/envprog/amp/amwg/mtgs/04mar03/mtga4_00.html.*

To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: January 29, 2004.

**Dennis Kubly,**

*Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.*

[FR Doc. 04–3347 Filed 2–13–04; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0030 and 1029–0049

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for: State processes for designating areas unsuitable for surface coal mining operations, 30 CFR part 764; and Special permanent program performance standards—operations in alluvial valley floors, 30 CFR part 822.

**DATES:** Comments on the proposed information collection must be received by April 19, 2004, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or *jtreleas@osmre.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 764 and 822.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for these information collection activities.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submissions of the information collection requests to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

*Title:* State processes for designating areas unsuitable for surface coal mining operations, 30 CFR part 764.

*OMB Control Number:* 1029–0030.

*Summary:* This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mining operations.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* The 3 individuals, groups or businesses that petition the States, and the State regulatory authorities that must process the petitions.

*Total Annual Responses:* 3.

*Total Annual Burden Hours:* 4,680.

*Title:* Special permanent program performance standards—operations in alluvial valley floors, 30 CFR part 822.

*OMB Control Number:* 1029–0049.

*Summary:* Sections 510(b)(5) and 515(b)(10)(F) of the Surface Coal Mining and Reclamation Act of 1977 (the Act) protect alluvial valley floors from the

adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

*Bureau Form Number:* None.

*Frequency of Collection:* Annually.

*Description of Respondents:* Surface coal mining operators who operate on alluvial valley floors.

*Total Annual Responses:* 27.

*Total Annual Burden Hours:* 2,970.

Dated: February 10, 2004.

**Sarah E. Donnelly,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 04–3286 Filed 2–13–04; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–489]**

### In the Matter of Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same; Notice of Commission Decision Not to Review an Initial Determination Terminating Investigation as to One Respondent on the Basis of a Settlement Agreement; Notice of Issuance of General Exclusion Order; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 22) issued by the presiding administrative law judge ("ALJ") terminating the investigation as to respondent Biovea on the basis of a settlement agreement. Notice is also hereby given that, having previously found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Commission has issued a general exclusion order under section 337(d)(2) and terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3090. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 6, 2003, based on a complaint filed by Pfizer, Inc. ("Pfizer") of New York, New York. 68 FR 10749 (March 6, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain sildenafil or any pharmaceutically acceptable salt thereof, such as sildenafil citrate, and products containing same by reason of infringement of claims 1–5 of Pfizer's U.S. Patent No. 5,250,534 ("the '534 patent").

Fifteen respondents were named in the Commission's notice of investigation. Thirteen of these were successfully served with the complaint and notice of investigation. One respondent has previously been terminated from the investigation on the basis of a settlement agreement.

Eleven respondents were found to be in default, including respondent #1 Aabaaca Viagra LLC ("Aabaaca"). On October 27, 2003, the ALJ issued an initial determination ("ID") (Order No. 19) finding that Pfizer had demonstrated that there is a violation of section 337 by reason of the defaulting respondents' importation and sale of sildenafil, sildenafil salts, or sildenafil products that infringe one or more of claims 1–5 of the '534 patent. He also found that Pfizer had established the existence of a domestic industry. He recommended the issuance of a general exclusion order, but did not recommend the issuance of a cease and desist order against defaulting respondent Aabaaca, as had been requested by Pfizer. The ALJ also recommended that the bond permitting temporary importation during the Presidential review period be set at 100 per cent of entered value. On November 24, 2003, the Commission issued notice that it had determined not to review the ALJ's ID and set a schedule for written submissions on remedy, the public interest, and bonding. Both Pfizer and the Commission investigative attorney timely filed initial submissions on remedy, the public interest, and bonding. The Commission investigative attorney filed a reply submission.

On January 6, 2004, the ALJ issued an initial determination (Order No. 22) terminating respondent Biovea on the basis of a settlement agreement. No petitions for review of Order No. 22 were filed.

Having reviewed the record in this investigation, including the recommended determination of the ALJ and the written submissions of the parties, the Commission determined (1) to not review Order No. 22, terminating respondent Biovea on the basis of a settlement agreement and (2) to terminate the investigation with the issuance of a general exclusion order under section 337(d)(2) prohibiting the unlicensed entry for consumption of sildenafil or any pharmaceutically acceptable salt thereof, such as sildenafil citrate, and products containing same which infringe one or more of claims 1–5 of the '534 patent.

The Commission also determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the aforementioned general exclusion order and that the bond during the Presidential review period shall be 100 percent of the entered value of the articles in question.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Administrative Procedure Act, and §§ 210.41–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.41–210.51.

Issued: February 6, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. 04–3306 Filed 2–13–04; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. DNH International Sarl, Dyno Nobel, Inc., El Paso Corp., and Coastal Chem, Inc.; Competitive Impact Statement, Proposed Final Judgment and Complaint

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a

Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement were filed with the United States District Court for the District of Columbia in *United States of America* v. *DNH International Sarl, Dyno Nobel, Inc., El Paso Corp., and Coastal Chem, Inc.*, Civil Action No. 1:03CV2486. On December 2, 2003, the United States filed a Complaint alleging that the proposed acquisition by DNH International Sarl subsidiary Dyno Nobel, Inc. ("Dyno"), of two industrial grade ammonium nitrate ("IGAN") production plants owned by El Paso Corporation subsidiary Coastal Chem, Inc. ("Coastal"), would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Dyno to divest its interest in a Vineyard, Utah, IGAN production facility, or, in the alternative and at the direction of the United States, its Battle Mountain, Nevada, IGAN production facility just acquired from Coastal. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violations.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, in Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Suite 3000, 1401 H Street, NW., Washington, DC 20530 (telephone: 202–307–0924).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

**United States District Court for the District of Columbia**

Case No. 1: 03CV02486; JUDGE: Gladys Kessler; DECK TYPE: Antitrust; DATE STAMP: January 21, 2004

*United States of America, Plaintiff, v. DNH International Sarl, Dyno Nobel, Inc., El Paso Corp., and Coastal Chem, Inc., Defendants; Competitive Impact Statement*

Plaintiff United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

On August 6, 2003, Defendant DNH International Sarl ("DNH"), through its wholly owned subsidiary Defendant Dyno Nobel, Inc. ("Dyno"), agreed to purchase certain assets of Defendant Coastal Chem, Inc. ("Coastal"AAA), a subsidiary of Defendant El Paso Corporation ("El Paso"). Theses assets include two industrial grade ammonium nitrate ("IGAN") plants, one located in Cheyenne, Wyoming and the other in Battle Mountain, Nevada. Dyno currently owns a 50 percent interest in Geneva Nitrogen LLC, which owns an IGAN production facility in Vineyard, Utah (the "Geneva facility").

On December 2, 2003, the United States filed a civil antitrust lawsuit alleging that the proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that Dyno's acquisition of Coastal's IGAN production facilities would substantially lessen competition in the production of IGAN for sale in Western North America. Coastal and one other firm are the primary suppliers of IGAN consumed in Western North America, accounting for over 80 percent of IGAN sales in that region, while Dyno's interest in the Geneva facility makes it the best located of the three fringe IGAN producers that supply the region. The acquisition would combine Coastal's Cheyenne and Battle Mountain facilities with Dyno's 50 percent interest in the Geneva facility. Such a reduction in competition would result in consumers of IGAN in the western United States paying higher prices for IGAN. Accordingly, the prayer for relief in the Complaint seeks (1) a judgment that the proposed acquisition would violate section 7 of the Clayton Act and (2) a permananet injunction that would foreclose DNH or any of its subsidiaries from purchasing Coastal's Cheyenne and Battle Mountain IGAN production facilities.

At the same time the Complaint was filed, the United States filed a proposed settlement that would permit Dyno to complete its acquisition of the two Coastal IGAN production facilities but require Dyno to divest its interest in Geneva Nitrogen LLC in such a way as to preserve competition in the Western North American IGAN market. The settlement consists of a Hold Separate Stipulation and Order and a proposed Final Judgment.

According to the terms of the settlement, Dyno must divest its interest in Geneva Nitrogen LLC to a person acceptable to the United States, in its sole discretion, within ninety (90) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States, in its sole discretion, may extend the time period for divestiture by an additional period of time, not to exceed sixty (60) calendar days. If Dyno does not complete the divestiture within the prescribed time period, then the United States may nominate, and the Court will appoint, a trustee who will have sole authority to divest Dyno's interest in Geneva Nitrogen LLC. If the trustee is unable to divest Dyno's interest in Geneva Nitrogen LLC in a timely manner, it shall, as directed by the United States in its sole discretion, divest the Battle Mountain facility that Dyno is acquiring from Coastal.

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the Tunney Act. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Judgment and to punish violations thereof.

**II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws**

*A. The Defendants and the Proposed Transaction*

DNH, a Luxembourg corporation headquartered in Oslo, Norway, is one of the world's largest explosives producers. DNH reported sales in 2002 of approximately $630 million. Its Dyno subsidiary is a Delaware corporation operating out of Salt Lake City, Utah. Dyno, which reported 2002 sales of roughly $336 million, is one of the two largest producers of explosives in North America.

El Paso, a Delaware corporation headquartered in Houston, Texas, reported 2002 sales of approximately $12 billion. El Paso is the leading provider of natural gas services and the largest pipeline company in North America. Its Coastal subsidiary, which also is incorporated in Delaware and located in Houston, is one of the two largest IGAN producers in Western North America, reporting 2002 sales of roughly $146 million.

On August 6, 2003, Dyno agreed to purchase Coastal's IGAN production facilities in Battle Mountain, Nevada and Cheyenne, Wyoming. The acquisition would combine the two Coastal facilities with Dyno's 50 percent interest in the Geneva facility, which is the best located of the three fringe IGAN facilities that supply Western North America.

*B. The Effects of the Transaction on Competition in the IGAN Market*

1. The Relevant Market Is the Production of IGAN for Sale in Western North America

The Complaint alleges that the production and sale of IGAN constitutes a relevant product market within the meaning of section 7 of the Clayton Act. IGAN, which is in the form of low-density, porous prills (or granules), is an essential ingredient used in the production of blasting agents, one of two types of explosives used in the mining and construction industries. Blasting agents accounted for nearly all of the explosives sold in North America last year. They are used principally to mine coal, rock and other nonmetals, and metals such as gold and copper. The purchase of blasting agents constitutes a relatively small portion of the total costs of the mining or other industrial

operations in which the blasting agents are used.

The other type of explosive commonly used in the mining and construction industries, high explosives, includes products such as dynamite. High explosives are much more expensive than blasting agents and are far more sensitive to detonation; high explosives can be detonated with only a blasting cap, while blasting agents are detonated using high explosives.

Virtually all blasting agents used in North America contain ammonium nitrate in the form of IGAN, and essentially all IGAN sold in North America is used to make blasting agents. The most widely used blasting agent is known as ANFO, which is made by soaking IGAN in fuel oil (Ammonium Nitrate plus Fuel Oil). Although ammonium nitrate is also available in an agricultural grade, which is in the form of high-density prills, only the more porous, lower density IGAN prills are used to make ANFO. The greater porosity of the IGAN prill allows for significantly better absorption of the fuel oil and makes an explosive with a much higher sensitivity to detonation. IGAN is also used to make explosive slurries, gels, and emulsions, which can be used as blasting agents either alone or in combination with ANFO.

A small but significant increase in the price of IGAN would not cause consumers of IGAN to use sufficiently less IGAN so as to make such a price increase unprofitable. Accordingly, the production and sale of IGAN is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

The Complaint further alleges that "Western North America" constitutes a relevant geographic market in which IGAN is sold. The Complaint defines Western North America as the eleven contiguous western-most states in the United States and the Canadian provinces of British Columbia, Alberta, and Saskatchewan.

IGAN typically is shipped to customers in bulk either by rail or by truck. Freight costs are a significant component of the total delivered price of IGAN and limit the geographic area that an IGAN production facility profitably can serve. The physical characteristics of the product impose additional limitations on the geographic reach of an IGAN production facility. IGAN degrades over time as moisture in the air causes it to "cake," rendering it much less economical to use as an ingredient to make blasting agents. Also, the more IGAN is handled between production and use, the more the IGAN prills break down into unusable fine particles.

IGAN produced at Coastal's Battle Mountain, Nevada and Cheyenne, Wyoming facilities is regularly sold within Western North America. IGAN produced at the Geneva facility, in which Dyno has a 50 percent interest, is also regularly supplied into Western North America. Only three other firms own facilities that regularly produce IGAN for sale in Western North Americas. One of those three firms is Oricas Limited ("Orica"), which owns the remaining 50 percent interest in the Geneva facility and also owns an IGAN facility located in Alberta, Canada. The other two facilities are located in Benson, Arizona and Manitoba, Canada.

No other firm owns an IGAN production facility from which it supplies IGAN on a regular basis to Western North America. Apart from the facilities referenced above, the IGAN facilities closest to Western North American customers are located along the Mississippi River. The additional transportation costs associated with supplying IGAN to Western North America from these facilities, coupled with the increased risk of degradation of the IGAN due to prolonged shipping and handling of the product, significantly limit the ability of these distant facilities to supply Western North America. A small but significant increase in the price of IGAN produced for sale in Western North America would not cause consumers of IGAN in Western North America to purchase sufficient amounts of IGAN produced at facilities that do not already regularly supply Western North America such that a price increase would be unprofitable. Accordingly, western North America is a relevant geographic market, within the meaning of section 7 of the Clayton Act, in which to assess the competitive effects of the proposed acquisition.

2. The Proposed Acquisition Would Result in Anticompetitive Effects

The Complaint alleges that Dyno's acquisition of Coastal's Battle Mountain and Cheyenne IGAN production facilities likely will substantially lessen competition in the production of IGAN for sale in Western North America, eliminate actual and potential competition between Dyno and Coastal in the production of IGAN for sale in Western North America, and increase prices for IGAN produced for sale in Western North America.

Specifically, the Complaint alleges that two firms—Coastal and Orica—account for over 80 percent of IGAN sales in Western North America, which in 2002 exceeded $150 million, and that Dyno's interest in the Geneva facility makes it the best located of the three fringe producers that supply the market. After the proposed acquisition, the two dominant firms together would control roughly 90 percent of such sales, with Dyno and Coastal combined having a share of approximately 50 percent.

In Western North America, most IGAN-containing blasting agents are consumed in mines located in one of three areas: the Powder River Basin in Wyoming (coal mines); Northern Nevada (gold mines); and the so-called "Four-Corners Area" surrounding the junction of Utah, Colorado, New Mexico, and Arizona (coal mines). Coastal and Orica have facilities that are well-positioned to supply the Powder River Basin and Northern Nevada. The Geneva plant, which has an annual capacity of about 100,000 tons and is equally owned by Orica and Dyno, is located roughly equidistant from Northern Nevada, the Powder River Basin, and the Four-Corners Area and is well-positioned to serve all three areas. In contrast, the two other fringe firms that produce IGAN for sale in Western North America are located at the outer reaches of the relevant geographic market.

The proposed transaction, which would combine Coastal's Battle Mountain and Cheyenne facilities with Dyno's 50 percent interest in the Geneva facility, thus would eliminate independent competition from the best located of the three fringe IGAN producers that supply Western North America.

Successful entry into the Western North American IGAN market would be expensive and time-consuming, and thus would be unlikely to constrain an increase in the price of IGAN in Western North America. To be successful, a new entrant likely would require an efficient IGAN facility that could produce at least one-quarter of total IGAN sales in Western North America in order to cover the estimated $70 million cost of constructing such a facility. An IGAN facility with that capacity would take over two years to complete. Considering the time and capital expense required to construct such a production facility, entry is unlikely to occur in response to a small by significant increase in the price of IGAN in Western North America.

**III. Explanation of the Proposed Final Judgment**

The proposed Final Judgment will preserve competition in the production of IGAN for sale in Western North America. The Judgment requires that within ninety (90) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment, whichever is later, Dyno must sell its 50 percent interest in Geneva Nitrogen LLC, the owner of the Geneva facility, to an acquirer acceptable to the United States. The United States may extend this time period for divestiture for one additional period, not to exceed sixty (60) calendar days. Dyno must use its best efforts to divest its 50 percent interest in Geneva Nitrogen LLC as expeditiously as possible.

If Dyno does not accomplish the ordered divestiture within the prescribed time period, the United States will nominate, and the Court will approve and appoint, a trustee to assume sole power and authority to complete the divestiture of Dyno's 50 percent interest in Geneva Nitrogen LLC. Should the trustee determine that this divestiture cannot be accomplished expeditiously, the trustee shall notify the United States and the parties and provide the reasons supporting its conclusion. Upon receipt of such notice from the trustee, the United States, in its sole discretion, shall have the right to direct the trustee to sell Coastal's Battle Mountain facility instead.

The United States considers the sale of Dyno's 50 percent interest in Geneva Nitrogen LLC to be satisfactory relief. The sale of that half-interest to a buyer that does not already produce IGAN for sale in Western North America would leave the post-acquisition market essentially the same as the pre-acquisition market, with the buyer replacing Dyno in the marketplace as the best positioned of the three fringe producers of IGAN in the region. The United States is optimistic that an acceptable buyer for Dyno's 50 percent interest in Geneva Nitrogen LLC can be found in a timely

manner. If not, the United States is satisfied that the sale of Coastal's Battle Mountain facility to a buyer acceptable to the United States would be a suitable alternative divestiture. Although the Geneva facility is better located than the Battle Mountain plant with respect to the majority of IGAN-consuming customers in Western North America—those located in the gold mining region of Northern Nevada, and in the coal mining industries found in the "Four Corners Area" and the Powder River Basin—Dyno's share of the Geneva facility's output is less than the capacity of the Battle Mountain plant. Because of this capacity advantage, the competitive significance of an independent Battle Mountain facility should be comparable to that of the better-located Geneva facility.

DNH, Dyno, El Paso, and Coastal must cooperate fully with the trustee's efforts to divest either Dyno's 50 percent interest in Geneva Nitrogen LLC or, should the United States so direct, Coastal's Battle Mountain facility to an acquirer acceptable to the United States, and they must report periodically to the United States on their divestiture efforts. If the trustee is appointed, defendant DNH will pay all costs and expenses of the trustee. The trustee's commission will be based in part on the price obtained for the divested assets and the speed with which the divestiture is completed, thus providing an incentive for the trustee to accomplish a speedy divestiture. After its appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the trustee's appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as may be appropriate to carry out the purpose of the Final Judgment, including extending the trust and the term of the trustee's appointment.

### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

### V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Tunney Act provides a period of at least sixty days preceding the effective date of the proposed Final Judgment during which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry by the Court. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

### VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants DNH, Dyno, El Paso, and Coastal. The United States could have continued the litigation to seek preliminary and permanent injunctions against Dyno's acquisition of Coastal's IGAN production facilities. The United States is satisfied, however, that the proposed relief, once implemented by the Court, will preserve and ensure competition in the relevant market.

### VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court *may* consider—

"(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial."

15 U.S.C. 16(e). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather,

"absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."

*United States* v. *Mid-America Dairymen, Inc.*, 1977–1 CCH Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that

"[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree."

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of

[1] 119 Cong. Rec. 24598 (1973); *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong., & Ad. News 6535, 6538.

[2] *Cf. BNS*, 858 F.2d at 463 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"), *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *AT&T*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 21, 2004.

Respectfully submitted,

Michael K. Hammaker
D.C. Bar No. 233684
U.S. Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW., Suite 3000
Washington, DC 20530

**Certificate of Service**

I, Joshua P. Jones, hereby certify that on January 21, 2004, I caused copies of the foregoing Competitive Impact Statement to be served on Defendants DNH International Sarl, Dyno Nobel, Inc., El Paso Corporation, and Coastal Chem, Inc., by facsimile and by mailing these documents first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

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**United States District Court for the District of Columbia**

Case No. 1:03CV02486; Judge: Gladys Kessler; Deck Type: Antitrust; Date Stamp: 12/02/2003

*United States of America, Plaintiff, v. DNH International Sarl, Dyno Nobel, Inc., El Paso Corporation, and Coastal Chem. Inc., Defendants; Final Judgment*

*Whereas*, plaintiff, United States of America, filed its Complaint on December 2, 2003, and plaintiff and defendants, DNH International Sarl, Dyno Nobel, Inc., El Paso Corporation and Coastal Chem. Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And Whereas*, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And Whereas*, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

*And Whereas*, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And Whereas*, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now Therefore*, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

**I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

**II. Definitions**

As used in this Final Judgment:

A. "Acquirer" means the entity or entities to whom defendants divest the Geneva Production Asset or, alternatively, the Battle Mountain Production Asset.

B. "DNH" means defendant DNH International Sarl, a Luxembourg corporation with its headquarters in Oslo, Norway, its successors and assigns, and its subsidiaries (including defendant Dyno Nobel, Inc.), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "El Paso" means El Paso Corporation, a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, its subsidiaries, divisions (including defendant Coastal Chem, Inc.), groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "IGAN" means low density or industrial grade ammonium nitrate which, when mixed with fuel oil, forms an explosive known as ANFO.

E. "Geneva Production Asset" means, unless otherwise noted, DNH's 50 percent membership interest in Geneva Nitrogen, LLC, a Delaware limited liability company which owns an IGAN production facility located at 1165 North Geneva Road, Vineyard, Utah 84601, including all of DNH's rights, titles, and interests in the following:

1. The tangible assets of the Geneva facility and the real property on which the Geneva facility is situated; any facilities used for research, development, engineering or other support to the Geneva facility, and any real property associated with those facilities; manufacturing and sales assets relating to the Geneva facility, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses of storages facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Geneva facility; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Geneva facility; supply agreements; all customer lists, accounts, and credit records; and other records maintained by DNH in connection with the operations of the Geneva facility; and

2. The intangible assets of the Geneva facility, including all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information DNH provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Geneva facility.

F. "Battle Mountain Production Asset" means, unless otherwise noted, all of El Paso's rights, titles, and interests in the IGAN production facility located in Battle Mountain, Nevada, including:

1. All tangible assets of the Battle Mountain facility and the real property on which the Battle Mountain facility is situated; any facilities used for research, development, engineering or other support to the Battle Mountain facility, and any real property associated with those facilities; manufacturing and sales assets relating to the Battle Mountain facility, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storages facilities, and other tangible property or improvements; all

licenses, permits and authorizations issued by any governmental organization relating to the Battle Mountain facility; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Battle Mountain facility; supply agreements; all customer lists, accounts, and credit records; and other records maintained by El Paso in connection with the operations of the Battle Mountain facility; and

2. All intangible assets of the Battle Mountain facility, including all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information El Paso provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Battle Mountain facility.

**III. Applicability**

A. This Final Judgment applies to DNH and El Paso, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Geneva Production Facility or the Battle Mountain Production Facility, that the purchaser agrees to be bound by the provisions of this Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

**IV. Divestiture**

A. Defendant DNH is ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Geneva Production Asset in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. Defendant DNH agrees to use its best efforts to divest the Geneva Production Asset as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendant DNH promptly shall make known, by usual and customary means, the availability of the Geneva Production Asset. Defendants shall inform any person making inquiry regarding a possible purchase of the Geneva Production Asset that it will be divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendant DNH shall offer to furnish to all prospective Acquirers, subject to customary confidentially assurances, all information and documents relating to the Geneva Production Asset customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendant DNH shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendant DNH shall provide prospective Acquirers of the Geneva Production Asset and the United States information relating to the personnel involved in the production, operation, development, and sale of the Geneva Production Asset to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of defendant DNH's employees whose responsibilities include the production, operation, development, or sale of the products of the Geneva Production Asset.

D. Defendant DNH shall permit prospective Acquirers of the Geneva Production Asset to have reasonable access to personnel and to make inspections of the physical facilities of the Geneva Production Asset; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendant DNH shall warrant to the Acquirer of the Geneva Production Asset that each asset therein that was operational as of the date of filing of the Complaint in this matter will be operational on the date of divestiture.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Geneva Production Asset.

G. Defendant DNH shall warrant to the Acquirer of the Geneva Production Asset that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Geneva Production Asset, and following the sale of the Geneva Production Asset, defendants shall not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Geneva Production Asset.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Geneva Production Asset or, alternatively, pursuant to section V(B), the entire Battle Mountain Production Asset, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divested asset can and will be used by the Acquirer as part of a viable, ongoing business engaged in the manufacture and sale of IGAN. Divestiture of the Geneva Production Asset or, alternatively, the Battle Mountain Production Asset may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that the divested asset will remain viable and the divestiture of such asset will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to section IV or section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States's sole judgment, has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of IGAN; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

**V. Appointment of Trustee To Effect Divestiture**

A. If defendant DNH has not divested the Geneva Production Asset within the time period specified in Section IV(A), it shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Geneva Production Asset.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Geneva Production Asset. Should the trustee determine that a sale of the Geneva Production Asset cannot be expeditiously accomplished, the trustee shall notify the United States and the parties of its conclusion and the reasons supporting its conclusion. Upon receipt of such notice from the trustee, the United States, in its sole discretion, shall have the right to direct the trustee to sell the Battle Mountain Production Asset as an alternative to the Geneva Production Asset. The trustee shall have the power and authority to accomplish the divestiture of the Geneva Production Asset or, should the United States so direct, the Battle Mountain Production Asset to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendant DNH any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of defendant DNH, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the Geneva Production Asset or, alternatively, the Battle Mountain Production Asset, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and

those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendant DNH and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the asset to be divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confident research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during he preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Geneva Production Asset or, alternatively, the Battle Mountain Production Asset, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest either asset.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust The Court thereafter shall enter such orders as it shall deem appropriate to carry lout the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

**VI. Notice of Proposed Divestiture**

A. Within two (2) business days following execution of a definitive divestiture agreement, defendant DNH or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person and not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Geneva Production Asset or, alternatively, the Battle Mountain Production Asset, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United Sates does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under section V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

**VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to section IV or V of this Final Judgment.

**VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Geneva Production Asset or, alternatively, the Battle Mountain Production Asset, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the asset to be divested, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the Geneva Production Asset and the Battle Mountain Production Asset and to divest either asset until one year after such divestiture has been completed.

**X. Compliance Inspection**

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, an don reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XI. No Reacquisition**

Defendants may not reacquire any part of the asset divested under this Final Judgment during the term of this Final Judgment.

**XII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIII. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

**XIV. Public Interest Determination**

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

**United States District Court for the District of Columbia**

CASE NUMBER 1: 03CV02486; JUDGE: Gladys Kessler; DECK TYPE: Antitrust; DATE STAMP: 12/02/2003

*United States of America, U.S. Department of Justice Antitrust Division 1401 H Street, NW Suite 3000 Washington, DC 20530, Plaintiff, v. DNH International Sarl, 23 Avenue Monterey L-2086 Luxemburg, Dyno Nobel, Inc., 50 S. Main Street Salt Lake City, UT 84144; El Paso Corporation, 1001 Louisiana Street Houston, TX 77002; and Coastal Chem, Inc., 1001 Louisiana Street Houston, TX 77002, Defendants; Complaint*

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain injunctive relief against defendants, and alleges as follows:

1. DNH International Sarl ("DNH") intends to acquire, through its wholly-owned subsidiary Dyno Nobel, Inc. ("Dyno"), certain assets associated with the nitrogen products businesses of El Paso Corporation ("El Paso"). The assets to be acquired include two industrial grade ammonium nitrate ("IGAN") manufacturing facilities owned by Coastal Chem, Inc. ("Coastal"), a wholly-owned subsidiary of El Paso. One of these facilities is located in Battle Mountain, Nevada, and the other is in Cheyenne, Wyoming.

2. Dyno and Coastal sell IGAN in the United States. IGAN is an essential ingredient in nearly all blasting agents. Coastal and one other firm are the primary suppliers of IGAN consumed in the western United States and western Canada ("Western North America"), accounting for over 75 percent of all plant capacity regularly used to make IGAN for sale in that region. Dyno, which owns a 50 percent interest in an IGAN production facility near Salt Lake City, Utah, is the best located of a few fringe IGAN suppliers in Western North America.

3. Unless the proposed acquisition is enjoined, Dyno's acquisition of Coastal's Battle Mountain and Cheyenne IGAN production facilities will substantially lessen competition in the production of IGAN for sale in Western North America, and consumers of IGAN in that region likely will pay higher process as a result of the reduced competition.

**Jurisdiction and Venue**

4. This Complaint is filed by the United States under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating section 7 of the Clayton Act, 15 U.S.C. 18.

5. DNH, through Dyno, and El Paso, through Coastal, produce and sell IGAN in the flow of interstate commerce. DNH's and El Paso's activities in producing and selling IGAN substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

6. DNH, Dyno, El Paso, and Coastal have consented to personal jurisdiction and venue in this judicial district.

**II. Defendants**

7. DNH is a Luxembourg corporation with its headquarters in Oslo, Norway. DNH is one of the world's largest producers of explosives. In 2002, DNH reported total sales of approximately $630 million. Dyno, a subsidiary of DNH, is a Delaware corporation with its principal place of business in Salt Lake City, Utah. Dyno, one of the two largest producers of IGAN in North America, reported 2002 sales of about $316 million.

8. El Paso is a Delaware corporation with its headquarters in Houston, Texas. El Paso is the leading provider of natural gas services and the largest pipeline company in North America. In 2002, El Paso reported sales of roughly $12 billion. Coastal, a subsidiary of El Paso, is a Delaware corporation with its principal place of business in Houston, Texas. Coastal, one of the two largest producers of IGAN in Western North America, reported 2002 sales of approximately $146 million.

**III. The Proposed Transaction**

9. Pursuant to an Asset Purchase Agreement dated August 6, 2003, Dyno, a wholly-owned subsidiary of DNH, intends to acquire certain assets of the nitrogen products businesses owned by El Paso's subsidiaries. The assets to be acquired include Coastal's IGAN manufacturing facilities in Battle Mountain, Nevada and Cheyenne, Wyoming.

**IV. Trade and Commerce**

*A. The Relevant Product Market*

10. IGAN, which is in the form of low-density, porous prills (or granules), is used to make blasting agents, one of two types of explosives for industrial uses like mining and construction. The other type is high explosives like dynamite, which are much more expensive than blasting agents. The principal physical difference between high explosives and blasting agents is in their sensitivity to detonation; a high explosive can be detonated with only a blasting cap, while blasting agents are detonated using high explosives. Blasting agents, which accounted for nearly all of the explosives sold in North America last year, are used principally to mine coal, rock and other nonmetals, and metals such as gold and copper. Blasting agents constitute a relatively small portion of the costs of mining and the other industrial uses to which they are put.

11. Virtually all blasting agents used in North America contain ammonium nitrate in the form of IGAN, and essentially all IGAN sold in North America is used to make blasting agents. The most widely used blasting agent is known as ANFO, which is made by soaking IGAN in fuel oil (Ammonium Nitrate plus Fuel Oil). Although ammonium nitrate is also available in an agricultural grade, which is in the form of high-density prills, the more porous IGAN prills are used to make ANFO. The greater porosity of the IGAN prill allows for significantly better absorption of the fuel oil and makes an explosive with a much higher sensitivity to detonation. IGAN is also used to make explosive slurries, gels, and emulsions, which can be used as blasting agents either alone or in combination with ANFO.

12. A small but significant increase in the price of IGAN would not cause consumers of IGAN to use sufficiently less IGAN so as to make such a price increase unprofitable. Accordingly, the production and sale of IGAN is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

*B. The Relevant Geographic Market*

13. IGAN typically is shipped to customers in bulk either by rail or by truck. Freight costs are a significant component of the total delivered price of IGAN and limit the geographic area that an IGAN production facility profitably can serve. In addition, IGAN degrades over time as moisture in the air causes it to "cake," rendering it much less economical to use as an ingredient to make

blasting agents. Also, the more IGAN is handled between production and use, the more the IGAN prills break down into unusable fine particles.

14. El Paso, through Coastal, produces IGAN at two facilities, one located in Battle Mountain, Nevada and the other in Cheyenne, Wyoming. IGAN produced at these facilities is sold within Western North America. DNH, through Dyno, owns a 50 percent interest in an IGAN plant near Salt Lake City, Utah (known as the "Geneva plant") from which it supplies IGAN into Western North America. Only three other firms own facilities that regularly produce IGAN for sale in the eleven contiguous western-most states in the United States and the Canadian provinces of British Columbia, Alberta, and Saskatchewan ("Western North America"). One of those three firms is Orica Limited ("Orica"), which owns the remining 50 percent interest in the Geneva plant and also owns an IGAN facility located in Alberta, Canada. The other two facilities are located in Benson, Arizona and Manitoba, Canada.

15. No other firm owns an IGAN production facility from which it supplies IGAN on a regular basis to Western North America. Apart from the facilities referenced in paragraph 14 above, the IGAN facilities closest to Western North American customers are located along the Mississippi River. The additional transportation costs needed to supply Western North America from these facilities, coupled with the increased risk of degradation of the IGAN due to prolonged shipping and handling, significantly limit the ability of these distant facilities to supply IGAN to Western North America.

16. A small but significant increase in the price of IGAN produced for sale in Western North America would not cause consumers of IGAN in Western North America to purchase sufficient amounts of IGAN produced at facilities not already regularly supplying IGAN to Western North America that such a price increase would be unprofitable. Accordingly, Western North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

*C. Anticompetitive Effects*

17. Two firms account for over 80 percent of IGAN sales in Western North America. After the proposed acquisition, the two dominant firms together would control about 90 percent of sales, with Dyno and Coastal combined having a share of about 50 percent. Total sales of IGAN in Western North America exceed 750,000 tons annually, or over $150 million a year.

18. Concentration in the Western North American IGAN market would increase significantly if DNH, through Dyno, acquired Coastal's IGAN production facilities in Battle Mountain and Cheyenne. The proposed acquisition would increase the Herfindahl-Hirschman Index ("HHI"), a measure of market concentration defined and explained in Appendix A, by approximately 220 points, based on plant capacity, resulting in a post-merger HHI of roughly 3400, well in excess of levels that ordinarily would raise significant antitrust concerns.

19. IGAN-containing blasting agents are used primarily in four industries in North America: Coal mining, which accounted for about 70 percent of total consumption in the United States in 2002; quarrying and nonmetal mining (13 percent); metal mining (8 percent); and construction (8 percent). In Western North America, most IGAN-containing blasting agents are consumed in mines located in one of three areas: The Powder River Basin in Wyoming (coal mines); North Nevada (gold mines); and the so-called "Four-Corners Area" surrounding the junction of Utah, Colorado, New Mexico, and Arizona (coal mines).

20. The two leading producers of IGAN sold in Western North America, Coastal and Orica, have facilities that are well-positioned to supply the Powder River Basin and Northern Nevada. The Geneva plant, which has a capacity of about 100,000 tons/year and is equally owned by Orica and Dyno, is located roughly equidistant from Northern Nevada, the Powder River Basin, and the Four-Corners Area and is well-positioned to serve all three areas.

21. The proposed transaction would combine Coastal's Battle Mountain and Cheyenne facilities with Dyno's 50 percent interest in the Geneva plant, thus eliminating independent competition from Dyno, the best located of three fringe IGAN producers that supply Western North America. Unlike the Geneva plant, which is centrally located to all three primary IGAN-containing blasting agent-consuming areas in Western North America, the two remaining fringe firms are located at the outer reaches of the relevant geographic market.

22. Purchasers of IGAN in Western North America have benefitted from competition between Dyno and Coastal through lower prices for IGAN. By acquiring Coastal's Battle Mountain and Cheyenne IGAN production facilities, DNH would eliminate that competition.

*D. Entry Unlikely To Deter a Post-Acquisition Exercise of Market Power*

23. Successful entry into the IGAN market in Western North America would not be timely, likely, or sufficient to deter any coordinated exercise of market power as a result of the transaction.

24. Significant barriers prevent de novo entry into the production of IGAN for sale in Western North America. De novo entry would be a lengthy process. The two most time-consuming steps—construction of the IGAN plant itself and the obtaining of permits needed to construct the plant—would take over two years. Also, economies of scale in plant capacity are significant. To be successful, a new entrant likely would require a facility that could produce at least one-quarter of total IGAN sales in Western North America. An IGAN facility with that capacity would cost over $70 million. All of these factors make entry unlikely in response to a small but significant increase in IGAN prices.

**V. Violations Alleged**

25. DNH's proposed acquisition from El Paso of Coastal's IGAN production facilities in Battle Mountain, Nevada and Cheyenne, Wyoming, likely will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

26. The transaction likely will have the following anticompetitive effects, among others:

a. Competition generally in the production of IGAN for sale in Western North America will be substantially lessened;

b. Actual and potential competition between Dyno and Coastal in the production of IGAN for sale in Western North America will be eliminated; and

c. Prices for IGAN produced for sale in Western North America likely will increase.

27. Unless prevented, the acquisition by DNH of Coastal's Battle Mountain and Cheyenne IGAN production facilities would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

**VI. Requested Relief**

28. Plaintiff requests:

a. That DNH's proposed acquisition from El Paso of Coastal's IGAN production facilities in Battle Mountain, Nevada and Cheyenne, Wyoming, be adjudged and decreed to be unlawful and in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding, or plan, the effect of which would be to combine DNH and Coastal's Battle Mountain and Cheyenne IGAN production facilities;

c. That plaintiff recover the costs of this action; and

d. That plaintiff receive such other and further relief as the case requires and this Court may deem proper.

Dated: December 2, 2003.

Respectfully submitted,

For Plaintiff United States of America:

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### Appendix A—Herfindahl-Hirschman Index Calculations

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. *See Merger Guidelines* § 1.51.

[FR Doc. 04–3384 Filed 2–13–04; 8:45 am]
BILLING CODE 4410–11–M

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Exemption Application No. D–11030]**

### Withdrawal of Notice of Proposed Exemption Involving Blue Cross and Blue Shield of Kansas (the Company) and Anthem Insurance Companies, Inc. (Anthem) Located in Topeka, KS

In the **Federal Register** dated January 3, 2002, the Department of Labor (the Department) published a notice of proposed exemption (the Notice) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986, as amended. The Notice provided prospective exemptive relief for the receipt of cash consideration by any eligible policyholder of the Company and Anthem which was an employee benefit plan (the Plan), including the Company's own in house Plan, in exchange for the termination of such Plan's membership interest in the Company, in accordance with the terms of a plan of conversion adopted by the Company and implemented pursuant to Kansas Law. Due to the length of time since the publication of the proposal and unresolved litigation between the Company and the Kansas Commissioner of Insurance regarding the contemplated demutualization, the Department does not believe the Notice, as originally published, currently reflects accurate and complete material facts and representations. Therefore, the Department has decided to withdraw the Notice from the **Federal Register**.

Signed at Washington, DC, this 10th day of February, 2004.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 04–3416 Filed 2–13–04; 8:45 am]
BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2004–02 *et al.*; Exemption Application No. D–11047 *et al.*]**

### Grant of Individual Exemptions; Bank of America, N.A.

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

### Bank of America, N.A., Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2004–02; Exemption Application No. D–11147]

### Exemption

*Section I—Covered Transactions*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of January 1, 2003, to:

(A) The granting to Bank of America, N.A. (Bank), either as an agent (the Agent) for a group of financial institutions (Lender(s)), or as a sole Lender, that will fund a so-called "credit facility" (Credit Facility) providing credit to certain investment funds (Fund(s)), by the Fund of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors, including employee benefit plans (a Covered Plan, as defined in Section III(A)), investing in the Fund;

(B) Any collateral assignment and pledge by the Fund to the Agent, or to the Bank as sole Lender, of its security interest in each Investor's equity interest, including a Covered Plan's equity interest, in the Fund;

(C) The granting by the Fund to the Agent, or to the Bank as sole Lender, of

a security interest in a Collateral Account to which all Capital Contributions in the Fund will be deposited when paid (except in certain limited circumstances);[1]

(D) The granting by the Fund to the Agent, or to the Bank as sole Lender, of its right to make calls on Investors for Capital Contributions (Capital Call), which shall be in cash, under the operative Fund Agreements (as defined in Section III(C)), enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility;

(E) The execution by a Covered Plan of an agreement (Investor Consent) consenting to the Fund's assignment to the Agent, or to the Bank as sole Lender, of the Fund's right to make Capital Calls, which may contain: (i) An acknowledgment by the Covered Plan of the Fund's assignment to the Agent, or to the Bank as sole Lender, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (ii) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility; (iii) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements; and (iv) an agreement that the Covered Plan will fund Capital Contributions only into the Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section II are met.

*Section II—Conditions*

(A) The transaction is on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;

(B) The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of the Bank (either as sole Lender or Agent), is made by fiduciaries of the Covered Plan that are not included among, are independent of, and are unaffiliated with, the Lenders (including the Bank) and the Fund. For purposes of this exemption, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including the Bank) or a Fund, as applicable, if: (i) The fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund,[2] (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) no officer, director, highly-compensated employee (within the meaning of section 4975(e)(2)(H) of the Code), or partner of the Fund, or any officer, director or highly-compensated employee, or partner of the Lender who is involved in the transactions described in Section I of the exemption, is also an officer, director, highly-compensated employee, or partner of the fiduciary. However, if such individual is a director of the Lender, and if he or she abstains from participation in, and is not otherwise involved with, the decision made by the Covered Plan to invest in the Fund, then this condition shall be deemed satisfied;

(C) At the time of the execution of an Investor Consent, the Covered Plan has assets of not less than $100 million. In the case of multiple plans maintained by the same employer, or by members of a controlled group of corporations (within the meaning of Code section 414(b)) or members of a group of trades or businesses under common control (within the meaning of Code section 414(c)) (hereafter, referred to as "members of a controlled group"), whose assets are invested on a commingled basis (*e.g.*, through a master trust), this $100 million threshold applies to the aggregate assets of the commingled entity;

(D) Not more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, is invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (*e.g.*, through a master trust), the five (5) percent limit applies to the aggregate assets of the commingled entity;

(E) Neither the Bank nor any Lender has discretionary authority or control with respect to a Covered Plan's investment in the Fund nor renders investment advice (within the meaning of 29 CRF 2510.3–21(c)) with respect to such investment;

(F) Upon request, the Covered Plan fiduciaries receive from the Bank a copy of this exemption, as published in the **Federal Register**, as well as a copy of the notice of proposed exemption. In addition, all appropriate fiduciaries of Covered Plans must receive a copy of this exemption, as published in the **Federal Register**, for Covered Transactions (as defined in Section III(D) below) that occurred during the period from January 1, 2003 until the date of this exemption;

(G) The Bank receives from the Covered Plan fiduciaries a written representation that the conditions set forth above in Section II(B), (C), and (D) are satisfied for such transaction with respect to the Covered Plan for which they are fiduciaries; and

(H) None of the Covered Transactions are part of an arrangement, agreement or understanding, designed to benefit a party in interest with respect to a Covered Plan.

*Section III—Definitions*

(A) The term "Covered Plan" means an investor in a Fund (as defined below) that is an employee benefit plan, as defined in section 3(3) of the Act, that satisfies the conditions set forth herein in Section II;

(B) The term "Fund" means an investment or venture capital fund (organized as a corporation, limited partnership, limited liability company, or another business entity authorized by applicable law) in which one or more investors invest, including employee benefit plans or special purpose entities holding "plan assets" subject to the Act, as described herein, by making capital contributions in cash to such Fund, pursuant to specific Capital Commitments as established by the Fund Agreement(s) and other operative documents executed by the parties, for purposes of making certain real estate investments (including real estate-related investments, such as venture capital investments) or non-real estate investments. The term "Fund" includes an entity created by the Fund that may borrow or receive funds from the Credit Facility, provided that such entity is considered an affiliate of the Fund as a subsidiary or other controlled entity;

(C) The terms "Fund Agreement" or "Fund Agreements" mean the written agreements under which a Fund (as defined above) is formed (such as a limited partnership agreement, a limited liability company agreement or articles of incorporation, together with ancillary

[1] In most cases, all Investors will make Capital Contributions into the Collateral Account. However, in some cases, investors that are not plans may be directed to make Capital Contributions to the Agent, for the benefit of the Lenders, after an event of default, in some other manner.

[2] For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term "Fund" shall be deemed, as appropriate, to include the governing entity of the Fund or a member of the governing body of the Fund, as appropriate, *e.g.*, a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation.

related agreements, such as subscription agreements) that obligate each investor to make cash contributions of capital with respect to Capital Commitments, upon receipt of a call for Capital Contributions;

(D) The terms "Covered Transaction" or "Covered Transactions" mean any combination of transactions described in Section I(A)–(D), in conjunction with the Investor Consent described in Section I(E); and

(E) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

**EFFECTIVE DATE:** This exemption is effective as of January 1, 2003.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 29, 2003, at 68 FR 56008.

*Written Comments:* The applicant (referred to herein as the "Bank") submitted a number of comments on the notice of proposed exemption (the Notice). These comments, and modifications to the exemption made by the Department in response thereto, are discussed below.

First, the Bank states that the term "Borrower Collateral Account" appeared several times in the operative language of the Notice (*see* 68 FR at 56008–56009, Section I(C) and I(E)) as well as in the Summary of Facts and Representations (the Summary) in the Notice. In particular, Paragraph 3 of the Summary states that the borrower under the Credit Facility will be a Fund. However, the Bank states that the account established for a borrower, referred to as a "Borrower Collateral Account," may be in the name of the Fund if the Fund is the borrower, or it may be in the name of an affiliate of the Fund (*i.e.*, a subsidiary or other controlled entity) that is established for the purpose of making a particular investment. Thus, in order to avoid any confusion, the Bank suggested that the exemption should refer to such accounts simply as the "Collateral Account."

In response to the Bank's comment, the Department has deleted the term "Borrower Collateral Account" and substituted the term "Collateral Account" in Sections I(C) and I(E), as well as in Footnote 1, of the exemption. In addition, the Department notes that any references to the term "Borrower Collateral Account" in the Summary (*e.g.*, in the last paragraph of Paragraph 6, or in item (iv) of Paragraph 7) should be replaced with the term "Collateral Account" as clarified by the Bank.

Second, the Bank states that there are at least two additional references in the Summary to a Fund as a borrower of funds (*i.e.*, monies) under a Credit Facility (*e.g.*, Paragraph 3 of the Summary (68 FR at 56009, third column) and Paragraph 6 of the Summary (68 FR at 56010, third column)). As noted above, the Bank represents that many of these Funds actually establish special purpose entities to make particular investments. In such instances, the Bank states that those entities are the borrower of such funds, in which case the Fund may be a guarantor or may be providing other credit support to the borrower entity. As a result, the Bank requested a clarification to note that such "Funds" may be borrowers under a Credit Facility as well as guarantors or providers of other credit support.

The Department acknowledges the Bank's clarification. In addition, in response to the Bank's comments, the Department has added a sentence at the end of the definition of the term "Fund" in Section III(B) of the exemption which states that such term includes an entity created by a Fund that may borrow or receive funds from the Credit Facility, provided that such entity is considered an affiliate of the Fund as a subsidiary or other controlled entity.

Third, with respect to the definition of a "Fund," the Bank states that the Notice used the phrase "investment opportunity fund" to describe, in part, such investment vehicles (see 68 FR at 56009, second line of Section III(B) and Paragraph 1 of the Summary). The Bank represents that some persons may think that an "investment opportunity fund" is a specific type of "Fund," rather than a more general investment fund that may be investing in real estate or other proper investments. As a result, the Bank requested that the word "opportunity" be deleted from the phrase "investment opportunity" in the definition of the term "Fund."

In response to the Bank's comment, the Department has deleted the word "opportunity" from the definition contained in Section III(B) of the exemption.

Fourth, with respect to Paragraph 4 of the Summary (see 68 FR 56010, second column), there is a discussion of the independence of Covered Plan fiduciaries from a Lender (including the Bank) or a Fund. In this regard, the last sentence in Paragraph 4 of the Summary (just prior to Paragraph 5) reads as follows:

"* * * (iii) the fiduciary is not a corporation or partnership in which a person affiliated with the Fund or a Lender, as appropriate, is an officer, director, partner, or employee."

The Bank states that the three items included in the discussion in Paragraph 4 of the Summary describe the circumstances for how fiduciaries are "independent of, or unaffiliated with" a Lender (including the Bank) or the Fund. The first item provides that the fiduciary must not, directly or indirectly, control, be controlled by, or be under common control with the Lender or a Fund. The second item ensures that a fiduciary (if an individual) is not an officer, director, employee, or relative of, or partner in, a Lender or a Fund. The third item is intended to cover fiduciaries that are not individuals, including a corporation or partnership. The Bank suggests that, in order to clarify that a Covered Plan's fiduciary that is an entity is not "affiliated with" a Lender (including the Bank) or a Fund, the exemption should state, for purposes of item (iii) above, that no officer or director of a fiduciary which is a corporation, partnership, or other entity controls the Fund or a Lender, as appropriate.

The Department is unable to concur with the Bank's suggestion for clarifying the scope of affiliations between a Covered Plan's fiduciary, that is an entity, and a Lender or Fund by limiting the affiliations referred to in item (iii) to officers or directors of such entities who would control the Lender or Fund. Such a clarification would deem many individuals who have a significant interest or relationship to both the Lender or Fund and the Covered Plan's fiduciary as "independent of, or unaffiliated with" such entities.

However, upon further discussion with the Bank in order to adequately address the concern raised by the comment, the Department has added the following sentence to the conditions contained in Section II(B) of the exemption:

"* * * For purposes of this exemption, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including the Bank) or a Fund, as applicable, if: (i) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund, (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) *no officer, director, highly-compensated employee (within the meaning of section 4975(e)(2)(H) of the Code), or partner of the Fund, or any officer, director or highly-compensated employee, or partner of the Lender who is involved in the transactions*

*described in Section I of the exemption, is also an officer, director, highly-compensated employee, or partner of the fiduciary. However, if such individual is a director of the Lender, and if he or she abstains from participation in, and is not otherwise involved with, the decision made by the Covered Plan to invest in the Fund, then this condition shall be deemed satisfied."* [emphasis added]

In addition, the Department has added a definition of the term "officer" in Section III(E) of the exemption to more narrowly define the number of individuals who could be covered by such term.

Finally, with respect to Section III(D) of the Notice, the Bank states that the word "with" should be inserted after the phrase "in conjunction" and before the phrase "the Investor Consent." The Department acknowledges the Bank's comment and has inserted the word "with" as indicated in Section III(D) of the exemption.

The Bank provided other minor clarifications relating to the information contained in the Summary, which do not require further changes or modifications to the operative language, conditions or definitions of the exemption. Interested persons are directed to the Bank's letter of November 19, 2003, contained in the exemption application file #D–11147, which is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Janet L. Schmidt of the Department, at telephone (202) 693–8540. (This is not a toll-free number.)

**Lodgian, Inc. 401(k) Plan and Trust Agreement (the Plan), Located in Atlanta, Georgia**

[Prohibited Transaction Exemption No. 2004–03; Application No. D–11180]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 3, 2002, to (1) the past acquisition and holding by the Plan of certain warrants (the Warrant(s)) issued by Lodgian, Inc. (Lodgian), a party in interest with respect to the Plan, which would permit the purchase of new common stock (New Lodgian Stock); (2) the cancellation payment (the Cancellation Payment) by Lodgian to the Plan in exchange for the Warrants (i) at the election of active participants (ii) at the election of the terminated vested participants whose vested interests exceed $5,000, or (iii) in accordance with the procedures for the automatic cash out of the value of Warrants held in the accounts of terminated vested participants whose vested interests are $5,000 or less, for an amount that represents the highest value of the Warrants determined by an independent, qualified, appraiser between December 31, 2002 and the date of the individual election; (3) the sale of the Warrants from Plan participants to Lodgian to cash out active and terminated vested participants; and (4) the potential exercise of the Warrants into the New Lodgian Stock. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with Lodgian's bankruptcy proceeding (the Bankruptcy);

(b) The Plan had no ability to affect the Plan of Reorganization filed by Lodgian on December 20, 2001 under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code), or the First Amended Plan of Reorganization, subsequently filed under the Bankruptcy Code by Lodgian on November 1, 2002 (The First Amended Plan of Reorganization);

(c) The Warrants were acquired automatically and without any action on the part of the Plan;

(d) The Warrants were acquired by the Plan with the same terms and conditions as non-Plan shareholders;

(e) The Plan did not pay any fees or commissions in connection with the acquisition of the Warrants;

(f) Any decision to cancel the Warrants and accept a Cancellation Payment from Lodgian will be made by the participant in the case of active participants and terminated vested participants whose vested interests exceed $5,000;

(g) The Warrants have been and will continue to be valued annually on the 31st of December by an independent, qualified, appraiser;

(h) With Respect to those Plan participants who cash out the Warrants, the value of the Warrants will be determined by using the highest value determined by an independent, qualified, appraiser between December 31, 2002 and the most recent valuation date prior to the date of the distribution;

(i) An independent fiduciary will monitor the Cancellation Payments, and confirm the valuation of the Warrants;

(j) Lodgian is required to purchase the Warrants upon request by a Plan participant provided that on the day of the request the price of the New Lodgian Stock is less than the exercise price of the Warrants; and

(k) If the Warrant is listed on an established trading market Lodgian is not required to purchase the Warrant from the Plan.

**EFFECTIVE DATE:** This exemption is effective as of December 3, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 29, 2003 at 68 FR 56013.

**FOR FURTHER INFORMATION CONTACT:** Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

**Bangs, McCullen, Butler, Foye & Simmons, L.L.P. Employees Profit Sharing Plan (the Plan) Located in Rapid City, South Dakota**

[Prohibited Transaction Exemption 2004–04; Exemption Application No. D–11198]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 2004, to the proposed lease by the Plan (the New Lease) of certain improved real property (the Property) located in Rapid City, South Dakota, to Bangs, McCullen, Butler, Foye & Simmons, L.L.P. (the Employer), the sponsor of the Plan, and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the New Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The New Lease is a triple net lease under which the Employer is obligated to pay for all costs of maintenance, repair, and taxes related to the Property;

(C) The interests of the Plan for all purposes under the New Lease are represented by an independent fiduciary, Wells Fargo Bank, N.A., Rapid City, South Dakota;

(D) The rent paid by the Employer under the New Lease is no less than the fair market rental value of the Property; and

(E) If the summary appraisal of the Property, due in mid-December 2003, contains a fair market rental value that is higher than the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004.

**EFFECTIVE DATE:** This exemption is effective as of January 1, 2004.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 2003 at 68 FR 70308.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department, telephone (202) 693–8540.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of February, 2004.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 04–3415 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,949]**

### American Fast Print LTD, U.S. Finishing Division, Greenville, South Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 6, 2004 in response to a petition filed on behalf of workers at American Fast Print LTD, U.S. Finishing Division, Greenville, South Carolina.

The three petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 30th day of January 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3316 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,000]**

### Arkansas Catfish Growers, Hollandale, Mississippi; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2004 in response to a petition filed by the company on behalf of workers at Arkansas Catfish Growers, Hollandale, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 23rd day of January, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3321 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,847]**

### Chicago Rawhide, Franklin, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 19, 2003, in response to a petition filed by a company official on behalf of workers at Chicago Rawhide, Franklin, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of January, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3327 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,094]**

### Eastman Machine Company Buffalo, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application of December 4, 2003, the United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 936 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on November 6, 2003 and published in the **Federal Register** on November 28, 2003 (68 FR 66877).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Eastman Machine Company, Buffalo, New York engaged in the production of manual and automatic cutting machines were denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974 was not met. The subject firm did not import manual and automatic cutting machines and production was not shifted abroad.

The union alleges that the subject firm failed to report imports of machines called D2's from China.

A company official was contacted in regard to these allegations. The official stated that D2 machines are indeed being imported by the subject firm, however, it is a very insignificant part of business which represents less than one percent of subject firm's total sales and production. Plant production and employment were not affected by these negligible imports during the relevant period.

The petitioner further alleges that the subject firm experienced "a drop in sales of another line of machines called the straight knife line due to cheaper clones being made in China and other countries." A production chart for years from 1988 to 2002 is attached in support of this allegation. The chart shows a decline in production of 629X machines from 2000 to 2001 and an increase from 2001 to 2002.

In its investigation, the Department considers production that occurred a year prior to the date of the petition. Thus the period ending in 2001 is outside the relevant period as established by the petition date of September 19, 2003. Thus a drop in production of 629X machines prior to 2001 is irrelevant in this investigation.

The union also alleges that Eastman is importing finished components for the machinery produced by the subject firm.

In fact, the original investigation revealed imports of components by the subject firm. However, in assessing the eligibility of a petitioning worker group for trade adjustment assistance, the Department considers imports that are "like or directly" competitive to those produced by the petitioning worker group. Imported components are used for further manufacturing by the subject firm and are not considered "like or directly" competitive with manual and automatic cutting machines produced by the subject firm, and thus do not meet the eligibility requirements of the Trade Act of 1974.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of January, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3310 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,996]**

### Eljer Plumbingware, Salem, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 13, 2004 in response to a petition filed by a company official on behalf of workers at Eljer Plumbingware, Salem, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3322 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,430]**

### EMF Corporation, EMK Division, Burkesville, Kentucky; Notice of Revised Determination on Reconsideration

By application postmarked December 23, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 9, 2003, based on the finding that imports of electric wire harnesses did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on January 16, 2004 (69 FR 2622).

The petitioner requested that all areas of EMK's business transactions be thoroughly investigated. The petitioner appears to be indicating work done by the subject firm was shifted to Mexico.

Upon further review of the initial investigation and contact with the subject firm's largest customer, new information was provided revealing that the customer increased its import purchases of electric wire harnesses, while significantly decreasing its purchases from the subject firm.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at EMF Corporation, EMK Division, Burkesville, Kentucky, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of EMF Corporation, EMK Division, Burkesville, Kentucky, who became totally or partially separated from employment on or after October 21, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 28th day of January 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3312 Filed 2–13–04; 8:45 am]

BILLING CODE 4310–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,419, TA–W–53,419A, and TA–W–53,419B]**

### Encee, Inc., Eden, North Carolina, Kannapolis, North Carolina, Smithfield, North Carolina; Notice of Revised Determination on Reconsideration

By letter dated December 10, 2003, the company requested administrative reconsideration regarding the

Department's Negative Determination Regarding Eligibility to Apply for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, applicable to the workers of the subject firms.

The initial investigation resulted in a negative determination issued on November 19, 2003, was based on the finding that the workers did not produce a product under the meaning of section 222 of the Act. The denial notice was published in the **Federal Register** on December 29, 2003 (68 FR 74978).

To support the request for reconsideration, the company supplied additional information to supplement that which was gathered during the initial investigation. The company indicated that Encee, Inc. is a wholly owned subsidiary division of Pillowtex Corporation. The petitioner further stated that functions of workers of Encee, Inc., Eden, North Carolina (TA–W–53,419), Kannapolis, North Carolina (TA–W–53,419A) and Smithfield, North Carolina (TA–W–53,419B) were dedicated to support activities at an existing trade-certified facility of Pillowtex Corporation.

An analysis of the information supplied by the company on their request for reconsideration revealed that the worker separations at the subject facilities were caused by a reduced demand for their services from a parent firm, whose workers produce an article and who are currently under certification for Trade Adjustment Assistance (TA–W–52,559). The investigation further revealed that employment at the subject facilities declined absolutely during the relevant period.

A review of the submitted documents revealed that at least five percent of the workforce at the subject facilities is at least fifty years of age and that the workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I determine that increased imports of articles like or directly competitive with those produced at an affiliated TAA certified firm contributed importantly to the declines in the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Encee, Inc., Eden, North Carolina (TA–W–53,419), Encee, Inc. Kannapolis, North Carolina (TA–W–53,419A) and Encee, Inc., Smithfield, North Carolina (TA–W–53,419B), who became totally or partially separated from employment on or after October 24, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of January 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3318 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,882]**

### International Mill Service, Midland, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 24, 2003, in response to a worker petition which was filed by the United Steelworkers of America Local 1212 on behalf of workers at International Mill Service, Midland, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of January, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3325 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,891]**

### Kokusai Semiconductor Equipment Corporation, Portland Region Office, Portland, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 29, 2003 in response to a petition filed by a company official on behalf of workers of Kokusai Semiconductor Equipment Corporation, Portland Region Office, Portland, Oregon.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of January, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3324 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,107]**

### Manpower, Inc., Roswell, NM; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2004 in response to a worker petition filed by one worker on behalf of workers of Manpower Inc., Roswell, New Mexico.

To be valid, petitions must be filed by three workers, their duly authorized representative, or a state agency. The petition regarding the investigation has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of January 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3313 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,872]**

### Metso Minerals Industries, Inc., Colorado Springs, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, investigation was initiated on December 23, 2003 in response to a petition filed by a company official at Metso Minerals Industries, Inc., Colorado Springs, Colorado.

The petitioner requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of January 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3317 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,951]**

### Millenium A.R. Haire, Thomasville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 7, 2004 in response to a petition filed by a company official on behalf of workers at Millenium A.R. Haire, Thomasville, North Carolina.

The petition regarding the investigation has been deemed invalid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of January, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3315 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,595]**

### Paradise Fisheries, Kodiak, Alaska; Notice of Revised Determination On Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of Paradise Fisheries* v. *U.S. Secretary of Labor* (Court No. 03–00758).

On May 5, 2003, the Department issued a negative determination regarding eligibility for workers of Paradise Fisheries, Kodiak, Alaska, to apply for worker adjustment assistance because the Department determined that the worker group eligibility requirements of section (a)(2)(A)(I.C) and section (a)(2)(B)(II.B) of section 222 of the Trade Act of 1974, as amended, were not met. There were no company imports of fresh or chilled salmon, nor was there a shift in production of fresh or chilled salmon from the workers' firm to a foreign country. A survey of the customers determined that there were no increases in imports of salmon that contributed importantly to worker separations at Paradise Fisheries. The notice was published in the **Federal Register** on May 19, 2003 (68 FR 27106).

In addition to above cited petition, filed by a company official and dated April 21, 2003, the same company official submitted another TAA petition dated April 24, 2003, indicating that the workers were secondarily affected. The information provided on the latter petition was considered before making the negative determination for worker eligibility to apply for adjustment assistance.

On May 15, 2003, the company official requested administrative reconsideration of the Department's denial of TA–W–51,595, citing that the workers were secondarily affected because the firm sold salmon to a salmon processor. On August 7, 2003, the review of the request resulted in a dismissal of the application, because no new information was provided that had not been considered during the initial investigation.

Based on new information submitted by Paradise Fisheries to the U.S. Court of International Trade, the Department has determined that the subject firm did supply salmon to a salmon processing firm whose workers were certified eligible to apply for adjustment assistance. The loss of business with the primary firm whose workers were certified eligible to apply for adjustment assistance contributed importantly to worker separations at Paradise Fisheries, Kodiak, Alaska.

**Conclusion**

After careful review of the additional facts obtained on remand, I conclude that workers of Paradise Fisheries, Kodiak, Alaska, qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended.

In accordance with the provisions of the Trade Act, I make the following revised determination:

All workers of Paradise Fisheries, Kodiak, Alaska, who became totally or partially separated from employment on or after April 21, 2002, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3328 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,242]**

### PolyOne Corporation; O'Sullivan Plastic Division; Yerington, NV; Notice of Revised Determination on Reconsideration

On November 21, 2003, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 19, 2003 (68 FR 70838).

On May 5, 2003 the Department initially denied TAA to workers of PolyOne Corporation, O'Sullivan Plastics Division, Yerington, Nevada producing calendared vinyl because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974 was not met.

On reconsideration, the department surveyed additional customers of the subject plant regarding their purchases of calendared vinyl during the relevant period. The survey revealed that major declining customer(s) increased their imports of calendared vinyl, while decreasing their purchases from the subject plant during the relevant period. These survey results, in combination with the volume of imports reported by the company in the initial investigation, indicate that imports contributed importantly to layoffs in the relevant period.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with calendared vinyl, contributed importantly to the declines in sales or production and to the total or partial separation of workers of PolyOne Corporation, O'Sullivan Plastics Division, Yerington, Nevada. In accordance with the provisions of the Act, I make the following certification:

All workers of PolyOne Corporation, O'Sullivan Plastics Division, Yerington, Nevada who became totally or partially separated from employment on or after

March 14, 2002 through two years of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 16th day of January 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3309 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,862]**

### Quest Star Medical, Inc., Eden Prairie, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 23, 2003, in response to a petition filed by the State Trade Act Coordinator on behalf of workers producing diabetic glucose meters at Quest Star Medical, Inc., Eden Prairie, Minnesota.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time production workers employed at some point during the period under investigation, and at least three separated from employment. Workers of the group subject to this investigation did not meet this threshold level of employment or separation.

Consequently, the investigation has been terminated.

Signed in Washington, DC, this 22nd day of January, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3326 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,211]**

### Rogers Corporation Elastomer Components Division South Windham, Connecticut; Notice of Negative Determination Regarding Application for Reconsideration

By application of December 9, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on November 10, 2003, and published in the **Federal Register** on December 29, 2003 (68 FR 74977).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Rogers Corporation, South Windham, Connecticut engaged in the production of rubber floats, elastomeric foam components and rubber fusers, was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of competitive products from 2001 through September 2003. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of rubber floats, elastomeric foam components and rubber fusers during the relevant period.

In the request for reconsideration, the petitioner alleges that employment declines at the subject facility are attributed to Rogers Corporation establishing a manufacturing facility in China. However, careful review of the facts and documents received during original investigation determined that no products manufactured by the subject firm in China are shipped directly to the United States, but are rather sold to customers in China for further assembly.

The petitioning company official states that the key customers of the subject firm are sourcing materials in Asia because of favorable pricing. When contacted for further customers to support this claim, the official clarified that, in fact, rubber floats, elastomeric foam components and rubber fusers were not being imported by customers. The official elaborated that the above mentioned products are components used in the production of paper moving machinery, such as printers, copy machines, check and mail sorters, and customers were shifting the production of these machines to Asia. The official concluded that, because this machinery is being imported back into the U.S., the subject firm workers producing the rubber floats, elastomeric foam components and rubber fusers were import impacted.

In assessing the eligibility of a petitioning worker group for trade adjustment assistance, the Department considers imports that are "like or directly" competitive to those produced by the petitioning worker group. Printers, check sorters, copy machines that are allegedly imported by the subject firm's customers are paper moving machinery and are not considered "like or directly" competitive with rubber floats, elastomeric foam components and rubber fusers produced by the subject firm, and thus do not meet the eligibility requirements of the Trade Act of 1974.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 22nd day of January, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3311 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,029]**

### Symtech, Inc., Spartanburg, South Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2004 in response to a petition filed on behalf of workers at Symtech, Spartanburg, South Carolina.

This petition was initiated in error; it is a duplicate of the petition filed on behalf of workers of the subject firm under petition number TA–W–53,461. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Attached to the duplicate petition was a letter from one of the petitioner's seeking further investigation of the denial of petition TA–W–53,461. The Department will review the information supplied by the petitioner to determine whether further investigation of TA–W–53,461 is warranted.

Signed at Washington, DC this 21st day of January, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3320 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,032]**

### Thermotech Company, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 16, 2004 in response to a petition filed by a company official on behalf of workers at Thermotech Company, El Paso, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 21st day of January 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3319 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,020]**

### Tri Star Precision, Inc., Gilberts, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2004 in response to a petition filed by a company official on behalf of workers at Tri Star Precision, Inc., Gilberts, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 23rd day of January, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3314 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,970]**

### Tyson Foods, Inc., Augusta, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 9, 2004 in response to a petition filed by a company official on behalf of workers at Tyson Foods, Inc., Augusta, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 21st day of January, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–3323 Filed 2–13–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0222(2004)]**

### Standard on Derricks (29 CFR 1910.181); Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for comment.

**SUMMARY:** OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Standard on Derricks (29 CFR 1910.181). The paperwork provisions of the Standard specify requirements for: Marking the rated load on derricks, inspecting derrick ropes, and preparing certification records to verify that the markings and inspections have been done. Certification records must be maintained and disclosed upon request.

**DATES:** Comments must be submitted by the following dates:

*Hard Copy:* Your comments must be submitted (postmarked or received) by April 19, 2004.

*Facsimile and electronic transmission:* Your comments must be received by April 19, 2004.

**ADDRESSES:**

**I. Submission of Comments**

*Regular mail, express delivery, hand-delivery, and messenger service:* Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0222(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

*Facsimile:* If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0222(2004), in your comments.

*Electronic:* You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/*.

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

**II. Obtaining Copies of the Supporting Statement for the Information Collection Request**

The Supporting Statement for the Information Collection Request is available for downloading from OSHA's Web site at *www.osha.gov*. The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Theda Kenney at (202) 693–2222.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney, Directorate of Standards

and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among employees by ensuring that the derrick is not used to lift loads beyond its rated capacity and that all the ropes are inspected for wear and tear.

*Marking the Rated Load and Capacity (paragraph (c)(1).* Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations, the manufacturer provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the employees to assure the derricks are used as designed and not overloaded or used beyond the range specified in the charts.

*Rope Inspections (paragraph(g)).* Paragraph (g)(1) requires employers to thoroughly inspect all running rope in use, and do so at least once a month. In addition, before using rope which has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

*Disclosure of Charts Under Paragraph (c) and Inspection Certification Records Under Paragraph (g).* Requires the disclosure of charts and inspection certification records if requested during an OSHA inspection.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

**III. Proposed Actions**

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified in the Standard on Derricks (29 CFR 1910.181). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

*Type of Review:* Extension of a currently-approved information-collection requirement.

*Title:* Derricks (29 CFR 1910.181).

*OMB Number:* 1218–0222.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government; Federal Government.

*Number of Respondents:* 10,000.

*Frequency of Recordkeeping:* Annually; Semiannually; On occasion.

*Average Time per Response:* Varies from one minute (.02 hour) to maintain rated load charts to 10 minutes (.17 hour) to inspect rope on derricks.

*Total Annual Hours Requested:* 19,404.

**IV. Authority and Signature**

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on February 10, 2004.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 04–3372 Filed 2–13–04; 8:45 am]

**BILLING CODE 4510–26–M**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office

### National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

*Name of Committee:* National Industrial Security Program Policy Advisory Committee (NISPPAC).

*Date of Meeting:* March 12, 2004.

*Time of Meeting:* 10 a.m.–noon.

*Place of Meeting:* National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Thomas Jefferson Room 122, Washington, DC 20408.

*Purpose:* To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than February 27, 2004. ISOO will provide additional instructions for gaining access to the location of the meeting.

*For further information contact:* J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, Washington, DC 20408, telephone number (202) 219–5250

Dated: February 10, 2004.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 04–3385 Filed 2–13–04; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meeting

**TIME AND DATE:** 10 a.m., Thursday, February 19, 2004.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Request from a Federal Credit Union to Convert to a Community Charter.

2. *Final Rule:* Sections 701.20 and 741.2 of NCUA's Rules and Regulations, Suretyship and Guaranty; Maximum Borrowing Authority.

3. *Final Rule:* Part 708a of NCUA's Rules and Regulations, Conversion of Insured Credit Unions to Mutual Savings Bank

4. *Interim Final Rule and Request for Comment:* Part 745 of NCUA's Rules and Regulations, Share Insurance Coverage for Living Trust Accounts.

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 04–3483 Filed 2–12–04; 3:07 pm]

**BILLING CODE 7535–01–M**

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, January 22, 2004, through February 5, 2004. The last biweekly notice was published on February 3, 2004 (69 FR 5200).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 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. The basis for this proposed determination for each amendment request is shown below.

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. Within 60 days after the date of publication of this notice, 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.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place 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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, 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 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 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/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, 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 general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the

requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include 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/requestor to relief. A petitioner/requestor 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.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, 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 by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 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*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

*AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of amendment request:* December 23, 2003.

*Description of amendment request:* The licensee proposed to revise Section 4.5.D.2 of the Technical Specifications. This change would allow the licensee to leak test the Main Steam Isolation Valves (MSIV) at a lower pressure to eliminate the risk of lifting the disc of the inboard MSIV from its seat, producing inaccurate test data. The inboard MSIV would then have to be plugged before the leak test can be repeated. The current leak rate requirement is 0.05(0.75)La at Pa, where La is the maximum allowable leak rate, and Pa is the calculated peak containment pressure. This amendment would change this requirement to a leak rate of ≤11.9 standard cubic feet per hour (scfh) at a pressure ≥20 psig. The leak rate of 11.9 scfh is a more conservative value based on control room habitability analysis, and 20 psig is based on the fact that post-accident pressure peaks in 2 to 3 seconds after an accident and would quickly drop below 20 psig. There is no physical changes to plant design associated with this amendment.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment would change the pressure at which the leak rate of the MSIV is performed, while the leak rate test standard would be made more conservative than the current standard. No hardware design change is associated with the proposed amendment. Changing the MSIV leak test criterion would have no impact on the performance of the MSIVs. Thus, the proposed amendment would create no adverse effect on the functional performance of any plant structure, system, or component (SSC). All SSCs will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of previously analyzed postulated accidents. Accordingly, the proposed amendment would lead to no increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create

the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is not the result of a hardware design change, nor does it lead to the need for a hardware design change. There is no change in the methods the unit is operated. As a result, all SSCs will continue to perform as previously analyzed by the licensee, and previously evaluated and accepted by the NRC staff. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, and did not propose to operate any component in a less conservative manner, the proposed amendment will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment request involves no significant hazards consideration.

*Attorney for licensee:* Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

*NRC Section Chief:* Richard J. Laufer.

*Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina*

*Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina*

*Date of amendments request:* December 19, 2003, as supplemented January 14, 2004.

*Description of amendment request:* The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated December 19, 2003, as supplemented by letter dated January 14, 2004.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Allen G. Howe.

*Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Date of amendment request:* December 8, 2003.

*Description of amendment request:* The amendment involves a one-time revision to the steam generator (SG) inservice inspection frequency requirements in Technical Specification 4.4.5.3a. to allow a 40-month inspection interval after the first inservice inspection following SG replacement, rather than after two consecutive inspections resulting in C–1 classification.

*Basis for proposed no significant hazards consideration determination:*

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. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revises the steam generator inspection frequency to allow a 40-month inspection frequency after the first inservice inspection following SG replacement, rather than after two consecutive inspections resulting in C–1 classification. The "C–1" category is defined in the Technical Specifications as having inspection results that indicate "less than 5% of the total tubes inspected are degraded tubes and none of the inspected tubes are defective."

The 100% inspection of the open steam generator tubes performed during RFO [Refueling Outage]–11 represents a quantity of tubes inspected that is significantly greater than the amount required by the Technical Specifications over two successive inspective periods (*i.e.*, 3% of the total number of tubes in all steam generators required in the first inspection following SG replacement and the same quantity of the tubes to be examined in the second inspection). The RFO–11 100% tube inspection did not indicate the tubes had experienced degradation from the cycle of operation.

The assessment of the condition of the steam generator tubes indicated the structural condition of the tubing had not changed during the first cycle of operation following steam generator replacement and these results that indicated the tubes would still meet their structural criteria over the proposed inspection frequency. The steam generator tube inspection meets the current industry examination guidelines without performing inspections during the next refueling outage.

The steam generator inspection frequency extension does not introduce a new failure mode or impact any other plant systems or components. The proposed change does not alter plant design. The HNP [Harris Nuclear Plant] steam generator tubes do not have an active damage mechanism which could lead to the potential of primary-to-secondary steam generator leakage.

Therefore, the proposed inspection frequency change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to extend the steam generator tube inspection frequency does not impact the design or operation of the steam generators or any other plant structure, system or component. Extending the inspection frequency of the steam generator tubes does not introduce any new failure modes. The proposed change does not alter plant design basis, or alter any potential accident previously evaluated.

The proposed change revises the steam generator inspection frequency to allow a 40-month inspection interval after the first inservice inspection following SG replacement, rather than after two consecutive inspections resulting in C–1 classification. The first steam generator inspection following replacement inspected 100% of the open tubing in all three steam generators. This inspection exceeded the existing technical specification inspection over the two consecutive inspections. This inspection indicated there was no service-induced degradation in the steam generator tubes. The HNP first cycle inspection results were comparable with other recent Westinghouse model replacement steam generators.

Therefore, the proposed inspection frequency change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The steam generator tubes are an integral part of the reactor coolant system pressure boundary. The tubes are expected to maintain primary system pressure and inventory. The tubes are a barrier to keep radioactive fission products in the reactor coolant system from transferring to the secondary system. The steam generator tubes transfer the heat from the primary system to the secondary system. The ability of the steam generator tubes to perform these functions depends on the integrity of the tubes.

Steam generator tube integrity is a function of design, environment, and current physical condition. Extending the steam generator tube inspection frequency by one operating cycle will not alter the function or design of the steam generators. The steam generator tube inspections performed during the first outage following steam generator replacement demonstrated that the tubes do not have an active damage mechanism, and the scope of these inspections significantly exceeded the requirements of the Technical Specifications. These inspection results were comparable to similar inspection results for second generation Alloy 690 models of replacement steam generators installed at other plants, and subsequent inspections at those plants yielded results that support this extension request. The improved design of the replacement steam generators also provides reasonable assurance that significant tube degradation is not likely to occur over the proposed operating period.

Therefore, the proposed inspection frequency change does not involve a significant reduction in a margin of safety.

Based on the above, Progress Energy Carolinas, Inc. [Carolina Power & Light Company] concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

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.

*Attorney for licensee:* Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Allen Howe.

*Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* November 5, 2003.

*Description of amendment requests:* The proposed change allows entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated November 5, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

*NRC Section Chief:* John A. Nakoski.

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of amendment request:* August 19, 2003.

*Description of amendment request:* The proposed amendment would modify Note 5 to Pilgrim Nuclear Power Station Technical Specification (TS) Table 3.2.C–1, to change the Rod Block Monitor (RBM) power-dependent Low Power Set Point (LPSP) allowable value from ≤ 29% to ≤ 25.9%. The proposed change would make the RBM LPSP consistent with plant procedures and the Core Operating Limits Report (COLR) allowable value used in compliance with TS 5.6.5.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed Rod Block Monitor (RBM) power dependent Low Power Set Point (LPSP) of ≤ 25.9% corrects the incorrect value of ≤ 29% in Note 5 of TS Table 3.2.C–1 and is more restrictive than the incorrect value. The proposed set point allowable value of ≤ 25.9% provides rod block protection over a wider range from ≤ 25.9% to 100%, instead of ≤ 29% to 100%, thereby enforcing RBM protection against rod withdrawal error at a lower power level. Also, the proposed requirement is consistent with the core operating limits report and is in accordance with License Amendment 138.

The proposed RBM LPSP value ensures safe operation of the plant during startup and run modes. This requirement is not an accident precursor. The proposed analytical value ≤ 25.9% was derived from the Average Power Range Monitor, Rod Block Monitor and Technical Specification (ARTS) improvement program methodology that was approved by License Amendment 138 and complies with the analytical methods required by Technical Specification 5.6.5. The proposed change provides additional assurance that the core operating limits are followed for safe operation and assumptions for core operating limits are met.

Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident [from] any accident previously evaluated?

*Response:* No.

The proposed change does not involve a change to the plant design or a new mode of equipment operation and enforces previously evaluated conditions. As a result, the proposed changes do not affect parameters or conditions that could contribute to the initiation of any new of different kind of accident. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change increases the margin of safety by providing additional assurance that the RBM downscale trip is not bypassed for reactor power ≥ 25.9% of rated thermal power and is based on previously evaluated methodologies. Therefore, the proposed change does not involve a significant reduction in the 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.

*Attorney for licensee:* J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

*NRC Section Chief:* Darrell J. Roberts (Acting).

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of amendment request:* December 8, 2003.

*Description of amendment request:* The proposed amendment would delete a portion of the Pilgrim Nuclear Power Station (Pilgrim) Technical Specification (TS) 4.6.A.2, "Primary System Boundary—Thermal and Pressurization Limitations," and the associated TS Table 4.6–3, "Reactor Vessel Material Surveillance Program Withdrawal Schedule." The amendment would replace the existing Reactor Vessel Material Surveillance Program with the Boiling Water Reactor Vessel and Internal Project (BWRVIP) Integrated Surveillance Program (ISP) and Supplemental Surveillance Program

(SSP). The BWRVIP ISP/SSP would be incorporated into the Pilgrim Updated Final Safety Analysis Report.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes to the licensing basis continue to assure that applicable regulatory requirements are met and the same assurance of reactor pressure vessel integrity continues to be provided. The proposed changes to the TS[s] and licensing basis follow the [U.S. Nuclear Regulatory Commission] NRC Safety Evaluation approving the implementation of the ISP. The proposed changes ensure that the reactor pressure vessel will continue to be operated within the design, operational, and testing limits.

The proposed changes do not modify the reactor coolant pressure boundary, (*i.e.*, there are no changes in operating pressure, materials, or seismic loading). The proposed changes do not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the control of radiological consequences is affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not involve a modification to the design of plant structures, systems, or components. Thus, no new modes of operation are introduced by the proposed change. The proposed change will not create any failure mode not bounded by previously evaluated accidents. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed implementation of ISP has been previously approved by the NRC and found to provide an acceptable alternative to plant-specific reactor vessel material surveillance programs. Operation of Pilgrim within the program ensures that the reactor vessel materials will continue to behave in a non-brittle manner, thereby preserving the original safety design bases. Therefore, the proposed change does 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.

*Attorney for licensee:* J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

*NRC Section Chief:* Darrell J. Roberts, Acting.

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of amendment request:* January 16, 2004.

*Description of amendment request:* The proposed amendment would approve an engineering evaluation performed in accordance with Pilgrim Nuclear Power Station Technical Specification (TS) 3.6.D.3 to justify continued power operation with safety relief valve (SRV) –3A and SRV–3D discharge pipe temperatures exceeding 212 degrees Fahrenheit (°F) for greater than 24 hours as required by TS 3.6.D.4.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Indication of elevated Safety Relief Valve (SRV) discharge pipes temperature is attributed to leakage past the SRVs. Excessive leakage, corresponding to temperatures greater than 255 °F, has the potential to affect SRV operability by affecting the SRV setpoint or response time. Continued operation with the discharge pipes of the SRVs indicating temperatures less than 255 °F ensures that the leakage past the SRVs is maintained below the threshold for a leakage rate that would potentially have an effect on SRV setpoint or response time.

Administrative controls are in place to ensure that margin to the 255 °F value is maintained to assure reliable operation and to reduce the potential for damage to the pilot seat and disc. The SRVs continue to perform their intended design/safety function with no adverse effect because the leakage past the SRVs is maintained below the threshold for a leakage rate that could potentially have an adverse impact on the ability of the SRVs to perform their design functions. The impact of the leakage on other systems is small and all systems continue to be able to perform their intended design functions. Current accident analyses remain bounding and there is no significant increase in the consequences of any accident previously evaluated. In addition, as a result of the leakage, normal plant operating parameters are not affected and consequently there is no increased risk in a plant transient.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated[.]

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Continued plant operation with elevated discharge pipe temperatures for SRV–3A & 3D within the bounds of the established administrative controls ensures that the leakage past the SRVs is maintained below the threshold for a leakage rate that would potentially have an effect on SRV setpoint or response time. This ensures that the SRVs will perform their intended design/safety function. The leakage does not adversely impact the ability of any system to perform its design function. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Continued operation with the discharge pipes of SRV–3A & 3D indicating temperatures in excess of 212 °F does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The leakage does not result in excess SRV setpoint drift or response time changes. The imposed administrative controls on plant operation provide assurance that there will be no adverse effect on the ability of the SRVs to perform their intended design/safety function. There are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety. Therefore, the proposed change does 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.

*Attorney for licensee:* J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

*NRC Section Chief:* Darrell J. Roberts, Acting.

*Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of amendment request:* November 25, 2003.

*Description of amendment request:* Exelon Generation Company, LLC, the licensee, is proposing a change to the Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications (TSs) contained in Appendix A to Operating Licenses NPF–39 and NPF–85, respectively. The proposed changes involve relocating the Reactor Coolant System (RCS) chemistry Limiting Conditions for Operation (LCO) from the Technical Specifications (TSs) to the Technical Requirements Manual (TRM). Additionally, proposed changes to TS RCS specific activity requirements involve removing various items and modifying the surveillance frequency of the isotopic analysis for Dose Equivalent I–131 from at least once per 31 days to once per 7 days.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No. The proposed relocation of the reactor coolant system chemistry requirements from Technical Specifications (TS) to the Technical Requirements Manual (TRM) is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. Conductivity, chloride and pH limits are not assumed to be an initiator of any analyzed event, nor are these limits assumed in the mitigation of consequences of accidents.

The proposed elimination from TS of the reactor coolant system specific activity requirements involving E-bar, gross beta, and gross gamma does not involve the modification of any plant equipment or affect basic plant operation. Specific activity is not assumed to be an accident initiator, and the specific activity requirements remaining in TS provide reasonable assurance that the reactor coolant specific activity is maintained at a sufficiently low level to preclude offsite doses from exceeding a small fraction of the limits of 10 CFR part 100 in the event of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No. The proposed changes to relocate the reactor coolant system chemistry requirements from TS to the TRM, and to eliminate the reactor coolant system specific activity requirements involving E-bar, gross beta, and gross gamma, do not involve any physical alteration of plant equipment and do not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No. The proposed change to the reactor coolant system chemistry requirements involves the relocation of current TS requirements to the TRM based on regulatory guidance and previously approved changes for other stations. The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by requirements that are retained, but relocated from the TS to the TRM.

The proposed change also involves the elimination from TS of the reactor coolant system specific activity requirements involving E-bar, gross beta, and gross gamma. The specific activity requirements remaining in TS provide reasonable assurance that the reactor coolant specific activity is maintained at a sufficiently low level to preclude offsite doses from exceeding a small fraction of the limits of 10 CFR Part 100 in the event of an accident. As a result, the proposed change does not adversely affect existing plant safety margins.

Therefore, 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.

*Attorney for licensee:* Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 2301 Market Street, Philadelphia, PA 19101.

*NRC Section Chief:* Darrell Roberts, Acting.

*Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of amendments request:* December 19, 2003, as supplemented January 14, 2004.

*Description of amendment request:* The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated December 19, 2003, as supplemented by letter dated January 14, 2004.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Allen G. Howe.

*Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1 (NMP1), Oswego County, New York*

*Date of amendment request:* January 9, 2004.

*Description of amendment request:* The licensee proposed to revise the Technical Specifications (TSs) and the Updated Final Safety Analysis Report (UFSAR) by replacing the current plant-specific reactor pressure vessel (RPV) material surveillance program with the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP). Specifically, the proposed amendment would (1) delete the current reactor vessel material specimen surveillance schedule in Section 3/4.2.2, "Minimum Reactor Vessel Temperature for Pressurization;" (2) delete the special reporting requirement regarding material surveillance specimen examination in Section 6.6.6.a; and (3) approve changes in the UFSAR to reflect the licensee's participation in the ISP and use of a methodology for determining neutron fluences.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes implement an ISP that has been evaluated by the NRC as meeting the requirements of paragraph III.C of Appendix H to 10 CFR [Part] 50; remove a TS surveillance requirement that prescribes a plant-specific withdrawal schedule for RPV surveillance specimens; and delete an unnecessary reporting requirement relating to RPV surveillance specimen examination. The proposed changes provide the same assurance of RPV integrity as has always been provided. Implementation of an ISP is not a precursor or initiator of any accident previously evaluated. No physical changes to the plant will result from the proposed changes. The proposed changes will not cause the RPV or interfacing systems to be operated outside of any design or testing limits, and will not alter any assumptions or initial conditions previously used in evaluating the radiological consequences of accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes revise the NMP1 licensing bases to reflect participation in the BWRVIP ISP. The ISP was approved by the NRC staff as an acceptable material surveillance program that complies with 10 CFR [Part] 50, Appendix H. No physical changes to the plant will result from the proposed changes. The proposed changes do not affect the design or operation of any system, structure, or component. As an alternate monitoring program, the ISP cannot create a new failure mode involving the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes have no impact on the margin of safety of any TS. There is no impact on safety limits or limiting safety system settings. The changes do not affect any plant safety parameters or setpoints. No physical or operational changes to the plant will result from the proposed changes.

The RPV material surveillance program requirements contained in 10 CFR [Part] 50, Appendix H provide assurance that adequate margins of safety exist during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the reactor coolant pressure boundary may be subjected over its service lifetime. The BWRVIP ISP has been approved by the NRC staff as an acceptable material surveillance program that complies with 10 CFR [Part] 50, Appendix H. The ISP will provide the material surveillance data that will assure that the safety margins required by the NRC regulations are maintained.

Therefore, 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.

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Richard J. Laufer.

*Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP2), Oswego County, New York*

*Date of amendment request:* January 9, 2004.

*Description of amendment request:* The licensee proposed to revise the licensing basis documented in the Updated Safety Analysis Report (USAR) by replacing the current plant-specific reactor pressure vessel (RPV) material surveillance program with the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP). Specifically, the proposed amendment would approve revising the USAR to reflect the licensee's participation in the ISP and

use of a methodology for determining neutron fluences.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change implements an ISP that has been evaluated by the NRC [Nuclear Regulatory Commission] as meeting the requirements of paragraph III.C of Appendix H to 10 CFR [Part] 50. The proposed change provides the same assurance of RPV integrity as has always been provided. Implementation of an ISP is not a precursor or initiator of any accident previously evaluated. No physical changes to the plant will result from the proposed change. The proposed change will not cause the RPV or interfacing systems to be operated outside of any design or testing limits, and will not alter any assumptions or initial conditions previously used in evaluating the radiological consequences of accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change revises the NMP2 licensing bases to reflect participation in the BWRVIP ISP. The ISP was approved by the NRC staff as an acceptable material surveillance program that complies with 10 CFR [Part] 50, Appendix H. No physical changes to the plant will result from the proposed change. The proposed change does not affect the design or operation of any system, structure, or component. As an alternate monitoring program, the ISP cannot create a new failure mode involving the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change has no impact on the margin of safety of any TS [Technical Specification]. There is no impact on safety limits or limiting safety system settings. The change does not affect any plant safety parameters or setpoints. No physical or operational changes to the plant will result from the proposed change.

The RPV material surveillance program requirements contained in 10 CFR [Part] 50, Appendix H provide assurance that adequate margins of safety exist during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the reactor coolant pressure boundary may be subjected over its service lifetime. The BWRVIP ISP has been approved by the NRC staff as an acceptable material surveillance program that complies with 10 CFR [Part] 50, Appendix H. The ISP will provide the material surveillance data that will assure that the safety margins required by the NRC regulations are maintained.

Therefore, the proposed change does 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.

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Richard J. Laufer.

*Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of amendment request:* January 16, 2004.

*Description of amendment request:* The proposed amendment is to revise Technical Specifications (TS) for the Kewaunee Nuclear Power Plant (KNPP). The proposed change would revise (1) the containment closure TS to allow the equipment hatch to be open during refueling operations and/or during movement of irradiated fuel assemblies within containment, (2) the containment tests TS to require verification of the ability to close the equipment hatch periodically during refueling operations, and (3) the control room post-accident recirculation system TS to include requirements for operability during fuel handling operations in which the fuel that is being moved has been irradiated less than 30 days ago.

*Basis for proposed no significant hazards consideration determination:* 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?

*Response:* No.

The proposed change would allow the containment equipment hatch to remain open during irradiated fuel movement in containment. This penetration is not an initiator of any accident. The probability of a fuel handling accident (FHA) in the containment is unaffected by the position of the equipment hatch. Adoption of this change requires analyses, approved by the [Nuclear Regulatory Commission] NRC staff, demonstrating that the dose consequences of a FHA with the equipment hatch open are acceptable. Therefore, the proposed change does 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?

*Response:* No.

The proposed change does not involve the addition or modification of any plant equipment. Also, the proposed change would not alter the design, configuration, or method of operation of the plant beyond the standard functional capabilities of the equipment. The proposed change involves a change to the Technical Specifications (TS) that would allow the equipment hatch to remain open during irradiated fuel movement within the containment. Having the equipment hatch open does not create the possibility of a new accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Analysis demonstrates that the resultant doses associated with a fuel handling accident are well within the appropriate acceptance limits. This change removes a defense-in-depth barrier that the analysis did not credit but provides additional restrictions on fission product release. Thus, this proposed change has the potential for an increased dose at the site boundary due to a FHA; however, the analysis demonstrates that the resultant doses are well within the appropriate acceptance limits. Without the containment structure, analysis demonstrates that the dose consequences are still approximately 20% of the allowable value for the control room dose and less than 2% of the allowable value for offsite dose. Thus, the margin of safety has not been significantly reduced. Administrative provisions that facilitate closing the equipment hatch following an evacuation of the containment further reduces the offsite doses in the event of a FHA and provides additional margin to the calculated offsite doses. Therefore, the proposed change does 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.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

*NRC Section Chief:* L. Raghavan.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* December 1, 2003.

*Description of amendment request:* The proposed amendment will modify Fort Calhoun Station Technical Specification (TS) 2.7, "Electrical Systems," TS Table 3–5, "Minimum Frequencies for Equipment Tests," and TS 5.0, "Administrative Controls." This proposed amendment modifies the requirements for diesel generator (DG) fuel oil for consistency with the Improved Standard Technical Specifications (ISTS) and adds requirements for DG lubricating oil and DG starting air. The proposed changes will assure that the required quality and quantity of DG fuel oil is maintained and also will assure that sufficient DG lubricating oil and DG starting air is maintained.

*Basis for proposed no significant hazards consideration determination:* 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will revise Technical Specification (TS) 2.7, "Electrical Systems," TS Table 3–5, "Minimum Frequencies for Equipment Tests," and TS 5.0, "Administrative Controls." This proposed amendment modifies the requirements for Diesel Generator (DG) Fuel Oil for consistency with the Improved Standard Technical Specifications (ISTS) and adds requirements for DG Lubricating Oil, and DG Starting Air. The Surveillance interval of Diesel Fuel Supply Surveillance [Table 3–5, Item 9 (changed to 9a)] is being changed from daily to monthly. The 31 day Surveillance interval is adequate to ensure that a sufficient supply of fuel oil is available, since low level alarms are provided and unit operators would be aware of any large uses of fuel oil during this period. Therefore, this change does not significantly increase the probability of a previously analyzed accident. Further, an increase of the Surveillance interval will not affect the capability of the component or system to perform its function. Therefore, this change does not significantly increase the consequences of a previously analyzed accident. All other changes are more restrictive changes. The changes will ensure that proper Limiting Conditions for Operation are entered for equipment or functional inoperability. There are no physical alterations being made to the DGs or related systems.

With regards to TSTF–254, Rev. 2, the proposed change does not require any physical change to any plant systems, structures, or components nor does it require any change in systems or plant operations. The proposed change does not require any change in safety analysis methods or results. The water content of the DG fuel oil system is not considered an accident initiator. The change to reduce the fuel oil sampling frequency for water content from 31 days to 92 days does not present a significant impact to DG operability or significantly degrade DG performance and, therefore, does not present a significant detrimental impact on structures, systems, or components that support accident recovery.

With regards to TSTF–374, Rev. 0, the proposed changes relocate the specific ASTM Standard references from the Administrative Controls Section of TS to a licensee-controlled document. Since any change to the licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, "Changes, tests and experiments," no increase in the probability or consequences of an accident previously evaluated is involved. In addition, the "clear and bright" test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The proposed changes revise Bases for TS 3.2 to reference the current specific ASTM Standards. The Bases for TS 3.2 are revised to indicate that the API gravity is tested in accordance with ASTM D287.

Relocating the specific ASTM Standard references from the TS to a licensee-controlled document, allowing a water and sediment content test to be performed to establish the acceptability of new fuel oil, and revising the TS Bases will not affect nor degrade the ability of the DGs to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the DGs, any plant configuration, systems, equipment, or operational characteristics. There will be no changes in operating modes, or safety limits, or instrument limits. With the proposed changes in place, Technical Specifications will retain requirements for the DGs.

With regards to TSTF–254, Rev. 2, the accident analyses do not consider the water content of the EDG fuel oil systems. Failure of a DG to start and load upon accident initiation is considered in the accident analyses, but is not affected by the proposed change to the fuel oil sampling Surveillance intervals. The existing analyses remain unchanged and the proposed TS change does not affect any accident initiators that would create a new accident.

With regards to TSTF–374, Rev. 0, the proposed changes relocate the specific ASTM Standard references from the Administrative Controls Section of the TS to a licensee-controlled document. In addition, the "clear and bright" test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The proposed changes [] also revise the Bases of TS 3.2 to reference the current specific ASTM Standards. The Bases for TS 3.2 is revised to indicate that the API gravity is tested in accordance with ASTM D287.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes clarify the regulatory requirements for the DGs. The Completion Times and Frequencies established are within those invoked by the present Technical Specifications or equal to those previously reviewed and approved for use by the NRC. The proposed changes will not alter any physical or operational characteristics of the DGs and associated systems and equipment.

With regards to TSTF–254, Rev. 2, the proposed change does not require any change in accident analysis methods or results. The safety margin as established in the current license basis remains unchanged. Reducing the Surveillance interval for DG fuel oil sampling does not, in itself, result in a measurable impact on the operability of the DGs. The water content of the DG fuel oil systems will continue to be assessed and corrective action taken should any condition adverse to DG operability be detected.

With regards to TSTF–374, Rev. 0, [t]he proposed changes relocate the specific ASTM Standard references from the Administrative Controls Section of [the] TS to a licensee-controlled document. Instituting the proposed changes will continue to ensure the use of current applicable ASTM Standards to evaluate the quality of both new and stored fuel oil designated for use in the emergency DGs. The detail associated with the specific ASTM Standard references is not required to be in the TS to provide adequate protection of the public health and safety, since the TS still retain the requirement for compliance with the applicable ASTM Standard. Changes

to the licensee-controlled document are performed in accordance with the provisions of 10 CFR 50.59. Should it be determined that future changes involve a potential reduction in a margin of safety, NRC review and approval would be necessary prior to implementation of the changes. This approach provides an effective level of regulatory control and provides for a more appropriate change control process.

The "clear and bright" test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The proposed changes revise the Bases for TS 3.2 to reference the current specific ASTM Standards. The Bases for TS 3.2 is revised to indicate that the API gravity is tested in accordance with ASTM D287. The level of safety of facility operation is unaffected by the proposed changes since there is no change in the intent of the TS requirements of assuring fuel oil is of the appropriate quality for emergency DG use. The proposed changes provide the flexibility needed to maintain state-of-the-art technology in fuel oil sampling and analysis methodology.

Therefore, the proposed changes do not involve a 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.

*Attorney for licensee:* James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Stephen Dembek.

*PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of amendment request:* December 12, 2003.

*Description of amendment request:* Proposed changes to the Technical Specifications (TSs) of the Control Room Emergency Filtration System (CREPS) would no longer require it to be OPERABLE in COLD SHUTDOWN. However, CREPS would have to be operable during operations with potential for draining the reactor vessel. The TSs for the Control Room Ventilation Radiation Monitor would be revised so that OPERABILITY would no longer be required during refueling. However, OPERABILITY would be required for operations with potential for draining the reactor vessel.

*Basis for proposed no significant hazards consideration determination:* 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. Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

*Response:* No.

The proposed changes to Table 3.3.7.1–1, Radiation Monitoring Instrumentation, and Table 4.3.7.1–1, Radiation Monitoring Instrumentation Surveillance Requirements, adds "recently" to modify irradiated fuel in the "*" footnote to provide consistency with TSTF–51, Rev. 2. Proposed changes to eliminate Operational Condition 5 from Tables 3.3.7.1–1 and 4.3.7.1–1, Control Room Ventilation Radiation Monitor, Operational Condition 4 from Control Room Emergency Filtration (CREF) System and adding operations with the potential for draining the reactor vessel (OPDRV) to Tables 3.3.7.1–1 and 4.3.7.1–1 footnote "*" and the CREF System are consistent with NUREG–1433 Vol. 1, Rev. 2, Standard Technical Specifications, General Electric Plants.

The proposed changes associated with the fuel handling accident (FHA) do not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report (UFSAR). The FHA for the Hope Creek Generating Station (HCGS) is defined as a drop of a fuel assembly over irradiated assemblies in the reactor core 24 hours after reactor shutdown. Alternative Source Term (AST) is used to evaluate the dose consequences of a postulated accident. The FHA has been analyzed without credit for Secondary Containment, Filtration Recirculation and Ventilation System (FRVS), and CREF system. The resultant radiological consequences are within the acceptance criteria set forth in 10 CFR 50.67 and Regulatory Guide (RG) 1.183. This amendment does not alter the methodology or equipment used in fuel handling operations. The equipment hatch, personnel air locks, other containment penetrations, or any component thereof is not an accident initiator. Actual fuel handling operations are not affected by the proposed changes.

Consequently the probability of a previously analyzed FHA is not affected by the proposed amendment. No other accident initiator is affected by the proposed changes.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or radiological consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

*Response:* No.

The proposed changes to Table 3.3.7.1–1, Radiation Monitoring Instrumentation, and Table 4.3.7.1–1, Radiation Monitoring Instrumentation Surveillance Requirements, adds recently" to modify irradiated fuel in the "*" footnote provides consistency with TSTF–51, Rev. 2. Proposed changes to eliminate Operational Condition 5 from Tables 3.3.7.1–1 and 4.3.7.1–1, Control Room Ventilation Radiation Monitor, Operational Condition 4 from CREF System and adding OPDRV to Table 3.3.7.1–1 and 4.3.7.1–1 footnote "*" and the CREF System are consistent with NUREG–1433 Vol. 1, Rev. 2, Standard Technical Specifications, General Electric Plants.

The proposed amendment will not create the possibility for a new or different type of accident from any accident previously evaluated because changes to the allowable activity in the primary and secondary systems do not result in changes to the design or operation of these systems. The evaluation of the effects of the proposed changes indicates that all design standard and applicable safety criteria limits are met. Equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes do not significantly affect the mitigative function of these systems.

Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

*Response:* No.

The proposed changes to Table 3.3.7.1–1, Radiation Monitoring Instrumentation, and Table 4.3.7.1–1, Radiation Monitoring Instrumentation Surveillance Requirements, adds "recently" to modify irradiated fuel in the "*" footnote provides consistency with TSTF–51, Rev. 2. Proposed changes to eliminate Operational Condition 5 from Tables 3.3.7.1–1 and 4.3.7.1–1 Control Room Ventilation Radiation Monitor, Operational Condition 4 from CREF System and adding OPDRV to Table 3.3.7.1–1 and 4.3.7.1–1 footnote "*" and the CREF System are consistent with NUREG–1433 Vol. 1, Rev. 2, Standard Technical Specifications, General Electric Plants.

The proposed changes revise the TS to establish operational conditions where specific activities represent situations during which significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences remain at or below the regulatory guidelines. Safety margins and analytical conservatisms are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed TS continue[s] to ensure that the total effective dose equivalent (TEDE) for the control room (CR), the exclusion area boundary (EAB), and low population zone (LPZ) boundaries are below the corresponding acceptance criteria specified in 10 CFR 50.67 and RG 1.183.

Therefore, these changes do not involve a significant reduction in 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.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Section Chief:* Darrell Roberts, Acting.

*PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of amendment request:* December 24, 2003.

*Description of amendment request:* The amendment request changes the Technical Specifications (TSs) to allow the use of GE14 fuel in reload cycle 13. Specifically, the proposed changes modify the TSs to reflect the use of General Electric (GE) core reload analysis methodologies. The proposed changes would revise the limiting conditions for operation for the recirculation loops to modify and add action statements to provide further thermal limit control during single-loop operation to be consistent with GE methodology specified in the core operating limits report. The proposed changes also modify the TS definitions and TS requirements for average planar linear heat generation rate consistent with NUREG–1433, "Standard Technical Specifications (STS) General Electric Plants, BWR/4," Revision 2. Additionally, TS Section 6.9.1.9 would be revised to correct an error in a previous amendment that inadvertently removed a reference. The NRC-approved reference would be restored to TS 6.9.1.9 in the format prescribed in NUREG–1433, Revision 2.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The revised information and references relative to the fuel vendor's calculation methodologies throughout the Technical Specifications are considered to be administrative in nature because they reflect the NRC approved methodologies to be used by PSEG Nuclear LLC and the fuel vendor to develop operating and safety limits for the fuel and core designs. The changes to the Recirculation System Action statements ensure the appropriate adjustments are made to core operating limits for single loop operation, and the Core Operating Limits Report (COLR) will still be developed in accordance with NRC approved methods. These proposed changes do not alter the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

There are no significant increases in the radiological consequences of an accident previously evaluated. The basis of the COLR and the PSEG Nuclear LLC and fuel vendor calculation methodologies is to ensure that no mechanistic fuel damage is calculated to occur if the limits on plant operation are not violated. The COLR will continue to preserve the existing margin to fuel damage and the probability of fuel damage is not increased.

Therefore, the proposed change does not involve an increase in the probability or radiological consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

These changes do not involve any new method for operating the facility, any changes to setpoints, or any new facility modifications for the reload core operation. No new initiating events or transients result from these changes.

The revised information and references relative to the fuel vendor's calculation methodologies throughout the Technical Specifications are considered to be administrative in nature because they reflect the NRC approved methodologies to be used by PSEG Nuclear LLC and the fuel vendor to develop operating and safety limits for the fuel and core designs. The changes to the Recirculation System Action statements ensure the appropriate adjustments are made to core operating limits for single loop operation, and the COLR will still be developed in accordance with NRC-approved methods.

Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The revised information and references relative to the fuel vendor's calculation methodologies throughout the Technical Specifications are considered to be administrative in nature because they reflect the NRC approved methodologies to be used by PSEG Nuclear LLC and the fuel vendor to develop operating and safety limits for the fuel and core designs. The changes to the Recirculation System Action statements ensure the appropriate adjustments are made to core operating limits for single loop operation, and the COLR will still be developed in accordance with NRC approved methods. The proposed changes will continue to ensure that the plant is operated within specified acceptable fuel design limits. Therefore, the proposed Technical Specifications 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.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Section Chief:* Darrell Roberts, Acting.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the *Federal Register* as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic

Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

*Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi*

*Date of application for amendment:* May 12, 2003, as supplemented by letter dated October 29, 2003.

*Brief description of amendment:* The amendment changes administrative Technical Specification (TS) 5.5.12 regarding containment integrated leakage rate testing (ILRT) and TS 3.6.5.1.1 regarding drywell bypass leak rate testing (DWBT). The change would allow for a one-time extension of the interval from 10 to 15 years for performance of the next ILRT and DWBT.

*Date of issuance:* January 28, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No:* 164.

*Facility Operating License No. NPF–29:* The amendment revises the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 10, 2003 (68 FR 34666).

The October 29, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2004.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* March 13, 2003.

*Brief description of amendment:* The amendment deletes Technical Specification (TS) 6.8.4.c, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system at the Hope Creek Generating Station.

*Date of issuance:* January 29, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 180 days.

*Amendment No.:* 149.

*Facility Operating License No. NPF–57:* This amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** May 27, 2003 (68 FR 28856).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 2004.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* June 17, 2003.

*Brief description of amendment:* The amendment corrects typographical errors in the Technical Specification (TS) Index and deletes TS 4.6.2.1.b.2.b, verification that thermal power is less than or equal to 1% of rated thermal power at least once per hour when the suppression chamber temperature exceeds 95 °F. The proposed TS change is consistent with the standard TSs for General Electric Plants, Boiling-Water Reactor/4 (NUREG–1433, Revision 2).

*Date of issuance:* January 30, 2004.

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 150.

*Facility Operating License No. NPF–57:* This amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** July 8, 2003 (68 FR 40717).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2004.

No significant hazards consideration comments received: No.

*PSEG Nuclear, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* June 6, 2003.

*Brief description of amendments:* The amendments modify the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specifications (TSs) by: (1) Adding a footnote to TS 3/4.11.2.5 to clarify the applicability of the Limiting Condition for Operation while the system is removed from service for maintenance; (2) revising Surveillance Requirement 4.11.2.5 to delete the reference to hydrogen concentration; and (3) revising the corresponding TS Bases.

*Date of issuance:* January 29, 2004.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment Nos.:* 261 and 243.

*Facility Operating License Nos. DPR–70 and DPR–75:* The amendments revised the TSs.

*Date of initial notice in* ***Federal Register:*** August 5, 2003 (68 FR 46246).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 2004.

No significant hazards consideration comments received: No.

*TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas*

*Date of amendment request:* July 18, 2003.

*Brief description of amendments:* The amendments modified Technical Specification (TS) requirements for mode change limitations to adopt Industry/TS Task Force (TSTF) change TSTF–359, "Increase Flexibility in Mode Restraints."

*Date of issuance:* January 23, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 109 and 109.

*Facility Operating License Nos. NPF–87 and NPF–89:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** October 14, 2003 (68 FR 59222).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 9th day of February 2004.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–3180 Filed 2–13–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Nuclear Waste Technical Review Board Meeting

*Panel Meeting:* March 9–10, 2004—Las Vegas, Nevada: The U.S. Nuclear Waste Technical Review Board's Panel on the Natural System will meet to discuss how components of the natural

geologic system would work together to isolate radioactive waste in a Yucca Mountain repository.

Pursuant to its authority under section 5051 of Pub. L. 100–203, Nuclear Waste Policy Amendments Act of 1987, members of the U.S. Nuclear Waste Technical Review Board's Panel on the Natural System will meet in Las Vegas, Nevada, on Tuesday, March 9, and Wednesday, March 10, 2004. The panel will discuss issues related to a proposed repository at Yucca Mountain in Nevada, particularly how components of the natural geologic system would work together to isolate radioactive waste. The meetings will be open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of activities undertaken by the U.S. Department of Energy (DOE) as stipulated in the Nuclear Waste Policy Amendments Act.

The panel meeting will be held at the Crowne Plaza Hotel; 4255 South Paradise Road; Las Vegas, NV 89109; (tel.) 702–369–4400; (fax) 702–369–3770. The meetings are tentatively scheduled to begin at 8 a.m. each day. Meeting times will be confirmed when agendas are issued, approximately one week before the meeting dates.

The purpose of the meeting is to examine aspects of the natural system that control transport of radionuclides from Yucca Mountain. Water flow will be the primary factor controlling that transport. The meeting is structured to consider the aspects of water flow and associated hydrogeologic phenomena that are important for estimating the amount of time required for the transport of radionuclides from the repository horizon to the regulatory boundary. The meeting is designed to gather information to help address the following questions.

- What is the median travel time of a molecule of water from the repository horizon at Yucca Mountain to the regulatory boundary?
- How much might travel time change for a radionuclide in that water, considering all factors relevant to radionuclide transport? Are all of the factors equally likely?
- Are the DOE's radionuclide transport estimates conservative, realistic, or optimistic?
- What is the technical basis for these estimates? What is the Board's assessment of the technical validity of the technical basis? What can be done to improve the technical basis of the DOE estimates?
- How much could the technical basis be improved by 2010 if the DOE pursues a rigorous scientific program?

On Tuesday, the meeting will focus on features and processes relevant to water flow and radionuclide transport in the unsaturated zone. Presentations will be made on unsaturated flow, sorption, matrix diffusion, colloid-facilitated transport, and radionuclide transport abstractions for total system performance assessment (TSPA). Evidence in the rock strata for evaluating the influence of climate change in the repository also will be presented.

On Wednesday, the features and processes relevant to water flow and radionuclide transport in the saturated zone will be discussed. Presentations will be made on the role of climate in the deposition of sediment that can slow radionuclide transport, the representation of climate in TSPA, ground-water flow of the Death Valley region and the Yucca Mountain site, sorption, matrix diffusion, colloid-facilitated transport, and radionuclide transport abstractions for TSPA.

The agendas on both days will conclude with roundtable discussions of the topics presented. Time will be made available at the end of each day for public comments. Those wanting to speak are encouraged to sign the public-comment register at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Detailed agendas will be available approximately one week before the meeting. Copies of the agendas can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov*. Transcripts of the meetings will be available on the Board's web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff, beginning on April 9, 2004.

A block of rooms has been reserved at the Crowne Plaza hotel for meeting participants. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. To receive the meeting rate, reservations should be made by February 20, 2004.

For more information, contact the NWTRB: Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel.) 703–235–4473; (fax) 703–235–4495.

Dated: February 5, 2003.

**William D. Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 04–3298 Filed 2–13–04; 8:45 am]

BILLING CODE 6820–AM–M

## POSTAL RATE COMMISSION

### Briefing on New Cost Model

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of public briefing.

**SUMMARY:** The Postal Rate Commission's advisory staff will present a briefing and demonstration of its new Windows-based CRA/Cost Rollforward model on Thursday, February 26, 2004 at 10 a.m. in the Commission's hearing room. The briefing will address the history of the Commission's model, reasons why the new version was developed, and components of the new model. A question-and-answer session will follow. The meeting is open to the public.

**DATES:** Thursday, February 26, 2004.

**ADDRESSES:** Postal Rate Commission (hearing room), 1333 H Street NW., Washington, DC 20268–0001, Suite 300.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6818.

**SUPPLEMENTARY INFORMATION:** The CRA/Cost Rollforward model is the primary tool used to disaggregate the total costs of the U.S. Postal Service. It implements the attributable cost theory the Postal Service and the Commission use to allocate costs to the classes and subclasses of mail. It also prepares and prints reports used in Commission decisions and in Postal Service workpapers and exhibits to testimony.

The Commission has developed a new Windows-based version of this model. The new version is intended to replace the DOS-based version the Commission has used in every rate filing since Docket No. R84–1.

The new version uses Microsoft Excel spreadsheet software. It is intended to be closer in structure and format to the Postal Service's current CRA/Cost Rollforward model than the version the Commission has been using. It is also intended to be easier to operate and more compatible with the software used to develop much of the primary cost input into model.

The Commission's advisory staff and the contractor responsible for programming the new model will present a public briefing on the new model on February 26, 2004 at 10 a.m. in the Postal Rate Commission's hearing

room. The briefing will describe the history of the Commission's CRA/Cost Rollforward model, identify reasons why the new version was developed, and describe the new model's components. The demonstration will use cost data from Docket No. R2001–1, which is the most recently completed omnibus rate filing. A question-and-answer session will follow with members of the Commission's staff responsible for the development and future operation of the model. All interested parties are invited to attend.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 04–3305 Filed 2–13–04; 8:45 am]

BILLING CODE 7710–FW–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #P019]**

### State of Maine

As a result of the President's major disaster declaration for Public Assistance on February 5, 2004 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Franklin, Kennebec, Oxford, Piscataquis, Somerset and Waldo Counties in the State of Maine constitute a disaster area due to damages caused by severe storms, flooding, snow melt and ice jams occurring on December 10, 2003 and continuing through December 31, 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 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.061 |
| Non-Profit Organizations With Credit Available Elsewhere | 4.875 |

The number assigned to this disaster for physical damage is P01911.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: February 9, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–3374 Filed 2–13–04; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 4605]**

### Notice of Intent To Establish the Secretary of State's Advisory Committee on Leadership and Management

*Summary:* Pursuant to section 9(a) of the Federal Advisory Committee Act (Pub. L. 92–463) and under the general authority of the Secretary and the Department of State, as derived from the President's constitutional authority and as set forth in sections 2656 and 2651a of Title 22 of the United States Code and other relevant statutes, this is a notice of intent to establish the Secretary of State's Advisory Committee on Leadership and Management.

The Advisory Committee is being created as a vehicle to address leadership and management issues as they arise and not in response to a specific issue or pending concern. Members of the Advisory Committee may include former senior U.S. government officials and members of congress and representatives of corporations, not-for-profit non-governmental organizations, professional associations, public policy or academic institutions, and other experts as needed. All meetings of this Committee will be published ahead of time in the **Federal Register**.

Additionally, the establishment of the Secretary of State's Advisory Committee on Leadership and Management is essential to the conduct of Department of State business, and is in the public interest. Further information regarding this committee may be obtained from Julie Wilhelm, Office of Management Policy, U.S. Department of State, Washington, DC 20520, phone (202) 647–1285.

Dated: February 4, 2004.

**Marguerite Coffey,**

*Deputy Director, Office of Management Policy, Department of State.*

[FR Doc. 04–3381 Filed 2–13–04; 8:45 am]

BILLING CODE 4710–01–P

## DEPARTMENT OF STATE

**[Public Notice 4607]**

### Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9 a.m. to noon on Tuesday, March 2, 2004 in Room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. Topics for the March 2 meeting are transparency and anti-corruption efforts, China's economic growth, public-private partnerships, and subcommittee updates.

The public may attend this meeting as seating capacity allows. Admittance to the State Department building will be by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number (or other identification number, such as driver's license number), date of birth, and citizenship to the ACIEP Executive Secretariat by fax (202) 647–5936 (Attention: Gwendolyn Jackson), e-mail (*jacksongl@state.gov*), or telephone (202) 647–0847 by February 26. On the date of the meeting, persons who have registered should use the C Street entrance.

For further information about the meeting, please contact Eliza Koch, ACIEP Secretariat, by e-mail (*kochek@state.gov*) or telephone (202) 647–1310.

Dated: February 10, 2004.

**Eliza K. Koch,**

*ACIEP Secretariat, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, Department of State.*

[FR Doc. 04–3382 Filed 2–13–04; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF STATE

**[Public Notice 4603]**

### Shipping Coordinating Committee

*Summary:* The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:00 p.m. on Monday, March 8, 2004, in Room 2415 of the United

States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 12th Session of the International Maritime Organization (IMO) Sub-Committee on Flag State Implementation to be held at IMO Headquarters in London, England from March 15th to 19th.

The primary matters to be considered include:

—Measures to enhance maritime security;
—Responsibilities of Governments and measures to encourage flag State compliance;
—Port State control on seafarer's working hours;
—Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
—Regional cooperation on port State control;
—Reporting procedures on port State control detentions and analysis and evaluation of reports;
—Mandatory reports under MARPOL 73/78;
—Casualty statistics and investigations;
—Port State control officer training for bulk carriers;
—Development of provisions on transfer of class;
—Review of the Survey Guidelines under the HSSC (resolution A.746(18));
—Marking the ship's plans, manuals and other documents with the IMO ship identification number;
—Illegal, unregulated and unreported (IUU) fishing and implementation of resolution A.925(22);
—Consideration of IACS unified interpretations;
—Unique IDs for companies and registered owners;
—Review of reporting requirements for reception facilities.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Commander Linda Fagan, Commandant (G–MOC), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001 or by calling (202) 267–2978.

Dated: February 4, 2004.

**Steven Poulin,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 04–3379 Filed 2–13–04; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF STATE

**[Public Notice 4604]**

### Shipping Coordinating Committee

**SUMMARY:** The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, April 13, 2004 in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to prepare for the Eighty-Eighth Session of the International Maritime Organization's (IMO) Legal Committee (LEG 88) scheduled from April 19, to April 23, 2004.

The provisional LEG 88 agenda calls for the Legal Committee to review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol). Also the Committee will examine the draft Wreck Removal Convention. To be addressed as well is the Provision of Financial Security which includes a progress report on the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers, and includes follow-up resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The Legal Committee will examine places of refuge, measures to protect crews and passengers against crimes committed on vessels, as well as monitoring of the implementation of the HNS Convention, access of news media to the proceedings of institutionalized committees, and matters arising from the twenty-second extraordinary session of the Council and the twenty-third regular session of the Assembly. Finally the committee will review technical cooperation: Subprogramme for maritime legislation in addition to allotting time to address any other issues that may arise on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Joseph F. Ahern or Lieutenant Martha Rodriguez, at U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *mrodriguez@comdt.uscg.mil*, telephone (202) 267–1527; fax (202) 267–4496.

Dated: February 4, 2004.

**Steve Poulin,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 04–3380 Filed 2–13–04; 8:45 am]

BILLING CODE 4710–07–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Request for Comments and Notice of Public Hearing Concerning Proposed United States-Andean Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of intent to initiate negotiations on a free trade agreement between the United States and Colombia, Peru, Ecuador, and Bolivia (hereinafter "the Andean countries"), request for comments, and notice of public hearing.

**SUMMARY:** The United States intends to initiate negotiations with four Andean countries on a free trade agreement. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

**DATES:** Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by March 10, 2004. A hearing will be held in Washington, DC, beginning on March 17, 2004, and will continue as necessary on subsequent days. Written comments are due by noon, March 30, 2004.

**ADDRESSES:** Submissions by electronic mail: *FR0411@ustr.gov* (notice of intent to testify and written testimony); *FR0412@ustr.gov* (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee,

at (202) 395–3475. All other questions should be directed to Bennett Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

Under section 2104 of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through TPA procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On November 18, 2003, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with the Andean countries and identified specific objectives for the negotiations. In addition, the USTR has requested the ITC's probable economic effects advice. This notice solicits views from the public on these negotiations and provides information on a hearing, which will be conducted pursuant to the requirements of the Trade Act of 1974.

**2. Public Comments and Testimony**

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of one of the Andean countries, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Andean trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on (1) product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Andean origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Andean countries' sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and the Andean countries that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant commercial and investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental issues that should be addressed in the negotiations.

(k) Relevant labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers, laws, or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country. At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on March 17, 2004, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by March 10, 2004. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, March 30, 2004. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

**3. Requirements for Submissions**

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "United States—Andean Free Trade Agreement" followed by (as appropriate) "Notice of Intent to Testify," "Testimony, or "Written Comments." Documents should be submitted as either WordPerfect, SWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with

the characters "P–". The "P–" or "BC–" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 04–3390 Filed 2–13–04; 8:45 am]

BILLING CODE 3190–W3–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Little Rock National Airport, Little Rock, AR

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Little Rock National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before March 18, 2004.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Deborah H. Schwartz, Executive Director, Little Rock National Airport, at the following address: Ms. Deborah H. Schwartz, Executive Director, Little Rock National Airport, One Airport Drive, Little Rock Arkansas 72202–4489.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Little Rock National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 26, 2004, the FAA determined that the application to use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 25, 2004.

The following is a brief overview of the application.

*Level of the proposed PFC:* N/A.

*Proposed charge effective date:* N/A.

*Proposed charge expiration date:* N/A.

*Total estiamted PFC revenue:* $4,643,000.

*PFC application number:* 04–04–U–00–LIT.

Brief description of proposed project(s):

**Project To Impose and Use PFC's**

1. Runway 4R–22L Extension; Roosevelt Road and Grundfest Drive Relocations.

*Proposed class or classes of air carriers to be exempted from collecting PFC:* N/A.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division. Planning and Programming Branch, ASW–610, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Little Rock National Airport.

Issued in Forth Worth, Texas on January 29, 2004.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 04–3398 Filed 2–13–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

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

**ACTION:** Notice and request for Comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on December 11, 2003 (68 FR 69119).

**DATES:** Comments must be submitted on or before March 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington,

DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On December 11, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 68 FR 69119. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Track Safety Standards (Gage Restraint Measurement Systems).

*OMB Control Number:* 2130–0010.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* N/A.

*Abstract:* Qualified persons inspect track and take action to allow safe passage of trains and ensure compliance with prescribed Track Safety Standards. FRA amended the Track Safety Standards to provide procedures for track owners to use Gage Restraint Measurement Systems (GRMS) to assess the ability of their track to maintain proper gage. Under the current Track Safety Standards, track owners must evaluate a track's gage restraint capability through visual inspections conducted at frequencies and intervals specified in the standards. With this amendment, track owners may monitor gage restraint on a designated track segment using GRMS procedures. Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector.

*Annual Estimated Burden:* 1,766,159 hours.

*Title:* Special Notice For Repairs.

*OMB Control Number:* 2130–0504.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* FRA F 6180.8; FRA F 6180.8A.

*Abstract:* The Special Notice For Repairs is issued to notify the carrier in writing of an unsafe condition involving a locomotive, car, or track. The carrier must return the form after repairs have been made. The collection of information is used by State and Federal inspectors to remove freight car or locomotives until they can be restored to a serviceable condition. It is also used by State and Federal inspectors to reduce the maximum authorized speed on a section of track until repairs can be made.

*Annual Estimated Burden:* 6 hours.

*Title:* Designation of Qualified Persons.

*OMB Control Number:* 2130–0511.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* N/A.

*Abstract:* The collection of information is used to prevent the unsafe movement of defective freight cars. Railroads are required to inspect freight cars for compliance and to determine restrictions on the movements of defective cars.

*Annual Estimated Burden:* 40 hours.

**ADDRESSES:** Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503; Attention: FRA Desk Officer.

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 10, 2004.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 04–3399 Filed 2–13–04; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than April 19, 2004.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB

control number 2130–0545." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or via E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Passenger Train Emergency Preparedness.

*OMB Control Number:* 2130–0545.

*Abstract:* The collection of information is due to the passenger train emergency preparedness regulations set forth in 49 CFR parts 223 and 239 which require railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting operations of rail passenger service. The regulations require luminescent or lighted emergency markings so that passengers and emergency responders can readily determine where the closest and most accessible exit routes are located and how the emergency exit mechanisms are operated. Windows and doors intended for emergency access by responders for extrication of passengers must be marked with retro-reflective material so that emergency responders, particularly in conditions of poor visibility, can easily distinguish them from the less accessible doors and windows. Records of the inspection, maintenance and repairs of emergency windows and door exits, as well as records of operational efficiency tests, will be used to ensure compliance with the regulations.

*Affected Public:* Businesses.

*Respondent Universe:* 18 railroads.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 233.13—Waivers | 18 railroads | 6 requests | 2 hours | 12 | $456 |
| 223.9(d); 239.107—Marking of Emergency Exits. | 18 railroads | 10,475 decals | 5 minutes | 873 | 25,317 |
| —Marking door and window exists w clear instructions. | 18 railroads | 1,300/6,320 decals | 4 min./5 min. | 614 | 17,806 |
| 239.107(b)—Records of inspection, Maintenance, & repair. | 18 railroads | 1,800 window rcds. + 1,800 door records. | 20 min./3 min. | 690 | 20,010 |
| 239.101, 239.201—Filing of Emergency Preparedness Plan. | 2 railroads | 2 plans | 158 hours | 316 | 20,856 |
| —Amendments to Emergency Plans. | 2 railroads | 2 amendments | 3.2 hours | 6 | 228 |
| 239.101(ii)—Maintenance of Current Emergency Phone Numbers. | 2 railroads | 2 records | 1 hour | 2 | 76 |
| —Subsequent Years | 18 railroads | 20 records | 30 minutes | 10 | 380 |
| 239.101(a)(3)—Joint Operations | 4 railroad pairs | 4 plans | 16 hours | 64 | 3,328 |
| —Subsequent Years | 1 railroad pair | 1 plan | 16 hours | 16 | 832 |
| 239.101(a)(5)—Liaison with Emergency Responders. | 2 railroads | 2 plans | 6 hours | 12 | 456 |
| —Subsequent Years | 20 railroads | 19 plans/1,200 copies. | 30 min./5 min. | 110 | 4,180 |
| 239.101(a)(7)(ii) Passenger Safety Information. | 5/12 railroads | 1,300 cards/5 progs./5 safety messages/12 progs./12 msgs.. | 5 min./16 hrs./48 hrs./8 hrs.. | 812 | 30,060 |

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 239.105—Debriefing and Critique | 18 railroads | 5 debrief sess. | 27 hours | 135 | 2,190 |
| 239.301—Operational Efficiency Tests | 18 railroads | 11,075 tests/rcds. | 5 minutes | 923 | 38,766 |

*Total Responses:* 35,363.

*Estimated Total Annual Burden:* 4,595 hours.

*Status:* Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 10, 2004.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 04–3400 Filed 2–13–04; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 6197

**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, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6197, Gas Guzzler Tax.

**DATES:** Written comments should be received on or before April 19, 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:* Gas Guzzler Tax.

*OMB Number:* 1545–0242.

*Form Number:* Form 6197.

*Abstract:* Internal Revenue Code section 4064 imposes a gas guzzler tax on the sale, use, or first lease by a manufacturer or first lease by a manufacturer or importer of automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is computed on Form 197. The IRS uses the information to verify computation of the tax and compliance with the law.

*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 organzations and individuals or households.

*Estimated Number of Respondents:* 605.

*Estimated Time Per Respondent:* 4 hours, 47 minutes.

*Estimated Total Annual Burden Hours:* 2,892.

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 Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–3403 Filed 2–13–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1098–T

**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 1098–T, Tuition Payments Statement.

**DATES:** Written comments should be received on or before April 19, 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 Larnice Mack, 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:* Tuition Payments Statement.

*OMB Number:* 1545–1574.

*Form Number:* Form 1098–T.

*Abstract:* Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information to the IRS and to students. Form 1098–T has been developed to meet this requirement.

*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 organzations and not-for-profit institutions.

*Estimated Number of Responses:* 21,078,651.

*Estimated Time Per Response:* 13 min.

*Estimated Total Annual Burden Hours:* 4,848,090.

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 Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–3404 Filed 2–13–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1098–E

**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 1098–E, Student Loan Interest Statement.

**DATES:** Written comments should be received on or before April 19, 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:* Student Loan Interest Statement.

*OMB Number:* 1545–1576.

*Form Number:* Form 1098–E.

*Abstract:* Section 6050S(b)(2) of the Internal Revenue Code requires persons (financial institutions, governmental units, etc.) to report $600 or more of interest paid on student loans to the IRS and the students. Form 1098–E is used for this purpose.

*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 organzations, not-for-profit institutions, and State, local or tribal governments.

*Estimated Number of Respondents:* 8,761,303.

*Estimated Time Per Respondent:* 7 min.

*Estimated Total Annual Burden Hours:* 1,051,357.

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 10, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–3405 Filed 2–13–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 5 Taxpayer Advocacy Panel (That Represents the States of North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Kansas, Missouri, Oklahoma, and Texas)

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestion on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Monday, March 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1–888– 912–1227 (toll-free), or 718–488– 2085 (non toll-free).

**SUPPLEMENTARY INFORMATION:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, March 8, 2004 from 3 p.m. to 4 p.m. c.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888– 912–1227 or 718–488 –2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201.

The agenda will include the following: Various IRS issues.

Dated: February 10, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–3406 Filed 2–13–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Washington and Wyoming)

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Monday, March 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Judi Nicholas at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, March 15, 2004 from 2 p.m. Pacific Time to 3 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: February 10, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–3407 Filed 2–13–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

**DATES:** The meeting will be held Tuesday, March 16, 2004, at 1:30 p.m., Eastern Standard Time.

**FOR FURTHER INFORMATION CONTACT:** Barbara Toy at 1–888–912–1227, or 414–297–1611.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, March 16, 2004, from 1:30 to 3 p.m., Eastern standard time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Dated: February 10, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–3408 Filed 2–13–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, March 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, March 17, 2004 from 2 pm to 3 pm ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include: Various IRS issues.

Dated: February 10, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–3409 Filed 2–13–04; 8:45 am]

BILLING CODE 4830–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**
**Agricultural Marketing Service**
Country of origin labeling:
Beef, lamb, pork, fish, perishable agricultural commodities, and peanuts; mandatory labeling; comments due by 2-27-04; published 12-22-03 [FR 03-31492]
Spearmint oil produced in Far West; comments due by 2-23-04; published 1-23-04 [FR 04-01404]

**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
Chronic Wasting Disease Herd Certification Program:
Captive deer and elk; interstate movement requirements; comments due by 2-23-04; published 12-24-03 [FR 03-31543]

**COMMERCE DEPARTMENT**
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Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic Fishery Management Council; meetings; comments due by 2-27-04; published 1-5-04 [FR 04-00090]
Northeastern United States fisheries—
Multispecies fishery; comments due by 2-27-04; published 12-29-03 [FR 03-31895]
Northeast multispecies; comments due by 2-27-04; published 1-29-04 [FR 04-01541]
West Coast States and Western Pacific fisheries—
Western Pacific pelagic; sea turtle take mitigation measures; comments due by 2-27-04; published 1-28-04 [FR 04-01811]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**
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**DEFENSE DEPARTMENT**
Federal Acquisition Regulation (FAR):
Labor standards; contracts involving construction; comments due by 2-23-04; published 12-23-03 [FR 03-31232]

**ENERGY DEPARTMENT**
**Federal Energy Regulatory Commission**
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Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
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Rural health care support mechanism; comments due by 2-23-04; published 12-24-03 [FR 03-31684]
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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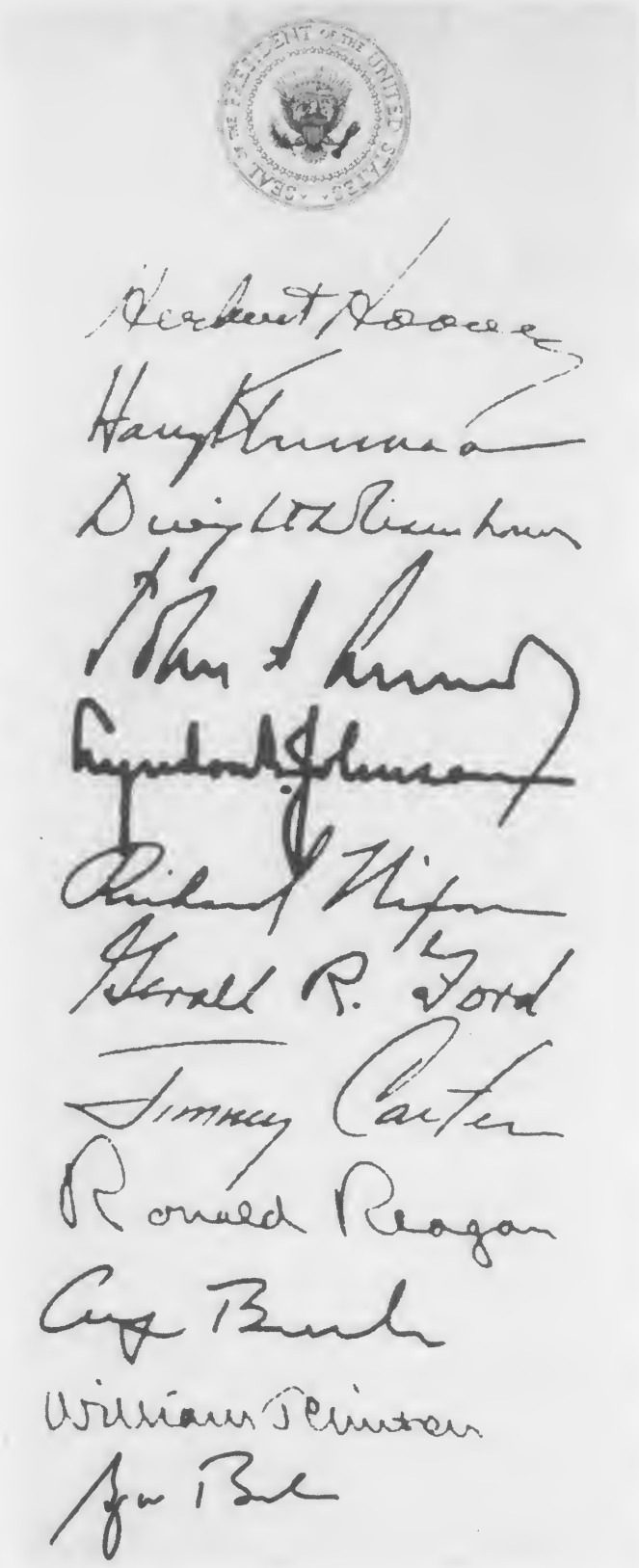

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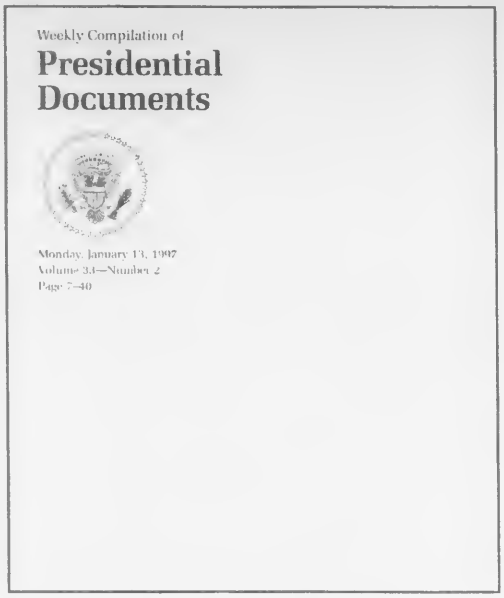


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