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

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2004–19 of December 30, 2003

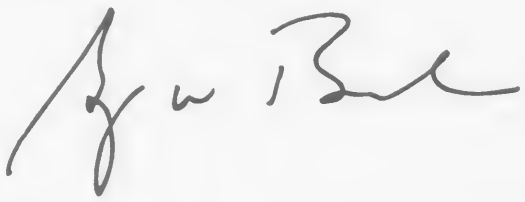
Waiver of Restrictions on Assistance to the Republic of Uzbekistan under the Cooperative Threat Reduction Act of 1993 and Title V of the FREEDOM Support Act

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 1306 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), I hereby certify that waiving the restrictions contained in subsection (d) of section 1203 of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952), as amended, and the requirements contained in section 502 of the FREEDOM Support Act (22 U.S.C. 5852) during Fiscal Year 2004 with respect to the Republic of Uzbekistan is important to the national security interests of the United States.

I have enclosed the unclassified report described in section 1306(b)(1) of the National Defense Authorization Act for Fiscal Year 2003, together with a classified annex.

You are authorized and directed to transmit this certification and report with its classified annex to the Congress and to arrange for the publication of this certification in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 30, 2003.

[FR Doc. 04–1148
Filed 1–15–04; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–103–5]

Importation of Artificially Dwarfed Plants in Growing Media from the People's Republic of China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants and plant products to add artificially dwarfed (penjing) plants of the species *Buxus sinica, Ehretia microphylla, Podocarpus macrophyllus, Sageretia thea,* and *Serissa foetida* from the People's Republic of China to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. We are taking this action in response to a request by the Government of China and after determining that the penjing plants established in growing media can be imported without resulting in the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This rule will relieve restrictions that currently allow these species to be imported only as bare-rooted plants.

EFFECTIVE DATE: February 17, 2004.

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

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2000, we published in the **Federal Register** (65 FR 56803–56806, Docket No. 98–103–1) a proposal to amend the regulations governing the importation of plants and plant products to allow artificially dwarfed plants (penjing) of the genera *Buxus, Ehretia (Carmona), Podocarpus, Sageretia,* and *Serissa* to be imported into the United States from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements. We proposed this action after assessing the pest risks associated with the importation of penjing established in growing media from the People's Republic of China under the conditions outlined in the proposed rule and determining that those plants could be imported into the United States without presenting a significant risk of introducing or disseminating dangerous plant pests. We solicited comments regarding the proposed rule for 60 days, ending November 20, 2000. We subsequently extended the comment period until December 20, 2000 (see 65 FR 75187, Docket No. 98–103–2, published on December 1, 2000).

In response to comments received on the proposed rule (discussed in detail later in this document), the Animal and Plant Health Inspection Service (APHIS) narrowed the application of the rule to five species of plants (*Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla*) from China and entered into consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). On April 10, 2003, FWS concluded the section 7 consultation process by concurring with APHIS's determination that the importation of penjing plants from China in growing media will not adversely affect federally listed or proposed endangered or threatened species or their habitats. The section 7 consultation for this rule is described later in this document.

Upon receiving concurrence from FWS, APHIS completed an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS's NEPA Implementing Procedures (7 CFR part 372). On September 15, 2003, we published in the **Federal Register** (68 FR 53956–53957, Docket No. 98–103–3) a notice announcing the availability of the environmental assessment, and solicited comments on the environmental assessment for 30 days ending October 15, 2003. On October 28, 2003, we published in the **Federal Register** (68 FR 61391–61392, Docket No. 98–103–4) another notice that extended the comment period on the environmental assessment for an additional 15 days ending November 12, 2003.

Risk Assessments and Risk Management Analysis

The risk assessments that supported our proposed rule (referred to elsewhere in this document as the 1996 risk assessments) identified pests that are known to be associated with the five species of penjing plants in China and assessed the risk posed by those pests in the absence of the mitigative effects of the requirements of § 319.37–8(e), which are designed to establish and maintain a pest-free production environment and ensure the use of pest-free seeds or parent plants. Because the original risk assessments were prepared in September 1996, APHIS believed it was appropriate to update them in order to bring them up to date with current APHIS guidelines [1] for pathway-initiated risk assessments. The 1996 risk assessments were based on guidelines applicable at the time those assessments were drafted, and the updates were necessary to provide the most transparent communication of risk possible at this time. The updated risk assessment documents are referred to elsewhere in this document as the 2003 supplementary risk assessments.

Further, as noted by commenters, the 1996 risk assessments did not contain a thorough description of how the mitigation measures required under the regulations in § 319.37–8(e) reduce the risk posed by the specific quarantine pests of penjing that were identified in the risk assessments. To address these

[1] Version 5.02, available on the Internet at: *http://www.aphis.usda.gov/ppq/pra/commodity/cpraguide.pdf.*

concerns, we have prepared a risk management analysis, "Pest Risk Management for Chinese Penjing Plants (September 15, 2003)," that includes a substantial discussion of how the risk mitigation measures required under this final rule mitigate the risks posed by the classes of quarantine pests that were identified as likely to follow the commodity import pathway. The 2003 risk management analysis, as well as the 2003 supplemental risk assessments are available on the Internet at *http://www.aphis.usda.gov/ppq/pim/*.

Determination by the Secretary

In this document, APHIS is adopting its proposal to allow the importation of penjing plants from China established in an approved growing medium as a final rule, with the changes discussed in this document. Specifically, we are allowing the importation of *Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla* penjing plants in growing media from China only.

Under § 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation of five species of penjing plants from China that are established in an approved growing medium in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings of the risk documents referred to earlier in this document and the Secretary's judgment that the application of the measures required under this rule will prevent the introduction or dissemination of plant pests into the United States.

Regulatory Requirements

Under this final rule, penjing plants of the species *Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla* imported in growing media are subject to the requirements of paragraph (a) of § 319.37–8 of the regulations, which requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

That combination approach found in § 319.37–8(e) provides conditions under which plants from 10 listed taxa may be imported into the United States established in an approved growing medium. In addition to other requirements, § 319.37–8(e):

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between APHIS and the plant protection service of the country where the plants are grown and between the foreign plant protection service and the grower;
- Requires the plants to be rooted and grown in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);
- Restricts the source of the seeds or parent plants used to produce the plants, and requires grow-out or treatment of parent plants imported into the exporting country from another country;
- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and
- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used successfully to mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

In addition to being subject to the general requirements of § 319.37–8(e), under this final rule, penjing plants imported from China in growing media must also meet the following requirements:

- The propagative materials used to produce the penjing plants may enter an approved greenhouse only as seeds, tissue cultures, unrooted cuttings, or rooted cuttings without growing media. Rooted cuttings may not be established or grown in soil at any time. Rooted cuttings may be established in a greenhouse or outside the greenhouse on raised benches (46 cm in height) in pots containing only APHIS approved growing media.
- When any cuttings are introduced into the greenhouse, they must be free of growing media, inspected, and found free of plant pests and then treated with a pesticide dip approved by the Animal and Plant Quarantine Service of the People's Republic of China that will control mites, scale insects, whiteflies, thrips, and fungi. The plants must be propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the Animal and Plant Quarantine Service of the People's Republic of China and found free of certain pests.
- The penjing plants must be grown in a greenhouse that meets the requirements of § 319.37–8(e) for at least 6 months immediately prior to export.
- While in the greenhouse, plants must be treated with appropriate pesticides at least once every 10 days or as needed for 3 months before shipping to maintain a pest-free condition.

These additional requirements were determined to be necessary according to risk analysis to mitigate the unique risks posed by the five species of penjing plants that are eligible for importation from China in growing media under this final rule.

Other Recent Revisions to Regulations Pertaining to Imported Artificially Dwarfed Plants

On August 19, 2002, APHIS published in the **Federal Register** a final rule (67 FR 53727–53731, Docket No. 00–042–2) that amended the regulations pertaining to all imported artificially dwarfed plants. Under the requirements established by that final rule (contained in § 319.37–5(q)), imported artificially dwarfed plants must be grown in accordance with the following requirements and be accompanied by a phytosanitary certificate containing declarations that those requirements have been met:

- The artificially dwarfed plants must be grown for at least 2 years in a greenhouse or screenhouse in a nursery registered with the government of the country where the plants were grown;
- The greenhouse or screenhouse in which the artificially dwarfed plants are grown must have screening with openings of not more than 1.6 mm on all vents and openings, and all

entryways must be equipped with automatic closing doors;

- The artificially dwarfed plants must be grown in pots containing only sterile growing media during the 2-year period when they are grown in a greenhouse or screenhouse in a registered nursery;
- The artificially dwarfed plants must be grown on benches at least 50 cm above the ground during the 2-year period when they are grown in a greenhouse or screenhouse in a registered nursery; and
- The plants and the greenhouse or screenhouse and nursery where they are grown must be inspected for any evidence of pests and found free of pests of quarantine significance to the United States at least once every 12 months by the plant protection service of the country where the plants are grown.

We wish to clarify that, for the purposes of the regulations, plants less than 2 years of age are not considered to be artificially dwarfed, even if they have been trained in the same manner as other artificially dwarfed plants. Although the regulations in § 319.37–5(q) require artificially dwarfed plants to be grown in a greenhouse for 2 years, plants that are less than 2 years of age may be imported subject to applicable regulations in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (§§ 319.37 through 319.37–14).

The regulations in § 319.37–5(q) were proposed and adopted after publication of our proposed rule regarding the importation of penjing from China in growing media, and were intended to address the risk that imported artificially dwarfed plants could be infested by longhorned beetles. These requirements do not apply to penjing plants imported from China in growing media under the regulations in § 319.37–8(e) unless the imported penjing plants are 2 years of age or older. Penjing plants less than 2 years of age that are grown in accordance with the requirements of § 319.37–8(e) are not likely to become infested with longhorned beetles due to pest-exclusionary greenhouse conditions. Furthermore, such plants are not likely to be of suitable size to provide harborage for wood-boring beetles.

We believe that plants that are 2 years of age or greater may reach dimensions that could provide harborage for longhorned beetles, and therefore, penjing plants imported from China in growing media that are 2 years of age or older must satisfy the requirements of this final rule and the requirements of § 319.37–5(q). For example, the regulations in § 319.37–5(q) require that plants be grown for 2 years in a greenhouse or screenhouse with screen openings no greater than 1.6 mm in size, while § 319.37–8(e) requires that plants be grown for 6 months in a greenhouse with screen openings no greater than 0.6 mm in size. Again, both requirements must be satisfied. One way to satisfy both requirements would be to grow the plants in accordance with § 319.37–5(q) for 18 months, and then move them to a greenhouse that meets the requirements of § 319.37–8(e) for 6 additional months. Alternately, the plants could be grown in a greenhouse that meets the requirements of § 319.37–8(e) for a total of 24 months, thus eliminating the need for multiple facilities and the movement of plants.

The current regulations in § 319.37–5(q) do not make it clear that plants less than 2 years of age are not subject to the regulations in that section. We are therefore clarifying that fact in this final rule. This change will not affect the way the current regulations are enforced, and is necessary to clarify what imported plants are subject to the requirements of § 319.37–5(q), especially in light of the revisions made to the regulations by this final rule.

Discussion of Public Comments on the Proposed Rule

We received eight comments on the proposed rule. Two comments, which arrived during the first 60 days of the comment period, simply asked for an extension of the comment period, which we granted. The other six comments were from representatives of plant industry organizations, an invasive species interest group, and representatives of State agricultural agencies.

We also received seven comments in response to our September 2003 notice of the availability of the environmental assessment. Some of those comments pertain to the risk documents or to the proposed rule for this action. All of these comments are addressed below, along with comments submitted during the comment period for the proposed rule.

Compliance and APHIS's Ability to Enforce

One commenter stated that due to budget cuts and downsizing in Federal agencies, it is unclear whether APHIS can continue to conduct adequate inspections, especially in the face of an increase in the amount of plant material entering the United States.

While some Federal agencies have been subject to budget cuts and downsizing, APHIS's appropriated funding for Agricultural Quarantine Inspection (AQI) Programs has doubled since 1998, from approximately $27.2 million to $55 million in 2002. Funds collected via AQI user fees have increased from $140.5 million in 1998 to $260 million in 2002. The inspections required under this rule will not be affected by the transfer of APHIS personnel to the Department of Homeland Security (DHS). All plants imported under this rule are required to be imported into Federal plant inspection stations,[2] which continue to be staffed by specially trained APHIS, not DHS, inspectors. APHIS has reviewed its resources and believes it has adequate resources available to ensure compliance with the conditions of the final rule.

Another commenter suggested that some inspectors may not be able to recognize every pest of risk, and claimed that APHIS's own pest interception data show that inspectors are often unable to identify the genus and species of intercepted pests.

When an unknown pest is found, inspectors may allow treatment of the commodity; they may allow the shipper to re-export the commodity to the country of origin, or, in some cases, to another country, or they may destroy the commodity, if necessary. Such decisions are based on the information that is available on the pests and are made in consultation with APHIS-Plant Protection and Quarantine's National Identification Service,[3] which is made up of national experts on pest identification.

One commenter stated that the conditions imposed by § 319.37–8 cannot be verified by APHIS because the cost of attempting to verify compliance is a significant expense and would require an unprecedented level of cooperation from other governments and their agencies.

Under the regulations in § 319.37–8, there must be an agreement between APHIS and a foreign entity for enforcement of the regulations in that section. In this case, the agreement will technically be between APHIS and the national plant protection organization of China. This agreement is referred to elsewhere in this document as the bilateral workplan. Each grower who wishes to export to the United States under the regulations must enter into an agreement with the national plant protection organization of the People's Republic of China whereby he or she must agree to comply with the

[2] A list of Federal plant inspection stations is contained in 7 CFR 319.37–14(b).

[3] See *http://www.aphis.usda.gov/ppq/nis/* for more information on National Identification Services.

provisions of the regulations in § 319.37–8 and to allow APHIS inspectors, and representatives of the People's Republic of China's national plant protection organization, access to the growing facility as necessary to monitor compliance with the provisions of that section. China's national plant protection organization is responsible for ongoing oversight of the program. APHIS inspectors will monitor for compliance with the regulations by making periodic visits to production sites, as is the case with current and past plants in growing media programs such as the following:

- In the Netherlands, two to four greenhouses (companies) have participated in the plants in growing media program each year since 1990. Both ferns and *Anthurium* have been grown and exported to the United States. Currently, three greenhouses are in the program. APHIS plant health specialists inspect the greenhouses 4 to 12 times a year for compliance with program requirements, including the absence of plant pests. No greenhouses have been found to be noncompliant, and no plant pests have been found on any of these visits.
- In Israel, one greenhouse growing ferns and African violets participated in the plants in growing media program between 1990 and 1994. This facility was inspected by APHIS plant health specialists three to five times a year. Again, no greenhouses were found to be noncompliant and no plant pests were found.

Based on our experience with these programs, we are confident that the safeguards work, and that we can verify compliance effectively.

One commenter questioned what will happen if parties are caught out of compliance, including in the event of pest- or disease-infested shipments.

If APHIS determines that certain species of penjing imported from China in growing media contain quarantine or actionable pests, APHIS will investigate the source of the detection and apply appropriate measures to mitigate the pest risk, including stopping imports from a specific producer or shutting down the entire program, if the circumstances show that either of these actions is warranted.

Risk Assessment

As noted earlier in this document, several commenters expressed that the rule should apply only to imports of *Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla* penjing plants, since those were the only species considered in the 1996 risk assessments. The commenters expressed concern that if the rule was applied at the genus level for each species without considering the unique risks posed by other species within the genus, imports would pose greater pest risks than APHIS estimated in its risk assessments.

We agree with commenters' concerns, and this final rule allows only the importation of *Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla* penjing plants, as those species were the only ones considered in the 1996 risk assessments.

Several commenters stated that APHIS should reexamine its 1996 pest risk assessments, analysis procedures, and policies to ensure that they are consistent with current levels of scientific knowledge and standards. Commenters suggested that the 1996 risk assessments should form "a link between scientific data and decision makers," but also that decisionmakers must have accurate and adequate scientific data upon which to base their decisions—which, the commenters argued, is not the case in this rulemaking. The commenters further claimed that the risk assessors' conclusions were not supported by enough scientific information and that the risk assessments should describe the processes and information sources used to estimate the risk posed by the importation of each plant species.

As noted elsewhere in this document, we have updated the 1996 risk assessment to bring them up to current standards. These updates included (1) inserting the data from the 1996 risk assessment into the risk assessment document format currently used by APHIS, (2) searching for additional research and data published since the 1996 risk assessment was prepared that could have a bearing on the findings of the risk assessment, and (3) preparing a risk management analysis to address how to reduce the risk posed by quarantine pests of the five species of penjing that can be expected to follow the import pathway. The 2003 supplemental risk assessments and risk management analysis also cite scientific evidence upon which conclusions were based.

We believe that by making the link between the identified quarantine pests and the mitigation measures more apparent, we have addressed the commenters' concerns about the need for a link between scientific data and decisionmakers. The 2003 risk assessment and risk management analysis are based on the best data available to us at the time the documents were drafted, and they provide a clear and rational basis as to why the five identified species of penjing imported from People's Republic of China in growing media will not lead to the introduction of plant pests or noxious weeds into the United States.

Further, the pest list contained in the 1996 and 2003 risk assessments are based on (1) a search of all available scientific literature and (2) APHIS's pest interception records for imported plants of the five penjing species. As such, we examined data on prior bare-root penjing imports and visited some of the production sites that would export as a result of the final rule. Furthermore, any exports of the five species of penjing by People's Republic of China would be contingent on an inspection of the production sites by APHIS and the execution of the bilateral workplan described earlier in this document. We believe our 2003 risk analysis provides an adequate analysis of the risks posed by quarantine pests, and documents how the measures in § 319.37–8(e) remove those pests from the import pathway.

Several commenters stated that basing a risk assessment on a literature search has some inherent weaknesses. One of the commenters stated that literature searches do not catch all pests due to the fact that pests have different common names, and because only the title words of literature are searched. Several commenters also stated that insufficient scientific literature and biological information regarding penjing pests exists to justify reliance upon a literature search, as the five species of penjing are not a major agricultural commodity and research has not been conducted to the necessary depth for every pest on every penjing species. Several commenters noted that penjing is an uncommon crop, and that as such, has not had the extensive research that more widely produced crops typically endure. Another commenter claimed that the risk potential for all the pest species identified may be high, yet due to a lack of information, the potential effects of penjing importation cannot be adequately addressed at this time. Another commenter stated that the 1996 risk assessment may not consider all potential pests, and relatedly, other commenters stated that the risk mitigations are not designed to protect against all potential unidentified pests.

The purpose of conducting an analysis of the risk posed by imported agricultural commodities is to evaluate available scientific evidence and to provide an evaluation of the risk associated with the importation of those commodities. As such, APHIS can only

make the determination to allow the importation of the commodity based on the current state of scientific knowledge. In developing the list of pests that are analyzed in the 1996 and 2003 risk assessments, we began with a list of pests provided to us by People's Republic of China. We then consulted applicable scientific literature (including field surveys done to date) and reviewed APHIS's records to determine what pests were intercepted on imported plants of the five penjing species. Literature searches are unique to each risk analysis, and typically begin with broad searches of both abstracts of publications and the entire text of publications, depending on the database being searched. These initial searches typically use scientific species, genus, and family names, as well as known common names of plants. As analysts learn more about the pests involved and their nomenclature, additional pest-specific searches are conducted. We believe these sources provide an adequate means to identify and assess pests of concern, even on plants considered to be uncommon crops.

While we do not believe there is a shortage of appropriate scientific information in this specific case, if APHIS were to regulate the trade of agricultural commodities based on the risk posed by unknown factors, such an action could be viewed as highly arbitrary, which could potentially affect the export markets for our own domestically produced commodities. Under the Plant Protection Act, APHIS protects American agriculture while facilitating the trade of agricultural commodities. There is always some uncertainty associated with the risk posed by imported agricultural products, and if zero risk were the standard applied, there would be no international trade in agricultural products. While we can never be certain that our methods, regulations, and policies will exclude pests 100 percent of the time, our goal is to do just that, to the extent practicable. We are confident that the measures required under this rule will mitigate the pest risk posed by importing penjing plants of the species *Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla* in approved growing media. Our judgment is supported by the fact that bare-rooted penjing plants and the growing media in which they will be imported have separately been imported from throughout the world for many years with no known associated pest introductions. Given that the plants in growing media will be subject to a number of additional requirements (the effects of which are considered and evaluated in the 2003 risk management analysis) that do not apply to bare-rooted plants, we believe that the risk posed by known and unknown pests is appropriately reduced, to the extent practicable, by the measures required by this final rule.

Several commenters stated that we had not included certain pests of concern in the 1996 pest risk assessments. The commenters also claimed that the risk assessments should be reevaluated in light of past detections of wood-boring citrus longhorned beetles that were believed to be associated with imported artificially dwarfed plants.

As described earlier in this document, in August 2002, APHIS amended the regulations pertaining to the importation of artificially dwarfed plants from all countries. Those amendments to the regulations were intended to address the risk that imported artificially dwarfed plants could contain longhorned beetles. Further, we are confident that our 1996 risk assessments and our 2003 risk assessment and management documents consider all pests known to be associated with the five species of penjing. Based on the findings of our risk documents, we believe that the measures contained in § 319.37–8(e) will effectively remove known quarantine pests from the import pathway. As stated previously, the measures contained in § 319.37–5(q) will effectively address the risk posed by longhorned beetles.

Risk Management

Several commenters claimed that inspection is not a reliable mitigation against many pests, including pathogens.

Inspection is only one of several risk mitigation measures required by this final rule to be applied to penjing plants imported from China in growing media, and is not intended to be the sole source of protection against the introduction of pests, including pathogens. The combined effects of several other measures required are described in detail in the 2003 risk management analysis. We believe the application of the measures required by the plants in growing media regulations in § 319.37–8(e), as revised, is sufficient to reduce the risk posed by penjing plants imported from China in growing media to the extent practicable.

One commenter suggested that APHIS should require plant defoliation prior to export of plants from China, since defoliation would eliminate many foliar pathogens and make visual inspections of the plant at the port of entry easier to conduct.

We are confident that the proposed preshipment inspection and pesticide sprays will remove foliar pests of concern from the import pathway. Furthermore, it is standard practice for inspectors at plant inspection stations to visually inspect the entire imported plant, including foliage.

Several commenters noted that the proposed rule's provisions allow field-grown plants to be moved into a greenhouse, and claimed that the risk posed by such an action is unacceptable due to the potential for field-grown plants to become infested with soil-based pests such as nematodes prior to entry into the greenhouse.

We agree that the risks noted by commenters should be further mitigated. In response, we are prohibiting the entry of field-grown plants into approved greenhouses. Under this final rule, the propagative materials used to produce artificially dwarfed (penjing) plants may enter an approved greenhouse only as seeds, tissue cultures, unrooted cuttings, or rooted cuttings with no attached growing media. Furthermore, cuttings may not be established or grown in soil at any time, but may be established in a greenhouse in approved media or outside the greenhouse on raised benches (46 cm in height) in pots containing only APHIS approved growing media. We believe this revision to our proposal reduces the risk that plants entering an approved greenhouse could be infested with nematodes or other soil-based pests to the extent practicable.

One commenter stated that the risk mitigations contained in the proposed rule rely too heavily on the use of chemicals and further suggested that serious alien pests are resistant to many highly toxic and persistent chemical insecticides. That commenter also noted that many effective pesticides are no longer available in the United States. Another commenter suggested that APHIS needs to require the use of specific chemicals and provide efficacy data for each one.

There is no specific scientific evidence that any of the quarantine pests affecting the five species of penjing are resistant to pesticides. We are confident that the measures required under the regulations in § 319.37–8(e) will reduce the risk posed by penjing plants imported from China, regardless of whether or not the pests are resistant to pesticides. Our judgment is supported by the fact that these plants have been imported bare-rooted for

many years, with no known associated pest introductions. Given that the plants in growing media will be subject to a number of additional requirements that do not apply to bare-rooted plants, we believe that the risks are appropriately mitigated.

APHIS generally does not require, by regulation, that specific pesticides be used to control pests as part of foreign import programs, given that pesticide labels are subject to change and given that certain pesticides may not be available in all countries. Rather, APHIS will not enter into a bilateral workplan with an exporting country unless the exporting country provides us with data on the efficacy of pesticides that are to be applied as part of a regulatory system.

One commenter claimed that the success of the proposed rule depends upon the cooperation and enforcement of the government of exporting country, which in many cases simply are inadequate or underfunded. The commenter claimed that compliance with the conditions spelled out in § 319.37–8(e) could only be assured if an inspector were on-site every hour of every day in every "certified" greenhouse—and perhaps not even then—and stated that signing an agreement does not guarantee that it will be followed. The commenter stated that APHIS should take extra precautions to enter only into agreements that have a high likelihood of compliance and claimed that there is no such assurance in this case.

The regulations in § 319.37–8 require that for penjing producers in the People's Republic of China to export *Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla* to the United States, there must be an agreement in place that stipulates provisions for how the regulations will be enforced. Furthermore, each grower who wishes to export to the United States under the regulations must enter into an agreement with the national plant protection organization of the People's Republic of China whereby he or she must agree to comply with the provisions of the regulations in § 319.37–8 and to allow APHIS inspectors, and representatives of the People's Republic of China's national plant protection service, access to the growing facility as necessary to monitor compliance with the provisions of that section.

We disagree with the commenter that these agreements do not provide for verification that the conditions specified in the regulations will be followed. As noted elsewhere in this document, APHIS monitors production sites to ensure compliance with the regulations. If the regulations are not followed, inspections of the production sites and inspections of the imported plants at the ports of entry in the United States will reveal as much, and APHIS may hold imports until an investigation can be completed and appropriate measures initiated, including stopping imports from a specific producer or shutting down the entire program, if the circumstances show that such an action is warranted. For this reason, the national plant protection organization of the People's Republic of China and growers have an economic incentive to follow the regulations.

Several commenters stated that screens of 0.6 mm mesh are inadequate to keep out certain important pests.

The screen mesh size required under the regulations in § 319.37–8(e) is sufficient to exclude most life stages of all quarantine pests of the five penjing species. Mesh screening is one part of the systems approach, and those screens are used in conjunction with pesticide dips; these measures act as redundant phytosanitary measures to remove all pests of concern from the pathway. Regular inspections of growing premises are intended to ensure that plants are grown in a pest-free environment, and our past experience with this type of program provides evidence that this approach is successful.

Growing Media

Some commenters stated that increased risk of pest introduction comes not from penjing plants but from the medium in which they are shipped, which, they maintain, the 1996 risk assessment did not consider. The commenters stated that the likelihood of importing pests and diseases is greatly increased where plants are already established in sphagnum, or any other growing medium, as bare-root plants allow a more thorough inspection of plant roots and easier detection of any pests or diseases which may be present. One commenter stated that the medium also provides harborage for dormant pest stages and may delay pest and disease symptoms. Another commenter stated that insects and other pests that feed on roots are found in substrates during part of their life cycle may not be noticed by the APHIS inspector during inspection. The commenters also stated that there may be an unacceptable risk of pest introduction associated with even bare-root penjing.

The 1996 risk assessment and 2003 risk documents consider the fact that growing media has an effect on pests' ability to find suitable shelter and an effect on the ability of inspectors to detect certain pests that may be obscured by growing media. Specifically, the risk assessment took these factors into consideration in its estimates of the likelihood of introduction. The risk posed by growing media in and of itself was not considered in the risk assessment, because the specific types of growing media are already approved and listed in § 319.37–8(e)(1) of the regulations, and have been successfully imported into the United States for years. Such media do not present a risk of pest introduction into the United States.

Based on many years of inspections of bare-rooted artificially dwarfed plants, we do not believe that it is necessary to impose any additional restrictions on their entry, beyond those we established in 2002 (described earlier in this document). We believe the recently amended regulations provide protection against the introduction of pests known to infest such plants.

One commenter stated, without providing specific evidence, that growing media increases the possibility that the imported commodity will be a host for bacteria and viruses.

We are aware that many plants, including those not established in growing media, carry bacterial and viral pathogens. Available literature, however, indicates that none of these pathogens are specifically identified as a pest of the five species of penjing. As stated elsewhere in this document, we can only make determinations as to whether a new agricultural commodity can be safely imported based on available scientific evidence, and we are not aware of any evidence that supports the commenter's suggestion. Given that the commenter did not identify particular viruses and bacteria, we have no basis to revise our risk documents.

One commenter stated that plants should be required to be established in sterile growing media rather than unused media, as was proposed.

Based on years of importations and inspections of various types of approved growing media we are confident that the approved growing media listed in § 319.37–8(e)(1), by virtue of their natural composition, are inhospitable to most pest species, and need not be sterilized to remain pest-free. Further, APHIS intends to require under the conditions of the bilateral workplan for this program that media will have to be safeguarded against pest infestation prior to entry into the greenhouse.

Other General Comments

Several commenters expressed confusion regarding our use of the terms

penjing and artificially dwarfed plants, and requested we clarify them.

A plant is considered by APHIS to be artificially dwarfed if the plant and its root system are trained and/or trimmed by a grower to restrict the plant's growth and to create or maintain an aesthetically pleasing miniature plant. Penjing is an art form which utilizes artificially dwarfed plants.

Nearly any species of plant can be artificially dwarfed, but certain species are preferred by growers due to their natural characteristics and ability to respond to training. Such plants are artificially dwarfed to create miniature landscapes in pots. In fact, a literal translation of the Chinese word penjing is "landscape in a pot." The Chinese term penjing, like the Japanese term bonsai, simply refers to any plant that has received this kind of training, regardless of species of the plant. To clarify, this final rule applies to plants of *Buxus sinica, Sageretia thea, Serissa foetida, Podocarpus macrophyllus,* and *Ehretia microphylla* that have been artificially dwarfed by growers, and that are imported in growing media from China.

One commenter stated that the regulatory flexibility analysis included in the proposed rule was superficial and not sensitive to the losses the commenter suggested that U.S. plant retailers and importers would face as a result of the importation of penjing established in growing media from China. The commenter also suggested that the economic analysis did not adequately account for the extra costs and losses that U.S. growers may suffer should a penjing-related pest become established in the country.

The commenter did not provide specific figures or other data for us to evaluate. APHIS is bound under international trade agreements to remove technical barriers to trade in the event that such barriers are found by scientific analysis to be unnecessary. In this case, we have conducted risk analyses that found that all quarantine pests associated with the five species of penjing from China are effectively removed from the import pathway by the measures required under § 319.37–8(e). As such, we have determined that it is not necessary to prohibit those penjing species from the People's Republic of China in approved growing media. We believe our final regulatory flexibility analysis complies with the requirements of the Regulatory Flexibility Act, as amended. Further, our analysis makes use of all the relevant data that we could locate.

One commenter suggested that the proposed rule was published prematurely because APHIS's Section 7 consultations with the U.S. Fish and Wildlife Service were incomplete.

We have now concluded those consultations, and we have received concurrence from the U.S. Fish and Wildlife Service. Information regarding those findings is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Another commenter expressed confusion as to why the title for the environmental assessment for this action referred to a final rule, when no final rule had been published at the time the environmental assessment was made available for public review.

The environmental assessment for this action pertained simply to this rulemaking action, and evaluated the potential environmental effects of the proposed imports given the application of the provisions of this final rule, which are different from the provisions originally proposed.

Another commenter stated that the body and conclusion of the environmental assessment made contradictory statements regarding eradication and control programs.

We note the potential for confusion in these statements, and have revised the environmental assessment to eliminate the potential for confusion. The conclusion now clearly corresponds to statements made within the body of the document regarding control and eradication programs.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the one change, as discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

In this rule we are amending the regulations governing the importation of plants and plant products to add artificially dwarfed (penjing) plants of the species *Buxus sinica, Ehretia microphylla, Podocarpus macrophyllus, Sageretia thea,* and *Serissa foetida* from the People's Republic of China to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. This rule will relieve restrictions that currently allow these species to be imported only as bare-rooted plants.

This analysis provides a qualitative assessment of the potential costs and benefits to U.S. interests and domestic small entities that are associated with the regulatory change. Given that pest risks will be adequately mitigated by the application of measures required by this rule, both costs and benefits associated with the rule derive primarily from increased availability of artificially dwarfed plants. Costs of the regulations will be borne largely by U.S. penjing growers and producers who could experience increased competition and marginally lowered prices. Benefits will be enjoyed by U.S. consumers, who will have access to an increased variety of penjing for consumption at lowered prices, and also by U.S. penjing importers (many of whom are also growers).

Historically, the five penjing species have been enterable from China as bare-rooted plants. Penjing potted in growing media may have some advantages over bare-rooted plants, including the potential for enhanced survival time in transit and decreased transit costs. Bare-rooted plants have short survival time outside of potting media and must be shipped by air freight. Potted plants, on the other hand, are more likely to tolerate the long and much less expensive ocean freight transit process.

Comparison of Regulatory Alternatives

APHIS considered three alternatives to the implementation of a rule to allow the importation of penjing plants in growing media from China: (1) No action (no change to the current regulations), (2) a rule change to allow the importation of 5 species of penjing plants in approved growing media subject only to the general requirements contained in § 319.37–8(e) without additional restrictions that are specific to penjing, and (3) a rule change to allow the importation of 5 species of penjing plants in approved growing media subject to the general requirements contained in § 319.37–8(e) and subject to additional restrictions that are specific to penjing (preferred alternative).

Under the first alternative (no change to the current regulations) APHIS would continue to allow the importation of bare-rooted penjing plants from China, according to the current regulations in §§ 319.37 through 319.37–14 and would not allow penjing plants to be imported in approved media. This alternative was not chosen because we have conducted risk analyses that found that all quarantine pests associated with the five species of penjing from China are effectively removed from the import pathway by the measures required under § 319.37–8(e). As such, we have determined that it is not necessary to

prohibit those penjing species from the People's Republic of China in approved growing media.

The second alternative would allow importation of *B. sinica, E. microphylla, P. macrophyullus, S. thea,* and *S. foetida* in approved growing media from China under the universal requirements that apply to all plants imported in growing media under § 319.37–8(e), without additional penjing-specific restrictions. This alternative was not chosen because it did not adequately mitigate the risk posed by specific pests that may be associated with the plants in media in China.

Under the third alternative, APHIS would allow the importation of penjing plants in APHIS-approved growing media provided that certain phytosanitary requirements are met. This is the preferred regulatory option because it effectively mitigates the risk posed by all identified pests and is responsive to China's request.

The changes to the regulations in § 319.37–8(e) include specific risk management measures that, when applied, will provide adequate protection against the introduction into the United States of certain pests that may be present in shipments of penjing plants from China that are established in growing media. The components of this regulatory system, either used singly or in combination with one another, work toward ensuring that plant pests or diseases will not be imported with penjing plants from China. The components of the regulatory system are described in detail earlier in this document and in the 2003 risk management analysis.

Description of Domestic Industry

Neither the U.S. Department of Agriculture nor the U.S. Census Bureau report domestic production data or trade data for artificially dwarfed plants. Available data on imports, which are based on number of shipments rather than number of plants, shows that in 2001, 207 shipments of artificially dwarfed plants entered the United States. Almost half (97) of the shipments were from China, 23 were from Japan, 13 were from Vietnam, and the remaining 37 were from Korea, Hong Kong, Canada, and other sources.

A National Arboretum survey of North American nurseries and businesses involved in supplying artificially dwarfed plants and related products[4] identified 367 bonsai and penjing firms, 95 percent of which were in the United States (not including retail nurseries, garden centers, florists, or kiosks found in large U.S. shopping malls, which buy small numbers of plants for resale). The number of firms has been increasing steadily since the early 1950s. One hundred eight firms (30 percent) were identified in the Southeast, 102 (28 percent) were identified in the Southwest, including California in particular, 84 (23 percent) were identified in the Northeast, 37 (10 percent) were in the Midwest, and 26 (7 percent) in the Northwest; however, a few of the firms identified in the Northeast and Northwest are located in Canada. Ninety-seven (26 percent) full-service firms were identified, which import, obtain from other sources, and produce plants and supply all of the tools needed to cultivate and display plants, as well as 82 plant and/or seed suppliers, 81 tool suppliers, 46 pot and container suppliers, 32 educational material suppliers, 28 suppliers of educational services, and one rock supplier.

Of the 367 bonsai-related firms reported in the survey, the 225 most affected by this rule would probably be the full service bonsai nurseries (97 firms in 1997), specialty stores selling plants (82 firms in 1997), and stores selling containers and pots (46 firms in 1997).

TABLE 1.—U.S. NATIONAL ARBORETUM SURVEY OF NORTH AMERICAN BONSAI RELATED BUSINESSES IN 1997

Type of company	Number of companies	Percentage of companies
General stores		
Full-service bonsai nurseries	97	26
Specialty stores:		
Plants including seed	82	22
Tools, supplies, stands	81	22
Containers and pots	46	13
Magazines, books, and newsletters	32	9
Consultants and teachers	28	8
Rocks	1	0
Total	367	100

This table was reproduced using data reported by Elias. Elias indicated that bonsai nurseries are smaller in scale than nurseries supplying traditional landscape trees, shrubs, and bedding plants and that, therefore, gross retail sales are significantly smaller. Per-unit sales, however, are among the highest in the industry: Mature bonsai specimens can range from several hundred dollars to $5,000.

Retail Prices

Retail prices for penjing, reported by one of the larger full-service firms on the west coast, range between $5 and $10 for 80 percent of the trees in inventory, $20 and $35 for 10 percent of the trees in inventory, and $36 and up for the remainder.[5] Three year old penjing plants, 7 inches tall, typically sell for $20.00.

In general, retail penjing prices increase with age, quality, and the amount of labor devoted to production and maintenance. Retail prices also appear to vary by species. A simple ordinary least squares regression of retail prices on age, height, and species indicates that retail prices increase almost $11 and $9 for each year a Japanese bonsai and Chinese penjing, respectively, have been alive. In addition, retail prices increased over $14 and a little less than $2 for each tree inch. The marginal impact of age on retail price was statistically significant for bonsai and penjing; however, the marginal impacts were not statistically different. The price data and regression statistics indicate that Japanese bonsai are much more expensive than Chinese penjing, as well as older and larger.

Given the age/price relationships reported here, we would expect young penjing (greater than 6 months and less

[4] Elias, T.S. "Bonsai Bonanza." *American Nurseryman.* pp. 60–66. April 1, 1999.

[5] Muth, J. Personal communication. Bonsai Northwest. Seattle WA, 2003.

than 24 months) plants imported from China under this rule to be at the lower end of the price spectrum, and to sell for less than the $20.00 price reported for 7 inch 3-year-old penjing plants.

Transportation Costs

The majority of penjing are imported via air freight or ocean vessel with soil removed from the roots. Because penjing and bonsai eventually die if left bare-rooted too long (especially plants 25 years old or older), only young trees can survive ocean shipment bare-rooted.

Transportation costs vary widely and depend on the size of the tree, whether soil is attached to the roots, and the method of shipment (See table below). It may cost roughly $0.50 to ocean ship a small bare-rooted tree, $3.00 to ship the same bare-rooted tree airfreight, and $115 to ship a larger bare-rooted tree airfreight.

Transportation costs increase dramatically for potted plants in media, because costs are based on the dimensions of the tree and its weight, both of which increase with the addition of growing media and a pot. For example, it may cost anywhere between $400 and $1,200 to airfreight a large tree with growing media attached to its roots[6] and between $67 and $200 for ocean shipment, using the relationship between ocean and airfreight costs for small bare-rooted trees.

TABLE 2.—RETAIL PRICE FOR SMALL AND LARGE ARTIFICIALLY DWARFED TREES

Penjing retail price	$0.50 Water (bare-root)	$3.00 Air (bare-root)	$3.00 Water (potted)	$21.00 Air (potted)
$28.11	2%	11%	12%	74%
$35.85	1%	8%	10%	58%
$43.58	1%	7%	8%	48%
$51.32	1%	6%	7%	41%
$59.06	1%	5%	6%	35%
$66.79	1%	4%	5%	31%
$74.53	1%	4%	5%	28%
$82.27	1%	4%	4%	25%
$90.00	1%	3%	4%	23%
$97.74	1%	3%	4%	31%

Data taken from relationships estimated by Michael Livingston, USDA (unpublished). Retail price for penjing was estimated using an age of two years and a height appropriate to a two-year old tree.

The data in the table present air and sea shipping costs for bare-rooted and potted penjing as a percentage of retail plant prices (for plants of a height and price appropriate to 2 year old trees). Because of data limitations, shipping costs for plants less than 2 years old are not analyzed here. Shipping costs are a declining percentage of retail price for all four transit modes examined here. Air freight for penjing potted in media is by far the most expensive shipping option. Sea shipment of bare-rooted plants is the least expensive; but is usually not feasible because bare-rooted plants tend to die in transit during the long sea voyage.

The cost of air shipping bare-rooted plants and the cost of sea shipping potted plants in media are roughly equivalent. This relationship suggests that the decision about whether to air freight bare-rooted penjing plants or sea freight potted penjing to the United States will probably be made on a case-by-case basis, and will depend on factors such as size, age, and species.

Conclusions

Upon implementation of this rule, five species (*Buxus sinica, Ehretia microphylla, Podocarpus macrophyullus, Sageretia thea*, and *Serissa foetida*) of potted penjing plants (of any age, but which have been grown in a greenhouse for at least 6 months) will be enterable into the United States. All other species of penjing plants may continue to enter the United States as bare-rooted plants as they have done in the past. Under the new rule we might see increased imports of less expensive potted penjing of the five designated species.

It is impossible to predict the amount by which volume of penjing imports from China will increase under this rule. Compliance with the more stringent mitigations required to ship potted penjing in media to the United States will impose additional costs on Chinese penjing producers. The extent to which the compliance costs associated with potted penjing will offset potential cost savings associated with shipping potted penjing is unclear. Possible sources of cost savings for potted penjing include improved survival in-transit for some ages/sizes plants; possible cost advantages associated with selling plants and pots together as a unit; or unit cost savings that might be associated with high volume importations of potted penjing by U.S. chain stores using proprietary shipping lines.

Many full-service bonsai nurseries import penjing from China and also grow their own artificially dwarfed plants; the net effects of potentially increased imports of lower-priced penjing from China on these firms is unclear. For large nurseries we contacted, roughly 45 percent of the current inventory is imported, mostly from China, and 55 percent is produced domestically or obtained from other sources. Potted penjing between 6 and 24 months shipped under this rule could compete with less expensive, younger, domestically produced dwarfed plants. But at the same time, these same firms would benefit by being able to import lower priced potted plants from China. Based on the National Arboretum survey, roughly 97 full service bonsai nurseries could be affected in this way. The net effect of the rule is expected to be positive, as consumers and some firms in the bonsai/penjing industry are expected to benefit from increased availability and potentially lower prices.

Regulatory Impacts on Small Entities

The U.S. Small Business Administration defines a small full-service bonsai and penjing nursery as one with annual sales receipts no

[6] Elias, T.S. Personal communication. U.S. National Arboretum, Agricultural Research Service, U.S. Department of Agriculture. Washington DC, 2003.

greater than $6 million (NAICS 444220 Nursery and Garden Centers) or one with fewer than 100 employees (NAICS 422930 Flower, Nursery Stock, and Florists' Supplies Wholesalers). There were 97 full service bonsai nurseries in 1997. All of the full-service firms in the United States are small entities (Elias 2003). Net impacts of the regulation on these firms are unclear, as many of these firms are both importers and growers of penjing; however, impacts are not expected to be significant.

Small plant and/or seed suppliers are those with annual sales receipts no greater than $0.75 million (NAICS 111421, Nursery and Tree Production). There were 82 stores specializing in bonsai plants in 1997. It is thought that all of these were small firms. To the extent that these firms benefit from increased availability and variety of penjing at lower prices, the net effect of the regulation on these firms could be positive.

Small pot, container, tool, and rock suppliers in the industry are those with annual sales receipts no greater than $6 million (NAICS 444220, Nursery and Garden Centers; NAICS 451120, Hobby, Toy, and Game Stores). There were 128 firms specializing in bonsai/penjing tools in 1997. All are believed to be small firms. To the extent that the supply of penjing increases following implementation of this rule, the 82 bonsai tool and supply firms should be positively affected. Most custom bonsai container and pot manufacturers produce pots for more expensive plants, so they should not be significantly affected by this rule.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact (FONSI) have been prepared for this final rule. The assessment provides a basis for the conclusion that the importation of penjing plants from China in approved growing media under the conditions specified in this rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS's NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and FONSI may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html*. You may request paper copies of the environmental assessment and FONSI from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment and FONSI are also available for review in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

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

■ 2. In § 319.37–5, paragraph (q), the introductory text is revised to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(q) Any artificially dwarfed plant imported into the United States, except for plants that are less than 2 years old, must have been grown and handled in accordance with the requirements of this paragraph and must be accompanied by a phytosanitary certificate of inspection that was issued by the government of the country where the plants were grown.

* * * * *

■ 3. In § 319.37–8, paragraph (e) is amended as follows:

■ a. By revising the introductory text to read as set forth below.

■ b. In paragraph (e)(2)(ix), by removing the word "and" at the end of the paragraph.

■ c. In paragraph (e)(2)(x)(B), by removing the period at the end of the paragraph and adding the word "; and" in its place.

■ d. By adding new paragraph (e)(2)(xi).

§ 319.37–8 Growing media.

* * * * *

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph if the restricted article meets the conditions of this paragraph and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the restricted article was grown that declares that the restricted article meets the conditions of this paragraph:

Alstroemeria
Ananas[11]
Anthurium
Artificially dwarfed (penjing) plants from the People's Republic of China of the following plant species: *Buxus sinica, Ehretia microphylla, Podocarpus macrophyllus, Sageretia thea*, and *Serissa foetida*.
Begonia
Gloxinia (=*Sinningia*)
Nidularium[11a]
Peperomia
Polypodiophyta (=*Filicales*) (ferns)
Rhododendron from Europe
Saintpaulia.

* * * * *

(2) * * *

(xi) Plants of the species *Buxus sinica, Ehretia microphylla, Podocarpus macrophyllus, Sageretia thea*, and

[11] These articles are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.7–7.

[11a] See footnote 11.

Serissa foetida from the People's Republic of China must also meet the following conditions:

(A) *Propagative cuttings.* The propagative materials used to produce the artificially dwarfed (penjing) plants may enter an approved greenhouse only as seeds, tissue cultures, unrooted cuttings, or rooted cuttings with no growing media. Rooted cuttings may not be established or grown in soil at any time. Rooted cuttings may be established in a greenhouse or outside the greenhouse on raised benches (46 cm in height) in pots containing only APHIS approved growing media.

(B) *Inspection and treatment.* When any cuttings are introduced into the greenhouse, they must be free of growing media, inspected, and found free of plant pests and then treated with a pesticide dip approved by the Animal and Plant Quarantine Service of the People's Republic of China that will control mites, scale insects, whiteflies, thrips, and fungi. The artificially dwarfed (penjing) plants must be propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the Animal and Plant Quarantine Service of the People's Republic of China and found free of the following pests:

(*1*) For *Buxus sinica: Guignardia miribelii, Macrophoma ehretia, Meliola buxicola*, and *Puccinia buxi.*

(*2*) For *Ehretia microphylla: Macrophoma ehretia, Phakopsora ehretiae, Pseudocercosporella ehretiae, Pseudocercospora ehretiae-thyrsiflora, Uncinula ehretiae, Uredo ehretiae*, and *Uredo garanbiensis.*

(*3*) For *Podocarpus macrophyllus: Pestalosphaeria jinggangensis, Pestalotia diospyri, Phellinus noxius*, and *Sphaerella podocarpi.*

(*4*) For *Sageretia thea: Aecidium sageretiae.*

(*5*) For *Serissa foetida: Melampsora serissicola.*

(C) *Growing.* The artificially dwarfed (penjing) plants must be grown in an approved greenhouse for at least 6 months immediately prior to export.

(D) *Additional treatments.* While in the greenhouse, plants must be treated with appropriate pesticides at least once every 10 days or as needed for three months before shipping to maintain a pest-free condition.

* * * * *

Done in Washington, DC, this 13th day of January 2004.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–1066 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV03–959–4 FR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the South Texas Onion Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.085 to $0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

This rule decreases the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.085 to $0.03 per 50-pound equivalent of onions handled.

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

For the 2002–03 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal

period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 5, 2003, and unanimously recommended 2003–04 expenditures of $124,661 and an assessment rate of $0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $325,400. The assessment rate of $0.03 is $0.055 lower than the rate currently in effect. The decrease in the assessment rate and budget is primarily due to the discontinuation of funding for production research projects and a lower marketing and promotion budget. The reduced assessment rate and budget lowers handler costs by about $220,000 and keeps the Committee's operating reserve at an acceptable level.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $74,661 for personnel and office expenses, $30,000 for compliance, and $20,000 for promotion expenses. Budgeted expenses for these items in 2002–03 were $72,002, $35,000, and $170,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 4 million 50-pound equivalents, which should provide $120,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $256,982) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

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

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

Final Regulatory Flexibility Analysis

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

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

There are approximately 78 producers of onions in the production area and approximately 37 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2002–03 marketing year, the industry's 37 handlers shipped onions produced on 12,740 acres with the average and median volume handled being 114,454 and 91,792 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 37 handlers were estimated to be $73 million, with average and median revenues being $1.97 million and $1.58 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that 36 of the 37 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 78 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.085 to $0.03 per 50-pound equivalent of onions handled. The Committee unanimously recommended 2003–04 expenditures of $124,661 and an assessment rate of $0.03 per 50-pound equivalent. The assessment rate of $0.03 is $0.055 lower than the current rate. The quantity of assessable onions for the 2003–04 fiscal period is estimated at 4 million 50-pound equivalents. Thus, the $0.03 rate should provide $120,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $74,661 for personnel and office expenses, $30,000 for compliance, and $20,000 for promotion expenses. Budgeted expenses for these items in 2002–03 were $72,002, $35,000, and $170,500, respectively. In addition, the Committee budgeted $47,900 for production research in 2002–03.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $124,661, which included increases in administrative expenses and decreases in the compliance and promotion expenses. The Committee did not approve any production research program expenses for 2003–04. In 2002–03, the Committee budgeted $47,900 for production research. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and Market Development Subcommittee. Numerous alternative expenditure levels were discussed based upon the relative value of various promotion projects to the onion

industry. The assessment rate of $0.03 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 4 million 50-pound equivalents for the 2003–04 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2003–04 fiscal period could range between $9.05 and $19.05 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between .16 and .33 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 5, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on November 21, 2003 (68 FR 65643). Copies of the proposed rule were also mailed to all onion handlers on November 24, 2003. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending December 22, 2003, was provided for interested persons to respond to the proposal. One comment in support of the proposal was received. The commenter expressed support for the decreased assessment rate due to the current economic condition surrounding the agricultural industry.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–04 fiscal period began August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. This action decreases the assessment rate for assessable onions beginning with the 2003–04 fiscal period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and one comment in support of the assessment decrease was received.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.03 per 50-pound equivalent is established for South Texas onions.

Dated: January 12, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–1005 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV04–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2003–2004 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2003–2004 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 6.8393 percent and 93.1607 percent, respectively, and the final free and restricted percentages are 8.2303 percent and 91.7697 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts that may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was unanimously recommended by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: *Effective Date:* This interim final rule is effective January 20, 2004. This interim final rule applies to all 2003–2004 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. *Comments:* Comments received by March 16, 2004 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in

the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2003–2004 marketing year (July 1, 2003, through June 30, 2004). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule establishes marketing percentages that allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) has estimated hazelnut production at 35,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 28, 2003, meeting, the Board adjusted the NASS crop estimate down to 33,717 tons by deducting the average crop disappearance over the preceding three years (4.64 percent or 1,624 tons) and adding the undeclared carryin (341 tons) to the 35,000 ton production estimate. Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 2,306 tons by taking the difference between the average of the past three years' sales (3,127 tons) and the declared carryin from last year's crop (821 tons).

The Board computed and announced preliminary free and restricted percentages of 5.4720 percent and 94.5280 percent, respectively, at its August 28, 2003, meeting. The preliminary free percentage was computed by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,306 tons × 80 percent/33,717 tons = 5.4720 percent.) The preliminary free percentage thus initially released 1,845 tons of hazelnuts from the 2003 supply for domestic inshell use, and the preliminary restricted percentage withheld 31,872 tons for the export and shelled (kernel) markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.*, desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be

revised upward, consistent with § 982.40(e).

The Board met on November 13, 2003, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 6.8393 percent free and 93.1607 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carryout, were recommended at 8.2303 free and 91.7697 percent restricted effective May 31, 2004. The final free percentage releases 2,775 tons of inshell hazelnuts from the 2003 supply for domestic inshell use.

The interim and final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2003–2004 marketing year:

Inshell supply	Tons
(1) Total production (crop estimate)	35,000
(2) Less substandard, farm use (disappearance; 4.64 percent of Item 1)	1,624
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	33,376
(4) Plus undeclared carryin as of July 1, 2003, (subject to regulation)	341
(5) Supply subject to regulation (Item 3 plus Item 4)	33,717
Inshell Trade Demand	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,127
(7) Less declared carryin as of July 1, 2003 (not subject to regulation)	821
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,306
(9) Desirable carryout on August 31, 2004 (15 percent of Item 6)	469
(10) Adjusted Inshell Trade Demand plus desirable carryout (Item 8 plus Item 9)	2,775

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	6.8393	93.1607
(12) Final percentages (Item 10 divided by Item 5) × 100	8.2303	91.7697
(13) Final free in tons (Item 10)	2,775	
(14) Final restricted in tons (Item 5 minus Item 10)		30,942

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 469 tons for desirable carryout effective May 31, 2004. The total free supply for the 2003–2004 marketing year is 3,596 tons of hazelnuts, which is the sum of the final trade demand of 3,127 tons and the 469 ton desirable carryout. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Initial Regulatory Flexibility Analysis

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

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

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 17 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $36,133. This is computed by dividing NASS figures for the average value of production for 2001 and 2002 ($27,100,000) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

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

Currently, U.S. hazelnut production is allocated among three market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return on domestic inshell, less for export inshell, and the least for kernels. Based on Board records of average shipments for 1993–2002, the percentage going to each of these markets was 13 percent (domestic inshell), 43 percent (export inshell), and 44 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S.

On average, 77 percent of domestic inshell hazelnuts are shipped during the period October 1 through November 30, primarily to supply the holiday nut market.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry to improve its marketing situation by keeping inshell supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market.

The estimated inshell trade demand (2,306 tons) and the larger 2003 crop were key market factors leading to the Board's recommendation for the 8.2303 percent final free percentage. The 35,000 ton hazelnut production for 2003 is 15,500 tons more than in 2002, and 14,500 tons less than the production level in 2001, the largest crop in the last ten years.

Although the domestic inshell market is a relatively small proportion of total sales (13 percent of average shipments over the last ten years, and 11 percent of average shipments for the last two years), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The domestic kernel market and inshell exports are both expected to continue to be good outlets for U.S. hazelnut production.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1993 and 2002, from a low of 15,400 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year was 49 percent and 159 percent, respectively, of the 10-year average tonnage of 31,220. Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2004.

The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the 10-year period is 0.39. In contrast, the coefficient of variation for hazelnut grower prices is 0.12, less than one third of the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower cost of production to grower revenue in recent years highlights the financial impacts on growers at varying production levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2002. Average grower revenue was below typical costs in the other years. Since 1995, the highest level of revenue per bearing acre was $1,552 (1997) and the lowest was $561 in 1996. Without the stabilizing impact of the order, growers may have lost more money. While crop size fluctuates, the volume regulations contribute to orderly marketing and market stability, and help to moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2003–2004 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA the preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 4 percent of total U.S. production for other tree nuts, and less than 4 percent of the world's hazelnut production.

During the 2002–2003 season, 87 percent of the kernels were marketed in the domestic market and 13 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop new markets and expand demand, with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S.-produced inshell hazelnuts, with a 10-year average of 5,249 tons, 40 percent of total average exports of 12,478 tons. The largest share went to Germany. In 1995, 70 percent of export shipments went to Europe. Recent years have seen a significant shift in export destinations, however, with Europe's share declining to 30 percent of inshell shipments (3,321 tons) in the 2002–2003 season. Inshell shipments to Asia have increased dramatically in the past few years, growing to 55 percent of total exports of 10,979 tons in the 2002–2003 season. Hong Kong is the largest export destination, followed by China. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 28 and November 13, 2003, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on the establishment of interim final and final free and restricted percentages for the 2003–2004 marketing year under the hazelnut marketing order. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2003–2004 marketing year began July 1, 2003, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new section 982.251 is added to read as follows:

[**Note:** This section will not be published in the annual Code of Federal Regulations.]

§ 982.251 Free and restricted percentages—2003–2004 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2003–2004 marketing year shall be 6.8393 percent and 93.1607 percent, respectively.

(b) On May 31, 2004, the final free and restricted percentages for merchantable hazelnuts for the 2003–2004 marketing year shall be 8.2303 percent and 91.7697 percent, respectively.

Dated: January 12, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–1004 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH25

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International, Inc., NAC–UMS cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 3 to Certificate of Compliance (CoC) Number 1015. Amendment No. 3 modifies the present cask system design to add an alternate poison material, revise the structural analysis, revise the thermal analyses, revise fuel assembly weight and dimensions, and revise allowable fuel cladding temperature. The amendment also revises the criticality analyses and reorganizes the Safety Analysis Report (SAR) Criticality Section, revises Technical Specification A.5.5 to remove the effluent reporting requirements, and makes several editorial and administrative changes.

DATES: The final rule is effective March 31, 2004, unless significant adverse comments are received by February 17, 2004. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number—RIN 3150–AH25—in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleform.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays (telephone (301) 415–1101).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), 0–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC, proposed TS, and preliminary SER can be found under ADAMS Accession Nos. ML032890297 (CoC), ML032890300 and ML032890305 (TS), and ML032890312 (SER). 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, 301–415–4737or by e-mail to *pdr@nrc.gov*.

CoC No. 1015, the revised TS, the underlying SER for Amendment No. 3, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *JMM2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–6219, e-mail *JMM2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on October 19, 2000 (65 FR 62581), that approved the NAC–UMS cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1015.

Discussion

On January 15, 2002, and as supplemented on February 4, July 3, August 7, November 27, and December 11, 2002; and August 15, 2003, NAC International (NAC) submitted an application to amend the NAC–UMS Universal Storage System to Incorporate Enhanced Design Features. The amendment adds an alternate poison material, revises the structural analysis, revises the thermal analyses, revises fuel assembly weight and dimensions, and revises allowable fuel cladding temperature. The amendment also revises the criticality analyses and reorganizes the SAR Criticality Section, revises Technical Specification A.5.5 to remove the effluent reporting requirements, and makes several editorial and administrative changes as described in the SER. No other changes to the NAC–UMS cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC–UMS cask design listing in § 72.214 by adding Amendment No. 3 to CoC No. 1015. The amendment primarily consists of changes to the Technical Specification (TS) to incorporate enhanced design features. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 3.

The amended NAC–UMS cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

§ 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1015 is revised by adding the effective date of the initial certificate and the effective date of Amendment No. 3.

Procedural Background

This rule is limited to the changes contained in Amendment No. 3 to CoC No. 1015 and does not include other aspects of the NAC–UMS cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on March 31, 2004. However, if the NRC receives significant adverse comments by February 17, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by February 17, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the NAC–UMS cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action

does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the NAC–UMS cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to add an alternate poison material, revises the structural analysis, revises the thermal analyses, revises fuel assembly weight and dimensions, and revises allowable fuel cladding temperature. The amendment also revises the criticality analyses and reorganizes the SAR Criticality Section, revises Technical Specification A.5.5 to remove the effluent reporting requirements, and makes several editorial and administrative changes. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On October 19, 2000 (65 FR 62581), the NRC issued an amendment to part 72 that approved the NAC-UMS cask design by adding it to the list of NRC-approved cask designs in § 72.214. On January 15, 2002, and as supplemented on February 4, July 3, August 7, November 27, and December 11, 2002; and August 15, 2003, NAC International (NAC) submitted an application to amend the NAC–UMS Universal Storage System to Incorporate Enhanced Design Features. The amendment adds an alternate poison material, revises the structural analysis, revises the thermal analyses, revises fuel assembly weight and dimensions, and revises allowable fuel cladding temperature. The amendment also revises the criticality analyses and reorganizes the SAR Criticality Section, revises Technical Specification A.5.5 to remove the effluent reporting requirements, and makes several editorial and administrative changes.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC International, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of

Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137. 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.

Initial Certificate Effective Date: November 20, 2000.

Amendment Number 1 Effective Date: February 20, 2001.

Amendment Number 2 Effective Date: December 31, 2001.

Amendment Number 3 Effective Date: March 31, 2004.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC–UMS.

* * * * *

Dated in Rockville, Maryland, this 30th day of December, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 04–976 Filed 1–15–04; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS04–1]

Appraisal Subcommittee; Appraiser Regulation

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council ("ASC").

ACTION: Final rule amendments.

SUMMARY: The ASC is adopting nonsubstantive amendments to its regulations that correct the ASC's office's street address, zip code, and telephone numbers to reflect an office relocation from 2100 Pennsylvania Avenue, NW., to 2000 K Street, NW., Washington, DC.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, at (202) 293–6250 or *marc@asc.gov;* Appraisal Subcommittee; 2000 K Street, NW., Suite 310; Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Authority and Section-by-Section Analysis

The ASC, since its creation under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"), has adopted and amended several regulations that appear at 12 CFR part 1102. These regulations, found in subparts A, B, C, and D of that part, relate to the ASC's implementation of The Privacy Act of 1974, the Freedom of Information Act, and various sections of Title XI.

In November 1998, the ASC moved its offices from 2100 Pennsylvania Avenue, NW., to its current location at 2000 K Street, NW. Part 1102, as adopted, contained numerous references to the ASC's Pennsylvania Avenue address and one reference to its previous fax number. The ASC is amending part 1102 by removing all references to its Pennsylvania Avenue address and prior fax number and replacing it with its new K Street address and new fax number.

II. Administrative Requirements

A. Notice and Comment Requirements Under 5 U.S.C. 553

The ASC, under 12 U.S.C. 553, is required, among other things, to publish in the **Federal Register** for public notice and comment a general notice of proposed rule making, unless, in accordance with paragraph (b)(3)(B), the agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The ASC finds that notice and procedure are unnecessary in connection with these rule amendments because they are nonsubstantive and essentially are nomenclature changes, as that term is defined in the Federal Register Document Drafting Handbook, page 2–31 (October 1998).

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, banking, Freedom of Information, Mortgages, Reporting and recordkeeping requirements.

Text of the Rule

■ For the reasons set forth in the preamble, title 12, chapter XI of the Code of Federal Regulations is amended as follows:

PART 1102—APPRAISER REGULATION

■ 1. The authority citation for part 1102, subpart A, continues to read as follows:

Authority: 12 U.S.C. 3348(a).

■ 2. The authority citation for part 1102, subpart B, continues to read as follows:

Authority: 12 U.S.C. 3332, 3335, and 3348(c).

■ 3. The authority citation for part 1102, subpart C, continues to read as follows:

Authority: 12 U.S.C. 552a.

■ 4. The authority citation for part 1102, subpart D, continues to read as follows:

Authority: 5 U.S.C. 552, 553(e); Executive Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 5. In 12 CFR part 1102, remove the words "2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037" wherever they appear and add, in their place, the words, "2000 K Street, NW., Suite 310, Washington, DC 20006."

■ 6. In 12 CFR part 1102, remove the words "2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC" wherever they appear and add, in their place, the words, "2000 K Street, NW., Suite 310, Washington, DC."

■ 7. In 12 CFR part 1102, § 1102.306(a)(1)(i), remove the fax number, "(202) 872–7501" and add, in its place, "(202) 293–6251."

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: January 12, 2004.

Ben Henson,

Executive Director.

[FR Doc. 04–945 Filed 1–15–04; 8:45 am]

BILLING CODE 6700–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 711

[Docket No. 0312113311–3311–01]

RIN 0694–AC97

Chemical Weapons Convention Regulations: Electronic Submission of Declarations and Reports Through the Web-Data Entry System for Industry (Web–DESI)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule.

SUMMARY: The Bureau of Industry and Security (BIS) published an interim rule, on December 30, 1999, that established the Chemical Weapons Convention Regulations (CWCR) to implement the provisions of the Chemical Weapons Convention (CWC) affecting U.S. industry and other U.S. persons. The CWCR include requirements to report certain activities, involving Scheduled chemicals and Unscheduled Discrete Organic Chemicals, and to provide access for on-site verification by international inspectors of certain facilities and locations in the United States. This interim final rule amends the CWCR by adding instructions on how to obtain authorization from BIS to make electronic submissions of declarations and reports through the Web-Data Entry System for Industry (Web–DESI), which can be accessed on the CWC Web site at *http://www.cwc.gov*. The rule also establishes procedures for the assignment and use of passwords for facilities, plant sites and trading companies (USC password) and procedures for the assignment and use of Web–DESI user accounts.

DATES: This rule is effective January 16, 2004.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on declarations and reports, contact the Treaty Compliance Division, Office of Nonproliferation Controls and Treaty Compliance, telephone: (703) 605–4400.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1997, the United States ratified the Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The CWC, which entered into force on April 29, 1997, is an arms control treaty with significant non-proliferation aspects. As such, the CWC bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties to the CWC from assisting or encouraging anyone to engage in a prohibited activity. The CWC provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities, and oversees the destruction of such weapons and facilities. To fulfill its arms control and non-proliferation objectives, the CWC also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain "scheduled" chemicals and unscheduled discrete organic chemicals, many of which have significant commercial applications. The CWC also requires States Parties to report exports and imports and to impose export and import restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals. States Parties to the CWC, including the United States, have agreed to this verification scheme in order to provide transparency and to ensure that no State Party to the CWC is engaging in prohibited activities.

The Chemical Weapons Convention Implementation Act of 1998 ("Act") (22 U.S.C. 6701 *et seq.*), enacted on October 21, 1998, authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections conducted by inspectors sent by the Organization for the Prohibition of Chemical Weapons (OPCW). Executive Order (E.O.) 13128 delegates authority to the Department of Commerce to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate functions to implement the CWC, consistent with the Act.

On December 30, 1999, the Bureau of Industry and Security (BIS), U.S. Department of Commerce, published an interim rule that established the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–722). The CWCR implemented the provisions of the CWC, affecting U.S. industry and U.S. persons, in accordance with the provisions of the Act. This interim final rule amends the CWCR by adding instructions on how to obtain authorization from BIS to make electronic submissions of declarations and reports through the Web-Data Entry System for Industry (Web–DESI), which can be accessed on the CWC Web site at *http://www.cwc.gov*. The rule also establishes procedures for the assignment and use of passwords for facilities, plant sites and trading companies (USC password) and procedures for the assignment and use of Web–DESI user accounts (user name and password).

Rulemaking Requirements

1. This interim final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid OMB control number. This rule amends an existing collection of information authority approved under OMB Control No. 0694–0091. The public reporting burdens for the collection of information are estimated to average 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 for Unscheduled Discrete Organic Chemicals (UDOCs), and 0.17

hours for Schedule 1 notifications. The burden hours associated with completing a particular type of declaration or report package (*e.g.*, Schedule 2 annual declaration on past activities) will change depending on the number of forms required to comply with the specific declaration or report requirement. Supplement 2 to parts 712, 713, 714, and 715 of the CWCR identifies the specific forms that must be included in each type of declaration or report package. The CWC Declaration and Report Handbook includes a "Guide to Submission of Forms" which also identifies the specific forms that must be included in a declaration or report package.

BIS will use the information contained in declarations and reports submitted by U.S. persons to compile the U.S. National Industrial Declaration in order to meet our obligations under the Chemicals Weapons Convention (CWC). BIS will submit the U.S. National Industrial Declaration to the United States National Authority who will forward the Declaration to the Organization for the Prohibition of Chemical Weapons (OPCW) as required by the Convention.

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(b)(B), the provisions of the Administrative Procedure Act requiring a prior notice and an opportunity for public comment are waived for good cause, because it is unnecessary to provide public notice and opportunity for comment. This regulation does not impose any new regulatory requirements or effect a substantive change to any existing regulatory requirement. Submission of documents through the Web-DESI system is voluntary and provided for the convenience of submitters. No other law requires that a notice of final rulemaking and an opportunity for public comment be given for this rule. Because a notice of final rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

■ Accordingly, part 711 of the Chemical Weapons Convention Regulations is amended as follows:

PART 711—[AMENDED]

■ 1. The authority citation for 15 CFR part 711 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 34703.

■ 2. Section 711.7 is added to read as follows:

§ 711.7 How to request authorization from BIS to make electronic submissions of declarations or reports.

(a) *Scope.* This section provides an optional method of submitting declarations or reports. Specifically, this section applies to the electronic submission of declarations and reports required under the CWCR. If you choose to submit declarations and reports by electronic means, all such electronic submissions must be made through the Web-Data Entry System for Industry (Web–DESI), which can be accessed on the CWC Web site at *http://www.cwc.gov*.

(b) *Authorization.* If you or your company has a facility, plant site, or trading company that has been assigned a U.S. Code Number (U.S.C. Number), you may submit declarations and reports electronically, once you have received authorization from BIS to do so. An authorization to submit declarations and reports electronically may be limited or withdrawn by BIS at any time. There are no prerequisites for obtaining permission to submit electronically, nor are there any limitations with regard to the types of declarations or reports that are eligible for electronic submission. However, BIS may direct, for any reason, that any electronic declaration or report be resubmitted in writing, either in whole or in part.

(1) *Requesting approval to submit declarations and reports electronically.* To submit declarations and reports electronically, you or your company must submit a written request to BIS at the address identified in § 711.6 of the CWCR. Both the envelope and letter must be marked "Attn: Electronic Declaration or Report Request." Your request should be on company letterhead and must contain your name or the company's name, your mailing address at the company, the name of the facility, plant site or trading company and its U.S. Code Number, the address of the facility, plant site or trading company (this address may be different from the mailing address), the list of individuals who are authorized to view, edit, or edit and submit declarations and reports on behalf of your company, and the telephone number and name and title of the official responsible for certifying that each individual listed in the request is authorized to view, edit, or edit and submit declarations and reports on behalf of you or your company. Additional information required for submitting electronic declarations and reports may be found on BIS's Web site at *http://www.cwc.gov*. Once you have completed and submitted the necessary certifications, you may be authorized by BIS to view, edit, or edit and submit declarations and reports electronically.

Note to § 711.7(b)(1): You must submit a separate request for each facility, plant site or trading company owned by your company (*e.g.*, each site that is assigned a unique U.S. Code Number).

(2) Assignment and use of passwords for facilities, plant sites and trading companies (U.S.C. password) and Web-DESI user accounts (user name and password).

(i) Each person, facility, plant site or trading company authorized to submit declarations and reports electronically will be assigned a password (U.S.C. password) that must be used in conjunction with the U.S.C. Number. Each individual authorized by BIS to view, edit, or edit and submit declarations and reports electronically for a facility, plant site or trading company will be assigned a Web-DESI user account (user name and password) telephonically by BIS. A Web-DESI user account will be assigned to you only if your company has certified to BIS that you are authorized to act for it in viewing, editing, or editing and submitting electronic declarations and reports under the CWCR.

Note to § 711.7(b)(2)(i): When individuals must have access to multiple Web-DESI accounts, their companies must identify such individuals on the approval request for each of these Web-DESI accounts. BIS will coordinate with such individuals to ensure that the assigned user name and password is the same for each account.

(ii) Your company may reveal the facility, plant site or trading company password (U.S.C. password) only to Web-DESI users with valid passwords, their supervisors, and employees or agents of the company with a commercial justification for knowing the password.

(iii) If you are an authorized Web-DESI account user, you may not:

(A) Disclose your user name or password to anyone;

(B) Record your user name or password, either in writing or electronically;

(C) Authorize another person to use your user name or password; or

(D) Use your user name or password following termination, either by BIS or by your company, of your authorization or approval for Web-DESI use.

(iv) To prevent misuse of the Web-DESI account:

(A) If Web-DESI user account information (*i.e.*, user name and password) is lost, stolen or otherwise compromised, the company and the user must report the loss, theft or compromise of the user account information, immediately, by calling BIS at (703) 235–1335. Within two business days of making the report, the company and the user must submit written confirmation to BIS at the address provided in § 711.6 of the CWCR.

(B) Your company is responsible for immediately notifying BIS whenever a Web-DESI user leaves the employ of the company or otherwise ceases to be authorized by the company to submit declarations and reports electronically on its behalf.

(v) No person may use, copy, appropriate or otherwise compromise a Web-DESI account user name or password assigned to another person. No person, except a person authorized access by the company, may use or copy the facility, plant site or trading company password (U.S.C password), nor may any person steal or otherwise compromise this password.

(c) Electronic submission of declarations and reports. (1) *General instructions.* Upon submission of the required certifications and approval of the company's request to use electronic submission, BIS will provide instructions on both the method for transmitting declarations and reports electronically and the process for submitting required supporting documents, if any. These instructions may be modified by BIS from time to time.

(2) *Declarations and reports.* The electronic submission of a declaration or report will constitute an official document as required under parts 712 through 715 of the CWCR. Such submissions must provide the same information as written declarations and reports and are subject to the recordkeeping provisions of part 720 of the CWCR. The company and Web-DESI user submitting the declaration or report will be deemed to have made all representations and certifications as if the submission were made in writing by the company and signed by the certifying official. Electronic submission of a declaration or report will be considered complete upon transmittal to BIS.

(d) *Updating.* A company approved for electronic submission of declarations or reports under Web-DESI must promptly notify BIS of any change in its name, ownership or address. If your company wishes to have an individual added as a Web-DESI user, your company must inform BIS and follow the instructions provided by BIS. Your company should conduct periodic reviews to ensure that the company's designated certifying official and Web-DESI users are individuals whose current responsibilities make it necessary and appropriate that they act for the company in either capacity.

Dated: January 12, 2004.

Peter Lichtenbaum,

Assistant Secretary, for Export Administration.

[FR Doc. 04–938 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM04–3–000; Order No. 645]

Emergency Closures

Issued December 18, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is modifying its regulations governing computation of time to cover situations in which its offices are closed due to temporary emergency conditions such as severe weather. This change will prevent unintended Commission action and eliminate possible hardship by ensuring that filing deadlines and deadlines for action by the Commission do not expire during times when the Commission is unable to accept filings or issue orders.

EFFECTIVE DATE: The rule will become effective December 18, 2003.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, (202) 502–8953.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. This Final Rule revises the Commission's regulations to ensure that filing deadlines and deadlines for action by the Commission do not expire during periods in which the Commission is closed due to temporary emergency conditions, such as severe weather emergencies. The Commission's regulations currently provide that the last day of a time period is not counted if that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal public holiday. 18 CFR 385.2007(a)(2) (2003) (Rule 2007). Thus, Rule 2007 would not have covered, for example, the Commission's temporary closure for two and one-half days in September 2003 due to the effects of Hurricane Isabel.

2. This Final Rule adds a provision to Rule 2007 covering temporary closures due to weather or other adverse conditions. The absence of such a provision could result in unintended action by the Commission or otherwise cause hardship to participants in Commission proceedings who face filing deadlines. This would particularly be a problem in connection with statutory deadlines that the Commission cannot extend, such as the 30-day period for requesting rehearing of a Commission order.[1] *See* 15 U.S.C. 717r(a) (Natural Gas Act); 16 U.S.C. 825l(a) (Federal Power Act). In addition, situations could arise in which the Commission is required to take action by a date certain but cannot do so because its offices are closed. For example, the Commission must act by a specified time on a rate proposal filed by a public utility, or an oil or natural gas pipeline, or the filing becomes effective by operation of law. *See* 16 U.S.C. 824d (Federal Power Act) (60 days); 15 U.S.C. 717c (Natural Gas Act) (30 days); 49 App. U.S.C. 6(3) (Interstate Commerce Act) (30 days). It is therefore in the public interest to revise the Commission's rules to ensure that a day on which it is closed due to adverse conditions does not count as the last day of the time period for a deadline.

3. In view of the foregoing, the Commission is making one addition to Rule 2007. Currently, the last day of a time period is extended if it falls on a weekend, part-day holiday or legal public holiday. The addition will cover days on which the Commission is closed due to adverse conditions. It will apply to full-day closures and also part-day closures as long as the Commission does not reopen prior to the official close of business.

[1] *See, e.g., Tennessee Gas Pipeline Co.*, 95 FERC ¶61,169 (Commission may not extend 30-day rehearing deadline, although it can provide rules for computing time as it has done in Rule 2007), *aff'd sub nom. Londonderry Neighborhood Coalition* v. *FERC*, 273 F.3d 416 (1st Cir. 2001).

Information Collection Statement

4. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR part 1320. This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

Environmental Analysis

5. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[2] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[3] Part 380 of the Commission's regulations lists exemptions to the requirement that an Environmental Analysis or Environmental Impact Statement be done. Included is an exemption for procedural, ministerial or internal administrative actions. 18 CFR 380.4(1) and (5). This rulemaking is exempt under that provision.

Regulatory Flexibility Act [Analysis or Certification]

6. The Regulatory Flexibility Act of 1980 (RFA)[4] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule concerns a matter of internal agency procedure and the Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

Document Availability

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

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

9. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202)502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202)502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

Effective Date

10. These regulations are effective immediately upon issuance. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately. The rule is intended to act as a contingency measure in order to preserve, rather than alter, the rights of persons appearing before the Commission. Therefore, there is no reason to make it effective at a later date.

11. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

12. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure; Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

(S E A L)

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 385—[AMENDED]

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a-825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 2. Section 385.2007 is amended by revising paragraph (a)(2) to read as follows:

§ 385.2007 Time (Rule 2007).

(a) * * *

(2) The last day of any time period is included in the time period, unless it is a Saturday, Sunday, day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, part-day holiday that affects the Commission, or legal public holiday as designated in section 6103 of title 5, U.S. Code, in which case the period does not end until the close of the Commission business of the next day which is not a Saturday, Sunday, day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, part-day holiday that affects the Commission, or legal public holiday.

[FR Doc. 04–954 Filed 1–15–04; 8:45 am]

BILLING CODE 6717–01–P

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

[3] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶30,783 (Dec. 10, 1984) (*codified* at 18 CFR part 380).

[4] 5 U.S.C. 601–612.

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 514

RIN 3141–AA16

Fees

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is amending its fee regulations. The regulations are being amended to reflect changes in the statutory limit set by Congress.

DATES: *Effective date:* February 16, 2004.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the NIGC, 1441 L Street, NW., Suite 9100, Washington, DC, 20005.

FOR FURTHER INFORMATION CONTACT: John R. Hay at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is funded primarily from fees collected from Indian gaming operations. The Commission is changing

its current regulations to reflect changes in the statutory limit imposed by Congress. This regulation is being amended so that the amount of fees imposed by the Commission is directly related to congressional action. Under the current regulations, the Commission may only impose fees not exceeding $8,000,000, during any fiscal year. For fiscal year, 2004 and 2005 Congress has increased that amount to a maximum of $12,000,000. The change will allow the Commission to collect up to the statutory maximum and will eliminate the need to regularly amend this regulation as Congress raises or lowers the fee level.

The Commission received comments in response to a Notice of Proposed Rulemaking. All of the comments received came from Indian tribes. Due consideration has been given to each of the comments received. A discussion of the comments follows.

Issue 1: One commenter expressed a preference for having the monetary cap included in the regulation so that tribes will know how much NIGC is authorized to collect. They also commented that amending the regulation every six years was not a great burden.

Response: Congress has set the monetary cap for the next two fiscal years. Therefore, the NIGC would be required to change its regulations whenever Congress adjusts that cap. The NIGC's position is that the time and money spent on amending its regulations could be better spent in performing its primary duties.

Issue 2: The commenter stated that while Congress has authorized NIGC to collect an additional $4,000,000 in overall fees, the Commission should not increase the individual fees paid by existing gaming enterprises but rather the increase should come from new gaming enterprises.

Response: It is the Commission's position that while small and large operations should be treated differently in regards to fee assessment, that new gaming operations should be treated the same as existing ones. This position is consistent with the guidelines established by IGRA.

Issue 3: One commenter suggested an additional change to the regulations since they felt there was an ambiguity in the regulation as to whether the Commission is required to credit amounts in excess the total amount of fees imposed or anything over the statutory maximum.

Response: The Commission does not see an ambiguity in the regulation. The Commission is only required to credit pro-rata any fees collected in excess of the statutory maximum. As the NIGC does not impose fees in specific dollar amounts (or a specific total fee for all tribes), but rather imposes fees as a percentage of gross tribal gaming revenues, until all the tribes have submitted their fee payments, the total amount of fees collected is not a sum certain. Only if the total so collected exceeds the statutory maximum do pro-rata credits become necessary, and the Commission strives to avoid that necessity as it establishes the fee rate.

Regulatory Flexibility Act

The Commission certifies that the rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows:

Of the 330 Indian gaming operations across the country, approximately 150 have revenues under 10 million. Of these, approximately 90 operations have gross revenues under 3 million. Those operations that gross less than 1.5 million are exempt from fees. Since fee assessments are based on a percentage of gross revenues until the maximum allowed by Congress is reached, and new gaming operations continue to open, the amount individual tribal gaming operations will pay in fees will likely only increase slightly or may in fact decrease. For these reasons, the Commission has concluded that the rule will not have a significant economic impact on those small entities subject to the rule.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than $100 million per year. Thus, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act

The Commission has determined that this rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Dated: January 12, 2004.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

Regulation Promulgation

List of Subjects in 25 CFR Part 514

Gambling, Indian-lands, Reporting and recordkeeping requirements.

■ Accordingly, 25 CFR Part 514 is amended as follows:

PART 514—FEES

■ 1. The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2702 *et seq.*

■ 2. Section 514.1(d) is revised to read as follows:

§ 514.1 Annual Fees.

* * * * *

(d) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the

amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

* * * * *

[FR Doc. 04–955 Filed 1–15–04; 8:45 am]
BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 363

Regulations Governing New Treasury Direct System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: New Treasury Direct (also referred to as Treasury Direct) is a book-entry, online system for purchasing, holding and conducting transactions in Treasury securities. This rule amends the regulations relating to accounts belonging to minors. This rule also sets forth the rules for custom accounts, which are accounts created for a specific purpose. This rule also removes references to special forms of registration for decedents' and incompetents' estates. Rather than change registrations for these circumstances, we will handle the transactions offline.

When we initiated New Treasury Direct, we published but deferred the implementation of several sections dealing with minor accounts. All deferred sections dealing with minor accounts have been deleted or amended in their entirety, and the new sections are effective with this rule.

DATES: This rule is effective January 16, 2004.

ADDRESSES: You can download this final rule at the following Internet address: *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT:
Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*
Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*
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SUPPLEMENTARY INFORMATION: New Treasury Direct is an account-based, online, book-entry system for purchasing, holding, and conducting transactions in Treasury securities via the Internet. Currently, Series EE and Series I savings bonds are offered through New Treasury Direct. Initially, only adult individuals were able to open accounts in New Treasury Direct. This rule will permit a parent or person who provides the chief financial support for a minor to open and access an account for a minor as custodian of the account.

The custodian is a fiduciary for the minor. The account is held in the name and social security number of the minor. The securities held in the minor's account are registered in the name and social security number of the minor, with the minor as sole owner, owner with beneficiary, or primary owner with secondary owner of the securities. The minor's account is a separate account that is linked to the primary New Treasury Direct account of the custodian. The custodian may access the minor's account using the custodian's primary New Treasury Direct account as a portal.

Using his or her own New Treasury Direct account, the custodian may access the minor's account to purchase and make transactions in securities on the minor's behalf. The custodian must certify that he or she is acting on behalf of the minor when he or she opens the minor's account and in all subsequent transactions in the account. The custodian may transfer the securities without a change in registration to another custodian for the same minor. The custodian may grant the right to view the securities to another New Treasury Direct account holder, and may grant the right to redeem the securities to a secondary owner named on the minor's securities. When the minor reaches the age of 18 years, the transactions that the custodian may make in the minor's account are limited to purchasing securities and transferring securities to another account identified by the minor's social security number, whether that is an account maintained by another custodian for the minor, or the minor's own previously established primary account. (We will continue to refer to a minor who has attained the age of 18 years by the term "minor", until the minor's securities are transferred to the minor's (now adult's) own primary account.) The minor may also contact us when he reaches the age of 18 to have the securities transferred from the custodian's account to the minor's primary account.

In addition to permitting accounts on behalf of minors, this rule permits custom accounts, which are accounts that are linked to the primary account of the owner. A custom account contains securities in the same form of registration as the primary account, but the owner may informally designate a purpose for the custom account. However, the designation has no legal effect on the securities held in the account; the registration of the securities determines ownership. The annual purchase limitation will include securities held in custom accounts.

We are also deleting sections referring to special forms of registration. Initially, we had planned to permit representatives of a decedent's estate and guardians of an incompetent to make online transactions in securities held by a decedent or an incompetent through the personal New Treasury Direct account of the representative or guardian. At this time we believe that the interests of our customers will be better served by focusing our resources on expanding the scope of our basic online services. We therefore provide offline servicing for estates through our customer service staff.

When we initiated New Treasury Direct, we published but deferred the implementation of several sections of the regulations, including those related to minors. We have since revised our thinking on the treatment of minor accounts. Therefore, the provisions of the regulations published in Volume 67 of the **Federal Register** at page 64276, on October 17, 2002, relating to minor accounts, will never be implemented. In their place, this rule will apply, as of the date of its publication in the **Federal Register**.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore,

the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR chapter II, subchapter B, is amended as follows:

■ 1. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.*, 3105 and 3125.

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN THE NEW TREASURY DIRECT SYSTEM

■ 2. Revise § 363.4 to read as follows:

§ 363.4 How is New Treasury Direct different from the Treasury Direct system?

New TreasuryDirect is an online (Internet-accessible only) system which currently provides for the purchase and holding of book-entry U.S. savings bonds and will eventually also provide for the purchase and holding of marketable Treasury securities. There is also a separate *TreasuryDirect* system (*TreasuryDirect*), available since 1986, for purchasing and holding marketable Treasury securities in book-entry form. The *TreasuryDirect* system for marketable securities offers more limited online services. The terms and conditions for *TreasuryDirect* are found at part 357, and are substantially different from the terms and conditions of securities held in New Treasury Direct.

■ 3. Amend § 363.6 by revising the definitions of "minor", "transfer", and "you", and by adding other definitions in alphabetical order, to read as follows:

§ 363.6 What special terms do I need to know to understand this part?

* * * * *

Custodian of a minor account means a person who opens an account on behalf of the minor. (*See* § 363.27 for more information about minor accounts.)

Custom account means an account that you establish for a specific purpose that is linked to your primary account. You use your primary account as the portal to open and access your custom linked account. (*See* § 363.15 for more information about custom accounts.)

* * * * *

De-link means the online process by which all securities contained within the minor linked account are moved to the minor's primary New Treasury Direct account and the linked account is deactivated.

* * * * *

Linked account means an account that is a separate account from your primary account, but connected to your primary account. You use your primary account as a portal to open and access the linked account. (*See* § 363.15 for more information about linked accounts.)

Minor means an individual under the age of 18 years. The term minor is also used to refer to an individual who has attained the age of 18 years but has not yet taken control of the securities contained in his or her minor account.

Minor linked account means an account that you control on behalf of a minor. You use your primary account as the portal to open and access the minor linked account. (See §§ 363.15 and 363.27 for more information about minor accounts.)

* * * * *

Primary account means the account that you establish when you first open your New Treasury Direct account; your primary account is the portal used to open and access all your linked accounts. (*See* § 363.15 for more information about primary accounts.)

* * * * *

Transfer means moving a minimum amount of $25 (consisting of principal and proportionate interest) of a security from one New Treasury Direct account to another. The transfer of a specific security may be restricted by the terms of this part that apply to that security.

* * * * *

You or your refers to a New Treasury Direct primary account holder.

■ 4. Revise § 363.15 to read as follows:

§ 363.15 What is a New Treasury Direct account?

A New Treasury Direct account is an online account maintained by us solely in your name in which you may hold and conduct transactions in eligible book-entry Treasury securities.

(a) *Primary Account.* Your primary account that you establish when initially opening your New Treasury Direct account may contain the following Treasury securities:

(1) Treasury securities that are your personal holdings, in sole owner, owner with beneficiary, and primary owner with secondary owner forms of registration; and

(2) gifts that have not yet been delivered.

(b) *Linked account.* A linked account is an account that is a separate account from your primary account, but that is connected to your primary account. You use your primary account as a portal to open and access the linked account. Linked accounts include the following:

(1) *Custom account.* A custom account is an account that is linked to your primary account. You use your primary account as the portal to open and access your custom account. You may informally designate a purpose for the custom account, for example, "vacation fund", or "Johnny's college fund". However, the designation as to purpose has no legal effect; the registration of the securities held in the custom account determines ownership (Annual purchase limitations include securities held in custom accounts). You may use your custom account to buy, redeem and transfer securities that you own in sole owner, owner with beneficiary, and primary owner with secondary owner forms of registration. You may also buy and deliver gift securities from your custom account.

(2) *Minor account.* A minor account is an account established by a custodian for a person who has not yet reached the age of 18 years. A minor account is linked to the custodian's primary account. The minor is the owner of the securities, but the custodian controls the account on behalf of the minor. (*See* § 363.27 for more information about minor accounts.)

■ 5. Amend § 363.24 by adding paragraph (p) to read as follows:

§ 363.24 What transactions can I perform online through my New Treasury Direct account?

* * * * *

(p) You can open and access any linked accounts using your primary account as a portal.

■ 6. Revise § 363.27 to read as follows:

§ 363.27 What do I need to know about accounts for minors who have not had a legal guardian appointed by a court?

(a) *Opening an account in the name of a minor.* (1) A parent or a person who provides the chief financial support of a minor may open an account for a minor. The person opening the account for a minor is referred to as the custodian of the minor's account.

(2) The custodian is a fiduciary for the minor as to the securities held in the minor's account.

(3) The custodian must have an existing primary New Treasury Direct account in order to open the minor's account.

(i) The minor's account is an account that is linked to the custodian's primary account.

(ii) The custodian must use his or her primary New Treasury Direct account as a portal to open and access the minor's account.

(4) Securities contained in the minor's account will be registered in the name and SSN of the minor, in either sole owner, owner with beneficiary, or primary owner with secondary owner forms of registration.

(b) *Procedure for opening an account for a minor.* (1) Online instructions will be provided for establishing an account for a minor.

(2) The custodian must certify that all transactions conducted through the account will be on the minor's behalf.

(c) *Procedure for conducting transactions in the minor's account.* The custodian must conduct all transactions in the minor's account on behalf of the minor. Access to the minor's account is through the custodian's primary account.

(d) *Transactions permitted in the minor's account.* (1) The custodian may purchase securities for and on behalf of the minor through the minor's account.

(2) The custodian may redeem securities on behalf of the minor through the minor's account. We will report the interest earned on the security to the name and SSN of the minor.

(3) The custodian may not purchase gift securities from the minor's account.

(4) The custodian may not transfer securities from the minor's account if the transfer will result in a change of ownership in the security.

(5) Securities may be transferred to the minor's account.

(6) Gift securities may be delivered to the minor's account.

(7) The custodian may grant the right to view securities in the minor's account to another New Treasury Direct account holder, and may grant the right to redeem securities in the minor's account to a secondary owner, if any, named on the securities held in the minor's account.

(e) *When the minor reaches the age of 18 years.* (1) The only transactions that the custodian may make in the minor's account after the minor attains the age of 18 years are to purchase new securities, and to transfer the securities contained in the minor's account to another account in the name and SSN of the minor. The receiving account in the name and SSN of the minor may be a primary account established by the minor, or it may be another minor linked account with the same or a different custodian. The custodian may transfer one or more of the securities at a time, or the custodian may de-link the account and transfer all of the securities contained in the account to the minor's previously established primary New Treasury Direct account. The minor must establish his or her own primary New Treasury Direct account prior to transfer of his or her securities.

(2) In order to gain control of the securities held in the minor's account, the minor must first open his or her own primary account.

(3) The minor may gain control of the securities held in the minor's account by the custodian transferring the securities held in the minor's account to the minor's primary account, or the minor may request that Public Debt transfer the securities to his or her primary account.

(f) *Liability.* We rely on the certification of the custodian that he or she is acting on behalf of the minor. We are not liable to the minor, or any other person or party acting on behalf of the minor, for the actions of the custodian, nor are we liable for the application of any proceeds from the transfer or redemption of securities held in the minor's account. The custodian agrees to indemnify and hold harmless the United States in the event that we suffer any loss on account of any claim relating to a minor account.

§§ 363.28 through 363.32 [Removed and reserved]

■ 7. Remove and reserve §§ 363.28 through 363.32.

■ 8. Revise § 363.36 to read as follows:

§ 363.36 What securities can I purchase and hold in my New Treasury Direct account?

You can purchase and hold eligible Treasury securities in your account. Current eligible securities are book-entry Series EE and I savings bonds. We intend to designate additional Treasury securities as eligible securities from time to time.

§ 363.51 [Amended]

■ 9. Amend § 363.51 by removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), respectively.

■ 10. Amend § 363.66 to read as follows:

§ 363.66 What forms of registration are available for book-entry savings bonds?

The forms of registration available are single owner, owner with beneficiary, and primary owner with secondary owner.

§§ 363.70 and 363.71 [Removed and reserved]

■ 11. Remove and reserve §§ 363.70 and 363.71.

■ 12. Revise § 363.82 to read as follows:

§ 363.82 May an account owner deliver a book-entry savings bond purchased as a gift to a minor?

An account owner may deliver a bond purchased as a gift to a minor. The account owner must deliver the security to the minor's linked account. Once delivered, the bond will be under the control of the custodian of the minor's account. (*See* § 363.27.)

§§ 363.85 [Removed and reserved]

■ 13. Remove and reserve § 363.85.

§ 363.90 [Amended]

■ 14. Amend § 363.90 by removing paragraph (a)(3) and redesignating paragraphs (a)(4), (5), and (6) as paragraphs (a)(3), (4), and (5), respectively.

§ 363.96 [Amended]

■ 15. Amend § 363.96 by removing paragraph (e).

Dated: January 13, 2004.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 04–1039 Filed 1–13–04; 3:11 pm]

BILLING CODE 4810–39–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–002]

Drawbridge Operation Regulations; Intracoastal Waterway, Beach Thorofare, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Margate Bridge across Beach Thorofare, at Intracoastal Waterway (ICW) mile 74.0, located in Margate, New Jersey. From midnight on January 4, 2004, through midnight on February 5, 2004, this deviation allows the bridge to remain closed to navigation. This closure is necessary to facilitate emergency mechanical and structural repairs.

DATES: This deviation is effective from midnight on January 4, 2004, through midnight on February 5, 2004.

FOR FURTHER INFORMATION CONTACT: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard

District, Bridge Section at (757) 398–6587.

SUPPLEMENTARY INFORMATION: Currently, the Margate Bridge is required to open on signal at all times. The Margate Bridge is owned and operated by Ole Hansen & Sons of Cologne, New Jersey. The bridge owner has requested a temporary deviation from the operating regulations set out in 33 CFR 117.5.

The work involves a complete overhaul of the mechanical system and structural repairs of the draw span. To facilitate the repairs, the work requires completely immobilizing the operation of the bascule span in the closed position to vessels from midnight on January 4, 2004, through midnight on February 5, 2004. The Coast Guard has informed the known users of the waterway of the closure period for the bridge caused by the temporary deviation.

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repair completion of the drawbridge. The temporary deviation allows the Margate Bridge across Beach Thorofare, at ICW mile 74.0, to remain closed to navigation from midnight on January 4, 2004, through midnight on February 5, 2004.

Dated: January 9, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Section, Fifth Coast Guard District.

[FR Doc. 04–1056 Filed 1–15–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–CORR FRL–7609–4]

State Implementation Plans; States of Arizona, California, and Nevada; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This action corrects clerical and typographical errors to regulations codified into the State Implementation Plans for Arizona, California, and Nevada. These errors occurred in final rules published in the **Federal Register** over a period of time from August 21, 1981 to May 24, 2001.

EFFECTIVE DATE: This action is effective on January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 21, 1981 (46 FR 42450), April 16, 1982 (47 FR 16327), May 7, 1982 (47 FR 19694), June 23, 1982 (47 FR 27068), March 27, 1984 (49 FR 11626), October 19, 1984 (49 FR 42450), October 26, 1992 (57 FR 48457), April 3, 1995 (60 FR 16799), June 27, 1997 (62 FR 34641), December 3, 1998 (63 FR 66758), August 19, 1999 (64 FR 45175), May 26, 2000 (65 FR 34101), August 4, 2000 (65 FR 47863), September 13, 2000 (65 FR 55193), September 19, 2000 (65 FR 56486), and May 24, 2001 (66 FR 28666), EPA published final rulemaking actions approving various sections of Arizona, California, and Nevada State Implementation Plans (SIP). These actions incorporated material by reference into 40 CFR 52.120, Identification of plan for Arizona, 40 CFR 52.220, Identification of plan for California, and 40 CFR 52.1470, Identification of plan for Nevada. The various clerical and typographical errors occurred when the material was incorporated by reference into the Code of Federal Regulations (CFR). All of the errors are being corrected by this action. An explanation of each correction is listed below by State and date of publication.

Arizona

On June 27, 1997 at 62 FR 3464, EPA published a final rulemaking deleting certain rules from the SIP. The codified language for § 52.120, paragraph (c)(3)(i) referenced an incorrect date. The correct date is being inserted in this action.

On April 16, 1982 at 47 FR 16326, EPA published a final rulemaking approving Pima County Department of Environmental Quality rules into the SIP. During the printing of the CFR from the year 1992 to 1993, the Government Printing Office inadvertently omitted two lines of codified rules from § 52.120, paragraph (c)(38)(i)(A). This action correctly replaces the approved rules.

On October 19, 1984 at 49 FR 41026, EPA published a final rule approving certain rules into the Arizona SIP. The codified language at § 52.120, paragraph (c)(56)(i)(A) contained two typographical errors, one for Rule R9–3–515 and the other for Appendix 11. These typographical errors are being corrected in this action.

California

On August 19, 1999 at 64 FR 45175, EPA published a direct final rule approving the recission of rules from the Mojave Desert Air Quality Management District. The codified language for § 52.220, paragraph (c)(39)(ii)(G) referenced an incorrect date. The correct date is being inserted in this action.

On August 21, 1981 at 46 FR 42450, EPA published a final rulemaking approving the San Joaquin Valley Air Basin Nonattainment Area Plan (SJVABNAP). On May 7, 1982 at 47 FR 19694, EPA published an additional final rulemaking on the SJVABNAP. Both rulemakings added language to § 52.220, paragraph (c)(71), creating duplicate paragraphs. This action combines and revises the language for (c)(71).

On June 23, 1982 at 47 FR 27068, EPA published a final rulemaking approving Placer County Air Pollution Control District rules. The rules were improperly codified in § 52.220 because paragraph (c)(80)(i)(B) already existed. This action eliminates the duplicate paragraphs by renumbering the June 23, 1982 entry from to (B) to (E).

On October 26, 1992 at 57 FR 48457, EPA published a final rulemaking approving South Coast Air Quality Management District rules. The rules were codified in § 52.220, paragraph (c)(184)(i)(B)(*2*), creating duplicate paragraphs. This action eliminates the duplicate paragraphs by renumbering that entry from to (*2*) to (*10*).

On April 3, 1995 at 60 FR 16799, EPA published a direct final rule approving Bay Area Air Quality Management District rules. The codified language at § 52.220, paragraph (c)(202)(i)(A) incorrectly lists the entire Rule 2–1. The April 3, 1995 **Federal Register** clearly states that only Section 429 of Rule 2.1 is being approved. This action corrects the entry for paragraph (c)(202)(i)(A) to read Rule 2–1–249.

On June 27, 1997 at 62 FR 34641, EPA published a final rule deleting certain rules from the California SIP. The codified language for Ventura County Air Pollution Control District at § 52.220, paragraph (c)(35)(iii)(C) and paragraph (c)(51)(xx)(B) contained typographical errors. The typographical errors are being corrected in this action.

On December 3, 1998 at 63 FR 66758, EPA published a final rule approving Santa Barbara County Air Pollution Control rules. The codified language at § 52.220, paragraph (c)(225)(i)(F) was inadvertently omitted. The action correctly adds Santa Barbara Air Pollution Control District to paragraph (c)(225)(i)(F).

On May 26, 2000 at 65 FR 34101, EPA published a final rule approving Bay Area Air Quality Management District rules. The codified language at § 52.220, paragraph (c)(248)(i)(F) was inadvertently omitted. The action correctly adds Bay Area Air Quality

Management District to paragraph (c)(248)(i)(F).

On December 19, 2000 at 65 FR 79314, EPA published a Final Interim Approval of an Operating Permits Program for the Antelope Valley Air Pollution Control District (AVAPCD). The Final Interim Approval created amendments to § 52.220, paragraph (c)(262)(i)(E)(*1*), which expired on January 11, 2003. On May 24, 2001 at 66 FR 28666, EPA published a direct final rule approving AVAPCD Rule 1171. The amendments to § 52.220, paragraph (c)(262)(i)(E)(*2*) were not codified into the CFR. This action codifies Rule 1171 and renumbers the paragraph in § 52.220, to paragraph (c)(262)(i)(E)(*1*) because the previous entry has expired.

On August 4, 2000 at 65 FR 47863, EPA published a final rule correcting an amendment to the Sacramento Metropolitan Air Quality Management District Rule 464 at § 52.220, paragraph (c)(263)(i)(C)(*1*). Because of inaccurate amendatory instruction, the paragraph was not corrected. This action corrects the entry for § 52.220, paragraph (c)(263)(i)(C)(1).

On September 13, 2000 at 65 FR 55193, EPA published a final rule approving San Joaquin Valley Unified Air Pollution Control District Rule 4653. Rule 4653 was erroneously codified in § 52.220, paragraph (c)(266)(i)(B)(*2*) in lieu of (c)(266)(i)(B)(*1*). This action corrects the codification.

On September 19, 2000 at 65 FR 56486, EPA published a final rule approving Tehama County Air Pollution Control District rules. A typographical error was inadvertently added to the entry for § 52.220, paragraph (c)(263)(i)(D)(1). This action will correct the typographical error.

Nevada

On March 27, 1984 at 49 FR 11628, EPA published a final rule approving Nevada State Department of Conservation and Natural Resources rules. Several typographical errors occurred during the transfer of the information from the **Federal Register** action to the CFR. This action will correct the typographical errors in § 52.1470, paragraph (c)(25)(i)(A).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: December 12, 2003.

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 D—Arizona

■ 2. Section 52.120 is amended by:
■ a. Revising paragraph (c)(3)(i)(A); revising paragraph (c)(38)(i)(A); and revising paragraph (c)(56)(i)(A) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) Previously approved on July 27, 1972 and now deleted without replacement Rules 60 to 67.

* * * * *

(38) * * *

(i) * * *

(A) New or amended Regulation 10: Rules 101–103; Regulation 11: Rules 111–113; Regulation 12: Rules 121–123; Regulation 13: Rules 131–137; Regulation 14: Rules 141 and 143–147; Regulation 15: Rule 151; Regulation 16: Rules 161–165; Regulation 17: Rules 172–174; Regulation 18: Rules 181 and 182; Regulation 20: Rules 201–205; Regulation 22: Rules 221–226; Regulation 23: Rules 231–232; Regulation 24: Rules 241 and 243–248; Regulation 25: Rules 251 and 252; Regulation 30: Rules 301 and 302; Regulation 31: Rules 312–316 and 318; Regulation 32: Rule 321; Regulation 33: Rules 331 and 332; Regulation 34: Rules 341–344; Regulation 40: Rules 402 and 403; Regulation 41: Rules 411–413; Regulation 50: Rules 501–503 and 505–507; Regulation 51: Rules 511 and 512; Regulation 60: Rule 601; Regulation 61: Rule 611 (Paragraph A.1 to A.3) and Rule 612; Regulation 62: Rules 621–624; Regulation 63: Rule 631; Regulation 64: Rule 641; Regulation 70: Rules 701–705 and 706 (Paragraphs A to C, D.3, D.4, and E); Regulation 71: Rules 711–714; Regulation 72: Rules 721 and 722; Regulation 80: Rules 801–804; Regulation 81: Rule 811; Regulation 82: Rules 821–823; Regulation 90: Rules 901–904; Regulation 91: Rules 911 (except Methods 13-A, 13-B, 14, and 15; and Rules 912, and 913; Regulation 92: Rules 921–924; and Regulation 93: Rules 931 and 932.

* * * * *

(56) * * *

(i) * * *

(A) New or amended rules R9–101 (Nos. 98 and 158), R9–3–201 to R9–3–207, R9–3–215, R9–3–218, R9–3–310, R9–3–322, R9–3–402, R9–3–404, R9–3–502, R9–3–515 (paragraph C.3., C.5., and C.6.b.v.), R9–3–529, R9–3–1101, and Appendices 1 and 11.

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Subpart F—California

■ 3. Section 52.220 is amended by:
■ a. Revising paragraph (c)(35)(iii)(C);
■ b. Revising paragraph (c)(39)(ii)(G);
■ c. Revising paragraph (c)(51)(xx)(B);
■ d. Removing both paragraphs for (c)(71) introductory text and adding a new paragraph (c)(71) introductory text;
■ e. Redesignating paragraph (c)(80)(i)(B)(which was added on June 23, 1982 at 47 FR 27068) as paragraph (c)(80)(i)(E) and revising newly designated paragraph (c)(80)(i)(E);
■ f. Redesignating paragraph (c)(184)(i)(B)(*2*) (which was added on October 26, 1992 at 57 FR 48459) as paragraph (c)(184)(i)(B)(*10*);
■ g. Revising paragraph (c)(202)(i)(A)(*1*);
■ h. Adding paragraph (c)(225)(i)(F);
■ i. Adding paragraph (c)(248)(i)(F);
■ j. Adding paragraph (c)(262)(i)(E);

■ k. Redesignating paragraph (c)(263)(i)(C)(*2*) (which was added on April 19, 2000 at 65 FR 20912) as paragraph (c)(202)(i)(C)(*1*)
■ l. Revising paragraph (c)(263)(i)(D)(*1*); and
■ m. Redesignating paragraph (c)(266)(i)(B)(*2*) (which was added on September 13, 2000 at 65 FR 55196) as paragraph (c)(266)(i)(B)(*1*).

The revisions and additions read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(35) * * *

(iii) * * *

(C) Previously approved on August 15, 1977 and now deleted without replacement Rules 115 to 119, 122, and 128 to 129.

* * * * *

(39) * * *

(ii) * * *

(G) Previously approved on September 8, 1978 and now deleted without replacement Rules 466 and 467.

* * * * *

(51) * * *

(xx) * * *

(B) Previously approved on June 18, 1982 and now deleted without replacement Rules 40, 110 to 114, 120 to 121, 123 to 126, and 130.

* * * * *

(71) The *San Joaquin Valley Air Basin Control Strategy (Chapter 16 of the Comprehensive Revisions to the State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards)* submitted on October 11, 1979, by the Governor's designee. Those portions of the *San Joaquin Valley Air Basin Control Strategy* identified by Tables 16–1a, 1b and 1c (Summary of Plan Compliance with Clean Air Act Requirements) except for those portions which pertain to Fresno County and the six transportation control measures for Stanislaus County, comprise the submitted plan. The remaining portions are for informational purposes only. The following rules were also submitted on October 11, 1979 as part of the enforceable plan:

* * * * *

(80) * * *

(i) * * *

(E) New or amended Rules 212, 213, 508 (except Paragraph (1)(C)(3)(h), and 514.

* * * * *

(202) * * *

(i) * * *

(A) * * *

(*1*) Rule 2–1–249, adopted on June 15, 1994.

* * * * *

(225) * * *

(i) * * *

(F) Santa Barbara County Air Pollution Control District.

* * * * *

(248) * * *

(i) * * *

(F) Bay Area Air Quality Management District.

* * * * *

(262) * * *

(i) * * *

(E) Antelope Valley Air Pollution Control District.

(*1*) Rule 1171, adopted on November 17, 1998.

* * * * *

(263) * * *

(i) * * *

(C) * * *

(*1*) Rule 464, adopted on July 23, 1998.

(D) * * *

(*1*) Rule 4:31 adopted on March 14, 1995, Rule 4:34 adopted on June 3, 1997, and Rule 4.37 adopted on April 21, 1998.

* * * * *

■ 4. Section 52.1470 is amended by revising paragraph (c)(25)(i)(A) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(25) * * *

(i) * * *

(A) New or amended sections 445.430–445.437, 445.439–445.447, 445.451, 445.453–445.472, 445.474–445.477, 445.480–445.504, 445.509–445.519, 445.522–445.537, 445.539, 445.542–445.544, 445.546–445.549, 445.551, 445.552, 445.554–445.568, 445.570, 445.572–445.587, 445.589–445.605, 445.608–445.612, 445.614–445.622, 445.624, 445.626, 445.627, 445.629–445.655, 445.660, 445.662–445.667, 445.682, 445.685–445.700, 445.704–445.707, 445.712–445.716, 445.721, 445.723, 445.729–445.732, 445.734, 445.742, 445.743, 445.746, 445.753, 445.754, 445.764, 445.844, and 445.845.

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[FR Doc. 04–557 Filed 1–15–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 111–OPPa; FRL–7611–2]

Clean Air Act Full Approval of the Title V Operating Permit Program for Antelope Valley Air Pollution Control District in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to fully approve the operating permit program submitted by the California Air Resources Board (CARB) on behalf of Antelope Valley Air Pollution Control District (Antelope Valley APCD or the District). The operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. EPA granted final interim approval to the District's operating permit program on December 19, 2000 (65 FR 79314). Of the three deficiencies noted by EPA, two were corrected by Antelope Valley APCD in a timely manner. The third deficiency was resolved on September 22, 2003, when the Governor of California signed SB 700, revising State law by removing the agricultural permitting exemption. Though interim approval of the District's operating permit program expired on January 21, 2003, and EPA consequently implemented a federal operating permit program for Antelope Valley APCD, all three deficiencies are now resolved. Therefore, EPA is approving the District's operating permit program.

DATES: This operating permit program is effective on March 16, 2004, without further notice, unless EPA receives adverse comments by February 17, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that these revisions will not take effect.

ADDRESSES: Written comments on this action may be submitted either by mail or electronically. By mail, comments should be addressed to Gerardo Rios, Permits Office Chief, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. Electronically, comments should be sent by e-mail to *rios.gerardo@epa.gov,* or submitted at *http://www.regulations.gov.*

You can inspect copies of the program submittals, and other supporting documentation relevant to this action, at our Region IX office during normal business hours by appointment.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, at (415) 972–3974 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" means EPA.

Table of Contents

I. Background

Title V of the Clean Air Act (CAA or Act) required all state permitting authorities to develop operating permit programs that met certain federal criteria codified at 40 Code of Federal Regulations (CFR) part 70. On December 19, 2000, EPA granted final interim approval of Antelope Valley APCD's title V operating permit program. The District resolved two of the three deficiencies in a timely manner (submittal dates of October 22, 2001, and June 17, 2002). However, because the third deficiency involved EPA's finding that the State's agricultural permitting exemption at Health and Safety Code Section 42310(e) unduly restricted the District's ability to adequately administer and enforce its title V program, Antelope Valley APCD was not able to resolve all deficiencies prior to the expiration of interim approval on January 21, 2003. As a result, EPA began implementation of the part 71 program for all major stationary sources in Antelope Valley APCD, effective January 21, 2003. The three program deficiencies are described in detail in the proposed rulemaking for interim approval of the District's title V program. *See* 65 FR 17231 (March 31, 2000).

II. Description of Today's Action

We are taking direct final action to approve the operating permit program of Antelope Valley APCD. As stated in the proposed rulemaking for interim approval of the District's title V program, two of the three deficiencies noted by EPA involved District rules: Rule 3006—Reopening, Reissuance, and Termination of Federal Operating Permits; and Rule 219—Equipment Not Requiring a Permit. For Rule 3006, a reference to Rule 3002(E)(2)(b) simply needed to be changed to Rule 3002(E)(2). For Rule 219, the insignificant activity emission cutoff for a regulated pollutant that is not a HAP needed to be reduced to 2 tons/yr. The required revisions were made to these two rules and submitted to EPA. Thus, these two deficiencies have been resolved.

The third deficiency involved California State law. Health and Safety Code Section 42310(e) contained an agricultural permitting exemption which unduly restricted the District's ability to adequately administer and enforce its title V program. On September 22, 2003, the Governor of California signed SB 700, which revised State law to remove the agricultural permitting exemption. Furthermore, we have received a legal opinion from the California Attorney General that confirms that the elimination of the agricultural permitting exemption from State law provides all local districts with authority to issue title V permits to major stationary agricultural sources. Therefore, the third deficiency has also been resolved.

A complete listing of each deficiency, as well as resolution of the deficiency, is contained in the technical support document which is a part of the docket for this action and which is available from the EPA contact (*see* **FOR FURTHER INFORMATION CONTACT** section).

III. Effect of Today's Action

Today's action would result in Antelope Valley APCD having a title V program that requires all major stationary sources, including major stationary agricultural sources, to obtain title V operating permits. It would also terminate EPA's implementation of a part 71 federal operating permit program within Antelope Valley APCD.

Following final interim approval of the District's title V program, since the District was not able to submit a complete corrective program for full approval by July 21, 2002, EPA started an 18-month sanctions clock pursuant to CAA section 179(b), 40 CFR 70.10(a)(ii), and 40 CFR 70.4(f)(2). This sanctions clock was to expire on January 21, 2004. Today's action would terminate this sanctions clock.

IV. Public Comment and Final Action

EPA is fully approving the District's title V operating permits program because we believe it is consistent with Title V of the Clean Air Act and 40 CFR part 70. We are processing this action as a direct final action because the revisions made to the program to resolve the interim approval deficiencies are noncontroversial. Therefore, we do not think anyone will object to this approval. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of this same operating permit program. If we receive adverse comments by February 17, 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 March 16, 2004. Please note that if we receive adverse comment on an amendment, paragraph, or section of this program and if that provision may be severed from the remainder of the program, we may adopt as final those provisions of the program that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 final action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve an existing requirement under state law, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final 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 revisions to state operating permit programs submitted pursuant to Title V of the CAA, EPA will approve such revisions provided that they meet the criteria of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. 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 part 70 program revision for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a part 70 program revision, to use VCS in place of a part 70 program revision 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 final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 70

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

Dated: January 6, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

■ 40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (ii) under California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(ii) Antelope Valley APCD:

(1) Complete submittal received on January 26, 1999; interim approval effective January 18, 2001; interim approval expires January 21, 2003.

(2) Revisions were submitted on October 22, 2001 and June 17, 2002. Due to unresolved deficiency of state-exempt major stationary agricultural sources, interim approval expired for all major stationary sources, effective January 21, 2003.

(3) Revision submitted on November 7, 2003 containing program for major stationary agricultural sources, effective on January 1, 2004.

* * * * *

[FR Doc. 04–1040 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1310

RIN 0970–AC16

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule will extend for 150 days those parts of the Head Start transportation regulation that deal with the requirement that each vehicle used to transport children is equipped for use of child safety restraint systems and the requirement that each bus have a bus monitor. Additionally, these rules will provide Head Start grantees the opportunity to request further extension of the effective date when such an extension is in the best interest of the children they serve.

DATES: These regulations are effective February 17, 2004. In providing this 30 day delay of the effective date, ACF is complying with section 644(d) of the Head Start Act which requires that at least 30 days prior to the effective date, all rules, regulation, and application forms shall be published in the **Federal Register** and shall be sent to each grantee with the notification that each such grantee has the right to submit comments prior to the final adoption thereof as well as the relevant requirements of the Administrative Procedures Act by publishing the notice of the interim final regulations in the **Federal Register** as well as mailing copies to individual grantees.

Consideration will be given to comments received by March 16, 2004.

ADDRESSES: You may submit your comments in writing to the Associate Commissioner, Head Start Bureau, 330 C Street, SW., Washington, DC 20447. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at the Department's offices at the above address. You may also transmit written comments electronically via the Internet at: *http://regulations.acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Craig Turner, (202) 205–8572.

SUPPLEMENTARY INFORMATION:

Justification for Interim Final Rule

The Administrative Procedure Act requirements for notice of proposed rulemaking (NPRM) do not apply to rules when the agency for good cause finds, and incorporates the finding, and a brief statement of the reasons therefore in the rules issued, that notice thereon is impracticable, unnecessary or contrary to the public interest. The Department believes that amending certain provisions of the Head Start transportation regulations under 45 CFR part 1310, before their current effective date of January 20, 2004 is of such importance, that publishing a notice of proposed rulemaking would be contrary to the public interest.

Since the publication of 45 CFR part 1310, the Department has been informed of what we believe to be significant issues which, if not addressed, could result in many children being denied transportation services to and from their Head Start program and many grantees being cited with deficiencies which could lead to the termination of their Head Start grants. Furthermore, the Department is now aware of several new factors which have only come to the Department's attention since promulgation of the final rule and believes these factors warrant reconsideration of some of the requirements of this regulation.

Many Head Start programs operate coordinated transportation programs in which they arrange for other agencies to provide transportation services, often at reduced or no cost to the program. In addition, many Head Start grantees that are local school systems provide, using the school system's resources, free transportation to Head Start children. It has come to the Department's attention

that many such arrangements integrate Head Start children into the on-going transportation system administered by the school system or other transportation provider. Head Start children ride the same bus as school age children and often represent only a few of the several dozen children on the bus. In considering the impact of this regulation, the Department did not fully appreciate the impact on such arrangements but rather was more focused on those programs with dedicated buses; that is buses on which only Head Start children are transported. Many school systems, and other transportation providers, forced to conform to the requirements of child restraint systems and monitors have indicated they will discontinue transportation services for Head Start children. This will not only diminish Head Start's ability to engage as a community player with other local organizations but will result in many Head Start grantees choosing to discontinue the provision of transportation services, as such services are not mandated. This will likely disenfranchise many families with no ability to get their children to and from the Head Start center and will pose significant safety risks for other children who now instead of being transported on a school bus will be transported in private vehicles which have been shown in studies by the National Highway Transportation Safety Administration (NHTSA) to put children at greater risk. We believe it more prudent to explore with the Department's transportation partners what alternatives might be available to assure children continue to be safely transported on school buses.

We have also come to understand that some earlier assumptions about possible options for implementing this regulation may have not been entirely correct. For example, requiring child restraint systems often times requires retrofitting a bus to make the installation of such seats possible and such retrofitting can, in and of itself, cause safety issues that may put children at risk. In addition, we have also, since the regulation's publication, been informed that one of the major requirements—that children up to 50 pounds be secured in child restraint systems should be reconsidered. This requirement was based on the National Highway Transportation and Safety Administration's (NHTSA) standards which were developed for restraint systems used in passenger vehicles. Crash testing by NHTSA with pre-school size dummies in school buses suggests that, because of the compartmentalization of a bus, only children less than 40 pounds need to be seated in child restraint systems. The Department believes regulations which may implement inappropriate requirements should be revisited.

Another consideration that led the Department to conclude an Interim Final Regulation is appropriate is our better understanding of some of the consequences which may result in grantees not fully implementing these requirements. Specifically, Head Start grantees which, during an on-site monitoring visit, were determined to not be complying with the restraint system/monitor requirement would be designated as deficient, and these programs would face the threat of having their grants terminated if they did not immediately bring their programs into compliance. This could result in many programs choosing to relinquish their transportation programs, only to discover that some months later, the Department had, through an NPRM process, chosen to provide an opportunity for an extension of the effective date; thus causing considerable disruption to those grantees and their enrolled children and families. Such grantees would then need to try and reimplement transportation programs which had been put in abeyance. Causing this type of situation in order to follow the full process of an NPRM seems unnecessary and unreasonable. There seems little gain in forcing those programs discovered to be not complying with this regulation (*i.e.* those grantees monitored for the first several months after January 20) to remedy a situation which may become moot in a relatively short time period.

The Department sought other solutions to ensure timely and effective implementation of the requirements for bus monitors and child safety restraint systems but determined that none were practicable and that rulemaking is necessary. For example, several grantees sought relief from these requirements through the waiver authority provided under existing Head Start regulations at 45 CFR 1310.2(c). However, we determined that the limited waiver authority provided under the regulations did not envision the types of problems grantees are facing and that these grantees would not meet the test set out in regulations. Similarly, we attempted to assist grantees in meeting these rules through the provision of technical assistance. However, as discussed earlier, the issues involved are varied and widespread and cannot be addressed through the normal technical assistance route which offers limited one-time funding to assist individual grantees.

Therefore, the Department has determined that an Interim Final Regulation providing grantees a short-term extension of 150 days with the opportunity to request a longer extension of the effective date for child safety restraints and monitors when such an extension would be in the best interest of children they serve is warranted. Moreover, the Department will carefully consider appropriate solutions to the issues discussed above and, should changes to the current regulation be warranted, will pursue appropriate changes to the Head Start transportation regulation through a notice of proposed rulemaking.

In accordance with Section 644(d) of the Head Start Act as well as the relevant requirements of the Administrative Procedures Act, we are publishing notice of the interim final regulation and mailing copies to individual grantees 30 days prior to the effective date.

Background

On January 18, 2001, the final Head Start transportation regulation was published in the **Federal Register** (66 FR 5296). This regulation, under 45 CFR part 1310, contains several requirements designed to assure that Head Start children are safely transported to and from Head Start centers and apply to all Head Start and Early Head Start programs that provide transportation either directly, using program owned or leased vehicles, or through arrangements with private or public transportation providers, including local education agencies (LEAs).

Different effective dates are included in the regulations for different requirements. The requirement, for example, that children be transported in school buses or allowable alternate vehicles does not take effect until January 18, 2006 while the requirement that each vehicle used to transport children is equipped for use of child safety restraint systems takes effect two years earlier on January 20, 2004.

This rule defers the effective date of the child safety restraint (45 CFR 1310.11) and the attendant bus monitor requirements (45 CFR 1310.15(c)) for 150 days and provides grantees the opportunity to request the date for their individual compliance be extended to not later than January 18, 2006, concurrent with the effective date of the school bus requirement, when such an extension would be in the best interest of the children they serve.

Provisions of the Regulation

As indicated above, two sections of the regulations are scheduled to become effective on January 20, 2004; specifically, the regulations related to child safety restraints (45 CFR 1310.11) and bus monitors (45 CFR 1310.15(c)). Section 1310.11 requires that vehicles used to transport children weighing 50 pounds or less be equipped for use of child safety restraint systems compliant with Federal Motor Vehicle Safety Standard (FMVSS) 213. Section 1310.15(c) states that vehicles must be staffed with at least one bus monitor in addition to the driver.

We believe that implementation of these two requirements should be deferred while the Department of Health and Human Services considers to what extent, if any, exceptions to these two requirements should be permitted.

Many Head Start agencies are local school systems that have agreed to provide, as a local contribution, free transportation services to enrolled Head Start children. Other agencies have arranged coordinated transportation services with local school districts, often receiving these services at no cost or reduced cost to the program. Integrating Head Start children into regular bus routes is often the most efficient and effective way to transport young children who may be widely dispersed over an agency's service area. In many of these collaborative arrangements Head Start children are picked up along with K–12 school children that live in the same neighborhood. In these situations, Head Start children often represent no more than a few pupils on a large school bus. All of the other pupils weigh more than the amount at which child safety restraint systems are needed. The need to reconfigure seats to install child safety restraint systems for these few Head Start children, the reduction in the total number of children that can be transported on a modified bus, and multiple daily bus runs all combine to create significant obstacles for school systems and other agencies.

Of potentially greater impact is that each such bus, under current requirements, would need to have at least one monitor, irrespective of how few Head Start children might be on the bus. This could be prohibitively expensive if a monitor's salary is amortized among, for example, only three or four children. While many would support the argument that having a monitor on a bus filled with preschool age children would be appropriate, it is less clear that providing a monitor for three preschool age children is either appropriate or cost effective. In fact, the final rule published in 2001 included a discussion of alternatives for reducing the expense of providing monitors by having individual volunteers fill the role or by assigning bus monitor duties to individuals who are employed most of the time in filling other roles in the Head Start program but these alternatives are not practical when an agency other than a grantee is operating the bus.

Our concern is that these requirements will result in school systems and other contracted providers discontinuing the provision of transportation to Head Start children. This is an issue either because the monitor costs are prohibitively high or because the child safety restraint requirement will result in schools needing more buses to transport fewer children, again resulting in increased costs. Head Start grantees without free transportation services will need to either discontinue transportation services, forcing parents to transport children to and from Head Start centers—with all the potential safety issues such a situation could entail—or reduce enrollment in order to free up sufficient funds to pay for what had previously been a free service.

A few examples illustrate this point.

A school district in Kentucky serves over 97,000 students K–12. Approximately 3,900 Head Start children are transported by the district on 266 school buses. Adding child safety restraints would reduce the seating capacity of these buses, requiring the school district to purchase additional buses and add bus runs. Hiring 266 monitors would cost millions of dollars and be cost prohibitive.

At least ten school districts in the Philadelphia area have said they will curtail the provision of transportations services to Head Start children.

Similar concerns have been echoed throughout the country. Waiver requests and correspondence have come in, and more are anticipated as the deadline approaches and grantees submit their annual refunding applications.

Additionally, we believe the single most important safety feature in the Head Start transportation regulations is the requirement that children be transported on buses. Study after study, conducted by the NHTSA and others, clearly establish that children should be transported in buses and that children transported in other vehicles, such as passenger vans, are at much greater risk. We are concerned that use of funds for the cost of bus monitors and child safety restraint systems would discourage grantees from voluntary early compliance with the requirement for use of school buses or alternative vehicles, which would have a greater impact on the safety of children than compliance with either the bus monitor or child safety restraint requirement.

Finally, as explained in detail earlier under the justification for the interim final rule, the Department is aware of other new factors, including safety factors, since promulgation of the final rule which provide compelling support for providing flexibility in the effective date of the provisions addressing child restraint systems and bus monitors while we consider these provisions more thoughtfully. We continue to believe that the best interest of children should be our paramount concern and that failure to provide some relief on the January 20, 2004 effective date could jeopardize children.

For these reasons, we are revising section 45 CFR 1310.11 to provide under paragraph (a) that effective June 21, 2004, rather than January 20, 2004, each agency providing transportation services must ensure that each vehicle used to transport children receiving Head Start services is equipped for the use of height- and weight-appropriate child safety restraint systems.

The rule also adds a new paragraph (b) under section 1310.11 to provide that the responsible HHS official will approve requests to extend this deadline to not later than January 18, 2006 when: (1) The grantee provides notification of its intent to seek such an extension by March 1, 2004; and (2) the grantee submits by April 1, 2004 a request for an extension with information documenting that an extension through the period requested (but not later than January 20, 2006) would be in the best interest of the children served, as set out in guidance provided by HHS.

Similarly, we are revising 45 CFR 1310.15(c) to provide under a new paragraph (c)(1) that effective June 21, 2004, rather than January 20, 2004, there is at least one bus monitor on board at all times, with additional bus monitors provided, as necessary, such as when needed to accommodate the needs of children with disabilities. We also have added a new paragraph (c)(2) to section 1310.15 to provide that the responsible HHS official will approve requests to extend this deadline to not later than January 20, 2006 when: (1) The grantee provides notification of its intent to seek such an extension by March 1, 2004; and (2) the grantee submits by April 1, 2004 a request for an extension with information documenting that an extension through the period requested (but not later than January 20, 2006)

would be in the best interest of the children served, as set out in guidance provided by HHS. We note that the waiver provisions of 45 CFR 1310.2(c) is distinct from the provision allowing for postponement for the requirements for child safety restraint systems and bus monitors.

Requests under section 1310.11(b) and 1310.15(c)(2) may be combined and may be based on the same documentation since these requirements are so closely interwoven, *i.e.*, the role of the monitor under section 1310.15(c) is largely to assist children with the child safety restraint systems required under section 1310.11(a) of the interim final rule. HHS will issue further guidance on the process for seeking extensions shortly.

We are also making a conforming change to 45 CFR 1310.2(b), which summarizes the effective dates of the various provisions of the regulations to provide that Sections 1310.11 and 1310.15(c) of this part are effective June 21, 2004.

As indicated earlier, rules under 45 CFR 1310, including these changes, apply to all Head Start and Early Head Start programs that provide transportation either directly, using program owned or leased vehicles, or through arrangements with private or public transportation providers, including local education agencies (LEAs).

Thus this rule provides an immediate extension of 150 days of the requirements for child safety restraint systems and bus monitors. We selected this time period because we believe it will provide grantees sufficient time to consider their individual circumstances and to consider if circumstances warrant submission of an application for an extension without disrupting services or subjecting children to potentially dangerous alternative modes of transportation. In addition, this would extend the provision to nearly the end of the Head Start grantee program year which would further prevent program disruption.

In tandem with these rules, we will evaluate the issues raised on the requirements for child safety restraint systems and bus monitors and seek solutions for the safest, most effective transportation systems possible for Head Start and Early Head Start children and families.

Finally, we note that this rulemaking would address Congressional concerns which have suggested the need for some flexibility in the current regulations, especially where local education agencies and Head Start integrate transportation services.

Paperwork Reduction Act

This interim final rule contains information collection requirements in sections 1310.11(b) and 1310.15(c)(20). This summary includes the estimated costs and assumptions for the paperwork requirements related to this interim final rule. A copy of this information collection request is available on our Web site at *http://regulations.acf.hhs.gov* and can also be obtained in hardcopy by contacting Craig Turner at the Head Start Bureau, ACF. These paperwork requirements have been submitted to the Office of Management and Budget for review under number 0970–0260 as required by 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The Head Start Bureau estimates that the interim final rule would create 1,670 burden hours in the first and only year of collection with related annualized costs of $41,750 for respondents and $50,100 for the Federal government. Table 1 summarizes number of costs by grantee. On a per grantee basis, the Head Start Bureau estimates the same paperwork for all relevant grantees. This is a onetime grantee collection.

TABLE 1.—ESTIMATE OF RESPONDENTS HOUR BURDEN AND ANNUALIZED BURDEN HOURS COSTS

Number of grantees and delegates	1,670
Hours per respondent	1
Cost per respondent	$25
Total costs	$41,750

The paperwork burden is summarized by total annualized burden hours by provision (Table 2) and by total annualized burden costs by provision (Table 3). New information collection requirements are imposed by sections 1310.11(b) and 1310.15(c)(2) of these regulations. Section 1310.11(b) requires the responsible HHS official to approve requests to extend the relevant deadline to no later than January 20, 2006 when (1) the grantee provides notification of its intent to seek such an extension by March 1, 2004; and (2) the grantee submits by April 1, 2004 a request for an extension with information documenting that an extension through the period requested (but not later than January 20, 2006) would be in the best interest of the children served, as set out in guidance provided by HHS. Section 1310.15(c)(2) requires the responsible HHS official to approve requests to extend this deadline to not later than January 20, 2006 when (A) the grantee provides notification of its intent to seek such an extension by March 1, 2004; and (B) the grantee submits by April 1, 2004 a request for an extension with information documenting that an extension through the period requested (but not later than January 20, 2006) would be in the best interest of the children served, as set out in guidance provided by HHS. Requests under section 1310.11(b) and 1310.15(c)(2) may be combined and may be based on the same documentation.

HHS is working with OMB to obtain emergency approval of the associated burden by February 1, 2004 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) before the effective date of the rule. Comments on this proposed information collection should be directed to Robert Sargis, ACF Reports Clearance Officer, by e-mailing *http://regulations.acf.hhs.gov* or faxing (202) 401–5701. HHS will provide notification regarding that approval and the procedures necessary to submit an application for extension at *http://regulations.acf.hhs.gov* or by contacting Robert Sargis at 202–690–7275 or by faxing 202–401–5701.

TABLE 2.—TOTAL BURDEN HOURS OF INTERIM FINAL RULE SUMMARY OF ALL BURDEN HOURS, BY PROVISION, FOR GRANTEES

Provision	Annualized burden hours
1310.11(b)	835
1310.15(c)(2)	835
Total	1,670

TABLE 3.—TOTAL BURDEN COSTS OF INTERIM FINAL RULE SUMMARY OF ALL BURDEN COSTS, BY PROVISION, FOR GRANTEES

Provision	Annualized burden costs
1310.11(b)	$20,875
1310.15(c)(2)	20,875
Total	41,750

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The regulation merely provides flexibility in meeting the effective date

of certain existing Head Start transportation requirements.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles.

This rule is considered a "significant regulatory action" under the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Report Act requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any 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 in any one year. The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government." This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

List of Subject in 45 CFR Part 1310

Head Start, Reporting and recordkeeping requirements, Transportation.

(Catalog of Federal Domestic Assistance Program Number 93.600, Head Start)

Approved: December 22, 2003.

Wade F. Horn,

Assistant Secretary for Children and Families.

Dated: January 8, 2004.

Tommy G. Thompson,

Secretary of Health and Human Services.

■ For the reasons discussed above, title 45 CFR Chapter XIII is amended as follows:

PART 1310—HEAD START TRANSPORTATION

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 2. Amend § 1310.2 to revise the second sentence of paragraph (b) to read as follows:

§ 1310.2 Applicability

(a) * * *

(b) * * * Sections 1310.11 and 1310.15(c) of this part are effective June 21, 2004. * * *

* * * * *

■ 3. Revise §1310.11 (added on January 18, 2001 at 66 FR 5311 and effective January 20, 2004) to read as follows:

§ 1310.11 Child Restraint Systems.

(a) Effective June 21, 2004, each agency providing transportation services must ensure that each vehicle used to transport children receiving such services is equipped for use of height- and weight-appropriate child safety restraint systems.

(b) The responsible HHS official may approve a request to extend the effective date under paragraph (a) of this section to not later than January 20, 2006, if:

(1) Notification is received by March 1, 2004 that such a request to the responsible HHS official will be forthcoming; and

(2) The request for an extension is submitted by April 1, 2004 with information documenting that an extension through the period requested (but not later than January 20, 2006) would be in the best interest of the children served by the Head Start or Early Head Start programs, as set out in guidance provided by HHS.

■ 4. Amend § 1310.15 to revise paragraph (c) (added on January 18, 2001 at 66 FR 5311 and effective January 20, 2004) to read as follows:

§ 1310.15 Operation of vehicles.

* * * * *

(c)(1) Effective June 21, 2004, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(2) The responsible HHS official may approve a request to extend the effective date under paragraph (a) of this section to not later than January 20, 2006, if:

(i) Notification is received by March 1, 2004 that such a request to the responsible HHS official will be forthcoming; and

(ii) The request for an extension is submitted by April 1, 2004 with information documenting that an extension through the period requested (but not later than January 20, 2006) would be in the best interest of the children served by the Head Start or Early Head Start programs, as set out in guidance provided by HHS.

* * * * *

[FR Doc. 04–1096 Filed 1–15–04; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 03–262]

Ensuring Compatibility With Enhanced 911 Emergency Calling Systems; Non-Initialized Phones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document lifts the stay currently in effect and modifies the Commission's rules by striking the requirement to program the 123–456–7890 sequential number into carrier-donated non-initialized and "911-only" phones. This action also relieves carriers of any attendant obligations to complete any network programming necessary to deliver the 123–456–7890 "telephone number" from these devices to PSAPs. This action further requires that carriers complete any network programming necessary to deliver this "telephone number" from carrier-donated non-service initialized phones and "911-only" handsets to PSAPs.

DATES: The stay of paragraphs (l)(1)(i) and (l)(2)(i) of § 20.18 is lifted effective May 3, 2004. The amendments to § 20.18 are effective May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Eugenie Barton, Attorney, (202) 418–1732.

SUPPLEMENTARY INFORMATION: This document grants the *Petition for Reconsideration (Reconsideration Petition)* filed by the Alliance for Telecommunications Industry Solutions (ATIS) on behalf of the Emergency Services Interconnection Forum (ESIF). In an Order released on September 30, 2002, the Commission stayed the rules contained in §§ 20.18(l)(1)(i) and (l)(2)(i) until the Commission resolved the *Reconsideration Petition*. This is a summary of the Commission Memorandum Opinion and Order, (MO&O) released November 3, 2003 (FCC 03–262). The full text of the MO&O is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th St., SW., Washington DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington DC, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. Additionally, the complete item is available on the Commission's Web site at *http://www.fcc.gov/wtb*.

Synopsis of the MO&O

1. In this Memorandum Opinion and Order (MO&O), the Commission grants the *Petition for Reconsideration (Reconsideration Petition)* filed by the Alliance for Telecommunications Industry Solutions (ATIS) on behalf of the Emergency Services Interconnection Forum (ESIF). This document amends the Commission's rules with the requirement to program carrier-donated non-service initialized phones and new "911-only" handsets covered in our original *Report and Order*, 67 FR 36112 (May 23, 2002), with a sequential number beginning with "911," plus seven digits selected in a manner analogous to the way a "telephone number" is generated by Annex C compliant network software, as explained in more detail. The Emergency Services Interconnection Forum (ESIF) refers to the solution as the "Annex C" solution because it was originally published as Annex C to J–STD–036–A, "Enhanced Wireless 9–1–1 Phase 2" (June 2002). The Commission's *Report and Order* under reconsideration required the programming of carrier-donated non-service-initialized phones and newly manufactured non-initialized "911-only" wireless handsets with the number 123–456–7890 as the "telephone number" transmitted to the Public Safety Answering Point (PSAP) receiving the call in order to address the problems created by the lack of call-back capability when 911 calls are dialed from these devices. The Commission concludes, in light of the new information presented by the ESIF, that the voluntary technical standard developed by the ESIF, which was recently adopted as part of the "Enhanced Wireless 9–1–1 Phase 2" industry consensus standard, provides a more far-reaching and technically superior solution and better serves the public interest.

2. Accordingly, the Stay currently in effect is lifted and the Commission's rules are modified by striking the requirement to program the 123–456–7890 sequential number into carrier-donated non-initialized and "911-only" phones. Carriers are also relieved of any attendant obligations to complete any network programming necessary to deliver the 123–456–7890 "telephone number" from these devices to PSAPs. Those rules are now amended with the requirement to program carrier-donated non-service initialized phones and new "911-only" handsets covered in our original *Report and Order* with a sequential number beginning with "911," plus seven digits selected in a manner analogous to the way a "telephone number" is generated by Annex C compliant network software. Carriers are further required to complete any network programming necessary to deliver this "telephone number" from carrier-donated non-service initialized phones and "911-only" handsets to PSAPs.

3. In view of the potential importance to public safety to provide PSAPs with a means of identifying emergency calls made by recipients of non-initialized wireless phones donated to provide them with emergency assistance and by purchasers of non-initialized "911-only" phones, the Commission further requires that, within six months of the issuance of the November 3, 2003 MO&O, carriers donating such phones and handset manufacturers of "911-only" phones that were covered under the requirements in our *Report and Order* begin to program 911 plus a seven digit number that is derived by a methodology analogous to that described in Annex C. By striking the earlier programming requirement and replacing it with a requirement that is consistent with the emerging industry standard for network deployment of Phase II E911, the Commission is targeting its regulations to accomplish the greatest benefit with the least burden. If the network solution becomes ubiquitous in the future and is able to provide a means of identifying emergency calls from these handsets, as well, the Commission plans to revisit the imposition of this limited requirement.

4. In light of the record, the limited scope of the Commission's original *Report and Order*, and the need for flexibility in the face of rapidly changing technology, the Commission will give the ESIF consensus standards process time to achieve full implementation voluntarily. However, the Annex C solution is expected to be substantially implemented voluntarily within 18 months of the issuance of the November 3, 2003 MO&O. As previously stated in the context of the *First Report and Order*, if a need for further action is demonstrated, "especially once E911 Phase I is fully operational and ubiquitous, the Commission will revisit this issue, weigh the evidence presented, and look at the possibility of requiring a technical or other solution at that time." If, within one year from the date the MO&O was issued, considerable progress towards the goal of voluntary implementation of the Annex C solution has not been made, the Commission will consider whether it is in the public interest to impose further specific implementation requirements.

Paperwork Reduction Act of 1995 Analysis

5. The actions contained in the MO&O have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new reporting requirements or burden on the public.

Final Regulatory Flexibility Analysis

6. The Regulatory Flexibility Act (RFA) of 1980, as amended, requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). We continue to use these definitions and to consider the impact of this

MM&O on the entities discussed in the initial *Report and Order*.

7. The RFA analysis adopted in the initial *Report and Order* remains correct because there is no greater burden on carriers who are donating non-initialized phones and manufacturers of "911-only" wireless devices to program these devices with 911 plus the seven least significant digits of the decimal representation of the ESN, IMEI, or other unique identifier programmed into the handset, than to program these devices with the 123–456–7890 sequential number. Also, there is no greater burden on carriers to program their networks to deliver these "telephone numbers" from carrier-donated non-service initialized phones and "911-only" handsets to PSAPs than programming their networks to deliver the 123–456–7890 sequential number from these devices.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

■ 2. Amend § 20.18 by revising paragraphs (l)(1)(i); (l)(2) introductory text and (l)(2)(i) to read as follows:

§ 20.18 911 Service.

* * * * *

(l) * * *

(1) * * *

(i) Program each handset with 911 plus the decimal representation of the seven least significant digits of the Electronic Serial Number, International Mobile Equipment Identifier, or any other identifier unique to that handset;

* * * * *

(2) Manufacturers of 911-only handsets that are manufactured on or after May 3, 2004, are required to:

(i) Program each handset with 911 plus the decimal representation of the seven least significant digits of the Electronic Serial Number, International Mobile Equipment Identifier, or any other identifier unique to that handset;

* * * * *

[FR Doc. 04–902 Filed 1–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3936]

Editorial Modifications of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission provides a more efficiently organized presentation of standards, specifications, and similar documents that are referenced in the regulations for broadcast radio services in part 73 of the Commission's rules, this Order makes administrative revisions to those rules pursuant to the authority contained in 47 CFR 0.231(b). The amendments adopted herein pertain to agency organization, procedure, and practice and are not subject to the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).

DATES: Effective January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Mort, *susan.mort@fcc.gov*, (202) 418–1043.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Order, DA 03–3936, adopted on December 11, 2003 and released on December 12, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text 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*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov*.

Summary of the Order

1. In order to provide a more efficiently organized presentation of the various materials, *e.g.*, standards, specifications, and similar documents that are referenced in the regulations for broadcast radio services in part 73 of the Commission's rules, certain administrative revisions are necessary to those rules. Authority for adoption of the revisions is contained in 47 CFR 0.231(b). The amendments adopted herein pertain to agency organization, procedure, and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act, contained in 5 U.S.C. 553(b), are inapplicable.

2. It is ordered that part 73 of the Commission's rules, set forth in title 47 of the Code of Federal Regulations, is amended, as set forth herein, and shall become effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 73

Incorporation by reference, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 2. Amend § 73.682 by revising paragraph (d) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) Digital broadcast television transmission standard. Transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: "ATSC Standard Digital Audio Compression (AC–3)" (incorporated by reference, *see* § 73.8000) and ATSC Doc. A/53B, Revision B with Amendment 1:

"ATSC Digital Television Standard," except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "*see* Table 3" in Section 5.1.1. Table 2 and Section 5.1.2 Table 4 (incorporated by reference, *see* § 73.8000). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Guide to Use of the ATSC Digital Television Standard, October 4, 1995, and ATSC Doc. A/65A, Program System and Information Protocol (PSIP) for Terrestrial Broadcast and Cable, December 23, 1997 for guidance. (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)).

[FR Doc. 04–904 Filed 1–15–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 11
Friday, January 16, 2004

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

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Parts 1980 and 4279

RIN 0570–AA49

Business and Industry Guaranteed Loans—Tangible Balance Sheet Equity

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS or the Agency) proposes to amend existing regulations relating to Business and Industry (B&I) loans made or guaranteed by the Agency by modifying the provisions that address the evaluation of credit quality. Specifically, the Agency proposes to modify the definition of tangible balance sheet equity to include the off balance sheet value of tangible assets to the extent of the difference between the depreciated book value of real property assets and their current market value supported by an appraisal or the original book value, whichever is less. Adjusted tangible balance sheet equity will also include qualified subordinated debt owed to the owner. This adjusted equity calculation will apply only in cases where the Agency is asked to guarantee a refinancing of outstanding debt. The Agency also proposes to increase the equity requirements applicable to energy businesses. The intended effect of this action is to facilitate Agency guarantees of refinancing loans that otherwise would not meet the equity requirements because the financial statements prepared in accordance with generally accepted accounting principles do not reflect the current market value of real property assets owned by the borrower.

DATES: Written or e-mail comments on this proposed rule must be submitted on or before March 16, 2004.

ADDRESSES: Submit written comments, in duplicate, via either the U.S. Postal Service or express courier. Comments sent via the U.S. Postal Service should be addressed to the Branch Chief, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. Written comments via Federal Express Mail, or via another mail courier service requiring a street address, should be addressed to the same attention at 300 7th Street, SW., 7th Floor, Washington, DC 20024. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "Tangible" in the subject line. All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, Rural Business-Cooperative Service, USDA, Stop 3224, Room 6871, 1400 Independence Ave., SW, Washington, DC 20250–3224, Telephone (202) 720–7818, Fax (202) 720–6003, or e-mail: *fred.kieferle@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

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

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to the applicable programs is 10.768, Business and Industry Loans.

Executive Order 12372

As stated in the Notice related to 7 CFR part 3015, subpart V, the programs and activities within this rule are subject to E.O. 12372 which requires intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V. Accordingly, agency personnel advise all prospective applicants of whether their state has elected to participate in the consultation process by designating a single point of contact and name of that contact point.

Program Administration

These programs are administered through the Business and Industry Division of the Rural Business-Cooperative Service within the Rural Development mission area of USDA and delivered via the USDA Rural Development State Directors.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this regulation have been approved by OMB under control numbers 0570–0014 and 0570–0017. The changes made in this proposed rulemaking to part 4279 are covered under the scope of the paperwork burden on file for these control numbers and already approved by OMB. The revisions in this rulemaking for part 1980 will require an amendment to the burden package and this modification to the burden package will be made when the final rule is promulgated.

Environmental Impact Statement

It is the determination of RBS that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This proposed rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal

governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. Some provisions published as a part of this rule are, in fact, a benefit to small entities.

The modified equity test in the case of refinancing applies equally to large and small entities, but in practice, the Agency expects it to benefit smaller entities disproportionately more than larger businesses. In the Agency's experience, the largest single component of off balance sheet value in a small firm is the real property it owns. Small firms that are real property rich, but cash flow constrained, may find this change to be the only means for achieve flexibility in refinancing, while larger businesses may have other ways, *i.e.*, other assets to work with, to achieve the same result.

The proposed change in equity requirements for energy loans may make it more difficult for small firms to qualify. The energy business is a capital intensive business and the corresponding risk is greater when it is undertaken by undercapitalized firms. It may be more difficult for small firms to raise the necessary equity for one project, whereas a larger business can spread the risk across more than one project.

On balance, the net effect of this rulemaking is expected to be neutral in its overall impact on smaller firms. Accordingly, a regulatory flexibility analysis was not performed."

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

Background

The current loan processing regulations for B&I Guaranteed Loan Program provide that the lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis. The Agency assumes this responsibility for the B&I Direct Loan Program. One of the elements of credit quality required in the regulation is that borrowers demonstrate a minimum level of tangible balance sheet equity. The threshold level of required tangible balance sheet equity is higher for new businesses than for existing businesses; separate thresholds for all energy related businesses also apply.

Conventional accounting policies and procedures provide for a distinction between tangible and intangible assets. The net equity on a balance sheet reflects the net book value of all assets, after depreciation, less total liabilities. The current regulations take a conservative approach in evaluating the equity component of a balance sheet, specifying that acceptable equity for credit quality purposes be restricted to tangible balance sheet equity, as defined in the regulation.

Where the accounting terms used in the regulation coincide with terms used in generally accepted accounting principles (GAAP),[1] the GAAP definitions are presumed in the regulation. Tangible balance sheet equity is not a term used in GAAP; there is no commonly held definition. It is nevertheless a concept familiar to many financial analysts and regulators who craft customized definitions, tailored to a specific industry or application, using the commonly understood terms found in GAAP as the basic building blocks.[2]

Tangible balance sheet equity is a refinement of the GAAP concept of equity, typically arrived at by reducing balance sheet equity by the book value assigned to intangible assets, including but not limited to assets such as goodwill, going concern value, organizational start up expenses, etc. These items are recognized as capital assets for purposes of GAAP but may or may not be assets that can be readily liquidated or pledged as security for loans.

The modification proposed in this rulemaking acknowledges that the market value of real property assets may increase at the same time the net book value of such assets decreases. The net book value of real property usually decreases over time due to depreciation, whereas the market value of real property may stay the same or appreciate over time.

In a lower interest rate environment, refinancing is a reasonable business strategy. The current regulation, however, does not contemplate that any credit can be given for a positive difference between net book value and market value for purposes of evaluating the equity component of credit worthiness when a borrower seeks Agency-guaranteed refinancing at a lower interest rate. It has happened that borrowers that could have met a modified balance sheet equity test have been foreclosed from this option because the equity ratio calculated using the conventional GAAP values reported on the balance sheet do not meet the equity test in the current regulation at the time the refinancing is of interest to the borrower. When this happens, the borrower is captive to the existing lender that is the beneficiary of the original Agency guarantee on what has become an above market rate loan. This lender has minimal incentive to refinance the above market rate loan, and unless the Agency can guarantee another lender willing to refinance the

[1] The meaning of the term generally accepted accounting principles (GAAP) has evolved over time. It used to refer to widely used, but uncodified, accounting policies and procedures. With time, standard-setting bodies and professional organizations came into being and became more involved in recommending preferred practices by means of issued pronouncements. Over the past fifty years, principles were promulgated by different groups, some of which are no longer in existence, and some conflicts exist between the various pronouncements. The American Institute of Certified Public Accountants issued a statement of auditing standards (SAS–69) to better organize and clarify what is meant by GAAP. This statement instructs financial statement preparers, auditors and users of financial statements concerning the relative priority of the different sources of GAAP (past and present pronouncements by the many standard-setting entities) used by auditors to judge the fairness of presentation in financial statements.

[2] See, for example, Cal. Admin. Code title 28, section 1300.76, where the state requires licensed health care service plans to maintain a minimum tangible net equity and another, Federal, example at 12 CFR 208.41 where tangible net equity is incorporated into the capital adequacy requirements required of state chartered banks that are members of the Federal Reserve system.

first lender's exposure, the borrower is locked into the higher interest rate. It is not able to "shop" for a lower interest rate. When the loan in question is already USDA guaranteed, the taxpayer is in a position of guaranteeing the higher interest rate when a lower exposure could otherwise be effected and there is a corresponding increased risk of default under the guarantee. The increased risk of default comes about when these higher interest rates undermine the financial health of the borrowers and lead to what otherwise could be avoidable financial defaults.

This proposed rule is intended to provide the borrower with refinancing flexibility when the market value of the real property on the balance sheet justifies a more flexible approach to the equity requirement than is allowed by the current regulation. The amount of the refinancing loan may not exceed the outstanding balance of the loan to be refinanced. Where a refinancing request is coupled with a "new money" guarantee application, the conventional, unadjusted, tangible balance sheet equity test will be applied to the combined guarantee request.

The Agency has considered, but not elected to propose, revising the tangible balance sheet equity test to apply across the board, for all borrowers, and not restrict its availability to refinancing loan applications. It may be that the Agency's experience with the limited applicability of this rulemaking will lead to proposing its wider application in the future. For now, it was determined to proceed with a more limited applicability in order to bring relief to at least some borrowers in a more rapid period of time.

The Agency has considered, but not elected to allow, full market value refinancing in this proposed rulemaking. The potential for abuse of market appraisals for purposes of full market value refinancing is thought to be greater than the potential benefit of liberalizing the related equity criterion to this maximum degree. In the alternative, the Agency has opted to allow consideration of market value only with respect to the equity test calculation; the amount of the refinancing loan itself may not exceed the outstanding balance of the loan to be refinanced. Market value must be determined by appraisals using arms-length methodologies to arrive at an unbiased "fair or current market value".

Allowing flexibility in the equity requirement for refinancing loans where the market value of real property assets supports such flexibility will serve to enhance the financial health of Agency-guaranteed borrowers and promote rural development.

In order to provide for an alternate equity calculation in determining whether the credit requirement is met for refinancing loans, the Agency has modified existing regulations to define "tangible balance sheet equity" and added two new definitions that build directly and indirectly on this term —adjusted tangible net worth" and "allowed tangible asset appreciation". The term "subordinated owner debt" is also added. These new terms apply only in the case of refinancing requests. "Subordinated owner debt" is defined as subordinated debt owed to one or more of the owners of the borrower.

An example that demonstrates the practical effect of this change is as follows. XYZ Company is capitalized with $200,000 cash on day 1 and uses $200,000 cash and $800,000 Agency guaranteed debt to purchase a building for $1,000,000 on day 2. Assume (1) the building is depreciated at 10 percent a year, (2) the market value of the building at the end of year 2 has appreciated to $1,200,000, (3) there are no other assets on the balance sheet at the end of year 2 for purposes of this simplified example, (4) the mortgage does not begin to amortize until the end of year 4, and (5) the income statement reflects a cumulative net loss of ($200,000) for the first two years of operations. At the end of year 2 the company would like to refinance the mortgage debt. At this point in time tangible balance sheet equity is $ -0-. Per the revised regulation, however, the tangible balance sheet can be adjusted upwards by an increment equal to the difference between the net book value of the property ($800,000) and the lesser of (1) its original book value ($1,000,000) or (2) an appraisal supported current market value ($1,200,000). Thus, the adjusted tangible balance sheet equity in that case would be $-0 plus $200,000, or $200,000 for purposes of determining eligibility for a refinancing loan guarantee. In order to calculate the equity ratio, (equity as a percentage of equity plus total liabilities), the result would be 200,000/1,000,000, or 20 percent.

A second refinement to the GAAP concept of equity proposed in this rulemaking for this credit evaluation criterion is to include in the equity calculation subordinated debt contributed to the borrower by the business owner(s). In order for this subordinated debt to count as equity for purposes of the equity criterion, the subordinated note must be expressly subordinate to the Agency's B&I loan exposure, whether that exposure is direct or guaranteed. Moreover, the loan documentation must provide that repayment of this subordinated debt may not commence until the earlier of the full repayment of the B&I loan exposure or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the B&I loan exposure. The partial repayment schedule in the case of the latter scenario may not be more accelerated than the debt repayment schedule in effect for the Agency's B&I loan exposure.

To carry our earlier example one step further, assume (1) that an owner provides $100,000 of subordinated debt to XYZ Company in year 3 so that it can purchase a patent. Also assume (2) the market value of the building at the end of year 3 remains at $1,200,000, (3) there are no other assets on the balance sheet at the end of year 3 for purposes of this simplified example, and (4) the income statement reflects a cumulative net loss of ($300,000) for the first three years of operations. Instead of refinancing at the end of year two as described above, the Company seeks a refinancing loan guarantee at the end of year three. Total liabilities equal the $800,000 mortgage debt plus $100,000 in subordinated family capital. Tangible balance sheet equity as defined in the proposed rule equals total equity less the book value of intangible assets, or ($100,000) minus $100,000 = ($200,000). Per the revised regulation, however, the tangible balance sheet equity can be adjusted upwards by an increment equal to the difference between the net book value of the property ($700,000) and the lesser of (1) its original book value ($1,000,000) or (2) an appraisal supported current market value ($1,200,000). Thus, the adjusted tangible balance sheet equity in that case would be ($200,000) plus $300,000, or $100,000 for purposes of determining eligibility for a refinancing loan guarantee. In order to calculate the equity ratio, (equity as a percentage of equity plus total liabilities), the result would be 100,000/1,000,000, or 10 percent. In practice, the Agency has considered the dividing line between new businesses and existing businesses in similar situations to be three years. Thus, the 10 percent equity requirement for existing businesses would apply and this borrower would qualify for a refinancing loan as a result of this regulatory change. In this example, the income statement shows three years of

consecutive accrual losses, but breakeven cash flows. The reduced equity requirement (from 20 percent to 10 percent) for existing business could have been triggered earlier under existing regulations had XYZ Company demonstrated a one full successful year of operations prior to the end of year three.

This proposed rule also modifies the equity requirement for certain energy projects and provides that financing will be guaranteed for energy projects only when they have met certain performance criteria. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the design levels approved by the Agency for purposes of underwriting the loan or loan guarantee. The higher equity requirements reflect the Agency's determination that energy projects are riskier than the average B&I portfolio loan. The Agency's energy borrowers are typically not utilities in the conventional sense. As a general rule, conventional utilities have other sources of financing and higher capital requirements than can practicably be met by RBS programs.

The proposed rule contemplates that energy projects must demonstrate two complete operating cycles at design performance levels submitted to and accepted by the Agency. A complete operating cycle consists of the purchase of raw material inputs, their input into the manufacturing process and transformation into a design specified number of output units for a given level of raw material input within a specified period of time and at a design-specified quality level. In the case of projects that produce steam or electricity as an output, there is an additional requirement that they be successfully interconnected with the purchaser of the output. This is not the same as being connected to the power grid alone. Being connected to the grid, without enforceable wheeling agreements and physical interconnection with the buyer at the other end of the transmission route, does not satisfy this requirement. Successful interconnection with the purchaser of the steam or electricity means that everything is in place that is required for the purchaser to receive the steam or electricity output in accordance with the contractual terms specified and such delivery has been demonstrated.

List of Subjects in 7 CFR Parts 1980 and 4279

Loan programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, Chapters XVIII and XLII, title 7, of the Code of Federal Regulations are proposed to be amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C 1932(a).

Subpart E—Business and Industrial Loan Program

2. Section 1980.402 is revised to read as follows:

§ 1980.402 Definitions.

(a) Definitions.

The following general definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of subpart A of this part.

Adjusted tangible net worth. Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Allowed tangible asset appreciation. Allowed tangible asset appreciation means the difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Area of high unemployment. An area in which a B&I Loan Guarantee can be issued, consisting of a county or group of contiguous counties or equivalent subdivisions of a State which, on the basis of the most recent 12-month average or the most recent annual average data, has a rate of unemployment 150 percent or more of the national rate. Data used must be those published by the Bureau of Labor Statistics, U.S. Department of Labor.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. A borrower may be a cooperative, corporation, partnership, trust or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county or other political subdivision of a State; or an individual. Such borrower must be engaged in or proposing to engage in improving, developing or financing business, industry and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

Business and Industry Disaster Loans. Business and Industry loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the direct consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a direct consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock or damage to building structures from a microburst wind occurrence in calendar year 1992.

Community facilities. For the purpose of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas extension or improvement of community transportation systems serving the site and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

Development cost. These costs include, but are not limited to, those for acquisition, planning, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights of way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82), providing for the guarantee of loans to assist in alleviating distress caused to

rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially appendix K, containing additional regulations for these loans.

Drought and Disaster guaranteed loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

Energy projects. Projects that produce or distribute energy and projects that produce biomass or biogas fuel, where such projects utilize technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Hurricane Andrew. A hurricane that caused damage in southern Florida on August 24, 1992, and in Louisiana on August 26, 1992.

Hurricane Iniki. A hurricane that caused damage in Hawaii on September 11, 1992.

Letter of conditions. Letter issued by FmHA or its successor agency under Public Law 103–354 to a borrower setting forth the conditions under which FmHA or its successor agency under Public Law 103–354 will make a direct (insured) loan from the Rural Development Insurance Fund.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Microburst wind. A violently descending column of air associated with a thunderstorm which causes straight line wind damage.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Public body. A municipality, political subdivision, public authority, district, or similar organization.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Seasoned loan. A loan which:

(1) Has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(2) Is in compliance with all loan conditions and B&I regulations.

(3) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(4) Is secured by collateral which is determined to be adequate to insure there will be no loss on the B&I guaranteed loan.

State. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

Subordinated owner debt. Debt owed by the borrower firm to the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I Loan Exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all indebtedness owed to or guaranteed by the Agency has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I Loan Exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the debt repayment schedule in effect for the Agency's aggregate B&I Loan Exposure.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP).

Typhoon Omar. A typhoon that caused damage in Guam on August 28, 1992.

Working capital. The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under generally accepted accounting principles (GAAP).

3. Section 1980.411 is amended by revising paragraph (a)(11)(iii), by adding new paragraphs (a)(11)(iv) and (a)(11)(v) and by adding a new paragraph (a)(16) to read as follows:

§ 1980.411 Loan purposes.

* * * * *

(a) * * *

(11) * * *

(iii) It is necessary to place a permanent loan subsequent to an interim loan for financing the construction of the project;

(iv) It does not refinance subordinated owner debt; and

(v) The refinancing loan guaranteed by the Agency does not exceed the balance outstanding of the debt to be refinanced.

* * * * *

(16) *Energy projects.* Energy projects that produce biomass fuel, biogas, fuel cells or batteries as an output must have completed two operating cycles at design performance levels submitted to and accepted by the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to and approved by the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects may be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

* * * * *

4. Section 1980.441 is revised to read as follows:

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at the loan and guarantee closing (40 percent for energy related businesses). A minimum of 20 percent tangible balance sheet equity will be required for new businesses at the loan or guarantee closing (50 percent for all new energy related businesses). Where the application is a request for only a refinancing loan guarantee, without any related incremental new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing guarantee request with a

new loan guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (a)(1) or (a)(2) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(1) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(i) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible, and

(ii) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(2) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(b) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(c) The equity requirement must be determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the guaranteed loan is closed.

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4279—GUARANTEED LOANMAKING

5. The authority citation for part 4279 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989 and 7 U.S.C. 1932(a).

Subpart A—General

6. Section 4279.2 is revised to read as follows:

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.*

Adjusted tangible net worth. Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National Office, Finance Office, State Office or other Agency offices or officials should be read as prefaced by Agency or "Rural Development" as applicable.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Arm's-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement (Business and Industry). Form 4279–6, the signed agreement among the Agency, the lender and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. All parties liable for the loan except for guarantors.

Conditional Commitment (Business and Industry). Form 4279–3, the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Energy projects. Projects that produce or distribute energy and projects that produce biomass or biogas fuel, where such projects utilize technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farmers Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many instructions and forms of FmHA are still applicable to Agency programs.

Finance office. The office which maintains the Agency financial accounting records located in St. Louis, Missouri.

High-impact business. A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form 4279–6 or predecessor form.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The organization making, servicing and collecting the loan which is guaranteed under the provision of the appropriate subpart.

Lender's Agreement (Business and Industry). Form 4279–4 or predecessor form between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan Note Guarantee (Business and Industry). Form 4279–5 or predecessor form issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Natural resource value-added product. Any naturally occurring product that is processed to add value to the product. For example, straw is processed into particle board.

Negligent servicing. The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a *pro rata* basis.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Poor. A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the non-metropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line.

Promissory note. Evidence of debt. "Note" or "Promissory note" shall also be construed to include "Bond" or other evidence of debt where appropriate.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Rural Development. The Under Secretary for Rural Development has policy and operational oversight responsibilities for RHS, RBS and RUS.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands.

Subordinated owner debt. Debt owed by the borrower firm to the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I Loan Exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all indebtedness owed to or guaranteed by the Agency has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I Loan Exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the debt repayment schedule in effect for the Agency's aggregate B&I Loan Exposure.

Subordination. An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP).

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in section 101(12) of title 38, United States Code.

(b) *Abbreviations.*

B&I—Business and Industry
CF—Community Facilities
CLP—Certified Lenders Program
FSA—Farm Service Agency
FMI—Forms Manual Insert
NAD—National Appeals Division
OGC—Office of the General Counsel
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
SBA—Small Business Administration
USDA—United States Department of Agriculture

(c) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP.

Subpart B—Business and Industry Loans

7. Section 4279.113 is amended by revising paragraph (q) and by adding a paragraph (bb) to read as follows:

§ 4279.113 Eligible loan purposes.

* * * * *

(q) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Existing lender debt may be eligible provided that, at the time of the application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt) and the borrower will receive better rates or terms. Subordinated owner debt is not eligible under this paragraph. A refinancing loan guaranteed by the Agency may not exceed the balance outstanding of the debt to be refinanced.

* * * * *

(bb) To finance energy projects. Energy projects that produce biomass fuel, biogas, fuel cells or batteries as an output must have completed two operating cycles at design performance levels submitted to and accepted by the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to and approved by the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects may be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

8. Section 4279.131 is amended by revising paragraph (d) to read as follows:

§ 4279.131 Credit quality.

* * * * *

(d) *Equity.* (1) A minimum of 10 percent tangible balance sheet equity

will be required for existing businesses at the loan and guarantee closing (40 percent for energy related businesses). A minimum of 20 percent tangible balance sheet equity will be required for new businesses at the loan or guarantee closing (50 percent for all new energy related businesses). Where the application is a request for only a refinancing loan guarantee, without any related incremental new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing guarantee request with a new loan guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (d)(1)(i) or (d)(1)(ii) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(i) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(A) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible, and

(B) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(ii) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(2) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(3) The Lender must certify that the equity requirement was determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the guaranteed loan is closed.

* * * * *

Dated: January 12, 2004.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–979 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–XY–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AH25

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International, Inc., NAC-UMS cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 3 to the Certificate of Compliance (CoC) Number 1015. Amendment No. 3 modifies the present cask system design to add an alternate poison material, revise the structural analysis, revise the thermal analyses, revise fuel assembly weight and dimensions, and revise allowable fuel cladding temperature. The amendment also revises the criticality analyses and reorganizes the Safety Analysis Report Criticality (SAR) Section, revises Technical Specification A.5.5 to remove the effluent reporting requirements, and makes several editorial and administrative changes.

DATES: Comments on the proposed rule must be received on or before February 17, 2004.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number—RIN 3150–AH25—in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleform.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays (telephone (301) 415–1101).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), 0–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC, proposed TS, and preliminary SER can be found under ADAMS Accession Nos. ML032890297 (CoC), ML032890300 and ML032890305 (TS), and ML032890312 (SER). 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, 301–415–4737or by e-mail to *http://www.pdr.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 3 to CoC No. 1015 and does not include other aspects of the NAC–UMS cask system design. The NRC is using the "direct final rule procedure" to issue this amendment

because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on March 31, 2004. However, if the NRC receives significant adverse comments by February 17, 2004, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. For example, a substantive response is required when:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.
Initial Certificate Effective Date: November 20, 2000.
Amendment Number 1 Effective Date: February 20, 2001.
Amendment Number 2 Effective Date: December 31, 2001.
Amendment Number 3 Effective Date: March 31, 2004.
SAR Submitted by: NAC International, Inc.
SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.
Docket Number: 72–1015.
Certificate Expiration Date: November 20, 2020.
Model Number: NAC–UMS.

* * * * *

Dated at Rockville, Maryland, this 30th day of December, 2003.

For the Nuclear Regulatory Commission.
William D. Travers,
Executive Director for Operations.

[FR Doc. 04–977 Filed 1–15–04; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, 119, 121, 135 and 136

[Docket No. FAA–1998–4521; Notice No. 03–10]

RIN 2120–AF07

National Air Tour Safety Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on October 22, 2003 (68 FR 60572). In that document, the FAA proposed to issue regulations to govern commercial air tours throughout the United States. This extension responds to requests received during the comment period for the NPRM.

DATES: The comment period for Notice No. 03–10, published on October 22, 2003 at 68 FR 60572, is extended until April 19, 2004.

ADDRESSES: You may submit comments to DOT DMS Docket Number FAA–1998–4521 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic Docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and Docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the

Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Flight Standards Service, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166; e-mail: *AlbertaBrown@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this proposed rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the Docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The Docket is available for public inspection before and after the comment closing date. If you wish to review the Docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the Docket using the Internet at the Web address in the **ADDRESSES** section. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Privacy Act: Using the search function of our Docket Web site, anyone can find and read the comments received into any of our Dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **FEDERAL REGISTER** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our Dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

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

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

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

Proprietary or Confidential Business Information

Do not file in the Docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we received a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Background

The FAA published a notice (68 FR 60572, October 22, 2003) proposing to issue regulations to govern commercial air tours throughout the United States. The notice provided for a 90 day comment period, ending on January 20, 2004.

Extension of Comment Period

We have received significant response to the NPRM, including some requests for an opportunity for the public to participate in a public forum. We are seeking broad participation in this proposed rulemaking because it may affect many small businesses and activities that are enjoyed by citizens in communities throughout the country. A traditional public meeting, or even a series of meetings, would not adequately allow broad input because the small businesses that may be affected by this proposed rule are spread throughout the United States, many of them in small communities. Many who could be most affected by the proposed rule would be unable to participate because of geography and our limited resources.

The Internet allows us to overcome the barriers of geography and limited resources. We intend to hold a virtual public meeting to allow participation by as many as possible. We will publish a Notice of Virtual Public Meeting in the **Federal Register** in the near future. In the meantime, we will extend the comment period for the NPRM.

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed requests for an extension of the comment period in Notice No. 03–10 (68 FR 60572). The FAA finds

that there is good cause and it is in the public interest to extend the comment period for an additional 90 days beyond the 90 days already provided. This will allow time for a virtual public meeting and allow the public more time to thoroughly review the issues and draft helpful comments. We believe this will help us prepare a final rule that will promote safety and minimize hardship on those the rule would affect. Accordingly, the comment period for Notice No. 03–10 is extended until April 19, 2004.

Issued in Washington, DC, on January 14, 2004.

Steven W. Douglas,

Acting Director, Flight Standards Service.

[FR Doc. 04–1129 Filed 1–14–04; 2:47 pm]

BILLING CODE 4913–10–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–49037; File No. S7–02–04]

RIN 3235–AI02

Amendments to the Penny Stock Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing to amend the definition of "penny stock" as well as the requirements for providing certain information to penny stock customers. The proposed amendments are designed to address market changes, evolving communications technology and recent legislative developments.

DATES: Comments must be submitted on or before March 16, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or electronic mail, but not by both methods. If comments are submitted in paper format, four copies should be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments in electronic format should be submitted to the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–02–04; this file number should be included on the subject line if E-mail is used. All comments received will be posted on the Commission's Internet Web site (*http://www.sec.gov*) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.[1]

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, Paula R. Jenson, Deputy Chief Counsel, Brian A. Bussey, Assistant Chief Counsel, or Norman M. Reed, Special Counsel, at 202/942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is requesting public comment on proposed amendments to Rule 3a51–1 [17 CFR 240.3a51–1], Rule 15g–2 [17 CFR 240.15g–2], Rule 15g–9 [17 CFR 240.15g–9], and Rule 15g–100 [17 CFR 240.15g–100] under the Securities Exchange Act of 1934 ("Exchange Act").

Table of Contents

I. Executive Summary

In light of changing market structures, new technology and legislative changes, we are proposing amendments to the definition of "penny stock," as well as amendments to rules requiring broker-dealers to provide certain information to customers regarding penny stock transactions.

Under the proposed amendments, the current exclusions from the definition of penny stock for reported securities and for certain other exchange-registered securities would be amended to require that these securities also satisfy one of the following new standards. First, an exchange-registered security could qualify if the exchange on which it is registered has been continuously registered since the Commission initially adopted the penny stock rules (as defined below) and if the exchange has maintained and continues to maintain quantitative listing standards substantially similar to those in place on January 8, 2004. Second, an exchange-registered security or a reported security listed on an automated quotation system sponsored by a registered national securities association (including The Nasdaq Stock Market, Inc. ("Nasdaq")) could qualify if the exchange or automated quotation system on which it is registered or listed has quantitative listing standards that meet or exceed standards modeled on those currently required for inclusion in the Nasdaq SmallCap Market. In addition, the proposed amendments would exclude security futures products from the definition of penny stock, and eliminate an outdated exclusion for securities quoted on Nasdaq. We do not intend these proposals, if adopted, to disturb the status quo with respect to securities relying on the current exclusions from the definition of penny stock as of January 8, 2004.

The proposed amendments would also provide an explicit "cooling-off period" to replace the implicit period that customers traditionally have had when the disclosure required by the penny stock rules is provided by postal mail rather than electronically. Moreover, the proposed amendments would revise the penny stock disclosure document (as defined below) and the instructions to it set forth in Schedule 15G under the Exchange Act.[2] The revisions would update the disclosure document, as well as streamline it to make it more readable.

Taken as a whole, these proposed amendments are intended to ensure that investors continue to receive the protections of the penny stock rules, regardless of changing technology or market structures.

II. Introduction

As Congress explicitly directed through the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Penny Stock Reform Act"),[3] the Commission adopted a series of rules requiring broker-dealers to provide customers with certain trade and market information prior to effecting a transaction in a penny stock for their customers.[4] Rules 15g–1 through 15g–9 under the Exchange Act (collectively known as the "penny stock rules")

[1] We do not edit personal, identifying information such as names or e-mail addresses from electronic submissions. Submit only information you wish to make public.

[2] 17 CFR 240.15g–100.

[3] Pub. L. 101–429, 104 Stat. 931 (1990); *see* Exchange Act Rel. No. 30608 (Apr. 20, 1992), 57 FR 18004 (Apr. 28, 1992) ("Adopting Release").

[4] Among other things, the Penny Stock Reform Act added Section 15(g) to the Exchange Act. *See* Pub. L. 101–429, at Sec. 502; *see also* Adopting Release, 57 FR at 18006.

implement the Congressional directive to increase the level of disclosure to investors concerning penny stocks generally as well as the specific penny stock involved in a transaction.[5] The scope of the penny stock rules is delineated by the definition of penny stock in Exchange Act Section 3(a)(51)[6] and Rule 3a51–1[7] thereunder.

The Commission believes that the penny stock rules have largely succeeded in providing first-time buyers of penny stocks with useful information as well as time to fully consider and reflect on their decision to purchase these often risky investments. We are, however, concerned that evolving technology, market changes and legislative developments could undermine these salutary rules and possibly subject penny stock investors to the abuses of the past. In light of these changes, the Commission proposes to update the definition of penny stock in Rule 3a51–1 as well as the procedural requirements of Rules 15g–2 and 15g–9 so that the penny stock rules can better accommodate both recent and future changes, including the growth of new markets and new market structures. We also propose to update and make conforming amendments to Schedule 15G, entitled "Information to be included in the document distributed pursuant to 17 CFR 240.15g–2."[8]

In proposing these rule amendments, we do not intend to create impediments to small companies' access to the capital markets or eliminate a viable secondary market for their securities. The Commission recognizes the important contributions that small companies make to the economy. We are mindful, however, that fraudulent sales practices, which have occurred and still occur in this area of the market, may not only harm investors financially but also undermine investor confidence.[9] Indeed, the diversion of substantial capital to unscrupulous promoters and broker-dealers does more than cause the loss of the productive use of investor funds. It may also discourage further investment by those who have been defrauded. Moreover, issuers of penny stocks that are fraudulently traded may themselves be victimized by this activity.[10]

III. Proposed Amendments to Rule 3a51–1

We believe that the definition of the term "penny stock," which we adopted in 1992, should be updated to take into account both market and legal developments. Among other things, the proposed amendments to Rule 3a51–1 would address an unintended consequence of national securities exchanges developing new markets or "junior" tiers of listed securities similar to, for example, Nasdaq's Over-the Counter Bulletin Board service ("OTC Bulletin Board") or the American Stock Exchange LLC's now defunct Emerging Company Marketplace, that would not meet the more stringent listing standards of the primary exchange.[11] Such new markets would be facilities of national securities exchanges. Thus, unless the definition of penny stock is modified to account for such developments, the securities trading on such facilities would be excluded from the definition of penny stock even though these securities would have the essential attributes of penny stocks and would, therefore, be exactly the sort of risky investments to which Congress intended the additional investor protections of the penny stock rules to apply.

In considering how to adapt the penny stock rules to evolving market structures, however, we have also reassessed the definition of penny stock more broadly and are of the view that this definition has not kept pace with market developments. The past decade has seen a series of dynamic market changes, and we expect the process to continue. We have, therefore, developed a definition of the term penny stock that is designed to keep pace with this process. As markets evolve and exchanges and registered national securities associations continue to develop using different models, we believe this proposed framework will work better than a market-by-market analysis.

A. Proposed Amendments Regarding Reported Securities and Other Exchange-Registered Securities

Congress explicitly gave the Commission the authority to prescribe the criteria national securities exchanges and automated quotation systems of registered national securities associations must meet in order to qualify their securities for an exclusion from the definition of penny stock.[12] Our original penny stock rules reflected Congress's view that many of the abuses occurring in the penny stock market were caused by the lack of publicly available information about the market in general and about the price and trading volume of particular penny stocks.[13] Many of the historically

[5] 15 U.S.C. 78o(g).

[6] 15 U.S.C. 78c(a)(51).

[7] 17 CFR 240.3a51–1.

[8] 17 CFR 240.15g–100.

[9] *See SEC* v. *Hasho*, 784 F. Supp. 1059; 1063 (S.D.N.Y. 1992) ("Defendants' contemptible conduct did more than harm their clients; their actions destroy investor confidence, pollute the environment for securities transactions, and bring disgrace and shame upon Wall Street.").

[10] This characterization of the penny stock market reform initiative was embraced broadly in the Congress. For example, Congressman Wyden stated:

Some said, for example, that this bill could retard the capital formation process, that somehow, by having some minimum basic standards to protect the small investor, this would retard capital formation. I just feel very strongly that that argument is off base. If anything, I think what has happened over the years, has been that capital which small investors have, scarce capital, has been diverted to these penny stock frauds. And if, with additional scrutiny and oversight, we can prevent penny stock fraud, I think that will free up more capital to be invested at this critical time, especially in the small business sector of our economy.

136 Cong. Rec. H 8534, Vol. 136 No. 125 (Oct. 1, 1990) (remarks by Mr. Wyden on Securities Enforcement Remedies and Penny Stock Reform Act of 1990).

In addition, Congressman Rinaldo stated:

This bill ranks with the most important legislation we will consider this year. It will bring the longstanding national disgrace of an inadequately regulated penny stock market to a close. It mandates and authorizes the Securities and Exchange Commission to provide greater protection to investors in low priced securities. In developing this legislation my colleagues and I worked hard to identify the problems of the penny stock market, and we have proposed solutions that will increase investor protection and not interfere with the ability of small businesses to raise capital.

136 Cong. Rec. H 8534, Vol. 136 No. 125 (Oct. 1, 1990) (remarks by Mr. Rinaldo on Securities Enforcement Remedies and Penny Stock Reform Act of 1990).

[11] The Emerging Company Marketplace consisted of a "junior" tier of listed securities that did not meet the listing standards of the American Stock Exchange LLC, but was otherwise subject to many of its regulatory requirements (e.g., last sale reporting, trading and specialist allocation rules, certain corporate governance requirements, and surveillance procedures). It was intended to provide small companies that would not otherwise qualify for an exchange listing with an opportunity to list their securities. *See* Exchange Act Rel. No. 30445 (Mar. 5, 1992), 57 FR 8693 (Mar. 11, 1992).

On June 9, 1995, the American Stock Exchange LLC submitted to us, pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4, a proposed rule change to discontinue the listing of new companies on the Emerging Company Marketplace. *See* Exchange Act Rel. No. 36079 (Aug. 9, 1995), 60 FR 42926 (Aug. 17, 1995) (approving the proposed rule change).

[12] Sections 3(a)(51)(A)(i) and (ii) of the Exchange Act [15 U.S.C. 78c(51)(A)(i) and (51)(A)(ii)] provide that the term "penny stock" means any equity security other than a security that is "registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph" or that is "authorized for quotation on an automated quotation system sponsored by a registered securities association, if such a system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph."

[13] *See* House Comm. on Energy and Commerce, Report to Accompany the Penny Stock Reform Act of 1990, H.R. Rep. No. 617, 101st Cong., 2d Sess. 20 (July 23, 1990) (reporting H.R. 4497) ("House

abusive practices in the penny stock market arose from broker-dealers communicating to their customers false or misleading information as to the value or market price of securities in order to induce transactions in those securities.[14] These practices were more likely to flourish where there was a paucity of price, quotation and other market information.[15] We encouraged increased transparency in the market because we believed that this information would enable investors to better judge the veracity of the claims of sales agents.[16]

The exclusions from the definition of penny stock for any security that is a reported security[17] and for certain other securities that are registered, or approved for registration upon notice of issuance, on a national securities exchange[18] are largely based on the transparency and oversight fostered by listing on such markets.[19] As we noted when we proposed the penny stock rules, "securities that are traded in a market that is subject to a comprehensive regulatory scheme requiring real-time transaction reporting and the extensive surveillance systems that this reporting supports, are less likely to be purchased or sold by means of manipulative sales tactics."[20]

During the decade since we adopted the penny stock rules, several developments have enhanced transparency with regard to trading in low-priced securities. For example, securities trading on the OTC Bulletin Board are now subject to last sale transaction reporting within 90 seconds after execution.[21] In addition, quotation on the OTC Bulletin Board is now limited to the securities of companies that report their current financial information to the SEC, banking or insurance regulators and that are current in those reports.[22] Moreover, Nasdaq now has the ability, in certain limited circumstances, to halt trading or quoting in an OTC Bulletin Board security when necessary to protect investors and the public interest.[23]

Efforts to increase transparency can also be seen in the "pink sheets,"[24] where a significant number of penny stocks are also quoted. In the fall of 1999, the Electronic Quotation Service commenced an Internet-based, real-time quotation service that fostered increased transparency of securities quoted in the pink sheets.

Despite these moves toward increased transparency in the markets where penny stocks are quoted and traded, a persistent pattern of abuse continues to exist with regard to the trading of these low-priced, thinly traded securities.[25] Thus, increased transparency alone does not appear sufficient to provide investors with protection against the abusive practices often found in the penny stock market. As noted above, the Penny Stock Reform Act gave the Commission the authority to establish the criteria that national securities exchanges and automated quotation systems of registered national securities associations must meet in order to qualify securities for the exclusion from the term "penny stock." In light of the last decade's experience, we believe it is appropriate to take the measured step of providing an additional level of protection to investors in low-priced, thinly traded securities.

We are, therefore, proposing to amend the current exclusion for reported securities in paragraph (a) of Rule 3a51–1[26] to require that reported securities

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Report") ("Because it is wrapped in secrecy and operates in relative obscurity, the penny stock market lends itself to manipulation far more easily than a market where information is readily available and circulated to investors.").

[14] Exchange Act Rel. No. 29093 (Apr. 17, 1991), 56 FR 19165, 19169 (Apr. 25, 1991) ("Proposing Release"), proposing certain of the penny stock rules.

[15] *Id.*

[16] *See also* Exchange Act Rel. No. 27160 (Aug. 22, 1989), 54 FR 35468, 35470 (Aug. 28, 1989). ("[M]any low-priced securities are issued by smaller, little known companies that may attract little attention outside that generated by a boiler room sales campaign. * * *. The scarcity of information about the issuer is further aggravated by the lack of information on transactions in the issuers' securities.").

[17] Under current Rule 3a51–1(a), equity securities that are reported securities as defined in 17 CFR 240.11Aa3–1(a) are not penny stocks. 17 CFR 240.11Aa3–1(a)(4) defines "reported security" as any exchange-listed equity security or Nasdaq security for which transaction reports are made available on a real-time basis pursuant to an effective transaction reporting plan. An "effective transaction reporting plan" refers to a transaction reporting plan that the Commission has approved pursuant to Rule 11Aa3–1. 17 CFR 240.11Aa3–1(a)(3). *See also* Adopting Release, 57 FR at 18008 ("As adopted, Rule 3a51–1 excludes from the definition of penny stock any equity security that is a reported security—that is, any exchange-listed or NASDAQ security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan.").

[18] Current Rule 3a51–1(e) provides an exclusion for any security "that is registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to 17 CFR 240.11Aa3–1 of this chapter, provided that: current price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the national securities exchange; and the security is purchased or sold in a transaction that is effected on or through the facilities of the national securities exchange, or that is part of a distribution of the security." 17 CFR 3a51–1(e).

[19] Adopting Release, 57 FR at 18008 ("In the Proposing Release, the Commission concluded that reported securities should be excluded from the penny stock rules because they are subject to the rules of self-regulatory organizations ("SROs") that set specific standards for inclusion, promote efficient pricing and transaction execution procedures, and generate public price information for evaluation by professional securities analysts and the financial press.").

See also id. at 18010 ("For similar [transparency] reasons, Rule 3a51–1 as adopted provides an exclusion in paragraph (e) for any security that is registered, or approved for registration upon notice of issuance, on a national securities exchange, provided that current price and volume information with respect to transactions in that security is required to be reported and is made available to vendors pursuant to the rules of the national securities exchange. Securities that are listed on the regional exchanges also are subject to general reporting requirements under the rules of those exchanges. Investors therefore have a greater ability to evaluate and to monitor the market price of listed securities without having to rely exclusively on the representations of their broker-dealers. In addition, issuers of these securities are required to meet minimum qualification and maintenance standards for listing on the exchange. The Commission believes that these requirements, together with comprehensive exchange surveillance, also make the protection provided by the penny stock rules less necessary for securities listed and traded on the regional exchanges.").

[20] Proposing Release, 56 FR at 19172.

[21] *See* NASD Rule 6550 (adopted in 1993); *see also* Exchange Act Rel. No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

[22] *See* NASD Rule 6530; Exchange Act Rel. No. 40878 (Jan. 4, 1999), 64 FR 1255 (Jan. 8, 1999); *see also* NASD Notice to Members 99–15.

[23] *See* NASD Rule 6545 (adopted in 2000); *see also* Exchange Act Rel. No. 42806 (May 22, 2000), 65 FR 34518 (May 30, 2000).

[24] *See* Proposing Release at n. 15, 56 FR at 19169. Since June of 2000, the "pink sheets" have been published and distributed nationally by Pink Sheets LLC and, with the exception of the OTC Bulletin Board, are the principal interdealer quotation system for equity securities that are not listed on an exchange or quoted on the Nasdaq system.

[25] *See, e.g.*; *SEC* v. *800 Americo.com, Inc., et al.*, Litigation Rel. No. 17835 (Nov. 13, 2002); *SEC* v. *Eagle Building Technologies, Inc., and Anthony Domoto*, Litigation Rel. No. 17803 (Oct. 23, 2002); *SEC* v. *Las Vegas Entertainment Network, Inc., Joseph A. Corozzi, Carl A. Sombus, and Jay I. Goldberg*, Litigation Rel. No. 17779 (Oct. 9, 2002); *SEC* v. *Camilo Pereira a/k/a Camilo Agasim-Pereira*, Litigation Rel. No. 17616 (July 16, 2002); *SEC* v. *Victor Industries, Inc., Ronald Pellett, Penny Sperry, and Xion, Inc., Litigation Rel. No. 17383 (Feb. 27, 2002); SEC* v. *Mark E. Rice D/B/A Primex Capitol*, Litigation Rel. No. 17377 (Feb. 25, 2002); *SEC* v. *Max C. Tanner, et al.*, Litigation Rel. No. 17305 (Jan. 14, 2002); *SEC* v. *Save The World Air, Inc.*, Litigation Rel. No. 17283 (Dec. 19, 2001); *SEC* v. *Spectrum Brands Corp., Saverio (Sammy) Galasso III, David Hutter (a/k/a David Green), Charlie Dilluvio and Michael Burns*, Litigation Rel. No. 17265 (Dec. 11, 2001); *SEC* v. *U.N. Dollars Corp., Harold F. Harris, Ronald E. Crews, Edward A. Durante (a/k/a/ Ed Simmons), Carib Securities Ltd., Berkshire Capital Partners, Inc., Galton Scott & Golett Inc., Dottenhoff Financial Ltd., Zimenn Importing and Exporting Inc., Prudential Overseas Company, Ltd., Commonwealth Associates, Ltd., Henry C. Weingarten, Defendants; and Exchange Bank & Trust, Inc., and VJV Inc., Relief Defendants*, Litigation Rel No. 17177 (Oct. 11, 2001).

[26] 17 CFR 240.3a51–1(a).

satisfy one of the following standards in order to be excluded from the definition of penny stock. First, a reported security registered on a national securities exchange could qualify for the exclusion for reported securities if the national securities exchange on which it is registered has been continuously registered since April 20, 1992[27] and has maintained quantitative listing standards, both initial and continued, that are substantially similar to those that are in place at that exchange on January 8, 2004.[28] Second, a reported security registered on a national securities exchange could qualify for this exclusion, even if the national securities exchange on which it is registered has not been continuously registered since April 20, 1992, has not maintained the quantitative listing standards outlined above, or has established a "junior" tier, if the national securities exchange or "junior" tier has quantitative initial listing standards that meet or exceed the criteria set forth below and maintains continued listing standards reasonably related to its initial listing standards. Third, a reported security listed on an automated quotation system sponsored by a registered national securities association[29] could qualify for this exclusion if the registered national securities association has quantitative initial listing standards for the automated quotation system that meet or exceed the criteria set forth below and maintains quantitative continued listing standards reasonably related to its initial listing standards.[30] We are also proposing to eliminate the exception in paragraph (a) of Rule 3a51–1.[31] Because the Emerging Company Marketplace no longer exists,[32] this exception is no longer necessary.

In addition, we are proposing to amend the exclusion for certain other exchange-registered securities provided by paragraph (e) of Rule 3a51–1[33] to require that these securities satisfy, in addition to the existing requirements of paragraph (e), one of the standards described above applicable to reported securities that are exchange-registered in order to be excluded from the definition of penny stock.[34] We are also proposing to amend the exception in paragraph (e) of Rule 3a51–1[35] to make clear that a security that satisfies the requirements of paragraph (e) and also satisfies the requirements of paragraphs (a), (b), (c), (d), (f) or (g) of Rule 3a51–1 is not a penny stock for purposes of Section 15(b)(6) of the Exchange Act.[36]

In order to qualify for the exclusion for reported securities or the exclusion for certain other exchange-registered securities, we are proposing that a national securities exchange (other than a "grandfathered" exchange) or an automated quotation system sponsored by a registered national securities association on which the security is registered or listed must have quantitative initial listing standards that require issuers to have (1) either stockholders' equity of at least $5 million, or a market value of listed securities of $50 million, or net income from continuing operations (in the most recently completed fiscal year or two of the last three most recently completed fiscal years) of $750,000; and (2) an operating history of at least one year or a market value of listed securities of $50 million. In addition, for common and preferred stock the listing standards must require a minimum bid price of $4 per share. For common stock, the listing standards must also require at least 300 round lot holders, and at least 1,000,000 publicly held shares with a market value of at least $5 million. In the case of a convertible debt security, the initial listing standards would need to require a principal amount outstanding of at least $10 million. In the case of rights and warrants, the initial listing standards would also need to require that at least 100,000 rights and warrants be issued and that the underlying security would be listed on a national securities exchange or on an automated quotation system sponsored by a registered national securities association. In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the company's common stock, at a specified price on or before a specified date), the initial listing standards would require there to be at least 100,000 put warrants issued and the underlying security to be listed on a national securities exchange or on an automated quotation system sponsored by a registered national securities association. In the case of units (that is, two or more securities traded together), the listing standards would require that all component securities meet the requirements for initial listing. Finally, the listing standards would require that all other equity securities listed on the national securities exchange or on the automated quotation system sponsored by a registered national securities association, *e.g.*, hybrid securities and derivative securities products, meet initial listing standards that are substantially similar to those outlined above.

These criteria are modeled on the quantitative criteria currently required by Nasdaq for inclusion in its SmallCap

[27] This is the date on which the Commission adopted Rule 3a51–1.

[28] We refer to this provision as a "grandfather" provision. The concept of "substantially similar" tracks the language of Section 18 of the Securities Act of 1933 [15 U.S.C. 77r(b)(1)(B)], as amended by the National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (1996). The Commission would interpret the phrase "substantially similar" in this context as it has in the context of Section 18. *See, e.g.*, Exchange Act Rel. No. 39542 (Jan. 13, 1998), 63 FR 3032 (Jan. 21, 1998) (in which the Commission concluded that the listing standards of the Chicago Board Options Exchange, Incorporated and Tier I of the Pacific Exchange, Incorporated and Tier I of the Philadelphia Stock Exchange, Incorporated were substantially similar to the listing standards of the New York Stock Exchange, Inc., the American Stock Exchange LLC and the Nasdaq/National Market System and adopted Rule 146(b) designating securities listed on these markets as "covered securities" for purposes of Section 18 of the Securities Act of 1933). *See* 17 CFR 230.146(b).

[29] We are proposing to use the term "automated quotation system," which is the term Congress used in the Penny Stock Reform Act, to avoid tying the exclusion in paragraph (a) to any specific market sponsored by a registered national securities association. As a result, we believe the exclusion in paragraph (a) will have sufficient flexibility to keep pace with the evolution of markets. The term includes Nasdaq.

[30] We believe that the securities now listed on Nasdaq do not need a "grandfather" provision because the proposed quantitative listing standards are modeled on those currently used by the Nasdaq SmallCap Market.

[31] This exception provides that any security that is listed on the American Stock Exchange LLC pursuant to the listing criteria of the Emerging Company Marketplace, but that does not satisfy the requirements of paragraphs (b), (c), or (d) of Rule 3a51–1, is a penny stock solely for purposes of the penny stock bar provisions of Exchange Act Section 15(b)(6).

[32] *See* note 11, above.

[33] 17 CFR 240.3a51–1(e). *See* note 18, above, for a description of paragraph (e).

[34] As a result of these proposed changes to paragraphs (a) and (e) of Rule 3a51–1, regardless of whether the OTC Bulletin Board or any successor to the OTC Bulletin Board is operated by a national securities exchange or a registered national securities association, the OTC Bulletin Board or any successor to it must satisfy the initial and continued listing standards that we are proposing in order to qualify for either exclusion from the definition of penny stock. We note, however, that in proposing these amendments, the Commission is not expressing a view regarding the pending application for registration of Nasdaq as a national securities exchange.

[35] This exception currently provides that a security that satisfies the requirements of paragraph (e), but that does not otherwise satisfy the requirements of paragraphs (a), (b), (c), or (d) of Rule 3a51–1, is a penny stock solely for purposes of the penny stock bar provisions of Exchange Act Section 15(b)(6).

[36] Proposed new paragraph (f), discussed below, would provide an exclusion for security futures products. We believe that it would be appropriate to treat this new exclusion in the same way as the exception to paragraph (e) treats the exclusion for securities that are put or call options issued by the Options Clearing Corporation. The proposed inclusion of paragraph (g) is intended to clarify a potential ambiguity in the current rule, and it is not intended to be a substantive change to the current rule.

Market,[37] with the exception of the quantitative initial listing criteria for all other equity securities, including hybrid and derivative securities. This additional "general" initial listing standard is designed to ensure that all equity products listed on a qualifying exchange or on a qualifying automated quotation system sponsored by a registered national securities association, even those with features common to both equity and debt securities, would meet initial listing standards that are comparable to those applicable to more traditional equity securities.[38]

We believe that these proposed standards would create a more meaningful distinction between securities that should be subject to the penny stock rules and those of more substantially capitalized issuers. Listing standards serve as a means for national securities exchanges and registered national securities associations to screen issuers and provide listed status only to companies that meet standardized criteria. It is therefore appropriate that the exclusions from the definition of penny stock for reported securities and for certain other exchange-registered securities require exchanges and automated quotation systems sponsored by registered national securities associations to have minimum quantitative initial listing standards, as well as reasonably related continued listing standards.

We request comment on patterning the proposed initial listing standards after those currently used by the SmallCap Market. Should other initial listing standards be used? If so, which ones and why? Should these proposed initial listing standards be extended to the exclusion for reported securities, or should they only be imposed on the exclusion contained in paragraph (e) for certain other exchange-registered securities? Commenters should explain their views. We also solicit comment regarding the proposal to require a "general" listing standard applicable to all other equity products listed on a qualifying exchange or a qualifying automated quotation system sponsored by a registered national securities association, even those with features common to both equity and debt securities. Should the proposed rule have such a general standard or not? Please explain any answer provided to this question. In addition, we request comment regarding any possible negative impact on small business capital formation. If there is an unintended negative impact on small business capital formation, is there an alternative that would protect investors, issuers and markets while avoiding these consequences?

We are also proposing that a national securities exchange (other than a "grandfathered" exchange) or an automated quotation system sponsored by a registered national securities association must establish quantitative continued listing standards that are reasonably related to the proposed initial listing standards discussed above and are consistent with the maintenance of fair and orderly markets [39] in order to qualify for the exclusion for reported securities or for the exclusion for certain other exchange-registered securities.[40] Once a security has been approved for initial listing, an exchange or an automated quotation system sponsored by a registered national securities association is required to monitor the status and trading characteristics of that issue to ensure it continues to satisfy the continued listing criteria. Because listed companies are on-going businesses that are subject to changing markets and changing economic circumstances, we recognize that the continued listing standards will not be identical to the initial listing standards. Nevertheless, to meet the proposed requirement that they be reasonably related to the initial listing standards, the continued listing standards should be similar enough to the initial listing standards so that the continued listing standards have sufficient substance and meaning to uphold the quality of particular markets.

The Commission believes that requiring national securities exchanges (other than "grandfathered" exchanges) and registered national securities associations to adopt continued listing standards that are reasonably related to the proposed initial listing standards would help to ensure the stability of their respective markets, as well as protect investors, by enabling the exchanges and the registered national securities associations to identify listed companies that may not have sufficient liquidity and financial resources to warrant continued listing.

We solicit comment on the proposed continued listing standards discussed above. Commenters are encouraged to suggest alternative continued listing standards and criteria and to explain the advantages of their suggested alternative. Commenters are also encouraged to suggest appropriate modifications to these proposed amendments.

Finally, we wish to emphasize that we do not intend these proposals to disturb the status quo with respect to securities relying on the current exclusions from the definition of penny stock. In addition, we note that any security that satisfies one of the other exclusions in Rule 3a51–1 will not be a penny stock even if it fails to satisfy any of the proposed conditions for reported securities or for other exchange-registered securities discussed above.[41]

B. Proposed Elimination of the Exclusion for Nasdaq Securities

We are proposing to eliminate the current exclusion in paragraph (f) of Rule 3a51–1 for certain securities quoted or authorized for quotation upon notice of issuance on Nasdaq because

[37] *See* NASD Rule 4310(c). Due to the continued development of new markets and exchanges, we are proposing to base the proposed rules on the listing standards of the SmallCap Market. We have chosen this particular market because we believe its quantitative listing standards are sufficient to exclude those companies that pose the most danger to unsophisticated investors—companies that are minimally capitalized and that do not possess the attributes of companies with general market followings such as, for example, substantial tangible assets, an operating history, a defined business plan, net income, and genuine public interest as demonstrated by a large number of public shareholders that are not affiliated with the company or a significant market value for the company's listed shares. The companies listed in note 25, above, for example, could not have complied with the listing standards we are proposing. At the same time, we believe that these standards are not so strict as to inhibit legitimate capital formation or to prevent bona fide companies from having their securities registered and traded on national securities exchanges.

[38] Specifically, if an exchange or an automated quotation system of a registered national securities association plans to list or to trade, pursuant to unlisted trading privileges, a new derivative securities product or other hybrid securities product, it would need to have quantitative listing standards that are appropriate to that product and address the concerns the penny stock rules are designed to address to have that securities product excluded from the definition of penny stock. Apart from the requirements of Rule 3a51–1, however, the listing standards for such derivative securities products and other hybrid securities products must also address surveillance and trading rules as well as other concerns applicable to derivative and hybrid products. *See* Exchange Act Rel. No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998).

[39] The continued listing standards must also satisfy the requirement under Section 6(b)(5) or 15A(b)(6) of the Exchange Act [15 U.S.C. 78f(b)(5) or 78o–3(b)(6)] that an exchange or a registered national securities association have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. *See, e.g.*, Exchange Act Rel. No. 45898 (May 8, 2002), 67 FR 34502 (May 14, 2002).

[40] *See* note 30, above.

[41] For example, under paragraph (g) of the current rule, a security is not a penny stock if its issuer has net tangible assets (*i.e.*, total assets less intangible assets and liabilities) in excess of $2,000,000, if the issuer has been in continuous operation for at least three years, or $5,000,000, if the issuer has been in continuous operation for less than three years; or has average annual revenues of at least $6,000,000. *See* Rule 3a51–1(g).

we believe it no longer serves any purpose. When the Commission adopted the penny stock rules, Nasdaq National Market System securities were reported securities.[42] SmallCap Market securities, however, were not reported securities within the meaning of paragraph (a) of Rule 3a51–1.[43] Paragraph (f) of Rule 3a51–1 was intended to provide an exclusion for SmallCap Market securities. In 2001, the Commission issued an order that, among other things, explicitly recognized SmallCap Market securities as reported securities because they are securities reported pursuant to a transaction reporting plan approved by the Commission.[44] As a result, all securities quoted on Nasdaq are reported securities within the meaning of paragraph (a) of Rule 3a51–1 and are therefore excluded from the definition of penny stock on that basis. We request comment on the proposed deletion of this exclusion.

C. Proposed New Exclusion for Security Futures Products

We are also proposing to amend Rule 3a51–1 by adding proposed new paragraph (f), which would exclude from the definition of penny stock security futures products listed on a national securities exchange or an automated quotation system sponsored by a registered national securities association.[45] This would be consistent with the treatment of options under the penny stock rules. In particular, the term "penny stock" currently does not include any put or call option issued by the Options Clearing Corporation ("OCC").[46] This exclusion recognizes that the put and call options issued by the OCC are subject to special disclosure requirements.[47] Security futures products are subject to a similar disclosure regime. In particular, broker-dealers must provide their customers with a risk disclosure document before effecting transactions in security futures products for their customers.[48] Subjecting security futures products to the additional disclosure requirements of the penny stock rules, therefore, would likely be duplicative and unnecessarily burdensome. We request comment on the proposed exclusion of security futures products from the definition of penny stock.

We note that security futures products commenced trading on November 8, 2002.[49] We are, therefore, issuing an order pursuant to Exchange Act Section 36[50] temporarily exempting security futures products from the definition of penny stock until such time as the Commission takes any further action on this proposed amendment to Rule 3a51–1.[51] This exemptive period will allow the Commission to receive and consider comments while, at the same time, temporarily excluding security futures products from the penny stock rules.

IV. Background Regarding the Proposed Amendments to Rules 15g–2 and 15g–9

We also propose amending Exchange Act Rules 15g–2 and 15g–9.[52] These rules essentially require that before a broker-dealer effects a transaction in a penny stock for a customer, the broker-dealer must provide the customer with certain disclosure documents and receive, in tangible form, both a signed acknowledgement of receipt of those documents and an agreement to the particular transaction. These requirements give customers the opportunity to carefully consider whether an investment in a penny stock that is recommended by a broker-dealer is appropriate for them.

The Commission is concerned that this "stop and think" opportunity could be unintentionally eroded by changes in technology coupled with the effect of the Electronic Signatures in Global and National Commerce Act ("Electronic Signatures Act").[53] In relevant part, the Electronic Signatures Act, which was signed into law on June 30, 2000, established that no signature, contract or other record relating to a transaction in interstate or foreign commerce may be denied legal effect, validity, or enforceability solely because it is in electronic form.[54]

Since the penny stock rules were adopted, electronic commerce has become commonplace. The Internet now allows investors to execute securities transactions virtually instantaneously. While this technology has provided investors with many benefits and opportunities, when considered in light of the Electronic Signatures Act, it has the potential to undermine the effectiveness of the penny stock rules. The amendments we are proposing to Rules 15g–2 and 15g–9 attempt to strike a balance by facilitating the use of electronic communications as contemplated by the Electronic Signatures Act while maintaining the important investor protections of the Penny Stock Reform Act. These amendments would explicitly retain the time for consideration that was inherent in the rules at the time they were adopted in light of then-current technology. The proposed rule amendments would preserve investors' opportunity to consider their investment decisions to purchase penny stocks outside of a high-pressure environment, and thus are designed to ensure that evolving technological advances and the legislative response to these advances do not inadvertently erode these protections.

The legislative history of the Electronic Signatures Act suggests that Congress expected the Commission to help ensure that the protections afforded under the penny stock rules remained intact after the Act went into effect.[55] Moreover, the Electronic

[42] *See* Adopting Release, 57 FR at 18004.

[43] *Id.* at 57 FR at 18008.

[44] *See* Exchange Act Rel. No. 45081 at n. 36 (Nov. 19, 2001), 66 FR 59273 (Nov. 27, 2001).

[45] Section 6(h)(1) of the Exchange Act makes it unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a). 15 U.S.C. 78f(h)(1).

[46] 17 CFR 240.3a51–1(c).

[47] Adopting Release at n. 39, 57 FR at 18010 ("In addition, because put and call options issued by the OCC are already subject to special disclosure requirements, they are separately excluded from the definition of penny stock in paragraph (c) of Rule 3a51–1."). *See also* 17 CFR 240.9b–1; CBOE Rules 9.1–9.23; NASD Rule 2860(b)(16).

[48] *See* Exchange Act Rel. No. 46862 (Nov. 20, 2002), 67 FR 70993 (Nov. 27, 2002); Exchange Act Rel. No. 46614 (Oct. 7, 2002), 67 FR 64162 (Oct. 17, 2002). *See also* NASD Rule 2865(b)(1) and NFA Compliance Rule 2–30(b).

[49] Peter A. McKay, *Single Stock Futures Arrive in the U.S. With Room to Grow*, Wall Street Journal, Nov. 11, 2002, at B6.

[50] 15 U.S.C. 78mm(a)(1).

[51] *See* Exchange Act Rel. No. 34–49038 (January 8, 2004).

[52] 17 CFR 240.15g–2 and 240.15g–9.

[53] Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (2000) (codified at 15 U.S.C. 7001 *et seq.* (2001)).

[54] Electronic Signatures Act, Sec. 101(a)(1), 15 U.S.C. 7001(a)(1).

[55] The following colloquy took place on the floor of the House between Chairman Bliley and Representative Markey:

Mr. MARKEY. Mr. Speaker, on another matter, with respect to penny stocks, would the gentleman from Virginia agree that conference reports preserve the ability of the SEC to require written customer statements with respect to a purchase of penny stocks, as was required in the House-passed version of this bill?

Mr. BLILEY. Mr. Speaker, if the gentleman will yield, the gentleman from Massachusetts is correct. Following enactment of the Penny Stock Reform Act of 1990, the SEC has developed a cold call rule that requires brokers to obtain a signed customer statement regarding any penny stock to be purchased before any transaction takes place. In addition, customers are provided with important written disclosures involving risks of investing in penny stocks. Section 104 of the conference report specifically permits Federal regulatory agencies, such as the SEC, to interpret the law to require retention of written records in paper form if there is a compelling governmental interest in law enforcement for imposing such a requirement and if imposing such a requirement is essential to attaining such interest. The conferees expect the

Signatures Act permits Federal regulatory agencies, such as the Commission, to interpret and apply the Act in the context of their particular regulatory schemes.[56] In addition, the Electronic Signatures Act provides Federal regulatory agencies with limited ability to require retention of a record in a tangible printed or paper form if (i) "there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement" and (ii) "imposing such requirement is essential to attaining such interest."[57]

As described below, the disclosures and customer signatures required in tangible form under current Rules 15g–2 and 15g–9 have proven to be an effective means to implement the intent of Congress in enacting the Penny Stock Reform Act and achieve the Commission's goal of protecting investors. The proposed rule amendments are intended to provide the same protections to penny stock customers regardless of how they communicate with their broker-dealers.

A. Current Requirements Under Rules 15g–2 and 15g–9

1. Rule 15g–2

Rule 15g–2(a)[58] makes it unlawful for a broker-dealer to effect a transaction in a penny stock with or for the account of a customer unless the broker-dealer distributes to the customer, prior to effecting a transaction in a penny stock, a document, as set forth in Schedule 15G,[59] and receives a signed and dated acknowledgement of receipt of that document from the customer in tangible form.[60] The document, which must contain the information set forth in Schedule 15G ("penny stock disclosure document"), gives several important warnings to investors concerning the penny stock market, and cautions investors against making a hurried investment decision. Among other things, the penny stock disclosure document points out that salespersons are not impartial advisers, that investors should compare information from the salesperson with other information on the penny stock, and that salespersons may not legally state that a stock will increase in value or guarantee against loss.[61]

When we adopted Rule 15g–2, we requested comment on whether the penny stock disclosure document should be required to be executed and returned by the customer, prior to the customer's first transaction in a penny stock with the broker-dealer, in order to evidence compliance with the rule.[62] In response to comments received, the Commission amended Rule 15g–2 in 1993 to require a broker-dealer to obtain an acknowledgement from the customer that he or she has received the penny stock disclosure document prior to effecting transactions for the customer in penny stocks.[63] As we stated at the time, "[t]he requirement to obtain the customer's signature is intended to emphasize to customers the importance of making an informed and deliberate investment decision."[64]

It is important to note, however, that Rule 15g–2 is narrowly focused to protect retail investors against the types of abusive and fraudulent sales practices that Congress considered in enacting the Penny Stock Reform Act—"boiler room" sales tactics and so-called "pump and dump" schemes by penny stock market makers. For example, the obligation to provide the penny stock disclosure document does not apply when the broker-dealer has not been a market maker in the particular penny stock that it is recommending during the immediately preceding twelve months and has not received more than five percent of its commissions and certain other revenue from transactions in penny stocks during each of the preceding three months.[65] Similarly, transactions with institutional accredited investors are not subject to many of the penny stock rules, including the requirement that the broker-dealer provide the penny stock disclosure document to a customer and receive a signed acknowledgement of receipt of that document from that customer under Rule 15g–2.[66]

In addition, the obligation to provide a penny stock disclosure document does not apply where the penny stock transaction was not recommended by the broker-dealer.[67] Therefore, nothing in this rule precludes a broker or dealer in penny stocks from immediately executing an unsolicited transaction at a customer's request. Rather, it is focused on protecting unwary investors who may be faced with fraudulent and high-pressure sales tactics by brokers and dealers recommending and selling penny stocks in which they are making markets.

2. Rule 15g–9

Rule 15g–9, which was originally adopted as Rule 15c2–6 under the

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SEC would be able to use this provision to require brokers to keep written records of all disclosures and agreements required to be obtained by the SEC's penny stock rule.

Mr. MARKEY. Mr. Speaker, without question, *penny stocks are a very special category of extremely dangerous investments that I think will require that the SEC needs to be able to ensure additional disclosure and agreements to continue to be done in writing to help protect consumers against fraud and facilitate the SEC securities law enforcement mission.* I thank the gentleman from Virginia (Mr. Bliley) very much for his assistance.

146 Cong. Rec. H4360–61 (daily ed. June 14, 2000) (emphasis added).

[56] Electronic Signatures Act Sec. 104(b)(1)(A), 15 U.S.C. 7004(b)(1)(A).

[57] Electronic Signatures Act, Sec. 104(b)(3)(B), 15 U.S.C. 7004(b)(3)(B). The Commission is not addressing whether the documents required to be obtained from customers under the penny stock rules, if obtained electronically, must be maintained in a tangible printed or paper form for purposes of these proposed rule amendments.

[58] Rule 15g–2 provides:

(a)It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless, prior to effecting such transaction, the broker or dealer has furnished to the customer a document containing the information set forth in Schedule 15G, 17 CFR 240.15g–100, and has obtained from the customer a manually signed and dated acknowledgement of receipt of the document.

(b)The broker or dealer shall preserve, as part of its records, a copy of the written acknowledgment required by paragraph (a) of this section for the period specified in 17 CFR 240.17a–4(b) of this chapter.

[59] 17 CFR 240.15g–100 ("Information to be included in the document distributed pursuant to 17 CFR 240.15g–2"). This disclosure document provides the customer with information and warnings about the risky nature of penny stocks, details the disclosures that the broker-dealer is required to give to the customer, and contains information concerning brokers' duties and customers' rights and remedies.

[60] Rule 15g–2(a) [15 CFR 240.15g–2(a)] provides "(a) It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless, prior to effecting such transaction, the broker or dealer has furnished to the customer a document containing the information set forth in Schedule 15G, 17 CFR 240.15g–100, and has obtained from the customer a manually signed and dated written acknowledgement of receipt of the document."

[61] *Id. See also* Adopting Release, 57 FR at 18018.

[62] Adopting Release, 57 FR at 18031. This would enable broker-dealers to demonstrate compliance with the rule as well as enable regulators to examine for a broker-dealer's compliance with the rule.

[63] In addition, the broker-dealer must maintain that record for at least three years following the date on which the penny stock disclosure document was provided to the customer. *See* Rule 15g–2(b) [17 CFR 240.15g–2(b)]. During the first two years, the penny stock disclosure document must be in an accessible place.

[64] Exchange Act Rel. No. 32576 (July 2, 1993), 58 FR 37413, 37416 (July 12, 1993). *See also* Schedule 15G to the penny stock rules, 17 CFR 240.15g–100. In fact, the Commission amended the penny stock disclosure document set forth in Schedule 15G to specifically urge investors to consider the warnings and other information in the document before providing the signed acknowledgement of receipt to their broker-dealers, as follows:

"Important Information on Penny Stocks

This statement is required by the U.S. Securities and Exchange Commission (SEC) and contains important information on penny stocks. Your broker-dealer is required to obtain your signature to show that you have received this statement before your first trade in a penny stock. You are urged to read this statement before signing and before making a purchase or sale of a penny stock."

[65] Rule 15g–1(a) [17 CFR 240.15g–1(a)].

[66] *See* Rule 15g–1(b) [17 CFR 240.15g–1(b)].

[67] Rule 15g–1(e) [17 CFR 240.15g–1(e)].

Exchange Act, was designed to address sales practice abuses involving certain speculative low-priced securities being traded in the non-Nasdaq over-the-counter ("OTC") market.[68] As the Commission noted in adopting the Rule, "[t]he target of the Rule is sales practice abuse and manipulation, not small issuers or speculative investment decisions *per se*. It is, however, in [penny stocks] that the Commission has found that a disproportionate number of such abuses occur, and it is for this reason that the Commission is adopting a prophylactic rule for recommended sales of such securities."[69] Rule 15g–9 generally prohibits a broker-dealer from selling to, or effecting the purchase of a penny stock by, any person unless the broker-dealer has approved the purchaser's account for transactions in penny stocks and received the purchaser's agreement in tangible form to the transaction.

In approving an account for transactions in penny stocks, a broker-dealer must obtain sufficient information from the customer to make an appropriate suitability determination, provide the customer with a statement setting forth the basis of the determination, and obtain a signed copy of the suitability statement from the customer in tangible form.[70] By requiring the customer to agree in tangible form to purchases of penny stocks, Rule 15g–9(a)(2)(ii) was intended to provide the customer with an opportunity to make an investment decision outside of a high-pressure telephone conversation with a salesperson. It removes the pressure for an immediate decision.[71] We believe this requirement is critical to the effectiveness of the Rule.[72]

In addition, the requirement that the broker-dealer provide a copy of its suitability determination to the customer prior to the customer's commitment to purchase a penny stock was intended to provide the customer with the opportunity to review that determination and decide whether the broker-dealer had made a good faith attempt to consider the customer's financial situation, investment experience and investment objectives.[73] The requirement that the broker-dealer receive a signed copy of the suitability statement in tangible form is also intended "to convey to the customer the importance of the suitability statement, and to prevent a salesperson from convincing the customer to sign the statement without a review for accuracy."[74]

Nevertheless, as with Rule 15g–2, these requirements under Rule 15g–9 do not apply to all broker-dealers or in all cases involving transactions in penny stocks. Most notably, none of these provisions applies to broker-dealers that have not received more than five percent of their commissions and certain other revenue from transactions in penny stocks during each of the preceding three months and have not made a market in the penny stock to be purchased by the customer during the preceding twelve months. Moreover, they do not apply when the customer is an institutional accredited investor or when the broker-dealer did not recommend to the customer the penny stock to be purchased.[75] In addition, the provisions of Rule 15g–9 do not apply if the customer is an "established customer" of the broker-dealer; that is, if the customer has had an account with the broker-dealer in which the customer (1) has effected a securities transaction or deposited funds more than one year previously, or (2) has already made three purchases involving different penny stocks on different days.[76]

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[68] Exchange Act Rel. No. 27160, 54 FR at 35468. The rule was redesignated as Rule 15g–9 in Exchange Act Rel. No. 32576. As we stated in adopting Rule 15c2–6, "[t]he Commission is taking this action in response to the widespread incidence of misconduct by some broker-dealers in connection with transactions in low-priced securities." Exchange Act Rel. No. 27160, 54 FR at 35468. Furthermore, "[c]ommenters supporting the proposed rule particularly noted the seriousness and extent of broker-dealer misconduct in the market for low-priced, non-NASDAQ OTC securities, and the need for effective regulatory tools with which to address such misconduct." Exchange Act Rel. No. 27160, 54 FR at 35469.

[69] Exchange Act Rel. No. 27160, 54 FR at 35479.

[70] Rule 15g–9 provides, in pertinent part:

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer to sell a penny stock to, or to effect the purchase of a penny stock by, any person unless:

(1) The transaction is exempt under paragraph (c) of this section; or

(2) prior to the transaction:

(i) the broker or dealer has approved the person's account for transactions in penny stocks in accordance with the procedures set forth in paragraph (b) of this section; and

(ii) the broker or dealer has received from the person a written agreement to the transaction setting forth the identity and quantity of the penny stock to be purchased.

(b) In order to approve a person's account for transactions in penny stocks, the broker or dealer must:

(1) Obtain from the person information concerning the person's financial situation, investment experience, and investment objectives;

(2) reasonably determine, based on the information required by paragraph (b)(1) of this section and any other information known by the broker-dealer, that transactions in penny stocks are suitable for the person, and that the person * * * reasonably may be expected to be capable of evaluating the risks of transactions in penny stocks;

(3) deliver to the person a written statement:

(i) setting forth the basis on which the broker or dealer made the determination required by paragraph (b)(2) of this section;

(ii) stating in a highlighted format that it is unlawful for the broker or dealer to effect a transaction in a penny stock subject to the provisions of paragraph (a)(2) of this section unless the broker or dealer has received, prior to the transaction, a written agreement to the transaction from the person; and

(iii) stating in a highlighted format immediately preceding the customer signature line that:

(A) the broker or dealer is required by this section to provide the person with the written statement; and

(B) the person should not sign and return the written statement to the broker or dealer if it does not accurately reflect the person's financial situation, investment experience, and investment objectives; and

(4) obtain from the person a manually signed and dated copy of the written statement required by paragraph (b)(3).

[71] As the Commission noted when it adopted Rule 15c2–6:

Most of the sales practice abuses involving low-priced securities are conducted over the telephone by broker-dealers engaging in "boiler-room" operations. Improved communications technology has enabled an increasing number of this type of broker-dealer to engage in high-pressure sales campaigns on a nationwide basis. An essential aspect of a boiler-room operation is the use of numerous salespersons making hundreds of high-pressure cold calls each day to generate sales of low-priced securities to new customers. Cold calls are telephone calls made to persons whose names are drawn from a telephone directory or a membership list. Consequently, many of the persons called will have little investment experience and limited financial resources. The salespersons are trained in high-pressure sales tactics designed to elicit a buy decision during the course of a telephone call, and typically are compensated solely by commissions generated by sales of securities. Because many of the persons called are inexperienced investors, they are particularly vulnerable to deceptive sales pitches promising high profits made by salespersons willing to disregard the unsuitability of a security for the purchaser.

Moreover, in a resolution supporting the adoption of the rule in 1989, the North American Securities Administrators Association stated that "penny stock manipulation schemes and fraudulent cold calling sales tactics are among the most prevalent fraudulent schemes being perpetrated on the investing public, resulting in millions of dollars of losses annually, damaging the efficient operation of the market and reducing the amount of capital available to legitimate business."

Exchange Act Rel. No. 27160, 54 FR at 35469.

[72] As the Commission stated when it adopted Rule 15c2–6:

"The written agreement requirement provides the Rule's most direct protection against high-pressure sales tactics by enhancing the ability of investors to guard themselves against such tactics. Broker-dealers involved in boiler room abuses typically use prepared scripts designed by marketing experts that try to elicit immediate buy decisions during the course of one or a series of telephone calls. * * * The written agreement requirement has the beneficial effect of ensuring that the customer's final decision will be made outside of a pressuring telephone call, and of providing objective evidence of whether a customer has agreed to a transaction."

Exchange Act Rel. No. 27160, 54 FR at 35480.

[73] *Id.*

[74] *Id.*, 54 FR at 35479.

[75] *See* Rule 15g–9(c)(1) [17 CFR 240.15g–1], referencing Rules 15g–1(b) and (e) [17 CFR 240.15g–1(b), (e)].

[76] *See* Rules 15g–9(c)(3) and 15g–9(d)(2) [17 CFR 240.15g–9(c)(3) and 240.15g–9(c)(4)].

Thus, these disclosures are essentially required only in very narrow circumstances—when the customer is a relatively new customer of the penny stock market-making broker-dealer or has limited experience with penny stocks and is not an institutional accredited investor, and when the broker-dealer has solicited the customer to engage in a penny stock transaction. The investors whose transactions do not qualify for any of the exemptions to the application of the penny stock rules are the persons most in need of the protections afforded by the proposed rule amendments, including an opportunity for unpressured consideration of the risks inherent in penny stocks.

B. The Need To Maintain These Investor Protections

The Commission has long worked to integrate the use of electronic media into the delivery and disclosure requirements under the federal securities laws. We first published our views on the use of electronic media to deliver information to investors in 1995.[77] The 1995 Release focused on electronic delivery of prospectuses, annual reports to security holders and proxy solicitation materials under the Securities Act of 1933,[78] the Exchange Act[79] and the Investment Company Act of 1940.[80] Our 1996 electronic media release[81] focused on electronic delivery of required information by broker-dealers (including municipal securities dealers) and transfer agents under the Exchange Act and investment advisers under the Investment Advisers Act of 1940.[82] In March 1998, we summarized our views about the reach of U.S. securities laws to offers and sales of securities and investment services by means of the Internet—particularly offers and sales that purport to be effected offshore.[83] In April 2000, we provided guidance on the use of electronic media by securities issuers of all types, including operating companies, investment companies and municipal securities issuers, as well as market intermediaries.[84] In addition, we have modified broker-dealer and investment adviser registration filing requirements to facilitate electronic filing, maintenance of and access to registration information over the Internet.[85] We have also provided guidance regarding the electronic storage of broker-dealer records in light of the Electronic Signatures Act.[86] We remain committed to adapting our regulations, as needed, to take into account technological advances in communications while seeking to ensure that investor protections are maintained.[87]

In our effort to integrate the use of electronic media into the federal securities laws, we addressed the penny stock rules in our 1996 Release.[88] Although the Commission allowed broker-dealers to meet their delivery obligations under the penny stock rules by electronic means, the Commission specifically determined that broker-dealers should continue to obtain from customers signatures and agreements in tangible form under the penny stock rules.[89] We thus preserved the customer's ability to "stop and think," maintaining an important component of the investor protections of the penny stock rules.

As discussed above, the Electronic Signatures Act is intended to facilitate the use of electronic communications in interstate commerce. The Penny Stock Reform Act, on the other hand, was intended to provide protections to investors in penny stocks and address the fraudulent sales practices that had long characterized the markets for penny stocks. As mandated by Congress, the Commission adopted the penny stock rules in order to further the goals of the Penny Stock Reform Act. Implementation of the provisions of the Electronic Signatures Act in the context of the penny stock rules, however, requires us to harmonize the Congressional mandates.[90] The proposed amendments to Exchange Act Rules 15g–2 and 15g–9 attempt to do so.

The requirements that a customer provide, in tangible form, a signed copy of the suitability statement and an agreement for a particular transaction under Rule 15g–9, together with the requirement that customers provide, in tangible form, a signed copy of the penny stock disclosure document pursuant to Rule 15g–2, were designed to give investors time to reflect. This interval can be used by an investor to consider whether an investment in penny stocks, which is often a risky investment, is appropriate for him or her before the broker-dealer that actively solicited the investment effects a transaction. The proposed amendments to Rules 15g–2 and 15g–9 are intended to maintain an investor's ability to thoughtfully consider investment in penny stocks—even when communicating nearly instantaneously by means of electronic media—by imposing a two-business-day waiting period, as explained below. The two-

[77] Securities Act Rel. No. 7233 (Oct. 6, 1995), 60 FR 53458 (Oct. 13, 1995) (the "1995 Release").

[78] 15 U.S.C. 77a, *et seq.*

[79] 15 U.S.C. 78a, *et seq.*

[80] 15 U.S.C. 80a–1, *et seq.*

[81] Exchange Act Rel. No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (the "1996 Release"). The 1996 Release also provided additional examples supplementing the guidance in the 1995 Release. Since 1996, we have further addressed the use of electronic media in the context of offshore sales of securities and investment services, *see* Securities Act Rel. No. 7516 (Mar. 23, 1998), 63 FR 14806 (Mar. 27, 1998) (the "1998 Release"), and cross-border tender offers, *see* Securities Act Rel. No. 7759, (Oct. 22, 1999), 64 FR 61382 (Nov. 10, 1999) (the "1999 Release").

[82] 15 U.S.C. 80b–1, *et seq.*

[83] 1998 Release.

[84] Exchange Act Rel. No. 42728 (Apr. 28, 2000), 65 FR 25843, 25844 (May 4, 2000) (As we stated at that time, "[t]he increased availability of information through the Internet has helped to promote transparency, liquidity and efficiency in our capital markets.").

[85] *See* Exchange Act Rel. No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999), in which we amended Form BD, the uniform broker-dealer registration form, and related rules under the Exchange Act to support electronic filing in the Internet-based Central Registration Depository system; and Investment Advisers Act Rel. No. 1897 (Sept. 12, 2000), 65 FR 57438 (Sept. 22, 2000), in which we adopted new rules and rule amendments under the Investment Advisers Act of 1940 to require that advisers registered with the Commission make filings under the Act with the Commission electronically through the Investment Adviser Registration Depository, as well as amendments to Forms ADV and ADV–W.

[86] Exchange Act Rel. No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

[87] *See* Exchange Act Rel. No. 44227 (Apr. 27, 2001), 66 FR 21648 (May 1, 2001) (amending the transfer agent record retention rule, Rule 17Ad–7, to allow registered transfer agents to use electronic, microfilm, and microfiche records maintenance systems to preserve records that they are required to retain under Rule 17Ad–6); Investment Advisers Act Rel. No. 1945 (May 24, 1945), 66 FR 30311 (June 6, 2001) (adopting rule amendments that expand the circumstances under which registered investment companies and registered investment advisers may keep records on electronic storage media). *See also* Securities Act Rel. No. 7877 (July 27, 2000), 65 FR 47281 (Aug. 2, 2000) (adopting, at the explicit direction of Congress in Section 104(d)(2) of the Electronic Signatures Act, Securities Act Rule 160, which exempts from the consumer consent requirements contained in Section 101(c) of the Electronic Signatures Act prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors).

[88] *See* 1996 Release at n. 12 and n. 50, 61 FR at 24646 and 24649.

[89] *See* 1996 Release at n. 12, 61 FR at 24646 ("[T]he Commission believes that in order to fulfill the purposes of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, broker-dealers should continue to have customers manually sign and return in paper form any documents that require a customer's signature or written agreement.").

[90] We express no view regarding how the Electronic Signatures Act affects the federal securities laws other than with respect to the effect of Section 101(a) of the Act on the ability of broker-dealers to obtain from customers signatures and agreements in electronic form to satisfy the requirements of Exchange Act Rule 15g–9 that customers provide a signed and dated copy of the suitability statement and an agreement for a particular transaction, and the Rule 15g–2 requirement that customers provide a signed and dated acknowledgement of receipt of the penny stock disclosure document.

business-day waiting period is meant, as a practical matter, to replicate the interval investors had when we adopted the penny stock rules and that we maintained in the 1996 Release.

As noted above, this opportunity for careful consideration continues to be necessary today.[91] Although the efforts of Congress and the Commission, as well as other federal and state regulators, have targeted fraudulent activity in the market for penny stocks, penny stock fraud continues to victimize investors.[92] The proposed amendments to Rules 15g–2 and 15g–9 are intended to give investors the time to carefully consider—and, perhaps reject—the overtures of high-pressure broker-dealers, regardless of the media through which they transact business. As Congress recognized when it enacted the Penny Stock Reform Act, the defrauded victims of penny stock fraud activities are not the only ones harmed. Penny stock fraud is detrimental to the integrity of our nation's capital markets.

V. Proposed Amendments to Rules 15g–2 and 15g–9

The ongoing advances in technology, including widespread use of the Internet, e-mail and the ability to use electronic signatures may unintentionally weaken the investor protections intended by Congress in enacting the Penny Stock Reform Act and afforded under the penny stock rules. As discussed above, Section 101(a) of the Electronic Signatures Act enables customers to provide to broker-dealers in penny stocks electronic signatures in place of the signatures in tangible form required under Rules 15g–2(a) and 15g–9(b)(4), and permits customers to provide the agreement regarding particular penny stock transactions required under Rule 15g–9(a)(2)(ii) through electronic media.

In the 1996 Release, while the Commission specifically determined that broker-dealers should continue to obtain signatures and agreements in tangible form under the penny stock rules instead of using electronic media to satisfy these requirements, the Commission also stated that it "may be willing to consider a 'cooling-off' period as an alternative to the requirement of a manual signature under Rules 15g–2 and 15g–9" when it next reviewed the penny stock rules,[93] and requested comment on the "cooling-off" period approach.[94] The one commentator addressing that aspect of the 1996 Release stated, without expressing a view as to investors' need for such protection, that "a cooling off period would be a more appropriate means of regulation than withholding access to modern means of communication."[95] In light of the intersection of the Electronic Signatures Act with the Penny Stock Reform Act and the penny stock rules, and the continued existence of fraudulent sales practices in the markets, we are proposing to implement such "cooling off" or waiting periods.

The proposed amendments would provide the method for compliance with current Rules 15g–2 and 15g–9(a) and (b) for brokers and dealers in penny stocks whose customers provide them with electronically signed or transmitted documents required under the Commission's penny stock rules. Our proposal takes into account that, although we previously have interpreted the penny stock rules to prohibit the use of electronic media to satisfy certain requirements, the Electronic Signatures Act allows these requirements to be satisfied through electronic means. Customers using electronic media, however, could effectively lose some of the protections afforded by the penny stock rules. We believe the proposed amendments are necessary so that all investors continue to receive the protections that the penny stock rules were designed to provide.

In particular, we propose to impose a waiting period of two business days from the time the broker-dealer sends the required material to the customer regardless of whether these communications are paper-based or electronic. For example, as applied to Rule 15g–2(a), the proposed amendments would impose a uniform waiting period of two business days that could be satisfied by waiting two days after sending the penny stock disclosure document required by the rule electronically or by mail or some other paper-based means. Similar time periods also would apply to the suitability statement required by Rule 15g–9(b) and the agreement to a transaction in a penny stock required by Rule 15g–9(a)(2)(ii). In other words, under the proposed amendments a broker-dealer could not execute the relevant penny stock transaction until at least two business days after it had transmitted the documents electronically or placed them in the mail. The rule would continue to require that the broker-dealer receive these signed documents, in either electronic[96] or paper form, back from the customer before executing the transaction.[97] Thus, the proposed amendments establish a two-business-day waiting period for all penny stock transactions during which a broker-dealer cannot sell a penny stock to a customer he or she has solicited even if the customer, either electronically or on paper, has signed and returned the documents required by the penny stock rules. The proposed amendments essentially seek to preserve parity between electronic and paper communications in the context of the disclosure requirements of the penny stock rules.

As discussed in detail below, we are also proposing to revise the penny stock disclosure document required by Rule 15g–2. As part of this revision, we are proposing to add the Internet address of that section of the Commission's Web site that provides investors with information regarding microcap securities, including penny stocks. New paragraph (d) of Rule 15g–2 would require broker-dealers to send a copy of this section of the Commission's Web site to any penny stock customer upon the customer's request.

We solicit comment on the proposed amendments to Rules 15g–2 and 15g–9. Because the proposed amendments would not differentiate between electronic and paper-based transactions, all broker-dealers subject to the penny

[91] Unfortunately, the types of abuses that the Penny Stock Reform Act and the penny stock rules are intended to combat have a long history in the securities markets. In 1697, the Parliament of England passed "[a]n act to restrain the number and ill practice of brokers and stock jobbers." The statute was aimed at unlawful conspiracies by jobbers to manipulate prices, and it followed a report of a special commission that had complained:

"The pernicious Art of Stock-jobbing hath, of late, so wholly perverted the End and Design of Companies and Corporations, erected for the introducing, or carrying on, of Manufacturers, to the private Profit of the first Projectors, that Privileges granted to them have, commonly, been made no other Use of, by the First Procurers and Subscribers, but to sell again, with Advantage, to ignorant Men, drawn in by the Reputation, falsely raised, and artfully spread concerning the thriving State of their Stock."—Louis Loss and Joel Seligman, *Securities Regulation*, 3 (3d ed. 1989).

[92] *See* discussion above at Section III, A.

[93] *Id.* at n. 50, 61 FR at 24649.

[94] *Id.*

[95] Letter from Scucommittee on Disclosure Technology of the Federal Regulation of Securities Committee of the Section of Business Law of the American Bar Association, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 27, 1996, Re: Release No. 33–7288, File No. S7–13–96.

[96] We note that an electronic acknowledgement of receipt generated automatically by certain e-mail programs when an e-mail message is delivered or opened would not satisfy any of these requirements.

[97] The proposed amendments would require that the broker-dealer continue to receive (i) a signed and dated acknowledgement of the receipt of the penny stock penny stock disclosure document from a customer under Rule 15g–2(a); (ii) a signed and dated suitability statement as required under Rule 15g–9(b); and (iii) an agreement to a transaction in a penny stock as required by Rule 15g–9(a)(2)(ii).

stock rules may be required to adjust the manner in which they currently comply with Rules 15g–2 and 15g–9. We therefore solicit comment on the costs, if any, broker-dealers would expect to incur in making these adjustments.

We also solicit comment on whether the proposed amendments could create any competitive advantages or disadvantages to particular firms or types of firms in this segment of the market. If so, commenters should explain these advantages or disadvantages in detail, and, if possible, quantify any associated costs. We also request comment on whether commencing the two-business-day waiting period at the time the documents are sent is the optimal starting point, or whether another starting point should be used. For example, should the waiting period commence when the broker-dealer receives the document back from the customer? Should the waiting period be three business days instead of two business days?[98] Should the waiting period be measured in calendar days instead of business days? Commenters should explain their answers.

We also request comment on how many broker-dealers making a market in penny stocks currently use, or would be likely to (if the proposed amendments were adopted) use electronic media to comply with the requirements of Rules 15g–2 and 15g–9.

VI. Revising Schedule 15G

We are also proposing to revise the penny stock disclosure document and the instructions to it set forth in Schedule 15G under the Exchange Act. The penny stock disclosure document was developed in 1991 and 1992 to provide penny stock investors with brief, standardized information identifying certain risks of investing in low-priced securities and explaining the basic concepts associated with the penny stock market.[99] Some of the proposed revisions are designed to reflect the rule amendments discussed above. Other proposed revisions would streamline the document to make it more readable, and update certain contact information. Among other things, we would eliminate specific references to Nasdaq such as "quoted on NASDAQ," "quoted on the NASDAQ system" or to "the NASD's automated quotation system." In addition, revised Schedule 15G would inform penny stock customers of the procedures (including waiting periods) that would result from any amendments to the penny stock rules for a broker-dealer to effect a transaction in any penny stock for or with the account of one of its customers. The revised document would also state that penny stocks trade on foreign exchanges as well as on facilities of national securities exchanges.

The current document is divided into two parts. The first part of the penny stock disclosure document, entitled "Important Information on Penny Stocks" (the "Summary Document"), sets forth on a single page the items required to be disclosed pursuant to Section 15(g)(2) of the Exchange Act.[100] The first section of the Summary Document, entitled "Penny stocks can be very risky," briefly defines "penny stock" and identifies certain risks of investing in penny stocks. The second section, entitled "Information you should get," describes the penny stock market and terminology important to an understanding of that market. The final section of the Summary Document, entitled "Brokers' duties and customer's rights and remedies," informs customers who have questions or who have been defrauded that they may have rights or remedies under federal and state law, and provides a toll-free telephone number of the NASD and the central number of NASAA for information on the background and disciplinary history of the firms and salespersons with whom they are dealing, as well as the Commission's complaint number. The second part of the current document (the "Explanatory Document") supplements and explains in greater detail the information provided in the Summary Document.

The revised document would simplify and update the Summary Document and replace the Explanatory Document with a hyperlink to (or in the case of a paper document, the Internet address of) the section of the Commission's Web site that provides investors with information regarding microcap securities, including penny stocks. The revised document is designed to be succinct and to catch the attention of readers by highlighting issues that call for investor caution. Moreover, we believe that the revised document would achieve the purposes of Section 15(g)(2) of the Exchange Act more effectively by providing investors with the information in a more accessible and understandable format.[101]

We are also proposing to revise Schedule 15G to provide instructions regarding how to electronically provide the penny stock disclosure document.[102] Under the proposed amendments, when broker-dealers electronically send their customers a penny stock disclosure document, the e-mail containing the penny stock disclosure document would be required to have as a subject line: "Important Information on Penny Stocks." If the penny stock disclosure document is reproduced in the text of the e-mail, it would need to be clear, easy to read, and where information is required to be printed in bold-face type, underlined, or capitalized, the amended rule would allow issuers to satisfy such requirements by presenting the information in any manner reasonably calculated to draw attention to it.[103] If the penny stock disclosure document is sent electronically using a hyperlink to where the document is located on the Commission's Web site, the e-mail containing the hyperlink would also need to have as a subject line: "Important Information on Penny Stocks." Immediately before the hyperlink, the text of the e-mail would need to reproduce the following statement in clear, easy-to-read type that is reasonably calculated to draw attention to the words: "We are required by the U.S. Securities and Exchange Commission to give you the following disclosure statement: *http://www.sec.gov/investor/Schedule15G.htm.* It explains some of the risks of investing in penny stocks.

[98] *See, e.g.*, Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR 429 (The Federal Trade Commission's cooling-off rule gives a consumer three days to cancel purchases of $25 or more if the consumer buys an item at home or at a location that is not the seller's permanent place of business).

[99] Proposing Release, 56 FR at 19180.

[100] 15 U.S.C. 78o(g)(2).

[101] *See* Adopting Release, 57 FR 18017–18 (discussing the penny stock disclosure document).

[102] In addition to the proposed instructions, the use of electronic media to provide the document is subject to applicable legal requirements. As indicated in note 90, above, we express no view regarding how the Electronic Signatures Act affects the federal securities laws other than with respect to the effect of Section 101(a) of the Act on certain requirements under Exchange Act Rules 15g–2 and 15g–9.

[103] Rather than promulgating and enforcing exacting technical requirements about how the penny stock disclosure document must be presented electronically, we have decided to follow the approach we adopted in 1996. *See* Exchange Act Rel. No. 37183 (May 9, 1996), 61 FR 24652 (May 15, 1996) ("As proposed, Commission rules that prescribe the physical appearance of a paper document, such as type size and font requirements, are being amended to provide that the issuer, when delivering an electronic version of a document, may comply with the requirements by presenting the information in a format readily communicated to investors. Where legends are required to be printed in red ink or bold-face type, or in a different font size, the amended rules will allow issuers to satisfy such requirements by presenting the legends in any manner reasonably calculated to draw attention to them.").

Please read it carefully before you agree to purchase or sell a penny stock."

All e-mail messages transmitting the penny stock disclosure document or a hyperlink to the penny stock disclosure document found on the Commission's Web site would be required to provide the name, address, e-mail address and telephone number of the broker sending the message. Under the proposal, no other information could be included in this e-mail message, except any privacy or confidentiality information routinely included in e-mail messages sent to customers from that broker, as well as instructions on how to provide a signed and dated acknowledgement of receipt of the document.

We would also update the penny stock disclosure document to add the Internet addresses for the Commission, the NASD, Inc. ("NASD"), and the North American Securities Administrators Association ("NASAA"). We would also revise the document to reduce repetition, make it easier to read, and make it more understandable to investors. The current penny stock disclosure document was written over a decade ago and reflects the market as it existed at that time. The proposed revisions to the penny stock disclosure document would bring it up to date, and make it more streamlined and understandable to investors. In particular, much of the detail in the document would be eliminated and replaced with a hyperlink to (or in the case of a paper document, the Internet address of) the section of the Commission's Web site that provides investors with information regarding microcap securities, including penny stocks. We believe that providing a hyperlink (or Internet address) would be an efficient method of alerting potential penny stock investors to the existence of the Commission's Web site and the useful information about investing in such securities that is posted on it. This approach would permit investors to better analyze the penny stock transaction being offered to them since they would have access not only to the portion of the Commission's Web site that deals with investing in penny stocks and microcap securities but to all of the other information posted on the Commission's Web site. An interested investor could, therefore, browse the entire Commission's Web site and, we hope, better educate him or herself before making an investment decision. If a customer requests, a broker-dealer would be required to provide him or her with a copy of the additional information regarding microcap securities, including penny stocks, from the Commission's Web site.

We request comment regarding all of the proposed changes to the penny stock disclosure document. Commenters are encouraged to discuss not only the substance of the document, but also the presentation. For example, we request comment about using a hyperlink (or an Internet address) to inform potential penny stock investors about the risks inherent in investing in penny stocks and microcap securities. Would investors be more or less likely to read such information in a hyperlink than if this information was presented to them at the same time as the penny stock disclosure document? Please explain any comment. We also solicit comment regarding our proposal to permit broker-dealers electronically transmitting the penny stock disclosure document to present the information in the document that is required to be printed in bold-face type, underlined or capitalized in any manner reasonably calculated to draw attention to this information. Should we be more prescriptive and specify in detail how this document should appear electronically? Should the same approach be followed with regard to the required text when a hyperlink to the document on the Commission's Web site is sent to the customer? Moreover, if the penny stock disclosure document is provided to a customer in paper form, should the penny stock broker-dealer be required to provide additional information upon the customer's request? For example, should the penny stock broker-dealer be required to provide a printed version of the section of the Commission's Web site that provides investors with information regarding microcap securities, including penny stocks, or should it be required to provide a modified version of the current Explanatory Document? If the additional information is provided some time after the penny stock disclosure document, should the broker-dealer be required to provide such information before it effects a transaction in that customer's account? Should the two-business-day waiting period begin to run after the customer has received this additional information from the broker-dealer?

VII. General Request for Comments

In addition to the specific requests for comment above, we are soliciting comments on all aspects of the proposed amendments. Commenters should explain their view in as much detail as appropriate.

VIII. Paperwork Reduction Act Analysis

A. Rule 3a51–1 Analysis

The proposed amendments to Rule 3a51–1 do not impose any "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[104] Similarly, the proposed amendments to Rule 15g–100 do not impose any "collection of information" requirements with the meaning of the PRA. Accordingly, the PRA does not apply to these proposed amendments.

B. Rule 15g–2 and Rule 15g–9 Analyses

Certain provisions of the proposed amendments to Rules 15g–2 and 15g–9 contain "collection of information" requirements within the meaning of the PRA. The Commission has submitted the proposed rule amendments to the Office of Management and Budget ("OMB") for review in accordance with PRA requirements. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

The Commission is proposing to amend the collections of information currently required under Rules 15g–2 and 15g–9 under the Exchange Act. The title for the collection of information under current Rule 15g–2, "Penny Stock Disclosure Rules," which the Commission is proposing to amend, contains a currently approved collection of information under OMB control number 3235–0434. The title for the collection of information under current Rule 15g–9, "Sales Practice Requirements for Certain Low-Priced Securities," which the Commission is proposing to amend, contains a currently approved collection of information under OMB control number 3235–0385. The information received by a broker-dealer pursuant to Rules 15g–2 and 15g–9 is mandatory, and is otherwise governed by Regulation S–P[105] and the internal policies of the broker-dealer regarding confidentiality. In addition, the Commission or a self-regulatory organization ("SRO") may review the information during the course of an examination.

[104] 44 U.S.C. 3501, *et seq.*

[105] *See* Title V of the Gramm-Leach-Bliley Act, Pub. L. 106–102, 106th Cong., 1st Sess. (codified at 15 U.S.C. 6801 *et seq.* (the "Act"). Pursuant to Section 504 of the Act, the Commission adopted Regulation S–P on June 22, 2000. *See* 17 CFR Part 248, Privacy of Consumer Financial Information (Regulation S–P), Exchange Act Rel. No. 42974 (June 22, 2000), 65 FR 40334 (June 29, 2000).

1. Summary of Collection of Information

Current Rule 15g–2 requires broker-dealers to provide their customers with a penny stock disclosure document, as set forth in Schedule 15G under the Exchange Act, prior to each customer's first non-exempt transaction in a penny stock. The rule also requires a broker-dealer to obtain from its customer in tangible form a signed acknowledgement that he or she has received the required penny stock disclosure document. The broker-dealer must maintain a copy of the customer's acknowledgement for at least three years following the date on which the penny stock disclosure document was provided to the customer. During the first two years of this period, the document must be maintained in an accessible place.

The substance of the collection of information required by Rule 15g–2 would not change under the proposed amendments. The penny stock disclosure document would still have to be provided by a broker-dealer to a customer prior to a non-exempt transaction in a penny stock, and a signed copy of that document would still have to be received by the broker-dealer and maintained in its records for the required period of time. The means of sending and receiving those documents may change from paper copies to electronic versions of those documents or vice versa.

Current Rule 15g–9 requires a broker-dealer to produce a suitability determination for its customers and to obtain from the customer in tangible form a signed copy of that document prior to executing certain recommended transactions in penny stocks. The broker-dealer must also obtain, in tangible form, the customer's agreement to a particular recommended transaction in penny stocks, listing the issuer and number of shares of the particular penny stock to be purchased.

Similarly, the substance of the collection of information required by Rule 15g–9 would not change under the proposed amendments. The suitability determination would still have to be provided by a broker-dealer to a customer and a signed copy of that document would still have to be received by the broker-dealer prior to its effecting a non-exempted transaction in penny stocks for that customer. The only potential change would be the media through which these documents may be sent and received.

As discussed above, the proposed rule amendments respond to advances in technology and legislative developments governing expanded use of electronic communications. They are intended to maintain investor protections regardless of whether broker-dealers subject to the penny stock rules use paper copies or electronic communications to obtain the required documents and signatures under the Rules.

2. Proposed Use of the Information

As discussed in more detail above, Rules 15g–2 and 15g–9 were adopted to provide important protections to investors solicited by broker-dealers to purchase penny stocks. These rules were intended to address some of the abusive and fraudulent sales practices (*e.g.*, boiler room tactics and "pump and dump" schemes) that had characterized the market for penny stocks. The requirement in Rule 15g–2 that a broker-dealer provide the Schedule 15G penny stock disclosure document to its customer prior to effecting a penny stock transaction recommended by the broker-dealer was intended to make the customer aware of the risky nature of investing in penny stocks and provide information about the customer's rights and remedies under the federal securities laws. The requirement in Rule 15g–2 that a broker-dealer obtain in tangible form a signed acknowledgement of receipt of the Schedule 15G penny stock disclosure document was designed to give customers the opportunity to carefully consider, outside of a high-pressure sales call, whether an investment in a penny stock that is recommended by a broker-dealer is appropriate for them.

Similarly, the requirement in Rule 15g–9 that a broker-dealer provide a copy of its suitability determination to the customer prior to the customer's commitment to purchase a penny stock was intended to provide the customer with the opportunity to review that determination and decide whether the broker-dealer has made a good faith attempt to consider the customer's financial situation, investment experience, and investment objectives. The requirement that a broker-dealer receive in tangible form a signed copy of the suitability statement is also intended to convey to the customer the importance of the suitability statement, and to prevent a salesperson from convincing the customer to sign the statement without a review for accuracy. The Rule 15g–9 requirement that the customer provide in tangible form an agreement to a particular transaction is intended to protect investors from fraudulent sales practices by identifying the particular stock and number of shares the customer has agreed to purchase.

The proposed amendments would apply to the means for the collection of information when broker-dealers send and receive the required documents electronically. The waiting period is designed to provide persons communicating electronically with their broker-dealers with protections that are comparable to those under the current rules.

The information collected and maintained by broker-dealers pursuant to Rules 15g–2 and 15g–9, including documents obtained in electronic form pursuant to the proposed rule amendments, may be reviewed during the course of an examination by the Commission or an SRO for compliance with the provisions of the federal securities laws and applicable SRO rules.

3. Respondents

Rule 15g–2 only applies to broker-dealers effecting transactions in penny stocks that are not otherwise exempt. It does not apply if the security involved is not a penny stock, or if the broker-dealer did not recommend the transaction to its customer.[106] It also does not apply to a broker-dealer that has not been a market maker in the particular penny stock that it is recommending during the immediately preceding twelve months or has not received more than five percent of its commissions and certain other revenue from transactions in penny stocks during each of the preceding three months.[107] Similarly, transactions with institutional accredited investors are not subject to the rule.[108] The rule also does not apply to transactions that meet the requirements of Regulation D or transactions with an issuer not involving a public offering.[109] A broker-dealer must provide the penny stock disclosure document to its customer only once, prior to the first penny stock transaction that is subject to the rule for that customer. Essentially, then, Rule 15g–2 only applies to broker-dealers making markets in the penny stocks they are recommending to non-accredited investors when they enter into their first penny stock transactions.

[106] Rule 15g–1(e) [17 CFR 240.15g–1(e)].

[107] Rule 15g–1(a) [17 CFR 240.15g–1(a)].

[108] *See* Rule 15g–1(b) [17 CFR 240.15g–1(b)].

[109] *See* Rule 15g–1(c) [17 CFR 240.15g–1(c)]. It also does not apply to transactions in which the customer is an issuer, or a director, officer, general partner, or direct or indirect beneficial owner of more than 5% of any class or equtiy security of the issuer of the penny stock that is the subject of the transaction. Rule 15g–1(d) [17 CFR 240.15g–1(d)].

The same exemptions apply to Rule 15g–9 as Rule 15g–2,[110] along with one additional exemption. The provisions of Rule 15g–9 do not apply if the customer is an "established customer" of the broker-dealer; that is, if the customer has had an account with the broker-dealer in which the customer (i) has effected a securities transaction or deposited funds more than one year previously, or (ii) has already made three purchases involving different penny stocks on different days.[111] Thus, the requirements to provide a suitability determination and a transaction agreement under Rule 15g–9 only apply in limited circumstances—if the customer is a relatively new customer of the penny stock market-making broker-dealer or has limited experience with penny stocks and is not an institutional accredited investor, and if the broker-dealer has solicited the customer to engage in a penny stock transaction. While a broker-dealer must provide the suitability determination to its customer once prior to that customer's first penny stock transaction that is subject to the rule, the broker-dealer may have to obtain more than a single transaction agreement under the rule, depending on the circumstances. The Commission estimates there are approximately 240 broker-dealers making markets in penny stocks that could, potentially, be subject to either Rule 15g–2 or Rule 15g–9.[112]

[110] Rule 15g–9(c) [17 CFR 240.15g–9(c)] provides that transactions exempt under Rules 15g–1(a) (non-market maker exemption), 15g–1(b) (institutional accredited investor exemption), 15g–1(d) (issuer/officer/director/significant shareholder exemption), and 15g–1(e) (non-recommended transaction exemption) are not subject to the rule. While Rule 15g–9 does not specifically include the exemption found in Rule 15g–1(c), it nevertheless provides a somewhat similar exemption in that it exempts transactions that meet the requirements of 17 CFR 230.505 or 230.506 (including, where applicable, the requirements of 17 CFR 230.501 through 230.506, and 17 CFR 230.507 through 230.508), or transactions with an issuer not involving a public offering.

[111] *See* Rules 15g–9(c)(3) and 15g–9(d)(2) [17 CFR 240.15g–9(c)(3) and 240.15g–9(c)(4)].

[112] The Commission estimates that there are approximately 120 penny stock dealers potentially subject to the penny stock rules. Since the identities of penny stock dealers are not readily available, the staff of the Commission developed a methodology to identify them. The staff estimates that there might be as few as 60 penny stock dealers, or as many as 240, potentially subject to the penny stock rules. We have used the upper bound of this range as a conservative estimate in order to decrease the likelihood that we understate the potential costs of these amendments. The staff identified penny stock dealers based on the ratio of their transaction activity in penny stocks to their trading in all stocks. Penny stocks were identified using company financial statements and information on stock prices.

4. Total Annual Reporting and Recordkeeping Burden

The proposed amendments are intended to adapt Rules 15g–2 and 15g–9 to an electronic or Internet-based environment. Under the proposed amendments, all penny stock transactions that are not exempted would be subject to a waiting period of two business days from the time a broker-dealer sends the required documents to its penny stock customer. As discussed above, the current rules were designed to effectively provide a similar waiting period through the imposition of the obligation to obtain signatures and agreements in tangible form. Therefore, except for the imposition of a formal waiting period, the proposed rule amendments would not impose any significant additional recordkeeping, reporting or other compliance requirement on broker-dealers.

Under the proposed amendments, a broker-dealer that becomes subject to the waiting period by complying with the current rules' requirements through electronic communications may incur some additional costs associated with keeping track of the waiting period. Hence, under the proposed amendments, broker-dealers subject to the penny stock rules may need to develop a tracking method to ensure compliance with the waiting period after receipt of the required signatures and agreements under the rules. We would not expect this to result in more than a minimal increase in burden. Moreover, there should be no non-hour costs associated with the requirement.

It should be noted, however, that only the transaction agreement required under Rule 15g–9(a)(2)(ii) is required for a particular transaction. Neither the suitability determination required under Rule 15g–9(b) nor the penny stock disclosure document required to be given to a customer under Rule 15g–2 is transaction-specific. Rather these documents may be provided to the customer at any time prior to the broker-dealer effecting a recommended penny stock transaction for the customer.

a. Estimated Burden Hours

i. Burden Hours for Rule 15g–2

The Commission estimates that there are approximately 240 broker-dealers potentially subject to current Rule 15g–2, and the Commission has previously estimated that each one of these firms processes an average of three new customers for penny stocks per week. Thus, each respondent would process approximately 156 penny stock disclosure documents per year. Under current Rule 15g–2, the Commission calculated that (a) the copying and mailing of the penny stock disclosure document should take no more than two minutes per customer, and (b) each customer should take no more than eight minutes to review, sign and return the penny stock disclosure document. Thus, the total existing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 240 respondents, the current annual burden is 374,400 minutes (1,560 minutes per each of the 240 respondents) or 6,240 hours. In addition, broker-dealers could incur a recordkeeping burden of approximately two minutes per response. Since there are approximately 156 responses for each respondent, the respondents would incur an aggregate recordkeeping burden of 74,880 minutes (240 respondents × 156 responses for each × 2 minutes per response), or, 1,248 hours, under current Rule 15g–2. Accordingly, the aggregate annual hour burden associated with current Rule 15g–2 (that is, if all respondents continue to provide paper copies and obtain paper-based signatures) is approximately 7,488 hours (6,240 response hours + 1,248 recordkeeping hours).

Under the proposed amendments, the burden hours associated with Rule 15g–2 may be slightly reduced where the penny stock disclosure document required under the rule is provided through electronic means such as e-mail from the broker-dealer (*e.g.*, the broker-dealer respondent may take only one minute instead of the two estimated above to provide the penny stock disclosure document by e-mail rather than regular mail to its customer) and return e-mail from the customer (the customer may take only seven minutes, to review, electronically sign and electronically return the disclosure document). In this regard, if each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total ongoing respondent burden would be approximately 8 minutes per response, or an aggregate total of 1,248 minutes (156 new customers × 8 minutes per respondent). Since there are 240 respondents, the annual burden would be, if electronic communications were used by all customers, 299,520 minutes (1,248 minutes per each of the 240 respondents), or, 4,992 hours. Based on information currently before us, we do not believe that recordkeeping burdens under Rule 15g–2 would increase where the required documents are sent or

received through means of electronic communication, so the recordkeeping burden would remain at 1,248 hours. Thus, if all broker-dealer respondents would obtain and send the documents required under the rules electronically, the aggregate annual hour burden associated with Rule 15g–2 would be 6,240 (1,248 hours + 4,992 hours).

In addition, if the penny stock customer requests a paper copy of the information on the Commission's Web site regarding microcap securities, including penny stocks, we estimate that the printing and mailing of the document containing this information should take no more than two minutes per customer. Because many investors will have access to the Commission's Web site via computers located in their homes or in easily accessible public places such as libraries, we estimate that at most a quarter of investors to whom Rule 15g–2 would apply will request their broker or dealer to provide them with the additional microcap and penny stock information posted on the Commission's Web site. Thus, each respondent would process approximately 39 requests for paper copies of this information per year or an aggregate total of 78 minutes per respondent (2 minutes per customer × 39 requests per respondent). Since there are 240 respondents, the estimated annual burden is 18,720 minutes (78 minutes per each of the 240 respondents) or 312 hours.

We have no way of knowing how many broker-dealers and customers would choose to communicate electronically. If we assume, however, that 50% of respondents would continue to provide documents and obtain signatures in tangible form and 50% would choose to communicate electronically in satisfaction of the requirements of Rule 15g–2, the total aggregate burden hours would be 7,176 ((aggregate burden hours for documents and signatures in tangible form × 0.50 of the respondents = 3,744 hours) + (aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 3,120 hours) + (312 burden hours for those customers making requests for a copy of the information on the Commission's Web site)).

ii. Burden Hours for Rule 15g–9

Likewise, there are approximately 240 broker–dealers potentially subject to current Rule 15g–9.[113] Although the burden of the rule on a respondent varies depending on the frequency with which new customers are solicited, the Commission previously estimated that firms process an average of three new customers for penny stocks per week. Thus, each respondent would process approximately 156 new customer suitability determinations per year. The Commission estimates that a broker–dealer would expend approximately one–half hour per new customer in obtaining, reviewing, and processing (including mailing to the customer) the information required by the Rule, and each respondent would consequently spend 78 hours annually (156 customers × .5 hours) obtaining the information required in the Rule. Since there are 240 broker–dealer respondents, the current annual burden is 18,720 hours (240 respondents × 78 hours).

In addition, as with Rule 15g–2, each customer should take (i) no more than eight minutes to review, sign and return the suitability determination document; and (ii) no more than two minutes to either read and return or produce the customer agreement to a particular recommended transaction in penny stocks, listing the issuer and number of shares of the particular penny stock to be purchased, and send it to the broker–dealer. Thus, the total current customer respondent burden is approximately 10 minutes per response, for an aggregate total of 1,560 minutes for each broker–dealer respondent. Since there are 240 respondents, the current annual burden for customer responses is 374,400 minutes (1,560 customer minutes per each of the 240 respondents), or 6,240 hours.

In addition, broker–dealers incur a recordkeeping burden under Rule 15g–9 of approximately two minutes per response. Since there are 240 broker–dealer respondents and each respondent would have approximately 156 responses annually, respondents would incur an aggregate recordkeeping burden of 74,880 minutes (240 respondents × 156 responses × 2 minutes per response), or 1,248 hours.

Accordingly, the current aggregate annual hour burden associated with Rule 15g–9 is 26,208 hours (18,720 hours to prepare the suitability statement and agreement + 6,240 hours for customer review + 1,248 recordkeeping hours).

Under the proposed amendments, the burden hours under amended Rule 15g–9 may be slightly reduced if the transaction agreement required under the rule is provided through electronic means such as e–mail from the customer to the broker–dealer (*e.g.*, the customer may take only one minute instead of the two estimated above to provide the transaction agreement by e–mail rather than regular mail). If each of the customer respondents estimated above communicates with his or her broker–dealer electronically, the total burden hours on the customers would be reduced from 10 minutes to 9 minutes per response, or an aggregate total of 1,404 minutes per respondent (156 customers × 9 minutes for each customer). Since there are 240 respondents, the annual customer respondent burden, if electronic communications were used by all customers, would be approximately 336,960 minutes (240 respondents × 1,404 minutes per each respondent), or 5,616 hours. We do not believe the hour burden on broker–dealers in obtaining, reviewing and processing the suitability determination would be changed through use of electronic communications. In addition, we do not believe, based on information currently available to us that recordkeeping burdens under Rule 15g–9 would change where the required documents were sent or received through means of electronic communication. Thus, if all broker–dealer respondents obtain and send the documents required under the Rule electronically, the aggregate annual hour burden associated with Rule 15g–9 would be 25,584 hours (18,720 hours to prepare the suitability statement and agreement + 5,616 hours for customer review + 1,248 recordkeeping hours).

We cannot estimate how many broker–dealers and customers would choose to communicate electronically. If we assume, however, that 50% of respondents would continue to provide documents and obtain signatures in tangible form and 50% would choose to communicate electronically in satisfaction of the requirements of Rule 15g–9, the total aggregate hour burden would be 25,896 burden hours ((26,208 aggregate burden hours for documents and signatures in tangible form × 0.50 of the respondents = 13,104 hours) + (25,584 aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 12,792 hours)).

iii. Aggregate Burden Hours for the Proposed Rule Amendments

Under the proposed amendments the burden hours required for compliance with Rule 15g–2, in light of the potential use of electronic communications would be an estimated 7,176 burden hours. The burden hours required for compliance with Rule 15g–9, in light of the option of using electronic means of communications would be an estimated 25,896 hours. Thus, under the proposed amendments, the total aggregate burden hours for complying with the requirements of Rules 15g–2 and 15g–9,

[113] *See* note 112, above.

in light of the available means of communication would be 33,072 hours (7,176 hours + 25,896 hours).

b. Estimate of Total Annualized Paperwork Cost Burden

i. Cost Burden of Rule 15g–2

The paperwork costs of complying with the signature and document requirements of current Rule 15g–2 in tangible form entail the costs of mailing the Schedule 15G disclosure document to the customer and providing a means to return the signed document (such as by return postage pre-paid envelopes). Postage costs (at $0.37 each, $0.74 for both the outgoing and prepaid incoming documents) related to providing the Schedule 15G and receiving the signed copy from the customer as required by the rule would be approximately $27,706 (240 respondents × 156 new customers annually × $0.74 for each document). The staff time required to send the document to a customer is estimated at an average compensation rate of $24.10/hour. [114] A broker-dealer's copying, sending and recordkeeping hour burden under the current rule, as noted above, is 4 minutes (1/15 of an hour). Staff time would therefore cost approximately $1.61 for each Schedule 15G provided to a customer under the rule. The total paperwork cost burden for staff time to comply with current Rule 15g–2 would be approximately $60,278 (240 respondents × 156 new customers annually × $1.61 for each document). Thus, the total paperwork annual cost burden to the industry to comply with current Rule 15g–2 is approximately $87,984 ($27,706 for postage × $60,278 for staff time).

Electronic communication of the Schedule 15G document would reduce the costs of compliance with Rule 15g–2. There would be no postage costs for electronically transmitted documents, and staff time for e-mailing the disclosure document to the customer may be reduced (*e.g.*, the broker-dealer respondent may take only 1 minute instead of the two estimated burden minutes to provide the penny stock disclosure document by e-mail rather than regular mail to its customer). Recordkeeping costs would likely remain the same. If all of the respondents estimated above send the Schedule 15G electronically, the total ongoing burden on broker-dealers would decrease from four minutes to three minutes per document disseminated, for an aggregate total of 112,320 minutes (240 respondents × 156 responses × 3 minutes for each response), or 1,872 hours. At a staff time rate of $24.10/hour total staff costs for compliance with the rule if all communication is electronic would be $45,115 (1,872 hours × $24.10/hour). Thus, if *all* broker-dealer respondents would obtain and send the documents required under the rules electronically, the total annual paperwork cost burden to the industry to comply with Rule 15g–2 would be approximately $45,115 ($0.00 postage + $45,115 staff time).

Moreover, the broker or dealer would incur additional postage costs under the proposed amendments when a customer requested a paper copy of the information found on the Commission's Web site regarding microcap securities, including penny stocks. As discussed above, we believe that such a request would be made at most in only a quarter of these transactions. Because there will be no return postage, each such request would result in a postage cost to the broker or dealer of $0.37. Thus, the aggregate annual postage cost for mailing documents containing the additional information will be $3,463 (240 respondents × 39 new customers annually × $0.37).

We cannot estimate how many broker-dealers and customers would choose to communicate electronically. If we assume, however, that 50% of respondents would continue to provide documents and obtain signatures in tangible form and 50% would choose to communicate electronically in satisfaction of the requirements of Rule 15g–2, the total aggregate cost burden to the industry to comply with amended Rule 15g–2 would be approximately $70,013 (($87,984 aggregate cost for documents and signatures in tangible form under the current rule × 0.50 of the respondents = $43,992) + ($45,115 aggregate cost burden for electronically signed and transmitted documents x 0.50 of the respondents = $22,558) + ($3,463 in postage for customers requesting tangible copies of the additional information on microcap and penny stocks on the Commission's Web site)).

ii. Cost Burden of Rule 15g–9

The Commission believes that, generally, a registered representative of a registered broker-dealer obtains the information required by current Rule 15g–9 and makes the suitability determination. The branch operations manager of the firm and the compliance officer reviews the information before it is mailed to the customer. The Commission has estimated that the average blended cost to the firm for these personnel is $75 per hour,[115] and the annualized cost for compliance with this portion of the current Rule is $1,404,000 (18,720 hours x $75/hour personnel costs).

In addition to the costs of preparing the suitability determination under the rule, broker-dealers also incur the cost of delivering that suitability statement to their customers, and of receiving both the signed acknowledgement of receiving the statement from the customers as well as the transaction agreement required by the rule (such as by return postage pre-paid envelopes). Postage costs (at $0.37 each, $0.74 for both the outgoing and prepaid incoming documents) related to providing the suitability statement and receiving the signed copy from the customer and the transaction agreement is approximately $27,706 (240 respondents × 156 new customers annually × $0.74 for each document).

In addition, broker-dealers incur a recordkeeping burden under current Rule 15g–9 of approximately two minutes per response. As noted above, the aggregate recordkeeping burden for compliance with current Rule 15g–9 is 1,248 hours. Using a $24.10/hour average for recordkeeping staff time, the aggregate annual recordkeeping cost burden associated with Rule 15g–9 is $30,077 (1,248 hours × $24.10/hour staff costs). Thus, the total aggregate annual cost burden to broker-dealers under current Rule 15g–9 is approximately $1,461,783 ($1,404,000 staff costs to prepare and send the suitability statement and agreement + $27,706 postage + $30,077 recordkeeping personnel costs).

The cost burden under Rule 15g–9 may be reduced where the suitability statement and transaction agreement required under the rule are communicated between the broker-dealer and the customer through electronic means. If each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the costs of

[114] A compliance clerk working in New York makes $26.33 an hour. A compliance clerk working outside New York makes $21.88 an hour. The average hourly salary of these two positions is $24.10 an hour. See *Report on Office Salaries in the Securities Industry 2002*, published by the Securities Industry Association. The same rate is being used below to estimate recordkeeping staff costs for compliance with Rule 15g–9.

[115] Branch Operations Managers in New York City make $99.60 an hour, including overhead. Compliance managers working in New York City make $111.75 an hour, including overhead. A senior branch operations supervisor outside of New York City makes $37.05 an hour, including overhead. While a compliance manager outside New York City makes $52/hour, including overhead. Hence, the blended rate of these four positions is approximately $75 an hour. See Report On Management & Professional Earnings In The Securities Industry 2002.

postage for delivery of the required documents would be $0.00. We do not believe that the personnel cost burden on broker-dealers and their personnel in obtaining, reviewing and processing the suitability determination would change through use of electronic communications. In addition, we do not believe, based on the information currently available, that recordkeeping burdens under Rule 15g–9 would change where the required documents were sent or received through means of electronic communication. Thus, if *all* broker-dealer respondents were to obtain and send the documents required under Rule 15g–9 electronically, the aggregate annual cost burden associated with Rule 15g–9 would be approximately $1,434,077 ($14,040,000 staff costs relating to the suitability statement and agreement + $0.00 postage costs + $30,077 recordkeeping personnel costs).

We cannot estimate how many broker-dealers and customers would choose to communicate electronically. If we assume, however, that 50% of respondents would continue to provide documents and obtain signatures in tangible form and 50% would choose to communicate electronically in satisfaction of the requirements of Rule 15g–9, the total aggregate paperwork cost burden to the industry to comply with amended Rule 15g–9 would be approximately $1,447,930 (($1,461,783 aggregate cost burden for documents and signatures in tangible form × 0.50 of the respondents = $730,891) + ($1,434,077 aggregate cost burden for electronically signed and transmitted documents × 0.50 of the respondents = $717,039)).

iii. Aggregate Paperwork Cost Burden for the Proposed Rule Amendments to 15g–2 and 15g–9

As noted above, the annual paperwork cost burden required for compliance with amended Rule 15g–2, in light of the available means of communication would be an estimated $70,013. The annual cost burden required for compliance with amended Rule 15g–9, in light of the available means of communication would be an estimated $1,447,930. Thus, the estimated total aggregate cost burden for complying with the proposed amendments to Rules 15g–2 and 15g–9, in light of the available means of communication, would be $1,517,943 ($70,013 for Rule 15g–2 + $1,447,930 for Rule 15g–9).

We note that the proposed rule amendments may not significantly alter the current burden on broker-dealers because those broker-dealers must provide the required documents to their customers and obtain from their customers the requisite documents and signatures regardless of whether they communicate with their customers electronically or by more traditional means.

It should also be noted that, for purposes of the PRA, the annual reporting and recordkeeping cost burden must exclude the cost of hour burden.[116] Therefore, the reported annual cost burden required for compliance with amended Rules 15g–2 and 15g–9 would include only the postage costs detailed above, and would exclude costs for staff. We are assuming that 50% of respondents would use electronic means to comply with the amended rule and 50% of respondents would use traditional means of communication. Hence, the estimated cost burden for compliance with amended Rule 15g–2 would be approximately $17,316 (($27,706 for postage × .50 of the respondents) + (3,463 for postage for those customers requesting a tangible copy of the information on the Commission's Web site regarding microcap securities, including penny stocks)), and the estimated cost burden for compliance with amended Rule 15g–9 would also be estimated at $13,853 ($27,706 for postage × .50 of respondents).

5. General Information About the Collection of Information

Any collection of information pursuant to Rules 15g–2 and 15g–9 is mandatory. For all non-exempt transactions in penny stocks, broker-dealers must provide the penny stock disclosure document required under Rule 15g–2 and the suitability determination required under Rule 15g–9 to their customers. Broker-dealers must maintain a copy of the customer's acknowledgement for at least three years following the date on which the penny stock disclosure document and the suitability determination were provided to the customer. During the first two years of this period, these documents must be maintained in an easily accessible place.[117] The information collected and maintained by broker-dealers pursuant to the proposed rule amendments may be reviewed during the course of an examination by the Commission or the SROs for compliance with the provisions of the federal securities laws and applicable SRO rules. The Commission and SROs would obtain possession of the information only upon request.

6. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed rules; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the proposed rules on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.[118] We are particularly interested in receiving comment regarding the number of broker-dealers that currently make a market in penny stocks. Moreover, we also request comment on how many of these broker-dealers plan to use electronic media to comply with the requirements of Rules 15g–2 and 15g–9.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed collection of information requirement should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–02–04. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–02–04 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

[116] *See* OMB Form 83–1, Instructions to Item 14.

[117] *See* Rule 15g–2(b) and Rule 17a–4 [17 CFR 240.17a–4].

[118] Comments are requested purusant to 44 U.S.C. 3506(c)(2)(B).

IX. Costs and Benefits of Proposed Rulemaking

The Commission is considering the costs and benefits of the proposed amendments to Rule 3a51–1 and Rules 15g–2, 15g–9 and 15g–100. We are sensitive to the costs and benefits that might arise from compliance with our rules and amendments.

A. Rule 3a51–1

The Commission believes that the costs of the proposed amendments to the Rule 3a51–1 should be minimal. The changes we are proposing would have only a limited impact on the penny stock market. For example, we are proposing to amend the current exclusions from the definition of penny stock for reported securities and for certain other exchange-registered securities to require that these securities also satisfy one of the following new standards. First, an exchange-registered security could qualify if the exchange on which it is registered has been continuously registered since the Commission initially adopted the penny stock rules and if the exchange has maintained and continues to maintain quantitative listing standards substantially similar to those in place on January 8, 2004. Second, an exchange-registered security or a reported security listed on an automated quotation system sponsored by a registered national securities association such as Nasdaq could qualify if the exchange or the automated quotation system on which it is registered or listed has quantitative listing standards that meet or exceed standards modeled on those currently required for inclusion in the Nasdaq SmallCap Market. These amendments, however, would be wholly prospective, and are not intended to change the status quo. We believe that securities currently listed and traded on national securities exchanges and on Nasdaq would continue to be excluded from the definition of penny stock. Moreover, all national securities exchanges have initial listing and continued listing standards,[119] which have been reviewed and approved by the Commission.[120] Any cost associated with the proposed rule amendments are further mitigated because the listing standards in the amendments have been patterned after those currently used by the Nasdaq SmallCap Market. Thus all securities now traded on Nasdaq, both National Market System securities and Smallcap Market securities, should meet the proposed new listing standards.

Moreover, we expect the proposed amendments to benefit both the securities markets and the investing public. Investors would benefit because the revised definition of penny stock would better ensure that they receive the extra protection of the penny stock rules when needed. The proposed amendments to the rule would prevent securities that have all the risky characteristics of penny stocks from being excluded from the definition of penny stock. These benefits, however, are difficult to quantify.

The proposed amendments would also reduce duplicative regulation with respect to security futures products and would also enhance legal certainty by deleting outdated and possibly confusing sections of the rule. Given the incremental change to the costs associated with the rule, we believe the benefits of the proposed amendments will justify the costs.

B. Rules 15g–2 and 15g–9

We do not expect the proposed amendments to Rules 15g–2 and 15g–9 to impose any new regulatory costs on broker-dealers. The proposed amendments merely impose an explicit, rather than implicit, waiting period on broker-dealers prior to their effecting a penny stock transaction for a customer after receipt of a signed acknowledgement of a penny stock disclosure document, or suitability statement or agreement for a penny stock transaction. Because the penny stock rules, as they operate today, essentially impose a waiting period before certain penny stock transactions may be effected when non-electronic methods of transmittal are used, we do not believe that the proposed rule amendments would produce any significant new costs.[121] We have set forth above many of the costs we believe are involved in complying with both the current rules and the proposed rule amendments in our discussion of the Paperwork Reduction Act.

There also may be lost opportunity costs due to the imposition of an explicit two-business-day waiting period for transactions recommended by a market-making penny stock broker-dealer that communicates electronically with its customers. We believe, however, that the effect of the waiting periods set forth above on investors would be minimal in light of the fact that the scope of the rules is quite narrow. As noted above, the effect of the operation of these proposed rule amendments would strongly resemble the operation of current Rule 15g–2 and 15g–9 with respect to broker-dealers who satisfy their obligations using non-electronic methods. For example, only those transactions recommended by a market-making broker-dealer in penny stocks are subject to the rules. In addition, the requirements of Rule 15g–9 do not apply to recommended transactions with "established customers" as defined in that rule. On the other hand, providing and receiving the required customer protection documents under the rules through electronic means may save penny stock broker-dealers subject to the rules the out-of-pocket costs of postage or other delivery methods.

Failure to adopt rule amendments that address electronic communications could, however, ultimately foster an increase in high-pressure sales tactics by some penny stock dealers through electronic means, leading to potential investor losses. If the market for penny stocks once again becomes characterized by abusive and fraudulent sales practices, investment in the stocks of legitimate penny stock issuers could diminish. We believe that any costs associated with the proposed amendments to the Rules 15g–2 and 15g–9 are justified by the benefits of reducing fraud.[122]

C. Rule 15g–100

The Commission believes that the costs of the proposed amendments to the penny stock disclosure document set forth in Schedule 15G should be minimal. The changes we are proposing would have only a limited impact on those broker-dealers making markets in penny stocks because of the narrow circumstances in which this document is required. The proposed changes to this document would not effect the frequency with which it is sent to customers. In addition, we believe that these changes would help reduce fraud by making the document more

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[119] *See e.g.*, NASD Rule 4310.

[120] Section 19(b)(1) of the Exchange Act [15 U.S.C. 78s(b)(1)].

[121] Practically speaking, broker-dealers in penny stocks today that are subject to current Rules 15g–2 and 15g–9 are essentially required to wait a minimum of 2 days before executing a penny stock transaction they solicited if they use non-electronic methods. As noted above, unless a person walked into a penny stock broker-dealer's offices and executed the required documents on-the-spot, a broker would have to wait at least two business days before executing a penny stock trade for a new customer under current rules using non-electronic methods.

[122] When it adopted Rule 15g–9, the Commission stated that "we continue to believe that any additional costs imposed by the Rule are outweighed by the benefits of reducing fraud through more effective regulation of the sales practices of broker-dealers active in the market for penny stocks." Exchange Act Rel. No. 27160, 54 FR at 35480–81.

accessible and understandable to investors.

We request that commentators address the costs and benefits of the proposed amendments to Rule 3a51–1 and to Rules 15g–2, 15g–9 and 15g–100, and provide supporting empirical data for any positions advanced. Specifically, we seek comment on whether, and to what extent, the proposed rule amendments would impose costs in addition to those already imposed under the current rules.

X. Consideration of Burden on Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaging in a rulemaking, to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action would promote efficiency, competition and capital formation.[123] Section 23(a)(2) of the Exchange Act requires us to consider the anticompetitive effects of any rules that we adopt under the Exchange Act.[124] Section 23(a)(2) prohibits us from adopting any rules that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We believe that the proposed amendments to Rules 3a51–1, 15g–2, 15g–9 and 15g–100 are consistent with the public interest and would promote efficiency, competition and capital formation by providing greater protections for investors, thus increasing investor confidence and involvement in the securities of small businesses.[125]

We do not believe that the amendments we are proposing to Rules 3a51–1, 15g–2, 15g–9, and 15g–100 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above, the proposed amendments to Rule 3a51–1 are prospective only and not intended to affect the status quo. Conceivably, however, the proposed amendments might impose some competitive burdens on wholly new markets or wholly new facilities or "junior tiers" of markets. We believe that such future competitive burdens would be more than justified by the future benefits of the proposed amendments. These amendments to Rule 3a51–1 would prevent securities that have all the risky characteristics of penny stocks from being excluded from the definition of penny stock. As a result, investors buying and purchasing these securities would continue to receive the increased protection that Congress intended they enjoy in Penny Stock Reform Act. Similarly, the proposed amendments to Rule 3a51–1 would also promote capital formation by encouraging investment because of increased investor confidence. Moreover, these proposed rule amendments would apply equally to all broker-dealers making markets in penny stocks.

The other changes being proposed to Rule 3a51–1 would encourage efficiency by updating the definition of penny stock. For example, we are proposing to amend the Rule 3a51–1 to exclude security future products from this definition.

Moreover, we do not believe that the explicit waiting periods imposed under the proposed rule amendments to Rules 15g–2 and 15g–9 would increase the already-existent burdens under the penny stock rules. Indeed, the current rules already effectively impose a similar waiting period on non-electronic efforts to satisfy the rules. As discussed in detail above, we believe that prospective investors in penny stocks should have the opportunity to carefully consider, outside of a high-pressure environment, whether an investment in penny stocks is appropriate for them. The proposed rule amendments would merely ensure that all investors in penny stocks, whether they communicate through traditional means or electronically, would retain the opportunity for careful consideration.

We do not believe that the proposed amendments to Rules 15g–2 and 15g–9 would adversely affect capital formation. As we said when we first adopted the penny stock rules, without these rules, sales practice abuses in the market may lead investors to bypass the penny stock market in favor of other types of securities. By operating to curb sales practice abuses in the markets for penny stocks, the proposed rule amendments should continue to benefit legitimate penny stock issuers and the broker-dealers making markets in those issuers' securities.

In addition, because these rule amendments would only apply to broker-dealers soliciting customers for recommended transactions in penny stocks in which they make a market (along with the other exceptions to the rules), any potential adverse effect on efficiency, competition, or capital formation should be limited.

Similarly, we do not believe that the waiting period that would be imposed by the proposed amendments to Rules 15g–2 and 15g–9 would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule amendments essentially translate the implicit waiting periods present under operation of the current rules to the electronic communications arena. Therefore, these proposed rule amendments do not impose any additional competitive burdens on penny stock brokers and dealers. We believe the proposed amendments also would promote competition by redesigning this necessary regulatory scheme to permit broker-dealers and customers to take advantage of rapidly evolving technology.

Finally, we believe that the changes we are proposing to the penny stock disclosure document set forth in Schedule 15G [Rule 15g–100] would not impose any burden on competition. On the contrary, we believe that by streamlining the document, making it more readable, and generally adapting it to electronic media, we are promoting efficiency, competition and capital formation.

The Commission requests comments regarding the impact of the proposed amendments to Rules 3a51–1, 15g–2, 15g–9 and 15g–100 on efficiency, competition and capital formation. Likewise, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[126] the Commission is interested in receiving information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commentators are requested to provide empirical data to support their views.

XI. Initial Regulatory Flexibility Analysis

Section 3(a) of the Regulatory Flexibility Act[127] requires the Commission to undertake an initial regulatory flexibility analysis of the effects of proposed rules and rule amendments on small entities, unless the Commission certifies that the rules and rule amendments, if adopted, would not have a significant economic

[123] 15 U.S.C. 78c(f).

[124] 15 U.S.C. 78w(a)(2).

[125] *See* Adopting Release, 57 FR at 18007 ("[T]he Commission also recognizes that fraudulent sales practices, which have occurred disproportionately in this market, may themselves hinder economic growth, because they cause the loss of the productive use of investor funds, and discourage further investment by those who have been defrauded. Legitimate small business is thus harmed by the diversion of substantial capital to unscrupulous promoters and broker-dealers. Moreover, the issuers of penny stocks that are fraudulently traded may themselves be victimized by this activity.").

[126] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

[127] 5 U.S.C. 603(a).

impact on a substantial number of small entities.[128]

The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rules 3a51–1, 15g–2, 15g–9 and Rule 15g–100 contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. With respect to the proposed changes to Rule 3a51–1, the scope of the penny stock rules is not being expanded. We believe that securities currently excluded from the definition of penny stock because they are listed on a national securities exchange or quoted on Nasdaq would continue to be excluded. Moreover, we are proposing to exclude security futures products from the definition of penny stock. We therefore believe that the proposed amendments to Rule 3a51–1 should not have a significant impact on a substantial number of small entities.

Similarly, the proposed amendments to Rules 15g–2 and 15g–9 should also not have a significant impact on a substantial number of small entities. The two-business-day waiting period being proposed does not significantly alter the status quo. The signatures and agreements in tangible form under the current rules were intended to provide customers with an opportunity to consider, outside of a high-pressure sales situation, the advisability of investing in the risky penny stock market. The practical effect of these requirements, due to the delay inherent in postal communications, was to impose a waiting period between a broker-dealer's first communication with a customer concerning penny stocks and the broker-dealer's ability to execute a penny stock transaction for that customer. The proposed amendments to Rules 15g–2 and 15g–9 simply attempt to preserve the status quo in the wake of Electronic Signatures Act. The proposed amendments are intended to provide customers using electronic media with protections similar to those given all other investors in penny stocks whose transactions are subject to the penny stock rules—the opportunity for careful consideration inherent in investing in penny stocks.

Finally, we believe that the changes we are proposing to the penny stock disclosure document set forth in Schedule 15G [Rule 15g–100] would not have any significant economic impact on a substantial number of small entities because they represent edits that simplify and shorten an existing disclosure document.

[128] 5 U.S.C. 605(b).

We encourage written comments regarding this certification. We solicit comment as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

XII. Statutory Authority

The Commission is proposing amendments to 240.3a51–1, 240.15g–2, 240.15g–9 and 240.15g–100 of Title 17, Chapter II of the Code of Federal Regulations pursuant to authority set forth in Sections 3(b), 15(c), 15(g) and 23(a) of the Exchange Act [15 U.S.C. 78c(b), 78o(c), 78o(g), and 78w(a)].

XIII. Text of Proposed Rule Amendments

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a51–1 is amended by revising paragraphs (a), (e) and (f) to read as follows:

§ 240.3a51–1 Definition of "penny stock".

* * * * *

(a) That is a reported security, as defined in 17 CFR 240.11Aa3–1(a) of this chapter, provided that:

(1) The security is registered, or approved for registration upon notice of issuance, on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992 (the date of the adoption of Rule 3a51–1 (17 CFR 240.3a51–1) by the Commission); and the national securities exchange has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004; or

(2) The security is registered, or approved for registration upon notice of issuance, on a national securities exchange, or is listed, or approved for listing upon notice of issuance on, an automated quotation system sponsored by a registered national securities association, that:

(i) Has established initial listing standards that meet or exceed the following criteria:

(A) The issuer shall have:

(1) Stockholders' equity of $5,000,000;

(2) Market value of listed securities of $50 million for 90 consecutive days prior to applying for the listing (market value means the closing bid price multiplied by the number of securities listed); or

(3) Net income of $750,000 (excluding extraordinary or non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

(B) The issuer shall have an operating history of at least one year or a market value of listed securities of $50 million (market value means the closing bid price multiplied by the number of securities listed);

(C) The issuer's stock, common or preferred, shall have a minimum bid price of $4 per share;

(D) In the case of common stock, there shall be at least 300 round lot holders of the security (a round lot holder means a holder of a normal unit of trading);

(E) In the case of common stock, there shall be at least 1,000,000 publicly held shares and such shares shall have a market value of at least $5 million (market value means the closing bid price multiplied by number of publicly held shares, and shares held directly or indirectly by an officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held);

(F) In the case of a convertible debt security, there shall be a principal amount outstanding of at least $10 million;

(G) In the case of rights and warrants, there shall be at least 100,000 issued and the underlying security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this section;

(H) In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the company's common stock, at a specified price until a specified period of time), there shall be at least 100,000 issued and the underlying security shall be

registered on an automated quotation system sponsored by a registered national securities exchange or listed on and shall satisfy the requirements of paragraphs (a) or (e) of this section;

(I) In the case of units (that is, two or more securities traded together), all component parts shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this section; and

(J) In the case of equity securities (other than common and preferred stock, convertible debt securities, rights and warrants, put warrants, or units), including hybrid products and derivative securities products, the national securities exchange or registered national securities association shall establish quantitative listing standards that are substantially similar to those found in paragraphs (a)(2)(i)(A) through (a)(2)(i)(I); and

(ii) Has established quantitative continued listing standards that are reasonably related to the initial listing standards set forth above in paragraph (a)(2)(i) of this section, and that are consistent with the maintenance of fair and orderly markets.

* * * * *

(e) That is registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to 17 CFR 240.11Aa3–1, provided that:

(1) Price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the national securities exchange;

(2) The security is purchased or sold in a transaction that is effected on or through the facilities of the national securities exchange, or that is part of the distribution of the security; and

(3) The security satisfies the requirements of paragraphs (a)(1) or (a)(2) of this section; *except that* a security that satisfies the requirements of this paragraph (e), but does not otherwise satisfy the requirements of paragraph (a), (b), (c), (d), (f), or (g) of this section, shall be a penny stock for purposes of Section 15(b)(6) of the Act;

(f) That is a security futures product listed on a national securities exchange or an automated quotation system sponsored by a registered national securities association;

* * * * *

3. Section 240.15g–2 is revised t0 read as follows:

The revisions and additions read as follows:

§ 240.15g–2 Penny stock disclosure document relating to the penny stock market.

(a) It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless, prior to effecting such transaction, the broker or dealer has furnished to the customer a document containing the information set forth in Schedule 15G, 17 CFR 240.15g–100, and has obtained from the customer a signed and dated acknowledgement of receipt of the document.

(b) Regardless of the form of acknowledgement used to satisfy the requirements of paragraph (a) of this section, it shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer less than two business days after the broker or dealer sends such document.

(c) The broker or dealer shall preserve, as part of its records, a copy of the acknowledgement required by paragraph (a) of this section for the period specified in 17 CFR 240.17a–4(b).

(d) Upon request of the customer, the broker or dealer shall furnish the customer with a copy of the information set forth on the Commission's Web site at *http://www.sec.gov/investor/pubs/microcapstock.htm.*

4. Section 240.15g–9 is amended by revising paragraphs (a)(2)(ii) and (b)(4) to read as follows:

§ 240.15g–9 Sales practice requirements for certain low-priced securities.

(a) * * *

(2) * * *

(ii)(A) The broker or dealer has received from the person an agreement to the transaction setting forth the identity and quantity of the penny stock to be purchased; and

(B) Regardless of the form of agreement used to satisfy the requirements of paragraph (A) of this section, it shall be unlawful for such broker or dealer to sell a penny stock to, or to effect the purchase of a penny stock by, for or with the account of a customer less than two business days after the broker or dealer sends such agreement.

(b) * * *

(4)(i) Obtain from the person a signed and dated copy of the statement required by paragraph (b)(3) of this section; and

(ii) Regardless of the form of statement used to satisfy the requirements of paragraph (b)(4)(i) of this section, it shall be unlawful for such broker or dealer to sell a penny stock to, or to effect the purchase of a penny stock by, for or with the account of a customer less than two business days after the broker or dealer sends such statement.

* * * * *

5. Section 240.15g–100 is revised to read as follows:

§ 240.15g–100 Schedule 15G—Information to be included in the document distributed pursuant to 17 CFR 240.15g–2.

Securities and Exchange Commission, Washington, DC 20549

Schedule 15G

Under the Securities Exchange Act of 1934

Instructions to Schedule 15G

A. Schedule 15G (Schedule) may be provided to customers in its entirety either on paper or electronically. It may also be provided to customers electronically through a link to the SEC's Web site.

1. *If the Schedule is sent in paper form*, the format and typeface of the Schedule must be reproduced exactly as presented. For example, words that are capitalized must remain capitalized, and words that are underlined or bold must remain underlined or bold. The typeface must be clear, easy to read, and in 12-point type. The Schedule may be reproduced either by photocopy or by printing.

2. *If the Schedule is sent electronically*, the e-mail containing the Schedule must have as a subject line "Important Information on Penny Stocks." The Schedule reproduced in the text of the e-mail must be clear, easy to read, type presented in a manner reasonably calculated to draw the customer's attention to the language in the document, especially words that are capitalized, underlined or in bold.

3. *If the Schedule is sent electronically using a hyperlink to the SEC Web site*, the e-mail containing the hyperlink must have as a subject line: "Important Information on Penny Stocks." Immediately before the hyperlink, the text of the e-mail must reproduce the following statement in clear, easy-to-read type presented in a manner reasonably calculated to draw the customer's attention to the words: "We are required by the U.S. Securities and Exchange Commission to give you the following disclosure statement: *http://www.sec.gov/investor/Schedule15G.htm.* It explains some of the risks of investing in penny stocks.

Please read it carefully before you agree to purchase or sell a penny stock."

B. Regardless of how the Schedule is provided to the customer, the communication must also provide the name, address, telephone number and e-mail address of the broker. E-mail messages may also include any privacy or confidentiality information that the broker routinely includes in e-mail messages sent to customers. No other information may be included in these communications, other than instructions on how to provide a signed and dated acknowledgement of receipt of the Schedule.

C. The document entitled "Important Information on Penny Stocks" must be distributed as Schedule 15G and must be no more than two pages in length if provided in paper form.

D. The disclosures made through the Schedule are in addition to any other disclosures that are required under the federal securities laws.

E. Recipients of the document must not be charged any fee for the document.

F. The content of the Schedule is as follows:

[next page]

Important Information on Penny Stocks

The U.S. Securities and Exchange Commission (SEC) requires your broker to give this statement to you, and to obtain your signature to show that you have received it, before your first trade in a penny stock. This statement contains important information—and you should read it carefully before you sign it, and before you decide to purchase or sell a penny stock.

In addition to obtaining your signature, the SEC requires your broker to wait at least two business days after sending you this statement before executing your first trade to give you time to carefully consider your trade.

Penny Stocks Can Be Very Risky

Penny stocks are low-priced shares of small companies. Penny stocks may trade infrequently—which means that it may be difficult to sell penny stock shares once you have them. Because it may also be difficult to find quotations for penny stocks, they may be impossible to accurately price. Investors in penny stock should be prepared for the possibility that they may lose their whole investment.

While penny stocks generally trade over-the-counter, they may also trade on U.S. securities exchanges, facilities of U.S. exchanges, or foreign exchanges. You should learn about the market in which the penny stock trades to determine how much demand there is for this stock and how difficult it will be to sell. Be especially careful if your broker is offering to sell you newly issued penny stock that has no established trading market.

The securities you are considering have not been approved or disapproved by the SEC. Moreover, the SEC has not passed upon the fairness or the merits of this transaction nor upon the accuracy or adequacy of the information contained in any prospectus or any other information provided by an issuer or a broker or dealer.

Information You Should Get

In addition to this statement, your broker is required to give you a statement of your financial situation and investment goals explaining why his or her firm has determined that penny stocks are a suitable investment for you. In addition, your broker is required to obtain your agreement to the proposed penny stock transaction.

Before you buy penny stock, federal law requires your salesperson to tell you the "offer" and the "bid" on the stock, and the "compensation" the salesperson and the firm receive for the trade. The firm also must send a confirmation of these prices to you after the trade. You will need this price information to determine what profit or loss, if any, you will have when you sell your stock.

The offer price is the wholesale price at which the dealer is willing to sell stock to other dealers. The bid price is the wholesale price at which the dealer is willing to buy the stock from other dealers. In its trade with you, the dealer may add a retail charge to these wholesale prices as compensation (called a "markup" or "markdown").

The difference between the bid and the offer price is the dealer's "spread." A spread that is large compared with the purchase price can make a resale of a stock very costly. To be profitable when you sell, the bid price of your stock must rise above the amount of this spread and the compensation charged by both your selling and purchasing dealers. Remember that if the dealer has no bid price, you may not be able to sell the stock after you buy it, and may lose your whole investment.

After you buy penny stock, your brokerage firm must send you a monthly account statement that gives an estimate of the value of each penny stock in your account, if there is enough information to make an estimate. If the firm has not bought or sold any penny stocks for your account for six months, it can provide these statements every three months.

Additional information about low-priced securities—including penny stocks—is available on the SEC's Web site at *http://www.sec.gov/investor/pubs/microcapstock.htm*. In addition, your broker will send you a copy of this information upon request. The SEC encourages you to learn all you can before making this investment.

Brokers' Duties and Customer's Rights and Remedies

Remember that your salesperson is not an impartial advisor—he or she is being paid to sell you stock. Do not rely only on the salesperson, but seek outside advice before you buy any stock. You can get the disciplinary history of a salesperson or firm from NASD at 1–800–289–9999 or contact NASD via the Internet at *www.nasd.com*. You can also get additional information from your state securities official. The North American Securities Administrators Association can give you contact information for your state. You can reach NASAA at (202) 737–0900 or via the Internet at *www.nasaa.org*.

If you have problems with a salesperson, contact the firm's compliance officer. You can also contact the securities regulators listed above. Finally, if you are a victim of fraud, you may have rights and remedies under state and federal law. In addition to the regulators listed above, you also may contact the SEC with complaints at (800) SEC–0330 or via the Internet at *help@sec.gov*.

* * * * *

Dated: January 8, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–881 Filed 1–15–04; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–166]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Miles 1062.6 and 1064.0 in Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the

East Sunrise Boulevard (SR 838) and East Las Olas bridges, miles 1062.6 and 1064.0, in Fort Lauderdale, Broward County, Florida. The drawbridges would be allowed to remain closed to navigation for periods of time during the first weekend of May to facilitate vehicle traffic flow to and from the Air and Sea Show each year.

DATES: Comments and related material must reach the Coast Guard on or before March 16, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–166], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received ruing the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The East Las Olas Boulevard bridge, mile 1064.0, has a vertical clearance of 31 feet above mean high water and a horizontal clearance of 91 feet between the fenders. The existing regulation in 33 CFR 117.5 requires the bridge to open on signal.

The East Sunrise Boulevard bridge (SR 838), mile 1062.6, has a vertical clearance of 25 feet at mean high water and a horizontal clearance of 90 feet between the fenders. The existing regulation is 33 CFR 117.261(gg) requires the bridge to open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

Annually, the City of Fort Lauderdale Police Department, on behalf of the City of Fort Lauderdale, requests that the Coast Guard temporarily change the operating regulations for these bridges during parts of the annual Air and Sea Show to allow the considerable volume of vehicular and pedestrian traffic to be routed as safely and quickly as possible. The proposed changes to these bridge operating regulations would allow the East Sunrise Boulevard (SR 838) and East Las Olas bridges in Fort Lauderdale, Florida to remain closed to navigation from 4 p.m. to 6 p.m. and from 9:45 p.m. to 10:45 p.m. on Saturday, and from 4 p.m. to 6 p.m. on Sunday, the first weekend of May.

Previously, each year the Coast Guard issued a temporary rule that provided for bridge openings at the East Sunrise Boulevard bridge (SR 838) at 4:45 p.m. and 5:30 p.m. each day, and at the East Las Olas bridge at 4:30 p.m. and 5:15 p.m. each day, for the Air and Sea Show. No openings were requested during these times for the last two years. For this reason, the provision for bridge openings at these specified times have been removed from this proposed rule. In accordance with 33 CFR 117.261 (a), public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or propertywould, upon proper signal, be passed through the draw of each bridge at any time.

Discussion of Proposed Rule

This proposed rule would allow these bridges to remain closed for a period of time on Saturday and Sunday during the first weekend of May, each year, to facilitate the flow of vehicular traffic to and from the Air and Sea Show. The bridges' operating schedules would only be changed by allowing them to remain closed to navigation for a total of five hours over a two-day period.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed rule would modify the existing bridge schedule to allow for efficient vehicle traffic flow and provide scheduled openings for vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Intracoastal Waterway in the vicinity of the East Sunrise Boulevard (SR 838) and East Las Olas bridges and persons intending to drive over the bridge and nearby business owners. Owners or operators of vessels would not be able to transit in this area during the periods the bridges remain closed. Since the change to the current regulation increases the amount of time the bridges would remain closed to five hours over a two day period and bridge openings are still provided for, the proposed rule would not be significant for small entities.

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

this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

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

Federalism

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 proposed rule under that Order and have determined that this rule 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 an expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, 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 (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule, because it involves the modification of Coast Guard bridge regulations.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reason discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.261, redesignate paragraph (hh) as paragraph (ii), revise paragraph (gg) and add a new paragraph (hh) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(gg) The draw of the East Sunrise Boulevard bridge (SR 838), mile 1062.6 at Fort Lauderdale shall open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. On the first weekend in May, the draw need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

(*hh*) The draw of the East Las Olas bridge, mile 1064 at Fort Lauderdale shall open on signal; except that on the first weekend in May the draw need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

* * * * *

Dated: December 24, 2003.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–1057 Filed 1–15–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–032]

RIN 1625–AA00

Security Zone: Coronado Bay Bridge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones

encompassing the navigable waters of San Diego Bay within 25 yards of all piers, abutments, fenders and pilings of the Coronado Bay Bridge. These temporary security zones are needed for national security reasons to protect the public ports from potential subversive actions. Persons and vessels would be prohibited from entering into, transiting through, loitering, or anchoring within these security zones unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before March 16, 2004.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Marine Safety Office San Diego, Port Operations Department between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Todd Taylor, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (03–032), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports to be on higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PAWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the Coronado Bridge would have on the public interest, the Coast Guard proposes to establish security zones around the Coronado Bridge. These security zones would help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these bridges. Due to these heightened security concerns and the catastrophic impact a terrorist attack on these bridges would have on the public transportation system and surrounding areas and communities, security zones are prudent for these structures.

This notice of proposed rulemaking is intended to notify the public that the Coast Guard intends to create permanent security zones around the Coronado Bay Bridge.

Discussion of Proposed Rule

In this proposed rule, the Coast Guard would establish fixed security zones extending, from the surface to the sea floor, 25 yards in the waters around all piers, abutments, fenders and pilings of the Coronado Bridge, San Diego Bay, California. Entry into these security zones would be prohibited, unless doing so would be necessary for safe navigation or you have the permission of the Captain of the Port. Vessels and people would be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein could be punishable by civil penalties, criminal penalties (including imprisonment up to 6 years), and in rem liability against the offending vessel. Any person who would violate this proposed regulation using a dangerous weapon or who would engage in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, would also face imprisonment up to 12 years.

Coast Guard personnel would enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although the proposed rule would restrict access to portions of the navigable waterways around the bridge, the effect of this regulation would not be significant because: (i) The zones would encompass only a small portion of the waterway; (ii) Vessels would be able to pass safely around the zones; and (iii) Vessels would be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the proposed zones are the minimum necessary to provide adequate protection for the bridges, vessels operating in the vicinity, their

crew and passengers, adjoining areas and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The security zones would not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic could pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing would have ample space outside of the security zones to engage in these activities. Small entities and the maritime public would be advised of these security zones via public notice to mariners.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Collection of Information

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

Federalism

Arule 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 proposed 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 proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, 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 because we are establishing a security zone.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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. Add § 165.1110 to read as follows:

§ 165.1110 Security Zone: Coronado Bay Bridge, San Diego, CA.

(a) *Location.* All navigable waters of San Diego Bay, from the surface to the sea floor, within 25 yards of all piers, abutments, fenders and pilings of the Coronado Bay Bridge. These security zones will not restrict the main navigational channel nor will it restrict vessels from transiting through the channel.

(b) *Regulations.* (1) Under § 165.33, entry into, transit through, loitering, or anchoring within any of these security zones by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners seeking permission to transit through a security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast Guard can be contacted on San Diego Bay via VHF–FM channel 16.

(2) Vessels may enter a security zone if it is necessary for safe navigation and circumstances do not allow sufficient time to obtain permission from the Captain of the Port.

Dated: December 16, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 04–1058 Filed 1–15–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY67–272, FRL–7611–4]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision; 1-Hour Ozone Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to title 6 of the New York Codes, Rules and Regulations, Part 205, "Architectural and Industrial Maintenance Coatings." This SIP revision consists of a control measure needed to meet the shortfall emissions reduction identified by EPA in New York's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve a control strategy required by New York's SIP which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

A copy of the New York's submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381 or *Wieber.Kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New York?

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. The specific requirements vary depending upon the severity of the ozone problem. The New York—Northern New Jersey—Long Island area is classified as a severe ozone nonattainment area. Under section 182, severe ozone nonattainment areas were required to submit demonstrations of how they would attain the 1-hour standard. On December 16, 1999 (64 FR 70364), EPA proposed approval of New York's 1-hour ozone attainment demonstration SIP for the New York—Northern New Jersey—Long Island nonattainment area. In that rulemaking, EPA identified an emission reduction shortfall associated with New York's 1-hour ozone attainment demonstration SIP, and required New York to address the shortfall. In a related matter, the Ozone Transport Commission (OTC) developed six model rules which provided control measures for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in developing their own regulations to achieve additional emission reductions to close emission shortfalls.

On February 4, 2002 (67 FR 5170), EPA approved New York's 1-hour ozone attainment demonstration SIP. This approval included an enforceable commitment submitted by New York to adopt additional control measures to close the shortfall identified by EPA for attainment of the 1-hour ozone standard.

II. What Was Included in New York's Submittal?

On November 4, 2003 and supplemented on November 21, 2003, Carl Johnson, Deputy Commissioner, New York State Department of Environmental Conservation (NYSDEC), submitted to EPA a revision to the SIP which included revisions to title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 205, "Architectural and Industrial Maintenance Coatings." The revisions to part 205 will provide volatile organic compound (VOC) emission reductions to address, in part, the shortfall identified by EPA. New York used the OTC model rule as a guideline to develop part 205.

A. What Do the Revisions to Part 205, "Architectural and Industrial Maintenance Coatings" Consist of?

The revisions to part 205 include VOC content limits for 52 coating categories. Revised part 205 establishes that no person, within the State of New York, shall manufacture, blend or repackage for sale, supply, sell, or offer for sale, or solicit for application or apply any architectural coating manufactured on or after January 1, 2005 which contains VOCs in excess of the limits specified in part 205 for those coatings. Part 205 includes specific exemptions, as well as certification and product labeling requirements, recordkeeping and reporting requirements, test methods and procedures, and compliance

flexibility. Revised part 205 allows small coatings manufacturers to request a limited exemption to the VOC content limits prescribed in part 205. This request must be submitted to NYSDEC and include a demonstration of the inability to produce coatings that meet the VOC content limits based on economic and/or technical feasibility. Limited exemptions for small coatings manufacturers that are approved by NYSDEC must be submitted to EPA as SIP revisions, as required by part 205.

III. What Is EPA's Conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the proposed revisions made to part 205, entitled, "Architectural and Industrial Maintenance Coatings" meet the SIP revision requirements of the Act.

IV. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

Dated: January 7, 2004.

Kathleen Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 04–1044 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 111–OPPb; FRL–7611–1]

Clean Air Act Proposed Full Approval of the Title V Operating Permit Program for Antelope Valley Air Pollution Control District in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit program submitted by the California Air Resources Board (CARB) on behalf of Antelope Valley Air Pollution Control District (Antelope Valley APCD or the District). The operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. EPA granted final interim approval to the District's operating permit program on December 19, 2000 (65 FR 79314). Of the three deficiencies noted by EPA, two were corrected by Antelope Valley APCD in a timely manner. The third deficiency was resolved on September 22, 2003, when the Governor of California signed SB 700, revising State law by removing the agricultural permitting exemption. Though interim approval of the District's operating permit program expired on January 21, 2003, and EPA implemented a federal operating permit program for Antelope Valley APCD, all three deficiencies are now resolved. Therefore, this action proposes full approval of the District's operating permit program.

DATES: Comments on this proposal must be received by February 17, 2004.

ADDRESSES: Written comments on this proposal may be submitted either by mail or electronically. By mail, comments should be addressed to Gerardo Rios, Permits Office Chief, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. Electronically, comments should be sent by e-mail to *rios.gerardo@epa.gov,* or submitted at *http://www.regulations.gov.*

You can inspect copies of the program submittals, and other supporting documentation relevant to this action, at our Region IX office during normal business hours by appointment.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, (415) 972–3974, *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the District's operating permit program. In the Rules and Regulations section of this **Federal Register,** we are approving the program in a direct final action without prior proposal because we believe the revisions made to the program to resolve the interim approval deficiencies are noncontroversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a

subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this program and if that provision may be severed from the remainder of the program, we may adopt as final those provisions of the program that are not the subject of an adverse comment.

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

Dated: January 6, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (ii) under California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * *

(ii) Antelope Valley APCD:

(1) Complete submittal received on January 26, 1999; interim approval effective January 18, 2001; interim approval expires January 21, 2003.

(2) Revisions were submitted on October 22, 2001 and June 17, 2002. Due to unresolved deficiency of state-exempt major stationary agricultural sources, interim approval expired for all major stationary sources, effective January 21, 2003.

(3) Revision submitted on November 7, 2003 containing program for major stationary agricultural sources, effective on January 1, 2004.

* * * * *

[FR Doc. 04–1041 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–220–1020–24 1A]

RIN 1004–AD42

Grazing Administration B Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; correction; extension of comment period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period on a proposed rule published in the **Federal Register** on December 8, 2003 (68 FR 68452). This will allow additional time for public comment following publication on January 6, 2004, of the Draft Environmental Impact Statement associated with this proposed rule. BLM is also announcing public meetings on the Draft Environmental Impact Statement, and correcting the proposed rule to conform it to a final rule published recently by the Office of Hearings and Appeals, Department of the Interior.

DATES: You must submit your comments by March 2, 2004. BLM may not necessarily consider or include in the Administrative Record for the proposed rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed below (*see* **ADDRESSES**). *See* the **SUPPLEMENTARY INFORMATION** section for the dates and locations of the public meetings.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD42. Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036. Direct Internet response: *www.blm.gov/nhp/news/regulatory/index.html*, or at *http://www.blm.gov*.

FOR FURTHER INFORMATION CONTACT: Kenneth Visser at (775) 861–6464, for information relating to the grazing program or the substance of the proposed regulation, or Ted Hudson at (202) 452–5042 or Cynthia Ellis at (202) 452–5012 for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION:

BLM published the proposed rule on December 8, 2003 (68 FR 68452), and provided a 60-day comment period that will end on February 6, 2004. We are extending the comment period on this proposed rule until March 2, 2004, to allow the public additional time to provide us with their comments. On January 6, 2004, BLM published in the **Federal Register** (69 FR 569) a Notice of Availability of the Draft Environmental Impact Statement (Draft EIS) under the National Environmental Policy Act on the changes we are considering making to the regulations governing BLM's Grazing Administration Program. BLM is planning 6 public meetings to provide the public with the opportunity to comment on the scope, proposed action, and possible alternatives BLM considered when developing the Draft EIS. The dates, times and locations of these meetings are shown in the table below:

Location	Date and Time	Address of Meeting	Contact Person
Salt Lake City, UT	Tuesday, January 27, 2004, 6 p.m. to 10 p.m..	Marriott Hotel, 75 South West Temple, Salt Lake City, UT 84101.	Laura Williams (801) 539–4027.
Phoenix, AZ	Wednesday, January 28, 2004, 6 p.m. to 10 p.m..	Wyndham Phoenix Hotel, 50 East Adams Street, Phoenix, AZ 85004.	Deborah Stevens, (602) 417–9215.
Boise, ID	Saturday, January 31, 2004, 1 p.m. to 5 p.m..	Doubletree Riverside Hotel, Tamarack Room, 2900 Chinden Boulevard, Boise, ID 83714.	Cheryle Zwang, (208) 373–4016.
Billings, MT	Monday, February 2, 2004, 6 p.m. to 10 p.m..	Holiday Inn Grand Montana, 5500 Midland Road, Billings, MT 59101.	Mary Apple, (406) 896–5258.
Cheyenne, WY	Tuesday, February 3, 2004, 6 p.m. to 10 p.m..	Little America, West America Ballroom, 2800 West Lincoln Way, Cheyenne, WY 82009.	Cindy Wertz, (307) 775–6014.
Washington, DC	Thursday, February 5, 2004, 1 p.m. to 5 p.m..	Courtyard by Marriott-Embassy Row, 1600 Rhode Island Avenue, Washington, DC 20036.	Tom Gorey, (202) 452–5137.

We are also correcting the proposed rule to conform to a provision in a new final rule published by the Office of Hearings and Appeals (OHA) on December 10, 2003 (68 FR 68765). Section 4160.3(c) in the proposed rule referred to the authority of an administrative law judge to provide that a grazing decision becomes effective immediately as provided in 43 CFR 4.21(a)(1). That provision does not contain such authority for administrative law judges. However, the December 10, 2003, OHA final rule does contain such authority in 43 CFR 4.479(c). Therefore, this notice corrects the cross-reference. We are also correcting editorial and typographical errors.

In proposed rule FR Doc. 03–30264, published on December 8, 2003 (68 FR 68452), make the following corrections.

1. On page 68460, in the second column, in line 10 of the column, correct the reference to "section 4130.3–1" to read "section 4130.3–3."

2. On page 68464, in the second column, in line 1 of the column, correct the reference to "section 4140.0" to read "section 4140.1."

3. On page 68473, in the second column, in paragraph (c) of § 4160.3, correct the final sentence to read as follows:

§ 4160.3 Final decisions.

* * * * *

(c) * * * Nothing in this section affects the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals as provided in § 4.21(a)(1) of this title, or the authority of an administrative law judge as provided in § 4.479(c) of this title, to provide that the decision becomes effective immediately.

Dated: January 9, 2004.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 04–1032 Filed 1–15–04; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket Nos. 96–262, 94–1, 91–213, 95–72; DA 03–3961]

Parties Asked To Refresh Record Regarding Reconsideration of Rules Adopted in 1997 Access Reform Docket

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission invites interested parties to update the record concerning petitions for reconsideration of rules that the Commission adopted in the 1997 access charge reform docket. Because the petitions for reconsideration were filed several years ago, passage of time and intervening developments may have caused the record developed by those petitions to become stale. If parties do not indicate an intent to pursue previous petitions for reconsideration, the Commission will deem them withdrawn and will dismiss them.

DATES: Comments are due on or before February 17, 2004, and reply comments are due on or before March 1, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Marvin F. Sacks, Attorney-Advisor, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or via the Internet at *marvin.sacks@fcc.gov.*

SUPPLEMENTARY INFORMATION: Below is a summary of the Commission's document in CC Docket Nos. 96–262, 94–1, 91–213, and 95–72 adopted December 15, 2003, and released December 15, 2003. When filing comments and reply comments, parties should reference CC Docket Nos. 96–262, 94–1, 91–213, and 95–72, and conform to the filing procedures contained in the Notice. All pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs.* Commenters must transmit one electronic copy of the comments to each docket 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 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." 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 number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket number. 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. The Commission advises that electronic media not be sent through USPS. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. Two (2) copies of the comments and reply comments should also be sent to Aaron Goldschmidt, Assistant Division Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–A121, Washington, DC 20554. Parties shall also serve one copy with Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, or via e-mail to *qualexint@aol.com.* The original petitions for reconsideration filed by the parties in CC Docket Nos. 96–262, 94–1, 91–213, and 95–72 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from Qualex International, telephone (202) 863–2893, facsimile (202) 863–2898. This document may also be purchased from Qualex International and is available via the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA–03–3961A1.pdf*

Synopsis

1. After the Commission released the *Access Charge Reform First Report and Order* on May 16, 1997, published at 62 FR 31868 (June 11, 1997) in CC Docket Nos. 96–262, 94–1, 91–213, and 95–72, FCC 97–158, several parties filed petitions for reconsideration of that

order. Since then, litigation and additional orders, including the *Access Charge Reform Sixth Report and Order (CALLS Order)*, 65 FR 57739 (September 26, 2000), have addressed access charge reform and the rules adopted in the *Access Charge Reform First Report and Order*. Issues raised in the pending petitions for reconsideration may, therefore, have become moot or irrelevant.

2. As a result, it is not clear what issues arising out of the *Access Charge Reform First Report and Order*, if any, remain in dispute. Moreover, because the *CALLS Order* arose out of a voluntary proposal representing a large consensus in the industry, the earlier concerns raised by the petitions for reconsideration already may have been addressed. Furthermore, because the petitions for reconsideration were filed several years ago, the passage of time and intervening developments may have caused the record developed by those petitions to become stale.

3. For these reasons, the Commission requests that parties that filed petitions for reconsideration of the *Access Charge Reform First Report and Order* now file a supplemental notice indicating those issues that they still wish to be reconsidered. In addition, these parties may refresh the record with any new information or arguments that they believe to be relevant to deciding those issues. If parties do not indicate an intent to pursue previous petitions for reconsideration, the Commission will deem them withdrawn and will dismiss them. The refreshed record will enable the Commission to undertake appropriate reconsideration of its access charge related rules.

Federal Communications Commission.

Aaron Goldschmidt,

Assistant Division Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 04–903 Filed 1–15–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011204A]

RIN 0648–AN16

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Amendment 10) incorporating the draft Final Supplemental Environmental Impact Statement (FSEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), for Secretarial review and is requesting comments from the public. Amendment 10 would establish a long-term, comprehensive program to manage the Atlantic sea scallop fishery through an area rotation management program to maximize scallop yield. Amendment 10 evaluates and proposes measures to minimize the adverse effects of fishing on Essential Fish Habitat (EFH), in accordance with the Joint Stipulation and Order in the American Oceans Campaign et al. v Evans et al. (Civil Case Number 99–982 (GK)) (Joint Stipulation and Order). In addition to the area rotation program, Amendment 10 includes a suite of management measures intended to make the management program more effective, efficient, and flexible.

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

ADDRESSES: Comments on the FMP and other incorporated documents listed below should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Atlantic Sea Scallop Amendment 10." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Amendment 10, the draft Final Supplemental Environmental Impact Statement (FSEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135, e-mail *peter.christopher@noaa.gov*.

SUPPLEMENTARY INFORMATION: A notice of availability for the Draft Supplemental Environmental Impact Statement (DSEIS) for Amendment 10 was published in the **Federal Register** on April 18, 2003 (68 FR 19206). The public was given 90 days to comment on the DSEIS, in accordance with the EFH Settlement Agreement. After considering all comments on the DSEIS, the Council adopted the final measures to be included in Amendment 10 at its August 13–14, and September 16–17, 2003, meetings and voted to submit the Amendment 10 document, including the FSEIS, to NMFS.

Amendment 10 is intended to establish a long-term, comprehensive program to manage the sea scallop fishery through an area rotation management program to maximize scallop yield. Area rotation would close and re-open areas based on the condition and size of the scallop resource in discrete areas. Area-based management has been used in the FMP since 1998, with controlled access to the Georges Bank and southern New England groundfish closed areas and the Hudson Canyon and Virginia Beach scallop closed areas. Amendment 10 evaluates and includes measures to minimize the adverse effects of fishing on EFH, in accordance with the Joint Stipulation and Order. Amendment 10 also proposes the following management measures: Initial area rotation closed area, a controlled access area; area specific days-at-sea (DAS) for the area rotation program; DAS allocations for the 2004 and 2005 fishing years; an increase in the minimum ring size for scallop dredge gear; an increase in the minimum twine top mesh size for scallop dredges; a new possession limit restriction for limited access scallop vessels fishing outside of DAS; set-asides of total allowable catch (TAC) and DAS to pay for scallop resource and fishery-related research;

set-asides of TAC and DAS to help defray the cost of at-sea observers; a new biennial framework process; and a process to address interactions between the scallop fishery and species protected under the Endangered Species Act.

Public comments are being solicited on Amendment 10 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 10 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of ability of Amendment 10 to be considered in the approval/disapproval decision on the amendment. All comments received by March 15, 2004, whether specifically directed to Amendment 10 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 10. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 10.

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

Dated: January 13, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–1012 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 11
Friday, January 16, 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

Forest Service

West Maurys Fuels and Vegetation Management Project, Ochoco National Forest, Crook County, Oregon

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) on a proposal to manage the fuels and vegetation in the west half of the West Maury Mountains. The proposed action will decrease high-intensity fire conditions, maintain low intensity fire conditions where they exist, and maintain and increase old growth habitat. This will entail changing the forest density and species composition to maintain and increase forest stand resistance to high intensity fire, insects, and disease. This will be achieved by applying a prescription comprising pre-commercial and commercial thinning of the under-story, grapple piling of slash thinning, and prescribed burns. Timber harvest and prescribed burning prescriptions will be conducted on estimated 18,508 acres. Juniper thinning, part of the prescription throughout the entire project area, would help restore upland grass and shrub communities. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis would be most helpful if received by February 16, 2004.

ADDRESSES: Send written comments to Arthur Currier, District Ranger, Lookout Mountain District, Ochoco National Forest, 3160 NE Third Street, Prineville, Oregon 97754.

FOR FURTHER INFORMATION CONTACT: Bryan Scholz, Interdisciplinary Team leader, Phone: (541) 416–6500, or e-mail: *comments-pacificnorthwest-ochoco@fs.fed.us*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Existing vegetation comprises excessively dense, small tree stands which reduce habitat for old-growth-dependent species such as the pileated and white-headed woodpeckers and goshawks. The crowded conditions foster bark beetle infestations and prevent small trees from growing into large ones. Dense tree stands are ripe for intense fires because they are often diseased and compacted with dead fuel. When trees are permitted to grow large in more open conditions, the stands emulate the conditions found prior to fire suppression.

Proposed Action

The Proposed Action consists of the following actions: 7,750 acres of commercial thinning, 11,700 acres of noncommercial thinning, 7,650 acres of fuels treatment of which 4,200 is underburning of natural fuels, and 6 miles of new roads, 6 miles of temporary roads, and 10 miles of roads to be decommissioned. The Proposed Action will move the distribution of fire regimes towards the historic range of variability by decreasing high-intensity fire conditions and maintaining low intensity fire conditions where they exist. This action will entail changing forest conditions to maintain and increase forest stand resistance to high intensity fire, insects and disease by applying a prescription comprising pre-commercial, and commercial thinning and prescribed burns. Slash from thinning will be treated with prescribed fire and grapple piling. The proposed action would increase the amount of forested area dominated by fire-tolerant species, maintain and enhance stands dominated by large and old structure (LOS) characteristics, move forested vegetation closer towards historic conditions, and would decrease the number of acres with potential for high-severity stand replacement fire. New and temporary road construction will be kept to a minimum, thus reducing the potential for harmful resource effects.

Issues

Preliminary issues that have been identified include: habitat quality for pileated and white-headed woodpeckers, goshawk nest cores and elk security. In addition, mitigation measures will be developed for issues regarding erosive soils, sedimentation and water quality. There are cultural and heritage issues as well. An alternative to the Proposed Action is being developed to address significant issues, and options also include a no-action alternative.

Alternatives

At a minimum, two action alternatives and a no action alternative will be analyzed in detail in the draft EIS. The action alternatives examine combinations and degrees of activities in order to meet the purpose of and need for action and concerns stated during the public scoping process. Under the no action alternative (Alternative A), pre-commercial and commercial timber harvest and other vegetation treatments, would not occur. Ongoing activities, such as road maintenance, noxious weeds abeyance, and recreational use, would continue. Access for public and administrative purposes would continue on the existing transportation system. Resource protection activities (such as road maintenance and fire suppression) would continue.

Alternative 2 is the Proposed Action.

Alternative 3 makes unit-by-unit alterations from the Proposed Action to accommodate concerns about wildlife, hydrology and soils. This alternative eliminates activities in habitat for pileated and white-headed woodpeckers, closes roads, reduces road density to retain or create wildlife connectivity corridors or security. Where necessary, Alternative 3 would promote intermingling crown compositions and/or augments or retains 70 percent crown closure for satisfactory elk cover. In other areas, units are dropped from treatments altogether to alleviate sediment increase or soil erosion. Harvest will be conducted minimally in stands with large and old growth characteristics, and snags and down wood will remain to foster habitat.

Scoping

Initial scoping began February 6, 2003, when the scoping letter, which included a description of the proposed action and stated the purpose and need for the project, was mailed to interested

parties. The proposal was listed in the Schedule of Proposed Actions for Spring 2003, Summer 2003, Fall 2003 and Winter 2004. Using the comments from the public, agencies, coalitions and Native Americans, the interdisciplinary team developed the list of issues to address which, subsequently, generated alternative three.

Comments

The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Native Americans, and individuals who may be interested in or affected by the Proposed Action. This input will be used to prepare the EIS. Comments are appreciated throughout the analysis process; however, comments received in response to this notice, including names and addresses of those who comment, will be considered a matter of public record on this Proposed Action and will be available for public inspection. Anonymous comments will be considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. If the request for anonymity is denied, the agency will notify the person and resubmission is possible.

The draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by March 2004. The EPA will publish a Notice of Availability of the EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several related to public participation in the environmental review process. First, reviewers of a draft must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the 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 have been raised at the EIS stage but are not expressed until after the EIS is completed 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 important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identification and consideration of issues and concerns on the Proposed Action, comments on the EIS should be specific, and refer to exact page numbers or chapters of the EIS. Comments may also be complimentary and address adequacies and merits of the alternatives formulated and discussed. Reviewers may wish to consult the Council on Environmental Quality Regulations on procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 when addressing these points.

The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Ochoco National Forest. He will decide which, if any, of the alternatives will be implemented. His decision and rationale for the West Maurys Fuels and Vegetation Management Project will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: January 6, 2004.

Larry Timchak,

Forest Supervisor.

[FR Doc. 04–958 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Modoc County RAC Meetings

AGENCY: USDA Forest Service.

ACTION: Notice of Modoc County RAC meetings.

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 Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, February 2, 2004 from 6 to 8 p.m. in Alturas, California. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: Agenda topics for the meeting include approval of the January 5, 2003 minutes. The meeting will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California on Monday, January 3, 2004 from 6 to 8 p.m. Time will be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 04–960 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, January 26, 2004. The meeting will include routine business, a discussion of larger scale projects, and the review and recommendation for implementation of submitted project proposals.

DATES: The meeting will be held January 26, 2004, from 4 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 8, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–1006 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Province Advisory Committee will meet on Wednesday, January 21, 2004, at the Gifford Pinchot National Forest Headquarters, located in Vancouver,

Washington, at 10600 NE. 51st Circle, Vancouver, WA 98682. The meeting will begin at 9 a.m. and continue until 4 p.m.

The purpose of the meeting is to: Receive advice on the Forest's implementation of Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 (County Payments); to receive advice on the Forest's Fire Management Plan; to hear a landscape management presentation; to hear a wildfire management presentation; and to share information among members.

All Southwest Washington Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled to occur at 1 p.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenbeger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: January 12, 2004.

Tom Knappenbeger,

Acting Forest Supervisor.

[FR Doc. 04–959 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Redesignation of Services

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Redesignation of procurement list services.

SUMMARY: This notice redesignates services on the Procurement List which will be procured on a Basewide basis rather than for individual buildings. These services are being performed for the Department of the Army, 99th Regional Support Command at the Johnstown Aviation Support Facility in Johnstown, Pennsylvania. Comments on this redesignation must be received by February 15, 2004.

EFFECTIVE DATE: February 16, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 2202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The following services are on the Procurement List to be performed by the designated nonprofit agency for the Department of the Army, 99th Regional Support Command as identified below:

Service Type/Location: Janitorial/Custodial, Johnstown Aviation Support Facility, Airport Road #2, Johnstown, Pennsylvania.
NPA: Goodwill Industries of the Connemaugh Valley, Inc., Johnstown, Pennsylvania.
Contract Activity: Department of the Army, Oakdale Pennsylvania.
Service Type/Location: Janitorial/Custodial, U.S. Marine Corps Reserve Center, Johnstown, Pennsylvania.
NPA: Goodwill Industries of the Connemaugh Valley, Inc., Johnstown, Pennsylvania.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

The above services will be procured by the 99th Regional Support Command, Department of the Army on a Basewide basis and are thus being redesignated collectively on the Procurement List as set forth below, and the nonprofit agency identified below has been designated as the qualified nonprofit agency authorized to provide the services.

Service Type/Location: Janitorial/Custodial, Basewide, Johnstown Aviation Support Facility, Johnstown, Pennsylvania.
NPA: Goodwill Industries of the Connemaugh Valley, Inc., Johnstown, Pennsylvania.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–1029 Filed 1–15–04; 8:45 am]

BILLING CODE 6530–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 15, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Basewide Custodial Services, Holloman Air Force Base, New Mexico.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas.
Contract Activity: AF–ACC–Holloman, Holloman AFB, New Mexico.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–1030 Filed 1–15–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Withdrawal of Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Withdrawal of proposed addition of products and service to procurement list.

SUMMARY: This notice withdraws previous published notices of proposed addition of products and a service from further consideration for addition to the Procurement List.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 17, 2003 and November 7, 2003 (68 FR 59775 and 68 FR 63057), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List of the following products and service. These notices were published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3 for the purpose of providing interested persons an opportunity to submit comments on the proposed actions. The Committee is withdrawing from further consideration and comment the addition of the products and service.

Products

Product/NSN: Jersey, Flight Deck, Crewman's (The remaining 50% of the Defense Supply Center Philadelphia's Requirement).
8415–00–914–0312
8415–00–914–0313
8415–00–914–0314
8415–00–914–0315
8415–00–914–0316
8415–00–914–0317
8415–00–914–0318
8415–00–914–0319
8415–00–914–0321
8415–00–914–0322
8415–00–914–0323
8415–00–914–0324
8415–00–914–0325
8415–00–914–0326
8415–00–914–0327
8415–00–914–0328
8415–00–914–0329
8415–00–914–0331
8415–00–914–0333
8415–00–914–0334
8415–00–914–0335
8415–00–914–0336
8415–00–914–0337
8415–00–914–0338
8415–00–914–0339
8415–00–914–0340
8415–00–914–4143
8415–00–914–9481
NPA: Bestwork Industries for the Blind, Inc., Runnemede, New Jersey.
NPA: El Paso Lighthouse for the Blind, El Paso, Texas.
NPA: Elizabeth Pierce Olmsted, M.D. Center for the Visually Impaired, Buffalo, New York.
NPA: Westmoreland County Blind Association, Greensburg, Pennsylvania.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Service

Service Type/Location: Custodial Services, Naval Exchange, National Naval Medical Center, Bethesda, Maryland.
NPA: Opportunities, Inc., Alexandria, Virginia.
Contract Activity: Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia. The above products and service are being withdrawn from further consideration for proposed addition. Consequently, these products and service will not be added to the Procurement List at this time.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–1031 Filed 1–15–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122–822]

Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On September 9, 2003, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Canada (68 FR 53105). The review covers shipments of this merchandise to the United States for the period August 1, 2002 through July 31, 2003, by Dofasco Inc. and Sorevco Inc., collectively known as Dofasco.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of comments, we have made changes to the preliminary results. For the final dumping margins see the "Final Results of Review" section below.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Elfi Blum-Page or Christian Hughes, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0197 or (202) 482–0190, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2003, the Department published the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Canada. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 53105 (September 9, 2003) (*Preliminary Results*). In the *Preliminary Results*, we determined that U.S. sales had been made below normal value (NV). We gave interested parties an opportunity to comment on our preliminary results. On October 9, 2003, we received case briefs from United States Steel Corporation (Petitioner) and Dofasco. On October 17, 2003, Dofasco filed rebuttal comments. Neither party requested a hearing. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is certain corrosion-resistant steel, and includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060,

7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non- rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")-- for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum from Joseph A Spetrini, Deputy Assistant Secretary for Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Results of the Ninth Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada for Dofasco, Inc. and Sorevco, Inc. (Collectively, Dofasco)*, dated January 7, 2004 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations for Dofasco. In response to comments from both Dofasco and Petitioner we have reclassified certain sales as CEP sales. *See Memorandum to Barbara E. Tillman from Maureen Flannery: Classification of Dofasco's Sales as Either EP or CEP Sales.* Any alleged programming or clerical errors are discussed in the relevant section of the *Decision Memo*, accessible in room B-099 and on the Web at *http://ia.ita.doc.gov*.

Final Results of Review

As a result of our review, we determine the antidumping margin for Dofasco to be as follows:

Manufacturer/ Exporter	Time Period	Margin
Dofasco	08/03/01–07/31/02	1.36 percent

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to CBP within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respect to all shipments of certain corrosion-resistant carbon steel flat products from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(2)(C) of the Act: (1) for Dofasco, the cash deposit rate will be the rate indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the "all other" rate established in the LTFV investigation, which is 18.71 percent. The deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative order itself. Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

List of Issues

1. Classification of Dofasco's Channel 2 and Channel 3 Sales as EP or CEP Sales
2. Matching by Level of Trade Before Matching by Month
3. Deduction of Indirect Selling Expenses Incurred in the Country of Manufacture (DINDIRSU) from Constructed Export Price (CEP)
4. Inclusion of Further Processing Costs and Freight to the Further Processor in CEP Selling Expenses (CEPSELL)
5. Exclusion of Certain Home Market Sales from Analysis by Not Extending the Window Period to Two Months after the Last Sale Date of the U.S. Sales
6. Reclassification of U.S. Spot Sales Made Through Channel 3 as Export Price (EP) Sales
7. Claimed Inaccuracies in Verification Report
8. Home Market Sales of Non-Prime Products

9. Correction to Draft Liquidation and Cash Deposit Instructions
10. Prepaid Brokerage and Handling (PBROKU) for Certain U.S. Sales
11. Correction of Certain Ministerial Errors

[FR Doc. 04–1026 Filed 1–15–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122–839]

Certain Softwood Lumber Products from Canada: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore at (202) 482–3692, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On June 26, 2003, the Department initiated an administrative review of the countervailing duty order on certain softwood lumber products from Canada. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 39055 (July 1, 2003). The preliminary results are currently due no later than February 2, 2004.

Extension of Time Limit for Preliminary Results of Review

The subsidy programs covered by this review are extraordinarily complicated. Further, petitioners have made several new subsidy allegations in this review. In addition, because this administrative review is being conducted on an aggregate level, the Department must analyze large amounts of data from each of the Canadian Provinces as well as data from the Canadian Federal Government. Furthermore, the Department intends to conduct a limited number of reviews of individual companies who claimed to have received zero or *de minimis* subsidies. Therefore, the Department is extending the time limits for completion of the preliminary results to June 1, 2004. *See* the Decision Memorandum from Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, to Holly A. Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement Group II, dated concurrent with this notice, which is on file in the Central RecordsUnit.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 8, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group II.

[FR Doc. 04–1025 Filed 1–15–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 040108008–4008–01]

RIN 0693–ZA53

Summer Undergraduate Research Fellowships (SURF) Gaithersburg and Boulder Programs; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the 2004 Summer Undergraduate Research Fellowships (SURF) Gaithersburg and Boulder programs are soliciting applications for financial assistance for FY 2004. The SURF Gaithersburg program is soliciting applications in the areas of Electronics and Electrical Engineering, Manufacturing Engineering, Chemical Science and Technology, Physics, Materials Science and Engineering, Building and Fire Research, and Information Technology. The SURF Boulder program is soliciting applications in the areas of Electronics and Electrical Engineering, Chemical Science and Technology, Physics, Materials Science and Engineering, and Information Technology. Applications for the Gaithersburg and Boulder programs are separate. Application to one program does not constitute application to the other, and applications will not be exchanged between the Gaithersburg and Boulder programs. If applicants wish to be considered at both sites, two separate applications must be submitted.

In Gaithersburg, Maryland, the programs "SURFing the Electronics and Electrical Engineering Laboratory," "SURFing the Manufacturing Engineering Laboratory," "SURFing the Chemical Science and Technology Laboratory," "SURFing the Physics Laboratory," "SURFing the Materials Science and Engineering Laboratory," "SURFing the Building and Fire Research Laboratory," and "SURFing the Information Technology Laboratory," will provide an opportunity for the NIST Electronics and Electrical Engineering Laboratory (EEEL), Manufacturing Engineering Laboratory (MEL), Chemical Science and Technology Laboratory (CSTL) Physics Laboratory (PL), Materials Science and Engineering Laboratory (MSEL), Building and Fire Research Laboratory (BFRL), Information Technology Laboratory (ITL), and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering. The program will provide research opportunities for students to work with internationally known NIST scientists, to expose them to cutting-edge research and promote the pursuit of graduate degrees in science and engineering.

The SURF NIST Boulder program will provide an opportunity for five NIST laboratories (in Boulder, Colorado)—Electronics and Electrical Engineering Laboratory (EEEL), Physics Laboratory (PL), Chemical Science and Technology Laboratory (CSTL), Materials Science and Engineering Laboratory (MSEL) and Information Technology Laboratory (ITL)—and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering. The

program will provide research opportunities for students to work with internationally known NIST scientists, exposing them to cutting-edge research, and will promote the pursuit of graduate degrees in science and engineering.

The NIST SURF Gaithersburg and Boulder Program Directors will work with appropriate department chairs, outreach coordinators, and directors of multi-disciplinary academic organizations to identify outstanding undergraduates (including graduating seniors) who would benefit from off-campus summer research in a world-class scientific environment.

SUPPLEMENTARY INFORMATION:

EEEL, MEL, CSTL, PL, MSEL, BFRL, and ITL SURF Gaithersburg Programs

I. Funding Opportunity Description

The objective of the SURF Gaithersburg Programs is to expose promising undergraduate students to scientific research and stimulate them to pursue advanced degrees and subsequent careers in scientific and engineering disciplines. Students, competitively selected into the program, must show promise as present or future contributors to the mission of NIST. SURF students will work one-on-one with our nation's top scientists and engineers at NIST. It is anticipated that successful SURF students will move from a position of reliance on their research advisors to one of research independence during the twelve-week period. The program provides opportunities for our nation's next generation of scientists and engineers to engage in world-class scientific research, especially in ground-breaking areas of emerging technologies. This carries with it the hope of motivating individuals to pursue advanced degrees in physics, chemistry, materials science, engineering, mathematics, or computer science, and to consider research careers. The SURF Gaithersburg Programs will help to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, especially those with a demonstrated commitment to the education of women, minorities, and students with disabilities. NIST will establish cooperative agreements with participants to further the program objective.

The following are summaries of the technical activities in the participating NIST laboratories.

NIST's EEEL strives to be the world's best source of fundamental and industrial-reference measurement methods and physical standards for electrotechnology. To be a world-class resource for semiconductor measurements, data, models, and standards focused on enhancing U.S. technological competitiveness in the world market, research is conducted in semiconductor materials, processing, devices, and integrated circuits to provide, through both experimental and theoretical work, the necessary basis for understanding measurement-related requirements in semiconductor technology. To provide the world's most technically advanced and fundamentally sound basis for all electrical measurements in the United States, the EEEL's research projects include maintaining and disseminating the national electrical standards, developing the measurement methods and services needed to support electrical materials, components, instruments, and systems used for the generation, transmission, and application of conducted electrical power, and related activities in support of the electronics industry including research on video technology and electronic product data exchange.

NIST's MEL conducts theoretical and experimental research in length, mass, force, vibration, acoustics, and ultrasonics, as well as intelligent machines, precision control of machine tools, and information technology for the integration of all elements of a product's life cycle. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which manufacturing facilities are spread across the globe. MEL's research and development leads to standards, test methods and data that are crucial to industry's success in exploiting advanced manufacturing technology. Critical components of manufacturing at any level are measurement and measurement-related standards, not just of products, but increasingly of information about products and processes. Thus, MEL programs enhance both physical and information-based measurements and standards. Research projects can be theoretical or experimental, and will range in focus from intelligent machine control, characterizing a manufacturing process or improving product data exchange in manufacturing and related industries such as healthcare and emergency response, to the accurate measurement of an artifact's dimensions.

NIST's CSTL is the United States' primary reference laboratory for chemical measurements, entrusted with developing, maintaining, advancing, and enabling the Nation's chemical measurement system, thereby enhancing industry's productivity and competitiveness, establishing comparability of measurements to facilitate equity of global trade, and improving public health, safety, and environmental quality. CSTL focuses its activities in measurement science research on reference methods, reference materials and reference data, and directs these efforts in support of the following specific Program areas aligned with industrial segments and National priorities: Automotive and Aerospace, Biomaterials, Pharmaceuticals and Biomanufacturing, Chemical and Allied Products, Energy Systems, Environmental Technologies and Services, Food and Nutritional Products, Forensics and Homeland Security, Health and Medical Technologies, Industrial and Analytical Instruments and Services, Microelectronics, Measurement and Standards, Data and Informatics (Knowledge Management), and Technologies for Future Measurements and Standards.

Attending to the long-term needs of many U.S. high-technology industries, NIST's PL conducts basic research in the areas of quantum, electron, optical, atomic, molecular, and radiation physics, and condensed matter. To achieve these goals, PL staff develop and utilize highly specialized equipment, such as polarized electron microscopes, scanning tunneling microscopes, lasers, and x-ray and synchrotron radiation sources. Research projects can be theoretical or experimental and will range in focus from computer modeling of fundamental processes through trapping atoms and choreographing molecular collisions, to standards for radiation therapy.

NIST's MSEL conducts basic research in the electronic, magnetic, optical, superconducting, mechanical, thermal, chemical, and structural properties of metals, ceramics, polymers, and composites. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which individual atoms and molecules will serve as the fundamental building blocks of devices. Preparation of unique materials by atomic level tailoring of multi-layers, perfect single crystals, and nanocomposites are just some of the future technologies being developed and explored in NIST's MSEL. To achieve these goals, staff develop and utilize highly specialized equipment, such as high resolution electron microscopes, atomic force microscopes, neutron scattering instruments, x-ray diffraction sources, lasers, magnetometers, plasma

furnaces, melt spinners, molecular beam epitaxy systems, and thermal spray systems. Research projects can be theoretical or experimental and will range in focus from the structural, chemical, and morphological characterization of advanced materials made in the NIST laboratories to the accurate measurement of the unique properties possessed by these special materials.

NIST's BFRL provides technical leadership and participates in developing the measurement and standards infrastructure related to materials critical to U.S. industry, academia, government, and the public. Building and Fire Research programs at NIST cover a full range of materials issues from design to processing to performance. Separate research initiatives address concrete, coating, earthquake resistance of structures, fire science and engineering, the theory and modeling of materials, and materials reliability. Through laboratory-organized consortia and one-on-one collaborations, BFRL's scientists and engineers work closely with industrial researchers, manufacturers of high-technology products, and the major users of advanced materials.

NIST's ITL responds to industry and user needs for objective, neutral tests for information technology. These are enabling tools that help companies produce the next generation of products and services, and that help industries and individuals use these complex products and services. ITL works with industry, research and government organizations to develop and demonstrate tests, test methods, reference data, proof of concept implementations and other infrastructural technologies. Program activities include: high performance computing and communications systems; emerging network technologies; access to, exchange, and retrieval of complex information; computational and statistical methods; information security; and testing tools and methods to improve the quality of software.

The authority for the SURF Gaithersburg Programs is as follows: 15 U.S.C. 278g–l authorizes NIST to fund financial assistance awards to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST.

II. Award Information

Funds budgeted for payment to students under these programs are stipends, not salary. The SURF Gaithersburg Programs will not authorize funds for indirect costs or fringe benefits. The table below summarizes the anticipated annual funding levels from the NSF to operate our REU (Research Experience for Undergraduates) programs, subject to program renewals and availability of funds. In some programs, anticipated NIST co-funding will supplement the number of awards supported. Program funding will be available to provide for the costs of stipends ($333.33 per week per student), travel, and lodging (up to $2800 per student).

Program	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated number of awards
EEEL	$73,000	$30,000	$103,000	~16
MEL	56,000	22,000	78,000	~11
CSTL	41,000	54,000	95,000	~15
PL	85,000	50,000	135,000	~22
MSEL	80,000	0	80,000	~12
BFRL	69,000	30,000	99,000	~16
ITL	60,000	40,000	100,000	~17

The actual number of awards made under this announcement will depend on the proposed budgets. For all SURF Gaithersburg Programs described in this notice, it is expected that individual awards to institutions will range from approximately $3,000 to $70,000. Funding for student housing will be included in cooperative agreements awarded as a result of this notice.

The SURF Gaithersburg Programs are anticipated to run from May 24 through August 13, 2004; adjustments may be made to accommodate specific academic schedules (*e.g.*, a limited number of 9-week cooperative agreements).

III. Eligibility Information

1. Eligible Applicants—NIST's SURF Gaithersburg Programs are open to colleges and universities in the United States and its territories with degree granting programs in materials science, chemistry, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents.

2. Cost Sharing or Matching—The SURF Gaithersburg Programs do not require any matching funds.

IV. Application Submission Information

1. Address to Request Application Package—For the EEEL, MEL, CSTL, PL, MSEL, BFRL, and ITL SURF Gaithersburg Programs, an application kit, containing all required forms and certifications, may be obtained by contacting Ms. Anita Sweigert, (301) 975–4200; websites for each program's application kit may be accessed through the following Web site: *http://www.surf.nist.gov/surf2.htm.*

The NIST site in Boulder, Colorado also operates a SURF program, described later in this notice. The application process for the Gaithersburg and Boulder programs are distinctly separate. An application for one SURF program does not constitute that for the other, and applications will not be exchanged between the Gaithersburg and Boulder programs. If applicants wish to be considered at both sites, a separate application must be submitted to each program.

2. Content and Form of Application Submission—For all SURF Gaithersburg Programs, applicant institutions must submit one (1) signed original and two (2) copies of the proposal to: Attn.: Ms. Anita Sweigert, Administrative Coordinator, National Institute of Standards and Technology,100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel: (301) 975–4200, E-mail: *anita.sweigert@nist.gov*. Web site: *http://www.surf.nist.gov/surf2.htm.*

3. Submission Dates and Times—All SURF Gaithersburg Program proposals must be received no later than 5 p.m. Eastern Standard Time on February 17, 2004.

V. Application Review Information

1. Criteria—For the SURF Gaithersburg Programs, the evaluation criteria are:

(A) Evaluation of Student's Academic Ability and Commitment to Program Goals: Includes evaluation of completed course work; expressed research interest; compatibility of the expressed research interest with SURF Gaithersburg Program research areas; research skills; grade point average in courses relevant to the SURF Gaithersburg Program; career goals; honors and activities.

(B) Evaluation of Applicant Institution's Commitment to Program Goals: Includes evaluation of the institution's academic department(s) relevant to the discipline(s) of the student(s).

Each of these factors is given equal weight in the evaluation process.

2. Review and Selection Process—All SURF Gaithersburg Program proposals are submitted to the Administrative Coordinator. Each proposal is examined for completeness and responsiveness. Substantially incomplete or non-responsive proposals will not be considered for funding, and the applicant will be notified in writing. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed. Proposals should include the following:

(A) Student Information:

(1) Student application information cover sheet;

(2) Academic transcript for each student nominated for participation (it is recommended that students have a G.P.A. of 3.0 or better, out of a possible 4.0);

(3) A statement of motivation and commitment from each student to participate in the 2004 SURF program, including a description of the student's prioritized research interests;

(4) A resume for each student;

(5) Two letters of recommendation for each student;

(6) Verification of U.S. citizenship or permanent legal resident status for each student; and

(7) Verification of health coverage for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research programs; and

(2) A summary list of the student(s) being nominated.

Institution proposals will be separated into student/institution packets. Each student/institution packet will be comprised of the required application forms, including a complete copy of the student information and a complete copy of the institution information. The student/institution packets will be directed to the SURF Gaithersburg Program designated by the student as his/her first choice. Each SURF Gaithersburg Program will have three independent, objective NIST employees, who are knowledgeable in the scientific areas of the program, conduct a technical review of each student/institution packet based on the Evaluation Criteria for the SURF Gaithersburg Programs described in this notice. Each technical reviewer will recommend that each student/institution packet be placed into one of three categories: Priority Funding; Fund if Possible; and Do Not Fund. Each student/institution packet will then be placed into one of the three categories by the Program's Director, who will take into consideration the reviewers' recommendations, the relevance of the student's course of study to the program objectives of the NIST laboratory in which that SURF Gaithersburg Program resides as described in the Program Description and Objectives section of this notice, the relevance of the student's statement of commitment to the goals of the SURF Gaithersburg Program, and the availability of funding.

Student/institution packets placed in the Priority Funding category will be selected for funding in that SURF Gaithersburg Program. Student/institution packets placed in the Do Not Fund category will not be considered for funding.

Student/institution packets placed in the Fund if Possible Category will be considered for funding by the SURF Gaithersburg Program designated by the student as his/her second choice. In making selections for funding, the Director of the student's second choice SURF Gaithersburg Program will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice SURF Gaithersburg Program, the program objectives of the NIST laboratory in which the student's second choice SURF Gaithersburg Program resides as described in the Program Description and Objectives section of this notice, the relevance of the student's statement of commitment to the goals of the SURF Gaithersburg Program, and the availability of funding.

Students not selected for funding by their first or second choice SURF Gaithersburg Program, and students who did not designate a second choice, will then be considered for funding from all SURF Gaithersburg Programs that still have slots available. In making selections for funding, the SURF Gaithersburg Program Directors will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice SURF Gaithersburg Program, the program objectives of the NIST laboratory in which their SURF Gaithersburg Program resides as described in the Program Description and Objectives section of this notice, the relevance to the goals of the SURF Gaithersburg Program, and the availability of funding.

Student/institution packets placed in the Fund if Possible category, but not selected through the process described above, will not be funded.

The final approval of selected applications and award of cooperative agreements will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

The SURF Gaithersburg Program will retain one copy of each unsuccessful application for three years for record keeping purposes, and unsuccessful applicants will be notified in writing. The remaining copies will be destroyed.

VI. Award Administration Information

Award administration information for this program may be found in the Award Administration Information section at the end of this notice.

VII. Agency Contact(s)

Technical questions for the SURF Gaithersburg Programs should be directed to the following contact persons:

Program	Contact person(s)	Phone No.	E-mail address
EEEL	Dr. David Newell	301–975–4228	*david.newell@nist.gov*
	Dr. Joseph Kopanski	301–975–2089	*joseph.kopanski@nist.gov*
MEL	Ms. Lisa Jean Fronczek	301–975–6633	*lfronczek@nist.gov*

Program	Contact person(s)	Phone No.	E-mail address
CSTL	Dr. Albert Lee	301–975–2857	*albert.lee@nist.gov*
	Ms. Jeanice Brown Thomas	301–975–3120	*jeanice.brownthomas@nist.gov*
PL	Dr. Marc Desrosiers	301–975–5639	*marc.desrosiers@nist.gov*
	Dr. Paul Lett	301–975–6559	*paul.lett@nist.gov*
MSEL	Dr. Terrell A. Vanderah	301–975–5785	*terrell.vanderah@nist.gov*
	Dr. Robert Shull	301–975–6035	*robert.shull@nist.gov*
BFRL	Dr. Chris White	301–975–6016	*cwhite@nist.gov*
	Dr. Chiara Ferraris	301–975–6711	*chiara.ferraris@nist.gov*
ITL	Dr. Larry Reeker	301–975–5147	*larry.reeker@nist.gov*
	Mr. Tim Boland	301–975–3608	*t.boland@nist.gov*
	Dr. Isabel Beichl	301–975–3821	*isabel.beichl@nist.gov*

All grants related administration questions concerning this program should be directed to Joyce Brigham, NIST Grants and Agreements Management Division at (301) 975–6328 or *joyce.brigham@nist.gov*.

Where websites are referenced within this notice, those without internet access may contact the appropriate Program official to obtain information.

SURF NIST Boulder Program

I. Funding Opportunity Description

The objective of the SURF NIST Boulder Program is to expose promising undergraduate students to scientific research and stimulate them to pursue advanced degrees and subsequent careers in scientific and engineering disciplines. Students, competitively selected into the program, must show promise as present or future contributors to the mission of NIST. SURF students will work one-on-one with some of our nation's top scientists and engineers at NIST in Boulder, Colorado. It is anticipated that successful SURF students will move from a position of reliance on their research advisors to one of research independence during the 10 week period of the program. The program provides opportunities for our nation's next generation of scientists and engineers to engage in world-class scientific research, especially in ground-breaking areas of emerging technologies. This carries with it the hope of motivating individuals to pursue advanced degrees in physics, chemistry, materials science, engineering, mathematics, or computer science, and to consider research careers. The SURF NIST Boulder Program will help to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, including those with a demonstrated commitment to the education of women, minorities, and students with disabilities. The NIST will establish cooperative agreements with participating colleges and universities to further the program's objectives.

The following are summaries of the technical activities in the participating NIST Boulder Laboratories:

Electronics and Electrical Engineering Laboratory (EEEL):

- Measurement technology, standards, and traceability for the optoelectronic industry,
- Solutions to metrology problems using solid-state quantum effects, low temperatures to reduce thermal noise, and state-of-the-art lithography,
- Fundamental microwave quantities, high-speed microelectronics, electromagnetic compatibility, antennas, electromagnetic properties of materials, measurement methods and standards for the magnetic data storage and superconductor power industries.

Physics Laboratory (PL):

- Standards of time and frequency; dissemination of timing information using radio broadcasts and the Internet,
- Atomic and chemical physics, precision measurement, and laser and optical physics.

Chemical Science and Technology Laboratory (CSTL):

- Measurements, standards, data, and models for the thermophysical/chemical properties of gases, liquids, and solids and for low-temperature refrigeration systems.

Materials Science and Engineering Laboratory (MSEL):

- Measurement methods and standards enhancing the quality and reliability of materials.

Information Technology Laboratory (ITL):

- Design of experiments, modeling, analytical methods, and algorithms for science,
- Modern statistical experimental design, statistical modeling, data analysis, and process control procedures.

The authority for the SURF NIST Boulder Program is as follows: 15 U.S.C. 278g–1 authorizes NIST to fund financial assistance awards to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST.

II. Award Information

Funds budgeted for payment to students under these programs are stipends, not salary. The SURF NIST Boulder Program will not authorize funds for indirect costs or fringe benefits. The table below summarizes the anticipated annual funding levels from the NSF to operate the SURF NIST Boulder program, broken out by Laboratory, subject to program approval and availability of funds. In some Laboratories, anticipated NIST co-funding will supplement the number of awards supported. Program funding will be available to provide for the costs of stipends ($4000 per student for 10 weeks), travel, and lodging (approximately $1800 per student for 10 weeks).

Laboratory	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated number of awards
EEEL	$58,400	$5600	$64,000	8
PL	36,500	3500	40,000	5
CSTL	21,900	2100	24,000	3
MSEL	14,600	1400	16,000	2

Laboratory	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated number of awards
ITL	14,600	1400	16,000	2

The actual number of awards made under this announcement will depend on the proposed budgets. For the SURF NIST Boulder Program described in this notice, it is expected that individual awards to institutions will range from approximately $4,000 to $70,000. Funding for student housing will be included in cooperative agreements awarded as a result of this notice.

The SURF NIST Boulder Program is anticipated to run from June 1 through August 6, 2004; adjustments may be made to accommodate specific academic schedules (e.g., a limited number of 10 week cooperative agreements shifted to begin 2 weeks after the regular start in order to accommodate institutions operating on quarter systems).

III. Eligibility Information

1. Eligible Applicants—The SURF NIST Boulder Program is open to colleges and universities in the United States and its territories with degree granting programs in materials science, chemistry, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents.

2. Cost Sharing or Matching—The SURF NIST Boulder Program does not require any matching funds.

IV. Application Submission Information

1. Address to Request Application Package—For the SURF NIST Boulder Program, an application kit, containing all required forms and certifications, may be obtained by contacting Ms. Phyllis Wright, (303) 497–3244; the program's application kit may be accessed through the following Web site: *http://surf.boulder.nist.gov/*.

The NIST headquarters site in Gaithersburg, Maryland also operates a SURF program, described above in this notice. The application process for the Gaithersburg and Boulder programs are distinctly separate. An application for one SURF program does not constitute that for the other, and applications will not be exchanged between the Gaithersburg and Boulder programs. If applicants wish to be considered at both sites, a separate application must be submitted to each program.

2. Content and Form of Application Submission—For the SURF NIST Boulder Program, applicant institutions must submit one signed original and two copies of the proposal to: Ms. Phyllis Wright, Administrative Coordinator, National Institute of Standards and Technology, 325 Broadway, Mail Stop 346.16, Boulder, CO 80305–3328, Tel: (303) 497–3244, E-mail: *pkwright@boulder.nist.gov*, Web site: *http://surf.boulder.nist.gov/*.

3. Submission Dates and Times—All SURF NIST Boulder Program proposals must be received no later than 5 p.m. Mountain Standard Time on February 17, 2004.

V. Application Review Information

1. Criteria—For the SURF NIST Boulder Program, the evaluation criteria are:

(A) Evaluation of Student's Academic Ability and Commitment to Program Goals: Includes evaluation of completed course work; expressed research interest; compatibility of the expressed research interest with SURF NIST Boulder Program research areas; research skills; grade point average in courses relevant to the SURF NIST Boulder Program; career goals; honors and activities;

(B) Evaluation of Applicant Institution's Commitment to Program Goals: Includes evaluation of the institution's academic department(s) relevant to the discipline(s) of the student(s).

Each of these factors is given equal weight in the evaluation process.

2. Review and Selection Process—All SURF NIST Boulder Program proposals are submitted to the Administrative Coordinator. Each proposal is examined for completeness and responsiveness. Substantially incomplete or non-responsive proposals will not be considered for funding, and the applicant will be so notified. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed. Proposals should include the following:

(A) Student Information:

(1) Student application information cover sheet;

(2) Academic transcript for each student nominated for participation (it is recommended that students have a G.P.A. of 3.0 or better, out of a possible 4.0);

(3) a statement of motivation and commitment from each student to participate in the SURF NIST Boulder program, including a description of the student's prioritized research interests;

(4) a resume for each student;

(5) two letters of recommendation for each student;

(6) verification of U.S. citizenship or permanent legal resident status for each student; and

(7) verification of health insurance coverage for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research programs; and

(2) A summary list of the student(s) being nominated.

Institution proposals will be separated into student/institution packets. Each student/institution packet will be comprised of the required application forms, including a complete copy of the student information and a complete copy of the institution information. The student/institution packets will be directed to a review committee of NIST staff appointed by the SURF NIST Boulder Program Directors. Each SURF Program packet will be reviewed by three independent, objective NIST employees, who are knowledgeable in the scientific areas of the program and are able to conduct a technical review of each student/institution packet based on the Evaluation Criteria for the SURF NIST Boulder Program described in this notice. Each technical reviewer will recommend that each student/institution packet be placed into one of three categories: Priority Funding; Fund if Possible; and Do Not Fund. Each student/institution packet will then be placed into one of the three categories by the SURF NIST Boulder Program Directors, who will take into consideration the reviewers' recommendations, the relevance of the student's course of study to the program objectives of the NIST Boulder Laboratories as described in the Program Description and Objectives section of this notice, the relevance of the student's statement of commitment to the goals of the SURF NIST Boulder Program, and the availability of funding.

Student/institution packets placed in the Priority Funding category will be selected for funding in the SURF NIST

Boulder Program. Student/institution packets placed in the Do Not Fund category will not be considered for funding.

Student/institution packets placed in the Fund if Possible Category will be considered for funding by the SURF NIST Boulder Program when possible. For example, when an award has been declined by another applicant, a back-up will be selected from student/institution packets in this category. In this case, it is likely that either the student's second or third choice of research opportunity would be assigned. In making selections for funding, the SURF NIST Boulder Program Directors will take into consideration the recommendations of the reviewers who conducted the technical reviews, the program objectives of the NIST Boulder laboratory in which the student's requested research opportunity resides as described in the Program Description and Objectives section of this notice, the relevance of the student's statement of commitment to the goals of the SURF NIST Boulder Program, and the availability of funding.

Students not selected for funding for either their first, second or third choice of research opportunities, and students who did not designate a second or third choice, will then be considered for funding from all Boulder Laboratories that still have slots available. In making selections for funding, the SURF NIST Boulder Program Directors will take into consideration the recommendations of the reviewers who conducted the technical reviews, the program objectives of the NIST Laboratory in which their SURF NIST Boulder SURF Program research opportunity resides as described in the Program Description and Objectives section of this notice, the relevance to the goals of the SURF NIST Boulder Program, and the availability of funding.

Student/institution packets placed in the Fund if Possible category, but not selected through the process described above, will not be funded.

The final approval of selected applications and award of cooperative agreements will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

The *SURF NIST Boulder Program* will retain one copy of each unsuccessful application for three years for record keeping purposes, and unsuccessful applicants will be notified in writing. The remaining copies will be destroyed.

VI. Award Administration Information

Award administration information for this program may be found in the Award Administration Information section at the end of this notice.

VII. Agency Contact(s)

Technical questions for the Boulder Laboratories SURF Program should be directed to the following contact person: Ms. Phyllis Wright, Administrative Coordinator, National Institute of Standards and Technology, 325 Broadway, Mail Stop 346.16, Boulder, CO 80305–3328, Tel: (303) 497–3244, E-mail: *pkwright@boulder.nist.gov*, Web site: *http://surf.boulder.nist.gov/*.

All grants related administration questions concerning this program should be directed to Joyce Brigham, NIST Grants and Agreements Management Division at (301) 975–6328 or *joyce.brigham@nist.gov*.

Where websites are referenced within this notice, those without internet access may contact the appropriate Program official to obtain information.

VI. Award Administration Information

The following Award Administration Information applies to all programs announced in this notice:

1. Award Notices

A successful applicant will be notified of award through the receipt of an obligated/approved Financial Assistance Award document. The document, which will include the award period, the budget, special award conditions, and applicable policy and regulatory references that will govern the award, is sent to the successful applicant via surface mail and requires a counter-signature of an authorized official.

2. Administrative and National Policy Requirements

a. *Catalog of Federal Domestic Assistance Name and Number:* Measurement and Engineering Research and Standards—11.609.

b. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation. On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block. In addition, the following information is applicable to all programs described above.

c. *Collaborations with NIST Employees:* All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

d. *Use of NIST Intellectual Property:* If the applicant anticipates using any NIST-owned intellectual property, to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. sec. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section 20 of the Department of Commerce Pre-Award Notification Requirements, 66 FR 49917 (2001), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States

government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

e. *Funding Availability:* For all Financial Assistance programs listed in this notice, awards are contingent on the availability of funds.

f. *Initial Screening of all Applications:* All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

g. *Fees and/or Profit:* It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

h. *Paperwork Reduction Act:* The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, CD–346, SF–269, and SF–272 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, 0605–0001, 0348–0039, and 0348–0003.

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

i. *Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects:* Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

On December 3, 2000, the U.S. Department of Health and Human Services (DHHS) introduced a new Federalwide Assurance of Protection of Human Subjects (FWA). The FWA covers all of an institution's Federally-supported human subjects research, and eliminates the need for other types of Assurance documents. The Office for Human Research Protections (OHRP) has suspended processing of multiple project assurance (MPA) renewals. All existing MPAs will remain in force until further notice. For information about FWAs, please see the OHRP Web site at *http://ohrp.osophs.dhhs.gov/humansubjects/assurance/fwas.htm.*

In accordance with the DHHS change, NIST will continue to accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current, valid MPA from DHHS. NIST also will accept the submission of human subjects protocols that have been approved by IRBs possessing a current, valid FWA from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) the derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at http:// for funding such research.

j. *Research Projects Involving Vertebrate Animals:* Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanased, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

k. *Type of Funding Instrument:* The funding instrument will be a grant or cooperative agreement, depending on the nature of the proposed work. A grant will be used unless NIST is "substantially involved" in the project, in which case a cooperative agreement will be used. A common example of substantial involvement is collaboration between NIST scientists and recipient scientists or technicians. Please see the DoC Grants and Cooperative Agreements Interim Manual which may be found on the Internet at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.osec.doc.gov/oebam/GCA_manual.htm.* NIST will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NIST is not available under this announcement.

If a proposal submitted under this Notice is not properly funded by a grant or cooperative agreement, NIST will consider whether the proposal may be appropriately funded through procurement, interagency agreement, or another mechanism that does not involve a grant or cooperative agreement. NIST's review and consideration of that proposal will be consistent with the requirements applicable to that funding mechanism.

l. *Indirect Costs:* For the SURF Gaithersburg and Boulder Programs, no Federal funds will be authorized for Indirect Costs (IDC) nor fringe benefits; however, an applicant may provide for IDC and/or fringe benefits under his/her portion of Cost Sharing.

m. *Executive Orders:* This funding notice was determined to be not significant for purposes of Executive Order 12866.

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

Applications under these programs are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

n. *Administrative Procedure Act/Regulatory Flexibility Act:* Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment

are not required under the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

o. *Limitation of Liability:* Funding for the programs listed in this notice is contingent upon the availability of Fiscal Year 2004 appropriations. NIST issues this notice subject to the appropriations made available under the current continuing resolution, H.J. Res. 69, "Making continuing appropriations for the fiscal year 2004, and for other purposes," Public Law 108–84, as amended by H.J. Res. 75, Public Law 108–104, H.J. Res. 76, Public Law 108–107, and H.J. Res. 79, Public Law 108–135. NIST anticipates making awards for the programs listed in this notice provided that funding for the programs is continued beyond January 31, 2004, the expiration of the current continuing resolution. In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NIST to award any specific project or to obligate any available funds.

The following are examples of the Special Award Conditions that may be applied to the recipients award document:

a. *Program Income:* Program income, as defined at 15 CFR 14.24 (non-profits and colleges) or 15 CFR 14.24.25 (states), earned during the award period shall be retained by the recipient and shall be deducted from the total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Grants Officer authorizes otherwise. Program income, which the Recipient did not anticipate at the time of the award, must be used to reduce the Department's contribution rather than to increase the funds committed to the project.

b. Supplemental Information to DoC, Financial Assistance Standard Term and Condition, K.02, titled "Rights to Inventions." The Recipient shall submit to the National Institute of Standards and Technology a final patent report listing all inventions disclosed or a certification that no subject inventions were disclosed during the award period. This report is due to the Grants Officer within 90 days from the expiration date of this award.

c. General Publication Guidelines:

(a) Whenever possible, the results of the research should be published in the open scientific literature in such a way as to be generally available to American Scientific Libraries.

(b) The Federal Program Officer is responsible for insuring appropriate dissemination of information resulting from a grant/cooperative agreement.

(c) The Journal of Research of NIST may be used as a medium of publication, but the Principal Investigators are free to choose the place of publication in the best scientific interest.

(d) In such publications, acknowledgment shall be made of sponsorship by NIST. Normally this is done by a footnote reading, "This work was performed under the sponsorship of the U. S. Department of Commerce, National Institute of Standards and Technology," or words to that effect.

(e) If the publication is copyrighted, the statement "Reproduction of this article, with the customary credit to the source, is permitted" should be added.

(f) Manuscripts intended for publication shall be forwarded to the Federal Program Officer for review prior to release.

(g) When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all recipients receiving Federal funds, including States and local governments, shall clearly state the:

(1) Percentage of the total costs of the program or project which will be financed with Federal money;

(2) Dollar amount of federal funds for the project or program; and,

(3) Percentage and dollar amount of the total costs of the project or program financed by non-federal sources.

d. *Interest:* This award is subject to 15 CFR 14.22 requiring recipients of Federal financial assistance to maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts (with the exception of $250 per year, which may be retained for administrative expenses) shall be remitted promptly, but not less frequently than quarterly to NIST at the address listed below:

NIST Accounts Receivable, 100 Bureau Drive, STOP 3751, Building 101, Room A809, Gaithersburg, MD 20899–3751.

e. *Supplementary Condition to DoC Standard Term and Condition D.01, titled, "Organization-wide, Program Specific, and Project Audits, paragraph b.:* Since the period of this award is less than two years and the recipient is a for-profit organization, the NIST requires that the recipient provide the Grant Officer with one of the following audits:

(1) An organization-wide audit that is conducted by an independent Certified Public Accountant (CPA) in accordance with Generally Accepted Government Auditing Standards, that encompasses the period of performance of this award and provides for a review of the costs associated with this award and all other revenue and income of the recipient, and certification that the recipient has complied with all the terms and conditions related to the financial management standards found at 15 CFR 14.21; or

(2) A project audit conducted by an independent CPA in accordance with Generally Accepted Government Auditing Standards, similar to that found in OMB, Circular A–133 and that:

(i) Provides for a review and determination of the appropriateness of the costs associated with this award in accordance with the applicable cost principles as specified on the cover sheet of this award;

(ii) Provides for a new review and determination of the recipient's compliance with the terms, conditions, laws and regulations governing this award; and

(iii) Reviews the financial statements of the organization and provides an opinion.

The Recipient shall submit either (1) or (2) above to the Grants Officer within 90 days of the expiration date of this award.

f. Return Payments for Funds Withdrawn Through ASAP: Funds that have been withdrawn through ASAP may be returned to ASAP via the Automated Clearing House (ACH) or via FEDWIRE. The ACH or FEDWIRE transaction can only be done by the Recipient's financial institution. Full or partial amounts of payments received by a Payment Requestor/Recipient Organization may be returned to ASAP. All funds returned to the ASAP system will be credited to the ASAP Suspense Account. The Suspense Account allows the Regional Financial Center to monitor returned items and ensure that funds are properly credited to the correct ASAP account. Returned funds that cannot be identified and classified to an ASAP account will be dishonored and returned to the originating depository financial institution (ODFI).

It is essential that the Payment Requestor/Recipient Organization provide its financial institution with ASAP account information (ALC, Recipient ID and Account ID) to which the return is to be credited. Additional detailed information can be found at *http://www.fms.treas.gov/asap/pay-return2.pdf.*

g. Supervision of the Recipient's Researchers on the NIST Site: The Recipient shall control the means and manner of its researcher(s)' activities, including research conducted on the NIST campus. The Recipient shall provide a salary, stipend, or other funding to the researcher(s), and shall establish the researcher(s)' work schedule and tenure. The Recipient is the supervisor of record for the researcher(s), and shall coordinate with NIST as needed to ensure that the research remains consistent with NIST program objectives. Staff and affiliates of the Recipient conducting research on a NIST site shall sign and abide by the terms of the NIST Guest Researcher Agreement.

NIST shall collaborate on the research as described in a Special Award Condition, titled NIST Participation, (that will change accordingly per award), and shall coordinate with the Recipient as needed regarding progress on the research. NIST shall have no firing or other terminating authority over the employment or affiliation status of the Recipient's researcher(s). Any issues related to performance or conduct in the laboratory involving researcher(s) shall be immediately reported to the Recipient. Any suspension or termination action on this award will comply with 15 CFR 14.60–.62 and the Department of Commerce Financial Assistance Standard Terms and Conditions, B.02 and B.05.

h. The Recipient shall comply with the requirements found in the Notice of Funding Availability published in the **Federal Register** and incorporated by reference into this award.

i. NIST Implementation of Department of Commerce, Financial Assistance Standard Terms and Conditions, Dated October 2001, Section A.02, Award Payments.

(1) The advance method of payment shall be authorized unless otherwise specified in a special award condition.

(2) Payments will be made through electronic funds transfers, using the Department of Treasury's Automated Standard Application for Payment (ASAP) system, and in accordance with the requirements of the Debt Collection Improvement Act of 1996. The following information is required when making withdrawals for this award (1) ASAP account identification (id) = award number found on the cover sheet of this award; (2) Agency Location Code (ALC) = 13060001; and (3) Region Code = 01. Recipients do not need to submit a "Request for Advance or Reimbursement" (SF–270) for payments relating to this award. If you are not enrolled as an ASAP Recipient Organization you must complete the enrollment process with your Federal Reserve Bank, Regional Finance Center. Enrollment applications and information can be found at *http//www.fms.treas.gov/asap/handbook.html.* If you need a paper copy of the enrollment documentation please contact the Grant Specialist responsible for this award.

(3) Advances taken through the ASAP shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned, via an ASAP credit, to the account from which the advanced funding was withdrawn. Advances shall be for periods not to exceed 30 days.

(4) This award has the following control or withdraw limits set in ASAP:

_____None
_____Agency Review required for all withdrawals (see explanation below)
_____Agency Review required for all withdrawal requests over $_____ (see explanation below)
_____Maximum Draw Amount controls (see explanation below)
$_____ each month
$_____ each quarter
$_____ each year

3. Reporting

a. The Department of Commerce Financial Assistance Standard Terms and Conditions dated October, 2001 provides policy guidelines for recipients. Financial and Programmatic Reporting Requirements for grants and cooperative agreements are outlined below. Please see the Department of Commerce Financial Assistance Standard Terms and Conditions dated October, 2001 which can be found on the Internet at *http://www.osec.doc.gov/oebam/standards.htm.*

b. Financial Requirements—Financial Reports

1. The Recipient shall submit a "Financial Status Report" (SF–269) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF–269 shall be submitted within 90 days after the expiration date of the award.

2. The Recipient shall submit a "Federal Cash Transactions Report" (SF–272) for each award where funds are advanced to Recipients. The SF–272 should be submitted on a quarterly basis for periods ending March 31, June 30, September 30, and December 31. The SF–272 is due 15 working days following the end of each reporting period unless otherwise specified in a special award condition.

3. All financial reports shall be submitted in triplicate (one original and two copies) to the Grants Officer.

c. Programmatic Requirements—Performance (Technical) Reports

1. For SURF Gaithersburg and Boulder Programs—Deviation to the DoC, Standard Term and Condition B.01, entitled, "Performance (Technical) Reports."

The technical abstract prepared by the student at the end of the SURF program shall constitute and fulfill the requirement for a final technical report. The abstract is the only required report that shall be submitted by the recipient. In addition, the Recipient must submit a SF–269 at the end of the program.

Dated: January 12, 2004.

Arden L. Bement, Jr.,

Director, NIST.

[FR Doc. 04–975 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020418091–3272–02]

Ballast Water Technology Demonstration Program: Request for Proposals for Fiscal Year 2004

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of request for proposals.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), in cooperation with the U.S. Fish and Wildlife Service (Service) and the U.S. Maritime Administration (MARAD), publishes this notice to solicit proposals to conduct ballast water treatment technology testing and demonstration projects. The Ballast Water Technology Demonstration Program supports projects to develop, test, and demonstrate technologies that treat ships' ballast water in order to reduce the threat of introduction of aquatic invasive species to U.S. waters through the discharge of ballast water. The technologies being proposed for investigation should have promise of being effective at removing, inactivating, or preventing the transfer of aquatic organisms in the ballast water, should be practicable from the standpoint of ship operations, safety, environmental protection, and the ability to meet all

regulatory requirements, and should have the potential to be developed into commercially viable product.

DATES: Preliminary proposals must be received by 5 p.m. e.s.t. February 13, 2004. Full proposals must be received by 5 p.m. e.s.t. on February 17, 2004. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals.

ADDRESSES: Proposals must be submitted to: National Sea Grant College Program, R/SG, Attn: Ballast Water Competition, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Phone number for express mail applications is 301–713–2435.

Electronic Access: The full funding announcement is available via the Ballast Water Program Web site noted below or NOAA's grant opportunities Web site: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML* or through the FedGrants Web site: *http://www.fedgrants.gov* or by contacting the program officials identified above.

FOR FURTHER INFORMATION CONTACT: Information Contact(s): Dorn Carlson at the above address, 301–713–2435; via Internet at *Dorn.Carlson@noaa.gov;* or Pamela Thibodeaux, U.S. Fish and Wildlife Service, 703–358–2493; via Internet at *Pamela Thibodeaux@fws.gov;* or Deborah Aheron, U.S. Maritime Administration, 202–366–8887; via Internet at *Deborah.Aheron@marad.dot.gov.* Further information can be obtained from the above information contacts, or on the Ballast Water Program Web site: *http://www.nsgo.seagrant.org/research/nonindigenous/ballast.*

SUPPLEMENTARY INFORMATION: NOAA published an omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarships/internships for Fiscal Year 2004 in the **Federal Register** on June 30, 2003 (68 FR 38678). That notice indicated that additional program initiatives, such as the Ballast Water Technology Demonstration Program, might be announced in subsequent **Federal Register** notices. The evaluation criteria and selection factors for projects contained in the June 30, 2003, Omnibus notice are applicable to this solicitation. For a copy of the June 30, 2003, omnibus notice, please go to: *http://www.ofa.noaa.gov/amd/~SOLINDEX.HTML.*

Statutory Authority: 16 U.S.C. 4701 *et seq.*; 33 U.S.C. 1121–1131; 46 U.S.C. App 1211 (2000); 50 U.S.C. App 1744 (2000).

CFDA: 11.417, Sea Grant Support; 15.FFA Fish and Wildlife Management Assistance

Program Description

The National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (Service), and the U.S. Maritime Administration (MARAD) expect to entertain proposals to conduct ballast water treatment technology testing and demonstration projects. The Ballast Water Technology Demonstration Program supports projects to develop, test, and demonstrate technologies that treat ships' ballast water in order to reduce the threat of introduction of aquatic invasive species to U.S. waters through the discharge of ballast water. The technologies being proposed for investigation should have promise of being effective at removing, inactivating, or preventing the transfer of aquatic organisms in the ballast water, should be practicable from the standpoint of ship operations, safety, environmental protection, and the ability to meet all regulatory requirements, and should have the potential to be developed into commercially viable product. Technology demonstration proposals must include a long-term development plan that outlines how the technology will be developed from its current state into an effective, commercially viable ballast water treatment system, and how the proposed project is an essential part of this development.

Funding Availability

Depending on 2004 appropriations, NOAA and the U.S. Fish and Wildlife Service expect to make available up to about $2 million in FY 2004, and MARAD expects to make available several vessels for use as test platforms, to support ballast water treatment technology demonstration projects. The maximum amount of award will vary with the scale of the proposed project. Anticipated maximum awards for laboratory-scale experiments will be $200,000; for full-scale demonstration projects, $400,000. If $2 million is made available, approximately 10 grants with a median value of about $160,000 are anticipated to be awarded. Cost Sharing Requirements: None.

Eligibility

Individuals, institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are eligible. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals.

Proposal Review and Selection Process for Projects

An initial administrative review is conducted at both the preliminary and full proposal stages to determine compliance with requirements and completeness of the application. This program includes a pre-application process that provides an initial review and feedback to the applicants. Preliminary proposals will not be subjected to a selection process. They will be used to assess the nature of full applications to be expected, to select appropriate technical reviewers for full applications, and to develop technical and formatting guidance that will be supplied to all applicants who submitted preliminary applications, to assist them in writing their full applications. All those (and only those) who submitted preliminary proposals meeting the deadline and other requirements of this notice are eligible to submit full proposals.

Full proposals are subject to merit review which is conducted by mail reviewers and/or peer panels consisting of government, academic, and industry experts. Each reviewer will individually evaluate and rank proposals using the evaluation criteria. There will be no consensus advice given by the mail reviewers or review panel. A minimum of three merit reviewers will review each proposal. The merit reviewers' ratings are used to produce a rank order of the proposals. Their recommendations and evaluations will be considered by the Federal Program Officers for NOAA, the Service, and MARAD who will award in rank order of the merit review ratings unless the proposal is justified to be selected out of rank order based upon the appropriate selection factors.

Federal Program Officers from NOAA, the Service, and MARAD will make the final recommendations concerning proposals for funding and will work together to reach decisions, but the final responsibility for making decisions regarding disposition of funds and other resources rests with the agency that is providing that resource. Applicants may be asked to respond to questions or modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current DOC or DOI grants procedures. Grants officers from each of the respective agencies are the officials authorized to make awards and obligate funds.

Intergovernmental Review

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

Limitation of Liability

Funding for the program listed in this notice is contingent upon the availability of Fiscal Year 2004 appropriations. NOAA issues this notice subject to the appropriations made available under the current continuing resolution, H.J. Res. 69, "Making continuing appropriations for the fiscal year 2004, and for other purposes," Public Law 108–84, as amended by H.J. Res. 75, Public Law 108–104, H.J. Res. 76, Public Law 108–107, and H.J. Res. 79, Public Law 108–135. NOAA, the Service, and MARAD anticipate making awards for the program listed in this notice provided that funding for the program is continued beyond January 31, 2004, the expiration of the current continuing resolution. In no event will NOAA, the Service, or MARAD be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA, the Service, or MARAD to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, for programs that have deadline dates on or after October 1, 2003, they will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. *See* the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 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 the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to the awards made by NOAA.

Paperwork Reduction Act

Applications involve collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, SF–LLL, and CD–346 has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. 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 requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

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

Administrative Procedure Act/ Regulatory Flexibility Act

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

Dated: January 12, 2004.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 04–950 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011204B]

North Pacific 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 North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will held from February 2 through February 10, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel will begin at 8 a.m., Monday, February 2, and continue through Saturday, February 7, 2004. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, February 2, and continue through Wednesday, February 4, 2004.

The Council will begin its plenary session at 8 a.m. on Wednesday, February 4 continuing through Tuesday February 10. All meetings are open to the public except executive sessions. The Enforcement Committee will meet Tuesday, February 3, at 4:30 pm in the Aleutian Room.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

(a) Executive Director's Report
(b) NMFS Report
(c) United States Coast Guard Report
(d) Alaska Department Fish & Game Reports
(e) United States Fish & Wildlife Report
(f) International Pacific Halibut Commission Report

2. Gulf of Alaska Rationalization (GOA): (a) Receive Board of Fisheries Workgroup Report; (b) Review and refine alternatives and options; (c) Review GOA salmon/crab bycatch discussion paper.

3. Observer Program: (a) Program overview (Alaska Fishery Science Center); (b) Receive progress report on Program Restructuring Analysis.

4. Improved Retention/Improved Utilization (IR/IU): (a) Receive update on Amendment 79; (b) Review Progress report on Amendments 80a and 80b.

5. Habitat Areas of Particular Concern (HAPC): Receive report on proposals received.

6. Crab Environmental Impact Statement (EIS): Initial review and release for public comment.

7. Congressional legislative (T): Discuss and provide direction on

Aleutian Island pollock and GOA rockfish.

8. American Fisheries Act: Review 2003 co-op reports and 2004 co-op agreements.

9. Draft Programmatic Supplemental Impact Statement (DPSEIS): (a) Report on comments received on draft; (b) Report on Endangered Species Act Consultation; (c) Review Groundfish Fishery Management Plan.

10. Steller Sea Lion (SSL) mitigation adjustments in GOA: Review NMFS informal consultation.

11. Groundfish Management: (a) Review National Bycatch Strategy and Alaska Region Report; (b) Review Crab/Groundfish overfishing definitions and multispecies models (SSC); (c) Review Exempted Fishing Permits (EFP) request for rockfish fishery.

12. Scallop Management: (a) Review Stock Assessment Fishery Evaluation; (b) Discuss Fishery Management Plan update.

13. Staff Tasking: Review tasking and provide direction to staff.

14. Other Business.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. C–1 Observer Program
2. C–4 HAPC
3. C–5 Crab EIS
4. C–8 DPSEIS
5. C–9 SSL Mitigations
6. D–1 Groundfish Management
7. D–2 Scallop Management

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Enforcement Committee: The Enforcement Committee will meet during each meeting of the Council to discuss enforcement issues or concerns related to any subject on the Council agenda.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: January 12, 2004.

Peter H. Fricke,

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

[FR Doc. 04–1011 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011204D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for Pacific whiting will hold a work session, which is open to the public.

DATES: The Pacific whiting STAR Panel will meet February 2, 2004 through February 4, 2004. Each day, the meeting will begin at 8 a.m. and end at 5 p.m., or as necessary to complete business.

ADDRESSES: The Pacific whiting STAR Panel meeting will be held at the National Marine Fisheries Service, Northwest Fisheries Science Center, Auditorium, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: (206) 860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Groundfish Staff Officer: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.) A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting. Since parking is at a premium at the Northwest Fisheries Science Center, car pooling and mass transit are encouraged.

Although non-emergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: January 12, 2004.

Peter H. Fricke,

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

[FR Doc. 04–1009 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011204E]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting to plan annual management measures, the biennial management cycle, and strategize 2004 Council initiatives. This meeting is open to the public.

DATES: The GMT working meeting will convene on Tuesday, February 3, 2004 at 8:30 a.m. and may go into the evening until business for the day is completed. The GMT meeting will reconvene from 8:30 a.m. to 5 p.m. Wednesday, February 4 through Friday, February 6 until business for the day is completed.

ADDRESSES: The GMT working meeting will be held at the Pacific Fishery Management Council office, West Conference Room, 7700 NE Ambassador

Place, Suite 200, Portland, OR 97220; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council Staff Officer for Groundfish, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to plan the GMT's annual schedule and strategies to effectively aid the Council in managing 2004 West Coast groundfish fisheries and Council initiatives expected to arise in 2004. Additionally, the GMT will discuss groundfish management measures in place for the winter and spring months, respond to assignments relating to implementation of the Council's groundfish strategic plan, consider technical aspects of draft stock rebuilding plans and analyses, discuss recommended modifications to the Recreational Fishery Information Network (RecFIN) database with the RecFIN Statistical Committee, discuss a new Pacific whiting stock assessment, and address other assignments relating to groundfish management.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: January 12, 2004.

Peter H. Fricke,

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

[FR Doc. 04–1010 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010804C]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Law Enforcement Committee and Advisory Panel to review Committee reports, current regulations for enhancement of compliance, and develop Committee priorities.

DATES: The joint meeting will take place February 3-4, 2004. Meeting participants will meet from 1:30 p.m. until 5 p.m. on February 3, 2004 and again from 8:30 a.m. until 4 p.m. on February 4, 2004.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 800/334-6660 or 843/571-1000.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: 843/571-4366 or 866/SAFMC-10; fax: 843/769-4520.

SUPPLEMENTARY INFORMATION: Items for discussion at the joint meeting include but are not limited to: (1) a review of the Committee Report ≥Precepts for Efficient Fisheries Enforcement≥; (2) a review of current mackerel regulations for enhancement of compliance; and (3) the development of near and long-term priorities for the Law Enforcement Committee.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 2, 2004.

Dated: January 12, 2004.

Peter H. Fricke,

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

[FR Doc. 04–1007 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010804D]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Ecosystem-Based Management Committee to discuss and develop definitions and approaches to ecosystem-based management.

DATES: The meeting will take place February 5–6, 2004. Meeting participants will meet from 8:30 a.m. until 5 p.m. on February 5, 2004 and again from 8:30 a.m. until 12 noon on February 6, 2004.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 800/334–6660 or 843/571–1000.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: 843/571–4366 or 866/SAFMC–10; fax: 843/769–4520.

SUPPLEMENTARY INFORMATION: The Ecosystem-Based Management Committee will review and discuss definitions of an ecosystem and an ecosystem approach to management, terms that have been widely discussed and applied to natural resource management to date. Using these comprehensive definitions as a foundation, the Committee will then develop a working definition of the terms and ideas that is applicable to the South Atlantic Region. The Committee will also discuss opportunities to expand the current fishery management plans and the Habitat Plan in and effort to best integrate ecosystem-based

principles into the fishery management process.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 3,2004.

Dated: January 12, 2004.

Peter H. Fricke,

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

[FR Doc. 04–1008 Filed 1–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 17, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: January 12, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension of a currently approved collection.

Title: Mathematics and Science Partnerships—Basic SEA Information.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; individuals or household, businesses or other for-profit, not-for-profit institutions, farms, Federal government.

Reporting and Recordkeeping Hour Burden:

Responses: 780.

Burden Hours: 31,200.

Abstract: The Mathematics and Science Partnerships program, Title II, part B of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2002 (Pub. L. 107–110) became a State educational agency (SEA)-administered formula grant program. Section 2202 of the ESEA has the Department make awards to SEAs without allowance for its review and approval of a program application. Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2274. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *kathy.axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–953 Filed 1–15–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–250–A]

Application to Export Electric Energy; PSEG Energy Resources & Trade LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: PSEG Energy Resources & Trade LLC (PSEG ER&T) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 17, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 6, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–250 authorizing PSEG ER&T to transmit electric energy from the United States to Canada as a power marketer using international electric transmission facilities. That two-year authorization expired on November 6, 2003.

On October 30, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application

from PSEG ER&T to renew its authorization to transmit electric energy from the United States to Canada. PSEG ER&T operates as a marketer and broker of electricity, capacity, ancillary services and natural gas products on a wholesale basis throughout the Eastern and Midwestern United States. PSEG ER&T is a fully integrated marketing and trading organization that is active in the long-term and spot wholesale energy markets.

PSEG ER&T proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by PSEG ER&T, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the PSEG ER&T application to export electric energy to Canada should be clearly marked with Docket EA–250–A. Additional copies are to be filed directly with Steven R. Teitelman, President, PSEG Energy Resources & Trade LLC, 80 Park Plaza, T21, Newark, NJ 07102 and Thomas P. Thackston, Senior Attorney, PSEG Services Corporation, 80 Park Plaza, T5G, Newark, New Jersey 07102.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on January 12, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–987 Filed 1–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

West Valley Demonstration Project Final Waste Management Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the West Valley Demonstration Project (WVDP) Final Waste Management Environmental Impact Statement (EIS), Cattaraugus County, West Valley, New York (DOE/EIS—0337F). DOE has prepared this Final EIS pursuant to the National Environmental Policy Act (NEPA) and applicable NEPA regulations issued by the Council on Environmental Quality (40 Code of Federal Regulations (CFR) Parts 1500–1508) and by DOE (10 CFR part 1021). DOE proposes to ship radioactive wastes that are either currently in storage on the WVDP site or that will be generated from WVDP operations over the next ten years, to offsite disposal locations. The Final EIS evaluates the potential environmental impacts of the proposed action, including impacts to workers and the public from waste transportation. The Final EIS also analyzes a No Action Alternative, under which most wastes would continue to be stored over the next ten years, and an alternative under which certain wastes would be shipped to interim offsite storage locations prior to disposal.

ADDRESSES: Requests for copies of the Final EIS or requests for information about this document should be directed to: Mr. Daniel W. Sullivan, EIS Document Manager, DOE West Valley Area Office, 10282 Rock Springs Road, WV–49, West Valley, NY 14171–9799, Telephone: (800) 633–5280 or (716) 942–2152.

Copies of the Final EIS have been distributed to Federal, State, and local officials; Members of Congress; agencies; organizations; and individuals who may be interested or affected. The Final EIS will be available at *http://tis.eh.doe.gov/nepa/docs.docs.htm* or *www.wv.doe.gov*. Copies of the Final EIS and supporting technical reports also are available for public inspection at the following locations:

Hulbert Library of the Town of Concord, 18 Chapel Street, Springville, NY 14141.

Central Library of the Buffalo, and Erie County Public Library System, Science and Technology Department, Lafayette Square, Buffalo, NY 14203.

West Valley Central School Library, 5359 School Street, West Valley, NY 14171.

The Olean Public Library, 134 North 2nd Street, Olean, NY 14760.

FOR FURTHER INFORMATION CONTACT: For additional information on this EIS, contact Mr. Daniel Sullivan at the address provided above. For general information on the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The WVDP is located on the Western New York Nuclear Service Center (also referred to as the Center). The Center comprises approximately 13.5 square kilometers (five square miles) in West Valley, New York, and is located in the Town of Ashford, approximately 50 kilometers (30 miles) southeast of Buffalo, New York. The Center was the site of a commercial nuclear fuel reprocessing plant, which was the only one to have operated in the United States. The Center operated under a license issued by the Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission [NRC]) in 1966 to Nuclear Fuel Services, Incorporated, and the New York State Atomic and Space Development Authority, now known as the New York State Energy Research and Development Authority (NYSERDA).

During reprocessing, spent nuclear fuel from commercial nuclear power plants and DOE sites was chopped, dissolved, and processed by a solvent extraction system to recover uranium and plutonium. Fuel reprocessing ended in 1972 when the plant was shut down

for modifications to increase its capacity, reduce occupational radiation exposure, and reduce radioactive effluents.

In 1976, Nuclear Fuel Services estimated that over $600 million would be required to modify the facility to increase its capacity and to comply with changes in regulatory standards. As a result, the company decided to withdraw from the nuclear fuel reprocessing business and exercise its contractual right to yield responsibility for the Center to NYSERDA. Nuclear Fuel Services withdrew from the Center without removing any of the in-process nuclear wastes. NYSERDA now holds title to and manages the Center on behalf of the people of the State of New York.

In 1980, Congress passed the WVDP Act (Pub. L 96–368). This Act requires DOE to demonstrate that the liquid high-level radioactive waste (HLW) from reprocessing can be safely managed by solidifying it at the Center and transporting it to a geologic repository for permanent disposal. In addition to HLW, the WVDP also manages low-level radioactive waste (LLW), transuranic (TRU) waste, and mixed waste (radioactive and hazardous) generated as a result of Project activities.

The WVDP Facilities and areas storing the waste are: The Process Building, which includes approximately 70 rooms and cells that comprised the NRC-licensed spent nuclear fuel reprocessing operations (one of the cells—the Chemical Process Cell—now serves as the storage facility for the canisters containing the HLW, which has been immobilized through vitrification); the Tank Farm, which includes the underground HLW storage tanks; Waste Storage Areas, which include several facilities such as Lag Storage Areas and the Chemical Process Cell Waste Storage Area; and the Radwaste Treatment System Drum Cell (Drum Cell), which stores cement-filled drums of stabilized LLW.

DOE announced its intent to prepare this EIS in a March 2001 Notice of Intent (NOI) (66 FR 16447, March 26, 2001). DOE modified the proposed scope of this EIS as a result of public comments received during scoping and the Department's further evaluation of activities that might be required independently of final decisions on decommissioning and/or long-term stewardship at the WVDP. In the future, DOE plans to issue an EIS on decommissioning and/or long-term stewardship. DOE published an Advance NOI (66 FR 56090, November 6, 2001) inviting preliminary public comment on a proposed scope for the decommissioning and/or long-term stewardship EIS and published an NOI (68 FR 12004, March 13, 2003).

Public Comments

The Waste Management EIS was issued in draft on May 16, 2003, for public review and comment (68 FR 26587 (2003)). The 45-day comment period ended on June 30, 2003, although DOE also considered comments received after that date. Two public hearings on the Draft EIS were held on June 11, 2003, at the Ashford Office Complex near the WVDP site. The Final EIS incorporates public comments received on the Draft EIS and DOE responses.

In response to public comments, several changes were made in the Final EIS. In particular, the option under Alternative B of placing retrievable grout in the HLW tanks as an interim stabilization measure has been eliminated. Information has been added regarding the extent to which the Canadian population within 80 kilometers (50 miles) of the site could be affected by the activities at the site and transportation under routine and accident conditions. In addition, a number of specific technical changes and corrections have been made in response to public comments, and updated DOE guidance regarding health risk factors was used to estimate potential impacts.

Description of Alternatives

The Final EIS analyzes three alternatives for the continued onsite waste management and shipment of wastes to offsite disposal. Under the No Action Alternative, Continuation of Ongoing Waste Management Activities, waste management would include continued storage of existing Class B and Class C LLW, TRU waste, and HLW. Limited amounts of Class A LLW would be shipped for off-site disposal and the remainder would be stored onsite. The waste storage tanks and their surrounding vaults would continue to be ventilated to manage moisture levels as a corrosion prevention measure.

Under DOE's Preferred Alternative A, Offsite Shipment of HLW, LLW, Mixed LLW, and TRU Wastes to Disposal, DOE would ship Class A, B, and C LLW and mixed LLW to one of two potential DOE disposal sites (in Washington or Nevada) or to a commercial disposal site (such as the Envirocare facility in Utah); ship TRU waste to the Waste Isolation Pilot Plant (WIPP) in New Mexico; and ship HLW to the proposed Yucca Mountain HLW Repository. LLW and mixed LLW would be shipped over the next ten years. TRU waste shipments to the WIPP could occur within the next ten years if the TRU waste were determined to meet all the requirements for disposal in this repository. If some or all of WVDP's TRU waste did not meet these requirements, the Department would need to explore other alternatives for disposal of this waste. The waste storage tanks would continue to be managed as described under the No Action Alternative.

Under Alternative B, Offsite Shipment of LLW and Mixed LLW to Disposal, and Shipment of HLW and TRU Waste to Interim Storage, LLW and mixed LLW would be shipped offsite for disposal at the same locations as Alternative A. TRU wastes would be shipped for interim storage at one of five DOE sites: the Hanford Site in Washington; the Idaho National Engineering and Environmental Laboratory (INEEL); the Oak Ridge National Laboratory (ORNL) in Tennessee; the Savannah River Site (SRS) in South Carolina; or WIPP. TRU wastes would subsequently be shipped to WIPP for disposal or interim storage at WIPP until disposal could be arranged. HLW would be shipped to SRS or Hanford for interim storage, with subsequent shipment to Yucca Mountain for disposal. The waste storage tanks would continue to be managed as described under the No Action Alternative.

In addition, DOE considered, but did not analyze, an alternative to construct and maintain waste storage facilities for indefinite storage of waste at the WVDP. DOE presently does not consider that alternative to be practical or reasonable over time, because of continuing costs of construction of new facilities and maintenance of existing facilities.

Record of Decision (ROD)

DOE intends to issue a ROD no sooner than 30 days following publication in the **Federal Register** of the Environmental Protection Agency's Notice of Availability of the WVDP Final EIS. DOE will publish its ROD in the **Federal Register**.

Issued in Washington, DC, on January 12, 2004.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 04–988 Filed 1–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 5, 2004; 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L211, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Annual State of the Flats Presentation by Rocky Flats Officials.
2. Presentation and Discussion of the Original Landfill Interim Measure/ Interim Remedial Action Document.
3. Presentation and Discussion of the Groundwater Interim Measure/Interim Remedial Action Document.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on January 13, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–986 Filed 1–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–026]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 9, 2004.

Take notice that on December 10, 2003, Colorado Interstate Gas Company (CIG) tendered for filing and acceptance by the Federal Energy Regulatory Commission, First Revised Sheet No. 11B to its FERC Gas Tariff, First Revised Volume No.1.

CIG states that the tariff sheet updates a previously filed negotiated rate transaction and is proposed to become effective January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with sections 385.214 or 385.211 of the Commission's rule and 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 proceeding. 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" 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 (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: January 15, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–73 Filed 01–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–342–001 and CP03–343–001]

Discovery Gas Transmission LLC, Discovery Producer Services LLC; Notice of Amendments

January 9, 2004.

Take notice that Discovery Gas Transmission LLC (Discovery), 2800 Post Oak Blvd., Houston, Texas, 77056, filed in Docket No. CP03–342–001 on December 30, 2003, pursuant to section 7(C) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations an amendment to its application for certificate authorization for Discovery's Market Expansion Project. In conjunction with this filing, Discovery Producer Services LLC (DPS) filed, in Docket No. CP03–343–001, an amendment to its application for a limited jurisdiction certificate to provide compression services to Discovery's Market Expansion Project. Discovery amends its Market Expansion Project application to adjust a portion of the route of its proposed pipeline to the proposed interconnection with Columbia Gulf Transmission Company (Columbia Gulf) in response to landowner concerns, to restate its proposed initial rates, and to revise its pro forma tariff to clarify that any commitments to deliver gas to the new delivery point at Transcontinental Gas Pipe Line Corporation (Transco) is subject to Discovery's lease of capacity from Texas Eastern Transmission, LP. In addition, DPS is amending its Compression Services Agreement with Discovery to cover the cost of some piping, valves and other miscellaneous items that will need to be constructed by DPS at the Larose gas processing plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection. These filings may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Any questions regarding the amendment applications should be directed to Kevin R. Rehm, Vice President, Discovery Gas Transmission LLC, 2800 Post Oak Boulevard—Level 36, Houston, Texas 77056, at (713) 215–2694, with fax at (713) 215–3050.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 29, 2004, 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). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–77 Filed 01–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–26–000, et al.]

Invenergy TN LLC, et al.; Electric Rate and Corporate Filings

January 9, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Invenergy TN LLC

[Docket No. EG04–26–000]

Take notice that on December 31, 2003, Invenergy TN LLC, (Invenergy) having a business address of 233 South Wacker Drive, Suite 9450, Chicago, Illinois, 60606, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Invenergy states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating a 27 MW wind-powered generation facility to be constructed in Anderson County, Tennessee and electric energy produced by the facility will be sold exclusively at wholesale.

Comment Date: January 21, 2004.

2. Shuweihat CMS International Power Company

[Docket No. EG04–27–000]

Take notice that on December 31, 2003, Shuweihat CMS International Power Company (Shuweihat CMS), Suite 802, Al Ghaith Tower, Hamdan Street, Abu Dhabi, United Arab Emirates, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Shuweihat CMS states that it is a private joint stock company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the Emirate of Abu Dhabi, United Arab Emirates and selling electric energy at wholesale.

Shuweihat CMS further states that it proposes to own an approximately 1,500 megawatt combined-cycle electric and steam cogeneration facility located in Shuweihat, Abu Dhabi, United Arab Emirates.

Comment Date: January 21, 2004.

3. Shuweihat O&M Limited Partnership

[Docket No. EG04–28–000]

Take notice that on December 31, 2003, Shuweihat O&M Limited Partnership (Shuweihat O&M), Suite 302, Old GASCo Building, Al Kubeirah Street, Corniche West, Abu Dhabi, United Arab Emirates, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Shuweihat O&M states that it is a limited liability partnership that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the Emirate of Abu Dhabi, United Arab Emirates and selling electric energy at wholesale. Shuweihat O&M further states that it proposes to operate an approximately 1,500 megawatt combined-cycle electric and steam cogeneration facility located in Shuweihat, Abu Dhabi, United Arab Emirates.

Comment Date: January 21, 2004.

4. Jubail Energy Company

[Docket No. EG04–29–000]

Take notice that on December 31, 2003, Jubail Energy Company (Jubail), c/o CMS Enterprises Company, One Energy Plaza, Fifth Floor, Jackson, Michigan 49201, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Jubail states that it is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in Saudi Arabia and selling electric energy at retail exclusively to consumers outside the United States. Jubail further states that it proposes to own and operate an approximately 242 megawatt combined-cycle electric and steam cogeneration facility located in Jubail Industrial City in Saudi Arabia.

Comment Date: January 21, 2004.

5. Entergy-Koch Trading, LP, the Dayton Power & Light Company

[Docket Nos. ER01–2781–003 and ER96–2602–005]

Take notice that Entergy-Koch Trading, LP (EKT) and The Dayton Power and Light Company (DPLC) tendered for filing Notification of a non-material change in the Characteristics that the Commission relied upon in granting EKT and DPLC market-based rate authorization under section 205 of the Federal Power Act.

Comment Date: January 21, 2004.

6. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–008]

Take notice that on December 31, 2003, the Market Monitoring Unit of PJM Interconnection, L.L.C. (PJM) submitted its report assessing the status of PJM's load response programs in compliance with the Commission's December 31, 2003, order, 104 FERC ¶ 61,188.

PJM states that copies of the filing have been served on each person on the official services list compiled by the Secretary in this proceeding.

Comment Date: January 21, 2004.

7. New England Power Pool

[Docket No. ER02–2330–023]

Take notice that on December 31, 2003, the New England Power Pool (NEPOOL) Participants Committee submitted its Report on Compliance in response to the requirements of the Commission's June 6, 2003, order, 103 FERC ¶ 61,304 (2003).

The NEPOOL Participants Committee states that copies of the filing were sent to all persons designated on the official service list in Docket No. ER02–2330–000.

Comment Date: January 21, 2004.

8. New England Power Pool

[Docket No. ER02–2330–024]

Take notice that on December 31, 2003, ISO New England Inc. (ISO) submitted an Independent Assessment of Demand Response Programs as directed by the Commission in its June 6, 2003, 103 FERC ¶ 61,304.

The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: January 21, 2004.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–262–014]

Take notice that on December 31, 2003, PJM Interconnection, L.L.C. (PJM) supplemented its previous filings in this docket with additional revisions under sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824d and 824e, to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., the PJM Open Access Transmission Tariff, and the PJM West Reliability Assurance Agreement Among Load-serving Entities in the PJM West Region, for the integration of Commonwealth Edison Company (including Commonwealth Edison Company of Indiana, Inc.) into PJM on May 1, 2004. PJM requests an effective date for these changes of May 1, 2004.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM Region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: January 21, 2004.

10. New England Power Pool

[Docket No. ER04–345–002]

Take notice that on December 31, 2003, ISO New England Inc. (ISO) submitted a Status Report on Load Response Programs as directed by the Commission in its February 25, 2003, 102 FERC ¶ 61,202.

The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: January 21, 2004.

11. Wisconsin Public Service Corporation

[Docket No. ER04–354–000]

Take notice that on December 31, 2003, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to its February 22, 1993, Agreement with the City of Marshfield, Wisconsin concerning the ownership and operation of combustion turbine generation. WPSC states that the amendment implements a revision to the capacity rating of the West Marinette Unit. WPSC requests waiver of the Commission's regulations to permit the amendment to become effective on January 1, 2004.

Comment Date: January 21, 2004.

12. New England Power Pool

[Docket No. ER04–357–000]

Take notice that on December 31, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include CAM Energy Products, LP (CAM), Emera Energy U.S. Subsidiary No. 1 Inc. (EE1), and Epic Merchant Energy, LP (Epic). The Participants Committee requests the following effective dates: January 1, 2004, for the commencement of participation in NEPOOL by Epic; February 1, 2004, for the commencement of participation in NEPOOL by CAM; and March 1, 2004, for the commencement of participation in NEPOOL by EEI.

The New England Power Pool Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: January 21, 2004.

13. New England Power Pool

[Docket No. ER04–358–000]

Take notice that on December 31, 2003, the New England Power Pool (NEPOOL) Participants Committee, pursuant to the Commission's directives in the orders issued August 15, 2003, in Docket No. ER03–894 and April 30, 2003, in Docket No. EL03–25 submitted: (1) The Hydro-Quebec Interconnection Capability Credit (HQICC) values established by the Participants Committee for the 2004/2005 NEPOOL Power Year, (2) the procedural methodology to be used to establish HQICC values beginning with the 2005/2006 NEPOOL Power Year, and (3) related descriptive materials. NEPOOL seeks a June 1, 2004, effective date for the 2004/2005 Power Year HQICC Values.

The New England Power Pool Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: January 21, 2004.

14. Emera Energy U.S. Subsidiary No. 1, Inc.

[Docket No. ER04–359–000]

Take notice that on December 31, 2003, Emera Energy U.S. Subsidiary No. 1, Inc., petitioned the Commission: (1) For authorization to engage in the sale of electric energy and capacity at market-based rates, (2) to waive certain of the Commission's regulations, and (3) to grant certain blanket approvals.

Comment Date: January 21, 2004.

15. Tucson Electric Power Company

[Docket No. ER04–360–000]

Take notice that on December 31, 2003, Tucson Electric Power Company (Tucson Electric) tendered for filing a Notice of Cancellation of its Market Rate Tariff for Affiliate Sales in Docket No. ER98–1150–000. Tucson Electric also seeks to cancel the codes of conduct filed with its market rate tariffs in Docket Nos. ER97–4514–000 and ER98–1150–000.

Comment Date: January 21, 2004.

16. PJM Interconnection, L.L.C.

[Docket No. ER04–361–000]

Take notice that on December 31, 2003, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to provide market-based credits to generation owners that adjust active power output at PJM's direction to provide increased reactive support to the transmission system. PJM requests an effective date of January 1, 2004, for the proposed revisions.

PJM states that copies of the filing were served on all PJM members and on the regulatory commissions in the PJM region.

Comment Date: January 21, 2004.

17. Sierra Pacific Power Company

[Docket No. ER04–362–000]

Take notice that on December 31, 2003, Sierra Pacific Power Company (Sierra) tendered for filing an amendment to the Amended and Restated Operating Agreement No. 2 between Sierra and Mt. Wheeler Power, Inc. Sierra states that the proposed amendment consists of additional language to permit Sierra to interconnect a wind project generator to Mt. Wheeler's Gondor 230kV substation bus. Sierra has requested a November 1, 2003, effective date.

Comment Date: January 21, 2004.

18. Jersey Central Power & Light Company

[Docket No. ER04–363–000]

Take notice that on December 31, 2003, Jersey Central Power & Light Company (JCP&L) tendered for filing a proposed tariff for the sale of power to wholesale purchasers at market-based rates. JCP&L has requested a December 17, 2003, effective date.

Comment Date: January 21, 2004.

19. American Electric Power Service Corporation, Commonwealth Edison Company, and Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER04–364–000]

Take notice that on December 31, 2003, American Electric Power Service Corporation (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) tendered for filing a proposed Schedule 13 Financial Hold Harmless for the tariff of PJM Interconnection, LLC (PJM), to be effective for each company upon the date it transfers function control of its transmission facilities to PJM. ComEd and AEP state that this filing, along with the Joint Operating Agreement filed concurrently by PJM and Midwest Independent System Operator, will fulfill the Commission's requirement to hold the Michigan and Wisconsin utilities harmless from adverse financial impacts from congestion and loop flow resulting from AEP's and ComEd's choice of PJM.

AEP and ComEd state that copies of the filing were served on the affected state commissions, and on parties listed on the service list in Docket No. EL02–65.

Comment Date: January 21, 2004.

20. Duke Energy Corporation

[Docket No. ER04–365–000]

Take notice that on December 31, 2003, Duke Energy Corporation (Duke) submitted for filing an amendment to the Interconnection Agreement between Duke and North Carolina Electric Membership Corporation (NCEMC). Duke requests an effective date of January 1, 2004, for the amendment.

Duke states that a copy of the filing has been served on representatives of NCEMC and the North Carolina Utilities Commission and the Public Service Commission of South Carolina.

Comment Date: January 21, 2004.

21. Jersey Central Power & Light Company

[Docket No. ER04–366–000]

Take notice that on December 31, 2003, Jersey Central Power & Light Company (JCP&L) tendered for filing a proposed tariff for the sale of power to wholesale purchasers at market-based rates (Tariff). JCP&L has asked for waiver of any applicable requirements in order to make the Tariff effective as of December 17, 2003.

Comment Date: January 21, 2004.

22. PJM Interconnection, L.L.C., Commonwealth Edison Company

[Docket No. ER04–367–000]

Take notice that on December 31, 2003, PJM Interconnection, L.L.C. and Commonwealth Edison Company submitted a transmittal letter and certain revised tariff sheets to the PJM Open Access Transmission Tariff. PJM and ComEd state that the revised tariff sheets are necessary to include ComEd as a transmission owner within PJM. PJM and ComEd request that the tariff sheets become effective on May 1, 2004.

PJM and ComEd state that copies of this filing have been served on the members of PJM, the Illinois Commerce Commission, and on all parties on the Commission's service list in Docket No. ER03–262–000.

Comment Date: January 21, 2004.

23. California Independent System Operator Corporation

[Docket No. ER04–370–000]

Take notice that on December 31, 2003, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's updated Transmission Access Charge Rates effective as of January 1, 2004.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO tariff. ISO further states that it is posting the filing on the ISO Home Page.

Comment Date: January 21, 2004.

24. San Diego Gas & Electric Company

[Docket No. ER04–371–000]

Take notice that on December 31, 2003, San Diego Gas & Electric (SDG&E) tendered for filing a change in rates for the Transmission Revenue Balancing Account Adjustment and its Transmission Access Charge Balancing Account Adjustment set forth in its Transmission Owner Tariff. SDG&E states that the effect of this rate change is to reduce rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-controlled grid owned

by SDG&E. SDG&E requests that this rate change be made effective January 1, 2004.

SDG&E states that copies of this filing were service upon the Public Utilities Commission of the State of California and on the California Independent System Operator Corporation.

Comment Date: January 21, 2004.

25. Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER04–372–000]

Take notice that on December 31, 2003, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, MetEd/Penelec) tendered for filing a proposed tariff for the sale of power either individually or collectively to wholesale purchasers at market-based rates (Tariff). MetEd/Penelec have asked for waiver of any applicable requirements in order to make the Tariff effective as of December 17, 2003.

Comment Date: January 21, 2004.

26. Williams Power Company, Inc.

[Docket No. ER04–373–000]

Take notice that on December 31, 2003, Williams Power Company, Inc., (WPC) submitted a Schedule F Informational Filing under its Reliability Must-Run Service Agreements with the California Independent System Operator Corporation (ISO) for Alamitos and Huntington Beach generating facilities, Williams Power Rate Schedules FERC Nos. 17 and 19 respectively. WPC also submitted revised tariff pages reflecting the Schedule F Informational Filing.

WPC states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board, Southern California Edison Company and the California Public Utilities Commission.

Comment Date: January 21, 2004.

27. Invenergy TN LLC

[Docket No. ER04–374–000]

Take notice that on December 31, 2003, Invenergy TN LLC tendered for filing an application for acceptance of an initial rate schedule authorizing it to sell energy, capacity, and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act, and to resell transmission rights. Invenergy TN LLC requests the waivers and blanket authorizations typically granted to market-based rate sellers, and requests that its market-based rate authorization be made effective as of June 1, 2004.

Comment Date: January 21, 2004.

28. Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.

[Docket No. ER04–375–000]

Take notice that on December 31, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM), submitted for filing a Joint Operating Agreement Between Midwest ISO and PJM. Midwest ISO and PJM requests an effective date of March 1, 2004.

Midwest ISO and PJM state that copies of this filing were served upon all Midwest ISO members and all PJM members, and each state electric utility regulatory commission in their respective regions.

Comment Date: January 21, 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. E4–72 Filed 01–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 9, 2004.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary permit (competing).

b. *Applicants, Project Numbers, and Dates Filed:*

Gibson Dam Hydroelectric Company, LLC filed the application for Project No. 12478–000 on October 29, 2003.

Gibson Dam Hydro, LLC filed the application for Project No.12479–000 on November 3, 2003.

c. Name of the project is Gibson Dam Project. The project would be located on North Fork Sun Fork in Teton and Lewis and Clark Counties, Montana. It would use the U.S. Bureau of Reclamation's Gibson Dam.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Gibson Dam Hydroelectric Company, LLC: Mr. Steven C. Marmon, Project Manager Gibson Dam Hydroelectric Company, LLC, 3633 Alderwood Avenue, Bellingham, WA 98225, (360) 738–9999. For Gibson Dam Hydro, LLC: Mr. Brent L. Smith, Northwest Power Services Inc., P.O. Box 535, Rigby, ID 83442, (208) 752–0834.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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.

h. *Description of Projects:* The project proposed by Gibson Dam Hydroelectric Company, LLC using the U.S. Bureau of Reclamation's Gibson Dam and operated in a run-of-river mode and would consist of: (1) Two proposed 300-foot-long, steel penstocks, (2) a powerhouse containing two generating units having a total installed capacity of 15

megawatts, (3) a proposed 34.5 kilovolt underground transmission line, and (4) appurtenant facilities. The Gibson Dam Hydroelectric Company, LLC project would have an average annual generation of 50 gigawatt-hours.

The project proposed by Gibson Dam Hydro, LLC using the U.S. Bureau of Reclamation's Gibson Dam and operated in a run-of-river mode and would consist of: (1) A proposed 100-foot-long, 120-inch-diameter steel penstock, (2) a proposed powerhouse containing two generating units with a total installed capacity of 16 megawatts, (3) a proposed 1-mile-long, 14.7 kilovolt transmission line, and (4) appurtenant facilities. The Gibson Dam Hydro, LLC project would have an average annual generation of 45 gigawatt-hours.

i. *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. 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.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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.

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 "e-filing" link. The Commission strongly encourages electronic filing.

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. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. E4–74 Filed 01–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1390–005]

Southern California Edison; Notice of Meeting To Discuss Settlement Negotiations

January 9, 2004.

a. *Date and Time of Meeting:* January 21, 2004, 10 a.m. to 12 p.m. P.s.t.

b. *Place:* U.S. Forest Service, Mono Basin Scenic Area Visitor Center, Lee Vining, California, ½ mile north of the Town of Lee Vining on Highway 395.

c. *Teleconference:* To participate by teleconference please call 760–647–3043 or contact Jim Canaday, California State Water Resources Control Board, at 916–341–5308.

d. *FERC Contact:* John Smith at (202) 502–8972; *John.Smith@FERC.gov.*

e. *Purpose of the Meeting:* The U.S. Forest Service on behalf of itself and other stakeholders have requested a meeting with Commission staff to discuss the progress of ongoing settlement negotiations regarding minimum flows at the Lundy Hydroelectric Project No. 1390.

f. *Proposed Agenda:* (1) Introduction of participants, (2) settlement group presentation to Commission staff on status of negotiations, (3) discussion, and (5) close of meeting.

g. All local, State, and Federal agencies, Indian Tribes, and interested

parties, are hereby invited to attend this meeting as participants.

Magalie R. Salas,

Secretary.

[FR Doc. E4–75 Filed 01–15–04; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL02–8–000, ER96–2495–016, ER97–4143–004, ER97–1238–011, ER98–2075–010, ER98–542–006 (Not Consolidated), ER91–569–018, and ER97–4166–010]

Before Commissioners: Conference on Supply Margin Assessment, AEP Power Marketing, Inc., AEP Service, Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., Central and South West Services, Inc., Entergy Services, Inc., Southern Company Energy Marketing L.P.; Supplemental Notice of Technical Conference on Supply Margin Assessment Screen and Alternatives

January 9, 2004.

The December 19, 2003, Notice of Technical Conference in this proceeding indicated that a technical conference will be held on January 13–14, 2004 from 9:30 a.m. to 4 p.m. in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The agenda for the technical conference is set forth in the Attachment to this notice.

The December 19, 2003, Notice of Technical Conference indicated that transcripts of the proceeding will be available for the public on the Commission's e-Library two weeks after the conference. Please note, however, that the transcripts will be available one week after the conference. In addition, Capitol Connection offers the opportunity for remote listening as well as viewing of the conference for a fee. Persons interested in this service should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

Magalie R. Salas,

Secretary.

Supply Margin Assessment Technical Conference Agenda

January 13, 2004—Morning Session

9:30 a.m.–12 p.m.—Panel 1: Discussion on Defining the Relevant Geographic Markets, Including Transmission Considerations.

Opening comments and introduction by staff.

Presentations and reactions by panelists: Joe Pace, Director, LECG, LLC; John Apperson, Director of Trading, PacifiCorp; Jesse Tilton, CEO of ElectriCities of NC; Ricky Biddle, Vice President of Planning, Rates and Dispatching, Arkansas Electric Cooperative; Ron McNamara, Vice President of Regulatory Affairs and Chief Economist, MISO; Steven Corneli, Director of Regulatory Affairs, NRG Energy, Inc.

Open microphone.

This session will include a discussion of how transmission should be accounted for in the context of the interim generation dominance analysis and statutory deadlines. Transmission affects which generators are in the market, and how they should be accounted for in a screen. There is some overlap between this session and the afternoon session.

Specific topics to be discussed in this session include the following:

Should the relevant geographic market be defined as the control area? More broadly? More narrowly? Where can reliable data be found for markets that are not defined using control areas?

How to account for load pockets inside and outside of RTOs/ISOs;

How to account for transmission limitations;

—TTC, ATC, Historical;

—What is the public source of the information used;

How to account for competing supplies;

How much transmission capacity should be included in the analysis where transmission providers (whose control over transmission has not been transferred to an RTO or ISO) calculate the capacity and also participate in generation markets?

Where transmission or other operating constraints exist within a control area (such that some generators are not able to run to their maximum rated capacity), what percent of these generators' capacity should be included as participating in the market?

12 p.m.–1 p.m.—Lunch.

January 13, 2004—Afternoon Session

1 p.m.–4 p.m.—Panel 2: Discussion of the Appropriate Interim Generation Dominance Screen.

Opening comments and introduction by staff.

Presentations and reactions by panelists: Bill Marshall, Vice President of Fleet Operations and Trading, Southern Company; Steve Henderson, Vice President, Charles River Associates; Michael Wroblewski, Assistant General Counsel for Policy Studies, Federal Trade Commission; Bob Stibolt, Senior Vice President of Risk Management, Tractebel Corporation; Gary Ackerman, Executive Director, Western Power Trading Forum; Denise Goulet, Senior Assistant Consumer Advocate, Pennsylvania Office of the Consumer Advocate.

Open microphone.

This session will include a discussion of staff's proposed interim generation dominance screens and alternative proposals offered by others.

Specific topics to be discussed in this session include the following:

Which approach is preferable for the interim screen: pivotal supplier? market share? other?

—Should the analysis be applied on a monthly or annual basis;

—Whether and how to capture generators' ability to withhold on non-peak days or over a sustained period of time;

How to determine capacity (installed and/or uncommitted);

How to determine "opportunity" demand under the Wholesale Market Share screen;

Whether and under what circumstances to adopt an ISO/RTO exemption.

January 14, 2004—Morning Session

9:30 a.m.–12 p.m.—Panel 3: Discussion of the Appropriate Mitigation Measures for Those That Fail the Applicable Screen.

Opening comments and introduction by staff.

Presentations and reactions by panelists: Bill Hieronymus, Vice President, Charles River Associates; Bill Dudley, Assistant General Counsel of Xcel Energy Services Inc.; Pat Alexander, Energy Industry Advisor, Dickstein Shapiro Morin & Oshinsky; Don Sipe, Counsel with Preti Flaherty; Robert O'Neil, General Counsel, Golden Spread Electric Cooperative; Craig Roach, Partner, Boston Pacific Company.

Open microphone.

This session will include a discussion of staff's Proposed Price Mitigation Measures (Cost-Based Rates and Single Market Clearing Price) as well as alternatives proposed by others. Specific topics to be discussed in this session include the following: Which approach is preferable (cost-based rate, single market clearing price, or other), and to what products should the price mitigation apply;

Over what time period should price mitigation be applied (monthly, seasonally, daily);

Posting of Incremental/Decremental costs;

Other mitigation proposals (different from staff's proposals);

Revocation of market-based rate authority or use of formula rates;

Whether utilities that fail the interim generation dominance screen should be allowed to propose their own remedy;

The extent to which control of transmission may create opportunities for affiliate abuse or convey market power to those that own generation in the same market (and if so, should such entities be required to hand over control of transmission system to a third party);

Is mitigation only needed in the short term, or should it also apply in the long term (*e.g.*, long-term contract mitigation);

Adopting a formula that sets a generic area-wide rate cap (*e.g.*, using a cost of capital set by the State commission(s)).

12 p.m.–1 p.m.—Lunch.

January 14, 2004—Afternoon Session

1 p.m.–4 p.m.—Panel 4: Data Concerns and Miscellaneous Issues.

Opening comments and introduction by staff.

Presentations and reactions by panelists: Rodney Frame, Managing Partner, Washington Office of Analysis Group; Joe Pace, Director, LECG, LLC; Seabron Adamson, Director, Tabors, Caramoni & Associates; William Townsend, Senior Director of Database and Spatial, Platt's Energy Information and Trading Services; Steve Schleimer, Director of Market and Regulatory Affairs, Calpine Corp.

Open microphone.

Specific topics to be discussed in this session include the following:

Restrictions on data access, related to security concerns or critical infrastructure (including confidentiality issues);

Data concerns;

Supply, demand (native load), outages, accuracy of FERC forms;

Public accessibility to information used, and cost to obtain it;

Accuracy of and access to OASIS postings;

Definitions and conforming to NERC terms where possible;

How should the generation dominance screen be used—as a definitive test or an indicative test? If indicative, does screen failure result in a hearing or additional studies? Should the Commission consider other measures of market power in generation markets in determining whether to grant market-based rate authority (*e.g.*, monopsony power)?

[FR Doc. E4–76 Filed 1–15–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6647–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–G65091–NM Rating LO, Surface Management of Gas Leasing and Development in the Carson National Forest, Implementation, Jicarilla Ranger District, Rio Arriba County, NM.

Summary: EPA has no objections to the proposed action since the project includes mitigation and site specific Conditions of Approval (COA)'s.

ERP No. D–AFS–J65395–WY Rating EC2, Lost Cabin Mine Project, Improvement of Historic Mining Road (Way 4170H) to Allow Motorized Access to the Lost Mine for Mineral Exploration, Plan-of -Operations, Medicine-Bow Routt National Forests and Thunder Basin National Grassland, Carbon County, WY.

Summary: EPA expressed environmental concerns with potential impacts to water quality. The final EIS should include more information on the potential of the mining exploration to cause acid mine drainage.

ERP No. D–AFS–J65398–MT Rating EC2, Judith Restoration Project, Proposal to Maintain and/or Restore Healthy Soil, Water and Vegetation Conditions, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT.

Summary: EPA expressed environmental concerns with potential impacts to water quality, fisheries, and consistency of project activities with State/EPA development of TMDLs and Water Quality Restoration Plans to address impairments in the 303(d) listed South Fork Judith River. EPA recommended modifications in the final EIS to address these issues.

ERP No. D–AFS–K65261–CA Rating EC2, Larson Reforestation and Fuel Reduction Project, Implementation, Stanislaus National Forest, Groveland Ranger District, Mariposa and Tuolumne Counties, CA.

Summary: EPA expressed environmental concerns regarding the potential impacts to aquatic habitat as a result of aerial herbicide applications. EPA requested additional information regarding Best Management Practices, a more extensive cumulative impacts analysis, and including recent studies regarding impacts of nonylphenol and its ethoxylates on riparian ecosystems.

ERP No. D–BLM–J02041–WY Rating EC2, Desolation Flats Natural Gas Field Development Project, Drilling Additional Development Wells, Carbon and Sweetwater Counties, WY.

Summary: EPA expressed environmental concerns with potential adverse impacts to air quality, water quality and wildlife. EPA requested that the final EIS identify additional mitigation for air quality impacts and to include benefits and costs of implementation. EPA recommended updating visibility and lake acidification impacts and including mitigation to reduce additional emissions in Class 1 areas. The final EIS should add mitigation that would reduce storm water runoff from well pads, compressor stations and other disturbed areas related to project development.

ERP No. D–FHW–C40160–NY Rating EC2, Cumberland Head Connector Road Construction, County Road 57 between U.S. 9 and the Peninsula (known as the Parkway), Funding, Town of Plattsburg, Clinton County, NY.

Summary: EPA has environmental concerns regarding the alternative analysis, the direct/indirect impacts to wetlands and the appropriate mitigation requirements, and the need for further mitigation of stormwater runoff associated with the project.

ERP No. D–FHW–E40800–FL Rating EC2, Indian Street Bridge PD&E Study, New Bridge Crossing of the South Fork of the St. Lucie River County Road 714 (Martin Highway)/SW 36th Street/ Indian Street from Florida's Turnpike to East of Willoughby Boulevard, Martin County, FL.

Summary: EPA has environmental concerns with the proposed project regarding the long term impacts and the continued degradation to aquatic resources of the St. Lucie River. Deficiencies have been identified in the alternatives analysis and consideration of options for mitigating adverse impacts. In addition, indirect and cumulative impacts were not assessed adequately in the DEIS.

ERP No. D–FRC–G02012–TX Rating EC2, Freeport Liquefied Natural Gas (LNG) Project, To Deliver Imported

Liquefied Natural Gas to Shippers, Authorization of Site, Construction and Operation, Stratton Ridge Meter Station 2007, City of Freeport, Brazoria County, TX.

Summary: EPA expressed environmental concern regarding wetland impacts/mitigation, Clean Water Act Section 402 permitting, vaporization water intake and discharge impacts, and conformity with the state's implementation plan for air quality. EPA requested additional information on these issues.

ERP No. D–FRC–L05230–OR Rating LO, Pelton Round Butte Hydroelectric Project, (FERC No. 2030–036), Application for a New License for Existing 366.82-megawatt Project, Deschutes River, OR.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Base upon the screen, EPA does not foresee having environmental objections to the proposed project. Therefore, EPA will not conduct a detailed review.

ERP No. D–NOA–K91012–00 Rating EC2, Bottomfish and Seamount Groundfish Fisheries Conservation and Management Plan, Implementation, US Economic Zone (EEZ) around the State of Hawaii, Territories of Samoa and Guam, Commonwealth of the Northern Mariana and various Islands and Atolls known as the U.S. Pacific remove island areas, HI, GU and AS.

Summary: EPA expressed concerns regarding the integration of the proposed alternative with other restrictions on Bottomfish fishing in the Western Pacific, and impacts to federally-endangered Hawaiian Monk Seals.

ERP No. DS–COE–D36107–WV, Rating EC2, Lower Mud River at Milton Project, Updated Information on the Milton Local Protection Project, Proposed Flood Damage Reduction Measure, City of Milton, Cabell County, WV.

Summary: EPA expressed environmental concerns over impacts to wetlands and the effectiveness of the proposed wetland mitigation measures. EPA requested additional information regarding the mitigation measures, as well as baseline environmental conditions and predicted cumulative impacts.

Final EISs

ERP No. F–AFS–J65369–MT, Windmill Timber Sale and Road Decommissioning Project, Timber Harvesting, Road Construction and Road Decommissioning, Mill Creek Drainage, Absaroka Mountain Range, Gallatin National Forest, Park County, MT.

Summary: The Final EIS includes planning, design and mitigation measures which will reduce environmental impacts to water quality and old growth habitat. EPA does have concerns for potential adverse environmental impacts from development of land transferred through exchange, should insufficient revenue be generated by the Windmill Timber Sale for land acquisition under the Gallatin Land Consolidation Act.

ERP No. F–AFS–J70021–SD, Prairie Project Area, (Lower Rapid Creek Area) Multiple Resource Management Actions, Implementation, Black Hills National Forest, Mystic Ranger District, Pennington County, SD.

Summary: EPA continues to have environmental concerns with erosion and impacts to soils and fish and wildlife habitats from roads and transportation, water runoff and sediment.

ERP No. F–COE–E39060–GA, Lake Sidney Lanier Project to Continue the Ongoing Operation and Maintenance Activities Necessary for Flood Control, Hydropower Generation, Water Supply, Recreation, Natural Resources Management and Shoreline Management, US Army COE Section 10 and 404 Permits, Dawson, Forsyth, Lumpkin, Hill and Gwinnett Counties, GA.

Summary: EPA has no objections to the proposed project.

ERP No. F–FHW–J40154–WY, US 287/26 Improvements Project, Moran Junction to 12 miles west of Dubois to where the roadway traverses thru the Bridger-Teton and Shoshone National Forests and Grand Teton National Park, NPDES and U.S. Army COE Section 404 Permits Issuance, Teton and Fremont Counties, WY.

Summary: EPA has environmental concerns with the preferred alternative regarding impacts to endangered species, habitat, water quality and the National Parks as well as concerns regarding erosion.

ERP No. F–FRC–E03010–FL, Ocean Express Pipeline Project, Construction, Operation and Maintenance of an Interstate Natural Gas Pipeline extending from the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas, (Docket No. CP02–090–001–1) Plan of Operations Approval, NPDES and U.S. Army COE Section 10 and Possible 404 Permits, Broward County, FL.

Summary: EPA expressed environmental concerns regarding (1) the uncertainty of the actual level of impacts during proposed pipeline placement, (2) the specifics of the final project mitigation, and (3) the potential for public involvement in certain final project decisions such as contingencies.

ERP No. F–FRC–L05200–OR, Bull Run Hydroelectric Project (FERC No.477–024), Proposal to Decommission the Bull Run Project and Remove Project Facilities including Marmot Dam, Little Sandy Diversion Dam and Roslyn Lake, and an Application to Surrender License, Sandy, Little Sandy, Bull Run Rivers, Town of Sandy, Clackamas County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USA–C11021–NY, Thomas Jefferson Hall and Other Construction Activities in the Cadet Zone of the United States Military Academy, Implementation, West Point, Hudson River Valley, Orange and Putnam Counties, NY.

Summary: EPA has no objections to the proposed action.

ERP No. FS–BLM–K67051–NV, Millennium Expansion Project, New Facilities Construction and Existing Gold Mining Operations Expansion, Plan-of-Operations Approval, Winnemucca, Humboldt County, NV.

Summary: EPA expressed environmental concerns that additional measures may be needed to minimize potential air impacts and suggests that BLM pursue further reductions of mercury emissions and particulates, and require restoration of vegetation on future evaporation basins.

Dated: January 13, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–1051 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6647–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed January 5, 2004 Through January 9, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040000, Final EIS, NPS, WA, Fort Vancouver National Historic Site, General Management Plan and Development Concept Plans, Implementation, Oregon County, WA, Wait Period Ends: February 17, 2004, Contact: Alan Schmierer (510) 817–1441.

EIS No. 040001, Draft EIS, BLM, CA, King Range National Conservation Area (KRNCA) Resource Management Plan, Implementation, Humboldt and Mendocino Counties, CA, Comment Period Ends: April 16, 2004, Contact: Lynda J. Roush (707) 825–2300. This document is available on the Internet at: *http://www.ca.blm.gov/aracta/.*

EIS No. 040002, Draft EIS, BLM, AK, Alpine Satellite Development Plan, Proposal to Construct and Operate Five Oil Production Pads, Associated Well, Roads, Airstrips, Pipelines and Powerlines, Northeast Corner of the National Petroleum Reserve-Alaska, Colville River Delta, North Slope Borough, AK, Comment Period Ends: March 1, 2004, Contact: James H. Ducker (907) 271–3130. This document is available on the Internet at: *http://www.apline-satellites-eis.com.*

EIS No. 040003, Final EIS, AFS, CA, Giant Sequoia National Monument Management Plan, Implementation, Establishment of Management Directions for Land and Resources, Sequoia National Forest, Fresno, Kern and Tulare Counties, CA, Wait Period Ends: February 27, 2004, Contact: Jim Whitefield (559) 784–1500.

EIS No. 040004, Final EIS, NOA, AK, OR, WA, CA, Programmatic EIS—Pacific Salmon Fisheries Management Plan, Off the Coasts of Southeast Alaska, Washington, Oregon and California, and the Columbia River Basin, Implementation, Magnuson-Stevens Act, AK, WA, OR and CA, Wait Period Ends: February 17, 2004, Contact: D. Robert Lohn (206) 526–6734.

EIS No. 040005, Draft EIS, AFS, ID, WY, ID, EastBridge Cattle Allotment Management Plan Revision (AMP), Authorization of Continued Grazing, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou and Bonneville County, ID and Lincoln County, WY, Comment Period Ends: March 1, 2004, Contact: Victor Bradfield (208) 547–4356.

EIS No. 040006, Draft EIS, NOA, AK, Essential Fish Habitat Identification and Conservation, Implementation, North Pacific Fishery Management Council, Magnuson-Stevens Fishery Conservation and Management Act, AK, Comment Period Ends: April 15, 2004, Contact: Jon Kurland (907) 586–7638.

EIS No. 040007, Final EIS, DOE, NY, West Valley Demonstration Project, Waste Management, Onsite Management and Offsite Transportation of Radioactive Waste, West Valley, Cattaraugus County, NY, Wait Period Ends: February 27, 2004, Contact: Daniel W. Sullivan (716) 942–4016. This document is available on the Internet at: *http://www.tis.eh.doe.gov/nepa/docs.docs.htm.*

EIS No. 040008, Draft EIS, AFS, MT, UT, WY, ID, Northern Rockies Lynx Amendment, To Conserve and Promote Recovery of the Canada Lynx, NFS and BLM to Amend Land Resource Management Plans for 18 National Forests (NF), MT, WY, UT and ID, Comment Period Ends: April 15, 2004, Contact: Jon Haber (406) 329–3399. This document is available on the Internet at: *http://www.fs.fed.us/r1/planning/lynx.htm1.*

EIS No. 040009, Final EIS, NPS, AR, Arkansas Post National Memorial General Management Plan, Implementation, Osotouy Unit, Arkansas and Mississippi Rivers, Arkansas County, AR, Wait Period Ends: February 17, 2004, Contact: Edward E. Wood, Jr. (870) 548–2207.

EIS No. 040010, Final Supplement EIS, FHW, RI, Jamestown Bridge Replacement, Funding, North Kingstown and Jamestown, Washington and Newport Counties, RI, Wait Period Ends: February 17, 2004, Contact: Ralph Rizzo (401) 528–4548.

EIS No. 040011, Final EIS, NOA, WA, CA, OR, 2004 Pacific Coast Groundfish Fishery Management Fishery, Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, Magnuson-Stevens Act, Exclusive Economic Zone, WA, OR and CA, Wait Period Ends: February 17, 2004, Contact: Robert Lohn (206) 526–6150.

EIS No. 040012, Final EIS, FAA, NY, Adoption-Griffiss Air Force Base (AFB) Disposal and Reuse, Implementation of Federal Aviation Administration's Decisions Relative to Reuse, Oneida County, NY Contact: Marie Janet (516) 227–3811. US Department of Transportation's, Federal Aviation Administration (FAA) has Adopted the U.S. Department of the Air Force's (USAF) FEIS #950534, filed 11/09/1995 and FSEIS #990384, filed 10/15/1999. FAA was a Cooperating Agency on the USAF FEIS and FSEIS. Recirculation of the EISs is not necessary under Section 1506.3(c) of the CEQ Regulations.

Amended Notices

EIS No. 030266, Draft EIS, EPA, KY, VA, TN, WV, Programmatic—Mountaintop Mining and Valley Fills Program Guidance, Policies or Regulations to Minimize Adverse Environmental Effects to Waters of the U.S. and Fish and Wildlife Resources, Implementation, Appalachia, Appalachian Study Area, WV, KY, VA and TN, Comment Period Ends: January 21, 2004, Contact: John Forren (EPA) (215) 814–2705. Revision of FR Notice Published on 11/22/03: CEQ Comment Period Ending 1/6/2004 has been Extended to 1/21/2004.

EIS No. 030586, Draft EIS, UAF, 00, Air Force Mission at Johnston Atoll Airfield (Installation) Termination, Implementation, Johnston Atoll is an Unincorporated Territory of the United States, Comment Period Ends: February 17, 2004, Contact: Patricia J. Vokoun (703) 604–5263. Revision of FR Notice Published on 1/2/2004: Title Correction and Removal of the State of Hawaii from the Record. Johnston Atoll is an Unincorporated Territory of the United States.

Dated: January 13, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–1050 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7610–8]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have teleconference meetings on January 21, 2004 at 1 p.m. e.t.; February 18, 2004 at 1 p.m. e.t.; March 17, 2004 at 1 p.m. e.t.; April 21, 2004 at 1 p.m. e.t.; May 19, 2004 at 1 p.m. e.t.; and June 16, 2004 at 1 p.m. e.t. to discuss ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by ELAB over these coming meetings include: the need to increase the participation of laboratories in NELAC; how to ensure the competency of laboratories involved in homeland security responses; environmental measurement issues; implementation of the performance approach to environmental monitoring; and increasing the value of NELAC accreditation. In addition to these teleconferences, ELAB will be hosting a

one hour face-to-face open forum only to hear issues the general public would like to raise for ELAB's consideration. The meeting will be from 5:30 p.m.–6:30 p.m. c.t. on January 27, 2004 at the Westin City Center in Dallas, TX. This open forum meeting will be followed by a regular meeting of ELAB on January 28, 2004 from 3 p.m.–5 p.m. c.t. at the Westin City Center in Dallas, TX. Written comments on laboratory accreditation and the NELAC standards are encouraged and should be sent to Ms. Lara P. Autry, Designated Federal Official, U.S. EPA (E243–05), 109 T.W. Alexander Drive, Research Triangle Park, NC 27709, faxed to (919) 541–4261, or e-mailed to: *autry.lara@epa.gov*. Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during regular ELAB meetings. Those persons interested in attending should call Lara P. Autry at (919) 541–5544 to obtain teleconference information. The number of lines for the teleconferences, however, are limited and will be distributed on a first come, first serve basis. Preference will be given to groups wishing to attend over requests from individuals.

Paul Gilman,

Assistant Administrator, Office of Research and Development.

[FR Doc. 04–1046 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7611–3]

National Advisory Council for Environmental Policy and Technology (NACEPT) Superfund Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT subcommittee on Superfund; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), will meet on the dates and times described below. The meeting is open to the public. Seating will be on a first-come basis, and limited time will be provided for public comment on each day.

DATES: The meeting will be held from 8:30 a.m. to 6 p.m. on February 11, 2004; and from 8:30 a.m. to 6 p.m. on February 12, 2004.

ADDRESSES: The meeting will take place at the Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Angelo Carasea, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC, (703) 603–8828.

SUPPLEMENTARY INFORMATION:

Agenda

This ninth meeting of the NACEPT Superfund Subcommittee will involve discussion of the latest version of the Subcommittee's draft report. The agenda for the meeting will be available one week prior to the meeting's occurrence.

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designated Federal Official. Each day will have one public comment period.

Dated: January 9, 2004.

Angelo Carasea,

Designated Federal Officer, NACEPT Superfund Subcommittee.

[FR Doc. 04–1047 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7611–6]

EPA Public Meeting: Market Enhancement Opportunities for Water-Efficient Products; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is hosting a one-day public meeting to discuss market enhancement opportunities for water-efficient products. EPA's goal is to bring together stakeholders from Federal, state and local governments; utilities; manufacturers; building trade associations; consumer groups; and other interested parties to exchange information and views on promoting water-efficient products in the marketplace. The focus of the February meeting will be on landscape irrigation products. The first meeting was held in Washington, DC on October 9, 2003 and the second was held in Austin, TX on January 15, 2004. One additional public meeting will be held in Seattle, WA in March; notice will be provided on a location and time when available.

The meeting will consist of several panel discussions, and is open to the public. The audience will have an opportunity to ask questions and provide comments at the conclusion of the meeting.

DATES: The meeting will begin at 8:30 a.m. on February 17, 2004.

ADDRESSES: The meeting will be held at the Phoenix Center for the Arts, 1202 N. Third St., Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: For more information on this meeting, please see EPA's Water Efficiency Web Page at *http://www.epa.gov/owm/water-efficiency/index.htm*. To register online from the Water Efficiency Program page, click on the registration form link. You may also register by contacting ERG, Inc. by phone (781–674–7374), or by downloading the registration form and sending the completed form to ERG via fax at 781–674–2906 or mail to ERG, Conference Registration, 110 Hartwell Avenue, Lexington, MA 02421–3136. Seating is limited, therefore please register or request special accommodations no later than February 10, 2004.

Dated: January 12, 2004.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 04–1049 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7610–9]

Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Bargaineer's Center Superfund Site, Located in Brockton, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental

Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, *et. seq.*, notice is hereby given of a proposed Agreement and Covenant Not to Sue between the United States, on behalf of the U.S. Environmental Protection Agency ("EPA") and W.B. Mason Co., Inc. and JLTS VI L.L.C. ("Purchaser"). The Purchaser plans to acquire 10.72 acres located at 70 East Battles Street in Brockton, Massachusetts, the location of a removal action in which the EPA removed semi-volatile organic compounds ("SVOCs"), asbestos, and polychlorinated biphenyls ("PCBs"). The Purchaser intends to perform additional cleanup activities, redevelop the Site, and operate a distribution center for its office supply business. Under the Proposed Agreement, the United States grants a Covenant Not to Sue to the Purchaser with respect to existing contamination at the Site in exchange for the Purchaser's agreement to pay EPA $25,000. In addition, the Purchaser agrees to provide an irrevocable right of access at all reasonable times to representatives of EPA.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214.

DATES: Comments must be submitted on or before February 17, 2004.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Bargaineer's Center Superfund Site, U.S. EPA CERCLA Docket No. 01–2003–0076.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Agreement and Covenant Not to Sue: W.B. Mason Co., Inc. and JLTS VI L.L.C. can be obtained from Andrea Treece, Enforcement Counsel, U.S. Environmental Protection Agency, Region I, One Congress Street, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1540.

Dated: January 7, 2004.

Robert V. Varney,

Regional Administrator, Region I.

[FR Doc. 04–1048 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7610–3]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the Liquid Dynamics Site in Chicago, IL

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice and request for public comment on proposed CERCLA 122(h)(1) agreement with 42 waste generators regarding a removal action to address residual soil contamination at the site of a former liquid hazardous waste treatment facility in Chicago, Illinois.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, notification is hereby given of a proposed administrative settlement agreement regarding a removal action at the site of the former Liquid Dynamics liquid hazardous waste treatment facility on the South Side of Chicago, Illinois. EPA proposes to enter into this agreement under the authority of sections 122(h) and 107 of CERCLA. The proposed agreement has been executed by Allied Tube and Conduit Corporation, Acme Galvanizing, Inc., Ashland , Inc., Beatrice Companies, Inc., BorgWarner, Inc., Brightly Galvanized Products, Cargill, Inc., Chicago Magnesium Casting Company, Chicago Metallic Products, Conopco, Inc., Chicago Tribune, Ford Motor Company, HH Howard Company, Honeywell International, Inc., International Truck and Engine Corporation, General Electric Company, Halliburtan Industrial, Hannah Marine Corporation, Litton Systems, Inc. Joseph T Ryerson & Son, Inc., Lucent Technologies, Inc., MacLean-Fogg Company, Moen, Inc., Motorola, Inc., Nikko Materials USA, Inc., Panduit Corporation, Precision Twist Drill Company, PVS Chemical Solutions, Inc., R.R. Donnelley & Sons Company, RCM Industries, Inc., Reichhold, Inc., Reliable Galvanizing Company, Signode, Rexam Beverage and Can Company, Stepan Company, Superior Carriers, Inc., T.A.C., Inc., Taubensee Steel & Wire Company, Templeton Kenly & Company, Union Special Corporation, Valhi, Inc., and Zenith Electronics Corporation (the "Settling Parties"). Under the proposed agreement, the Settling Parties will implement a removal action to address residual soil contamination at the site. Also, the Settling Parties will pay $36,400 into a special account to fund costs the Agency will incur in overseeing the work under the agreement. In addition, under the agreement, EPA will waive all of its past response costs ($200,000) incurred in connection with the Liquid Dynamics Site. EPA incurred these past response costs in investigating the release of hazardous substances at the site, reviewing and approving remedy proposals, and negotiating a resolution of the case. For thirty days following the date of publication of this notice, the EPA will receive written comments relating to the past cost waiver provisions of this proposed agreement. EPA will consider all comments received and may decide not to enter into the past cost waiver provisions of this proposed agreement if comments disclose facts or considerations which indicate that the past cost waiver is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before February 17, 2004.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Liquid Dynamics Site, EPA Docket No. V–W–04–C–773.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–0555. A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Douglas Ballotti,

Acting Director, Superfund Division, Region 5.

[FR Doc. 04–1045 Filed 1–15–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council; Charter Renewal

AGENCY: Federal Communications Commission.

ACTION: Notice of charter renewal.

SUMMARY: The Federal Communications Commission has renewed the charter for the "Network Reliability and Interoperability Council (the "Council") for a 2-year period, through December 29, 2005. The Council is a federal advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Renewed through December 29, 2005.

ADDRESSES: You may request a copy of the charter by writing to Chief, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, The Portals II, 445 12th Street, SW., Room 7–A325, Washington, DC 20554; by calling (202) 418–1096; or by faxing (202) 418–1988.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, the Designated Federal Officer (DFO) at (202) 418–1096 or *Jeffery.Goldthorp@fcc.gov*. The TTY Number is: (202) 418–2989.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide recommendations to the FCC and to the communications industry that, if implemented, shall under all reasonably foreseeable circumstances assure optimal reliability and interoperability of wireless, wireline, satellite, cable, and public data networks.[1] This includes facilitating the reliability, robustness, security, and interoperability of communications networks including emergency communications networks. The scope of this activity also encompasses recommendations that shall ensure the security and sustainability of communications networks throughout the United States; ensure the availability of adequate communications capacity during events or periods of exceptional stress due to natural disaster, terrorist attacks or similar occurrences; and facilitate the rapid restoration of telecommunications services in the event of widespread or major disruptions in the provision of communications services. The Council shall address topics in the following areas:

1. Emergency Communications Networks Including E911
2. Homeland Security Best Practices
3. Best Practices for Wireless and Public Data Network Services
4. Broadband

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–944 Filed 1–15–04; 8:45 am]

BILLING CODE 6712–01–U

[1] Public data networks are networks that provide data services for a fee to one or more unaffiliated entities.

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection systems described below.

DATES: Comments must be submitted on or before March 15, 2004.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed below.

- *Mail:* Steve Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Room MB–3046, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to the OMB control number.

Joseph Lackey, FDIC OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

- *Hand Delivery:* Guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Steve Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Three Currently Approved Collections of Information

1. *Title:* Application for a Bank to Establish a Branch or Move its Main Office or Branch.
   OMB Number: 3064–0070.
   Frequency of Response: On occasion.
   Affected Public: Insured financial institutions.
   Estimated Number of Respondents: 1,540.
   Estimated Time per Response: 5 hours.
   Total Annual Burden: 7,700 hours.
   General Description of Collection: Insured State nonmember banks are required by law to obtain the FDIC's prior written consent before they can establish and operate any new domestic branch or move their main office or any branch from one location to another.

2. *Title:* Application for Consent to Reduce or Retire Capital.
   OMB Number: 3064–0079.
   Frequency of Response: On occasion.
   Affected Public: Insured State nonmember banks.
   Estimated Number of Respondents: 80.
   Estimated Time per Response: 1 hour.
   Total Annual Burden: 80 hours.
   General Description of Collection: Insured state nonmember banks that propose to change their capital structure must apply for and obtain FDIC's consent to reduce or retire capital.

3. *Title:* Activities and Investments of Savings Associations.
   OMB Number: 3064–0104.
   Frequency of Response: On occasion.
   Affected Public: Insured savings associations.
   Estimated Number of Responses: 75.
   Estimated Time per Response: 5 hours.
   Total Annual Burden: 375 hours.
   General Description of Collection: This collection of information is an application submitted by savings associations to the FDIC as part of the process of obtaining exceptions to the restrictions on the powers of savings associations. The restrictions reduce the risk of loss to the deposit insurance funds and eliminate some differences between the powers of state associations and those of federal associations.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the

methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 13th day of January, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–978 Filed 1–15–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 361.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., January 21, 2004.

CHANGES:

1. The addition of an Open Session of the Meeting to begin at 2 p.m.

2. The consideration of Item 1 in the Open Session of the Meeting: Item 1. Petition No. P10–03—Petition of National Custom Brokers and Forwarders Association of America, Inc. for Rulemaking.

3. The addition of Item 5 to the Closed Session of the Meeting: Item 5. Petition No. P3–02—Petition of the Association of Bi-State Motor Carriers, Inc. To Investigate Truck Detention Practices of the New York Terminal Conference at the New York/New Jersey Port District.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. Van Brakle,

Secretary.

[FR Doc. 04–1138 Filed 1–14–04; 1:43 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 9, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Allied Bancshares, Inc., Cumming, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Forsyth County, Cumming, Georgia.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Pine River Bank Corporation, Bayfield, Colorado; to acquire 100 percent of the voting shares of First National Bank of Lake City & Creede, Lake City, Colorado.

2. First Pioneer Holding, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Western Trust Bank, Denver, Colorado (in organization).

In connection with this application, Applicant also has applied to acquire First Western Investment Management, Inc., Denver, Colorado, and thereby engage in investment advisory activities, pursuant to sections 225.28(b)(6)(i) and (ii) of Regulation Y, and James Sprout & Associates, Inc., Fort Collins, Colorado, and thereby engage in investment advisory activities, pursuant to sections 225.28(b)(6)(i) and (ii) of Regulation Y.

In connection with this application, Applicant also has applied to acquire Poudre River Valley Trust Co., Fort Collins, Colorado, and thereby engage in trust company activities, pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, January 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–946 Filed 1–15–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry Public Meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Oak Ridge Reservation Health Effects Subcommittee

Name: Public meeting of the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.–6:30 p.m., February 3, 2004.

Place: Kingston Community Center, 201 Patton Ferry Road, Kingston, TN 37763. Telephone: (865) 376–9476.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE, the MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the

responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ORRHES is part of these efforts.

Purpose: The purpose of this meeting is to address issues that are unique to community involvement with the ORRHES, and agency updates.

Matters to be Discussed: Agenda items will include a presentation and discussion of the initial release of the Public Health Assessment on White Oak Creek Radionuclide Release from the DOE Oak Ridge Reservation, a response to recommendations regarding the Needs Assessment Document, updates and recommendations from the Public Health Assessment, Communications and Outreach, Agenda, Guidelines and Procedures, and the Health Education Needs Assessment Workgroups, and agency updates.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Lorine Spencer, Executive Secretary, or Marilyn Horton, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32 Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATDSR.

Dated: January 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–962 Filed 1–15–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., February 4, 2004, 8:30 a.m.–12 p.m., February 5, 2004.

Place: Corporate Square, Corporate Square Boulevard, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333. Telephone (404) 639–8008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include issues pertaining to the Federal TB Task Force Plan; laboratory capacity to support TB elimination; Strategic Plan for TB Training and other TB related topics.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–961 Filed 1–15–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1964]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Review of Part B Medicare Claim and Supporting Regulations in 42 CFR Section 405.807; *Form No.:* CMS–1964 (OMB# 0938–0033); *Use:* This form is the preferred manner to enable appellants to request a part B review by a carrier; *Frequency:* Other: as needed; *Affected Public:* Individuals or households, and not-for-profit institutions; *Number of Respondents:* 6,860,000; *Total Annual Responses:* 6,860,000; *Total Annual Hours:* 1,715,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail

your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 8, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–982 Filed 1–15–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–2786M, R, and S–Y, CMS–10097, CMS–R–204, CMS–9044, CMS–P–0015A, CMS–R–13]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Fire Safety Survey Report Forms and Supporting Regulations in 42 CFR 488.26 and 442.30; *Form No.:* CMS–2786 M, R, and S–Y (OMB# 0938–0242); *Use:* CMS surveys facilities to determine compliance with the Life Safety Code of 2000. The providers must make documentation proving compliance available to the surveyors; *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 27,900; *Total Annual Responses:* 27,900; *Total Annual Hours:* 2325.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Contractor Provider Satisfaction Survey; *Form No.:* CMS–10097 (OMB# 0938–NEW); *Use:* CMS needs standard data about Medicare provider's satisfaction with their Medicare contractors, who are charged with all Medicare claims processing and related activities on behalf of the Agency. Respondents will be staff representatives of hospitals, skilled nursing facilities, rural health clinics, home health agencies, end-stage renal disease clinics, physicians, non-physicians, durable medical equipment suppliers, laboratories and ambulance providers. The survey will be used as a mechanism for evaluating and improving Medicare providers' satisfaction with their Medicare contractors. The results will provide CMS with a comprehensive review of contractor-provider business relations from the perspective of the "customer" or provider. The information will help the Agency appropriately address provider concerns about Medicare Contractors' performance, aid in business/contracting decisions, and assist or guide contractors in identifying/implementing "best practices" or quality improvement initiatives.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 6,052; *Total Annual Responses:* 6,052; *Total Annual Hours:* 3,331.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Data Collection for the Second Generation Social Health Maintenance Organization Demonstration; *Form No.:* CMS–R–204 (OMB# 0938–0709; *Use:* The Centers for Medicare and Medicaid Services will continue to use the data collected under this effort to support the operational needs of the Congressionally-mandated and administratively extended Second Generation of the Social Health Maintenance Organization Demonstration; *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 15,000; *Total Annual Responses:* 15,000; *Total Annual Hours:* 3,000.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Provider Reimbursement Manual, Part 1—Chapter 27, Sections 2721, 2722 and 2725, Request for Exception to End Stage Renal Disease Composite Rates and Supporting Regulations in 42 CFR 413.170 and 413.184; *Form No.:* CMS–9044 (OMB# 0938–0296); *Use:* This information collection describes the information End Stage Renal Disease facilities must submit in justifying an exception request to their composite rate for outpatient dialysis services; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Federal government; *Number of Respondents:* 125; *Total Annual Responses:* 125; *Total Annual Hours:* 6,000.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey (MCBS): Rounds 38–46; *Form No.:* CMS–P–0015A (OMB# 0938–0568); *Use:* The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged and disabled persons enrolled in Medicare. The survey provides a comprehensive source of information on beneficiary characteristics, needs, utilization, and satisfaction with Medicare-related activities; *Frequency:* Other: 3 times a year; *Affected Public:* Individuals or households, business or other for-profit, and not-for-profit institutions; *Number of Respondents:* 16,500; *Total Annual Responses:* 49,500; *Total Annual Hours:* 50,325.

6. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR, Sections 486.304, 486.306, 486.307, 486.310, 486.316, 486.318, and 486.325; *Form No.:* CMS–R–13 (OMB# 0938–0688); *Use:* Organ Procurement Organizations are required to submit accurate data to CMS concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of*

Respondents: 59; *Total Annual Responses:* 59; *Total Annual Hours:* 118.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 8, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–983 Filed 1–15–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0295]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/ Processors With Interest in Exporting to Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/ Processors With Interest in Exporting to Chile" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 8, 2003 (68 FR 58114), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0509. The approval expires on December 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: January 6, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–942 Filed 1–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0267]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarketing Studies for Licensed Biological Products; Status Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 17, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Postmarketing Studies for Licensed Biological Products; Status Reports—(OMB Control Number 0910–0433)—Extension

Section 130(a) of the Food and Drug Administration Modernization Act (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision (section 506B of the act (21 U.S.C. 356b)) requiring reports of postmarketing studies for approved human drugs and licensed biological products. Section 506B of the act provides FDA with additional authority to monitor the progress of postmarketing studies that applicants have made a commitment to conduct and requires the agency to make publicly available information that pertains to the status of these studies. Under section 506B(a) of the act, applicants that have committed to conduct a postmarketing study for an approved human drug or licensed biological product must submit to FDA a status report of the progress of the study or the reasons for the failure of the applicant to conduct the study. This report must be submitted within 1 year after the U.S. approval of the application and then annually until the study is completed or terminated. The reporting requirements for applicants of approved new drug applications and abbreviated new drug applications are under §314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The collection of information requirements for § 314.81(b)(2)(vii) are approved under OMB control number 0910–0001. The reporting requirements for applicants of approved biologics license applications (BLAs) or supplements to an application are under § 601.70 (21 CFR 601.70). Section 601.70 requires applicants of approved biologics license applications or supplements to an application to submit to FDA postmarketing status reports for studies of clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology that are required by FDA or that an applicant of a BLA commits to conduct, in writing, at the time of approval of an application or a supplement to an application, or after approval of an application or a supplement. Information submitted in a status report for §601.70(b) is limited to that which is needed to sufficiently identify each applicant that has committed to conduct a postmarketing study, the status of the study that is being reported, and the reasons, if any,

for the applicant's failure to conduct, complete, and report the study. Previously, status reports were only for postmarketing studies in pediatric populations. Section 601.28(c) (21 CFR 601.28(c)) requires that the status of postmarketing pediatric studies be reported under § 601.70 rather than under § 601.28 and, therefore, the information collection burden for postmarketing studies in pediatric populations is included under § 601.70. Respondents to this collection of information are the applicants holding approved applications for licensed biological products that have committed to conduct postmarketing studies. Based on information obtained from FDA's Center for Biologics Evaluation and Research computerized application and license tracking database, the agency estimates that approximately 44 applicants with 65 approved BLAs have committed to conduct approximately 223 postmarketing studies and would be required to submit an annual progress report on those postmarketing studies under § 601.70. Based on past experience with similar reporting requirements, the agency estimates that it takes an applicant approximately 24 hours (8 hours per study x 3) annually to gather, complete, and submit the appropriate information for each report (approximately two to four studies per report). Included in these 24 hours is the time necessary to prepare and submit two copies of the annual progress report of postmarketing studies to FDA under § 601.70(d).

In the **Federal Register** of June 26, 2003 (68 FR 38066), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
601.70(b) and (d)	44	1.5	65	24	1,560

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–943 Filed 1–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0273]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 17, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B–41, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Title: 21 CFR Part 589—Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed—(OMB Control Number 0910–0339)—Extension

Epidemiological evidence gathered in the United Kingdom suggests that bovine spongiform encephalopathy (BSE), a progressively degenerative central nervous system disease, is spread to ruminant animals by feeding protein derived from ruminants infected with BSE. Effective August 4, 1997, the FDA amended it regulations to create 21 CFR 589.2000 to regulate handlers of certain animal protein intended for use in ruminant feed. The regulation was designed to ensure that ruminant feed does not contain protein derived from mammalian tissue. It requires that firms that manufacture, blend, process or distribute both mammalian and nonmammalian materials intended for use in ruminant feed maintain written procedures to prevent commingling and cross-contamination of these materials.

Respondents to this collection of information are individuals or firms that manufacture, blend, process distribute, or use feed or feed ingredients that contain or may contain protein, that may be derived from mammalian tissue.

In the **Federal Register** of October 3, 2003 (68 FR 57468), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Sections	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
589.2000(e)(1)(iv)	400	1	400	14	5,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of recordkeepers (i.e., persons that separate mammalian and nonmammalian materials), is derived from inspections of firms handling animal protein intended for use in animal feed. The estimate of the time required for this recordkeeping requirement is based on agency communication with industry.

Dated: January 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1062 Filed 1–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Notice of Approval of New Animal Drug Application; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that it has approved a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provided revised susceptibility information for food-animal pathogens listed in the clinical microbiology section of labeling for ceftiofur hydrochloride injectable suspension.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail *jgotthar@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed a supplement to NADA 140–890 which provides for the veterinary prescription use of EXCENEL (ceftiofur hydrochloride) RTU Sterile Suspension. The supplemental NADA provided updated susceptibility data for food-animal pathogens listed in the clinical microbiology section of labeling. In accordance with section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)) and 21 CFR 514.105(a) and 514.106(a), FDA is providing notice that this supplemental NADA is approved as of December 12, 2003. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 31, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–941 Filed 1–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; 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.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Dates and Times: February 9, 2004, 8:30 a.m.–5:30 p.m., February 10, 2004, 8:30 a.m.–5:30 p.m., February 11, 2004, 8:30 a.m.–4 p.m.

Place: The Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Status: The meeting will be open to the public.

Agenda: Agenda items will include, but not be limited to: Welcome; plenary session on healthcare disparities as it relates to the grant programs under the purview of the Committee with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. The following topics will be addressed at the meeting: What is the relationship between health disparities and underserved/unserved populations; what is the impact of health disparities on Title VII programs, what are Title VII programs doing in terms of legislative requirements, and what are the best practices to address health disparities employed by Title VII programs; and what are complementary programs doing to address health disparities, what are their best practices, and how can we collaborate with these partners to build on existing infrastructures and to maximize resources to address health disparities.

Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comment will be permitted at the end of the Committee meeting on February 9, 2004 and before lunch on February 10, 2004. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

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 Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Double Tree Hotel, Rockville, MD, on February 9, 2004. These persons will be allocated time as the Committee meeting agenda permits.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: January 12, 2004.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 04–1063 Filed 1–15–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

High Throughput Screening for Cancer Genes

Liotta et al. (NCI)

DHHS Reference No. E–209–2003/0–US–01 filed 28 Apr 2003

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov.*

The invention relates to the discovery of an assay system in Drosophila that is useful for (i) identifying genes that are functionally required for invasion and metastasis and (ii) screening for drugs that block tumor growth and metastasis. The system employs the *lgl* mutation in flies. Isolated *lgl* neoplastic tissues from imaginal discs and brain tissue of *lgl* larvae grow and metastasize rapidly upon transplantation into wild-type flies.

In the first embodiment of the assay system, random insertions into genes in the Drosophila genome are made using P-elements. Flies are bred to obtain larva that are homozygous for the *lgl* deletion and homozygous for a specific P-element insertion, and larval tissue is transplanted into an adult host to identify mutations that modulate *lgl* tissue tumorigenesis and metastasis phenotype in the host. Mutated genes can be readily cloned using the P element as tags. The inventors have successfully used this system to identify a link between class 5 semaphorins and cancer.

In the second embodiment of the assay system, *lgl* neoplastic tissue is introduced into an adult fly comprising a functional *lgl* gene, and a candidate therapeutic agent is introduced into the nutrient medium on which the fly, and/or larval forms of the fly, feed. The ability of the candidate therapeutic agent to modulate the pattern of tumor growth in the fly is then assessed by qualitative and quantitative measurements of abnormal cell proliferation in the flies.

This technology is available for licensing on a non-exclusive basis.

Dated: January 12, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–1022 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: January 22, 2004.

Time: 12:30 p.m. to 2 p.m.

Agenda: The purpose of the meeting will be to discuss the Sarcoma Progress Review Group Report.

Place: National Cancer Institute, Bldg. 31, Rm. 11A03, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cherie Nichols, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/joint/htm, where an agenda and any additional information for the meeting will be posted when available.

(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: January 12, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1017 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Heart, Lung, and Blood Institute Special Emphasis Panel, DNA GENO Typing Review Meeting.

Date: February 10, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Irina Gordienko, Scientific Review Administrator, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, 301–435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1020 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: March 2, 2004.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Bldg 31, Bethesda, MD. (Telephone conference call.)

Contact Person: Ken D. Nakamura, PhD., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892. 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS.)

Dated: January 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–948 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: February 9–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bay Club Hotel and Resort, 2131 Shelter Island Drive. San Diego, CA.

Contact Person: Richard D. Crosland, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

Name of Committee: Training Grant and Career Development Review Committee.

Date: February 19–20, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda. MD 20892–9529. 301–496–9223, *saavedrr@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: February 26–27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: February 26–27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington. DC 20037.

Contact Person: Andrea Sawczuk, DDS, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892. 301–496–0660, *sawczuka@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: February 26–27, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Katherine M. Woodbury, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–947 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR Phase I, Topic 43.

Date: January 21, 2004.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR Phase I, Topic 44.

Date: January 26, 2004.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–949 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: February 1–3, 2004.

Closed: February 1, 2004, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: February 2, 2004, 8:30 a.m. to 11:35 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: February 2, 2004, 11:35 a.m. to 1:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: February 2, 2004, 1:15 p.m. to 2:30 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: February 2, 2004, 2:30 p.m. to 3:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: February 2, 2004, 3:15 p.m. to 4 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: February 2, 2004, 4 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: February 2, 2004, 6 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 3, 2004, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1018 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Infrastructure, Neuroinformatics and Computational Neuroscience Subcommittee.

Date: February 11, 2004.

Time: 8 p.m. to 10 p.m.
Agenda: To discuss research mechanisms and infrastructure needs.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological, Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Clinical Trials Subcommittee.
Date: February 12, 2004.
Open: 8 a.m. to 8:30 a.m.
Agenda: To discuss clinical trials policy.
Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.
Closed: 8:30 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.
Contact Person: John Marler, MD, Associate Director for Clinical Trials, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892, (301) 496–9135, *jm137@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council Training and Career Development Subcommittee.
Date: February 12, 2004.
Time: 8 a.m. to 10 a.m.
Agenda: To discuss the training programs of the Institute.
Place: National Institutes of Health, Building 31, 31 Center Drive, A Wing, Conference Room 8A28, Bethesda, MD 20892.
Contact Person: Henry Khachaturian, PhD, Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, MD 20892–9527, (301) 496–4188, *hk11b@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council.
Date: February 12–13, 2004.
Open: February 12, 2004, 10:30 a.m. to 3:30 p.m.
Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research; Overview of the NINDS Intramural Program; scientific presentation, and other administrative and program developments.
Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.
Closed: February 12, 2004, 3:30 p.m. to 5 p.m.
Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.
Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.
Closed: February 13, 2004, 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.
Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1019 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method of Treating Cancer in Humans Using IL–21

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the U.S. Patent Application 60/368,438 (re-filed), PCT Patent Application No. PCT/US03/09707, filed March 27, 2003 (DHHS ref. E–137–2002/0–PCT–02), entitled "Method of Treating Cancer in Humans," to Actis Biologics, Inc., which is located in Livermore, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of cancer via use of IL–21 with the company's proprietary Viral Vector delivery system.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before March 16, 2004, will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: George G. Pipia, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: (301) 435–5560; facsimile: (301) 402–0220; e-mail: *pipiag@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The primary technology describes the use of IL–21 for cancer therapy and/or cancer prevention. When compared to similar cytokines, IL–21 has shown substantial anticancer activity and reduced toxicity in murine models.

IL–21 belongs to the class I family of cytokines and is closely related to IL–2 and IL–15. Some cancer patients have shown significant response to administration of IL–2. However, IL–2 has also been associated with severe toxicity leading to a variety of undesirable side effects. This invention attempts to resolve the toxicity concerns and presents a new therapy for cancer prevention and treatment.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 12, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–1021 Filed 1–15–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Obligated Service for Mental Health Traineeships: Regulations (42 CFR part 62a) and Forms—(Extension, no change; OMB No. 0930–0074)—SAMHSA's Center for Mental Health Services (CMHS) awards grants to institutions for training instruction and traineeships in mental health and related disciplines. Prior to statutory change in 2000, graduate student recipients of these clinical traineeships were required to perform service, as determined by the Secretary to be appropriate in terms of the individual's training and experience, for a length of time equal to the period of support. The clinical trainees funded prior to implementation of the statutory change are required to submit SAMHSA Form SMA 111–2, which is an annual report on employment status and any changes in name and/or address, to SAMHSA. The information on this form is required to document that the trainee has completed their service obligation.

The annual burden estimate is provided below.

42 CFR Citation and Associated Forms	Number of Respondents	Responses/ Respondent	Average Burden/Response (Hrs.)	Annual Burden (Hrs.)
64a.105(b)(2)—Annual Payback Activities Certification—SMA 111–2	79	1	.18	14

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: January 8, 2004.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–963 Filed 1–15–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System; Correction

AGENCY: Department of Homeland Security.

ACTION: Notice; correction.

SUMMARY: The Department of Homeland Security published a document in the **Federal Register** of January 5, 2004, requiring certain nonimmigrant aliens to provide fingerprints, photographs or other biometric identifiers if arriving in or departing from the United States through designated air or sea ports of entry on or after January 5, 2004. The document contained an incorrect telephone number.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, U.S. Department of Homeland Security, Washington, DC 20528, telephone (202) 298–5200.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 2004, in FR Doc. 03–32333, on page 484, in the second column, correct the telephone number for Steve Yonkers to read: Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, U.S. Department of Homeland Security, Washington, DC 20528. Phone (202) 298–5200. Fax (202) 298–5201.

Dated: January 12, 2004.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 04–1015 Filed 1–15–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Privacy Impact Assessment and Privacy Policy; US–VISIT Program

AGENCY: Department of Homeland Security.

ACTION: Notice; Privacy Impact Assessment and Privacy Policy.

SUMMARY: On January 5, 2004, the Department of Homeland Security (Department) promulgated an interim rule implementing the first phase of the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT, Increment 1) in accordance with several Congressional mandates requiring that the Department create an integrated, automated entry exit system that records the arrival and departure of aliens and that verifies, through the comparison of biometric identifiers, the identities of aliens and the authentication of their travel documents. In connection with this program, and in accordance with Section 208 of the E-Government Act of 2002, which requires federal agencies to conduct a privacy impact assessment (PIA) when they use information technology to collect new information, the Department of Homeland Security conducted a Privacy Impact Assessment of US–VISIT, which was published on January 4, 2004, at *http://www.dhs.gov/privacy*. Because Section 208 of the E-Government Act of 2002 requires federal agencies to make PIAs publicly available through their Web sites, publication in the **Federal Register**, or other means, attached as appendices to this notice are the Department's Executive Summary of the PIA, the PIA, and the Privacy Policy for the US–VISIT Program, Increment 1.

ADDRESSES: Written comments about the US–VISIT Program, Increment 1 Privacy Impact Assessment and Privacy Policy may be submitted to Privacy Office, Attn.: US–VISIT PIA, U.S. Department of Homeland Security, Washington, DC 20528, fax (202) 298–5201, or email *privacy@dhs.gov*. If submitting comments by email, please include the words "US–VISIT PIA" in the subject line.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, U.S. Department of Homeland Security, Washington, DC 20528, telephone (202) 298–5200, fax (202) 298–5201.

SUPPLEMENTARY INFORMATION:

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—US–VISIT Program, Increment 1 Privacy Impact Assessment Executive Summary
Appendix B—US–VISIT Program, Increment 1 Privacy Impact Assessment
Appendix C—US–VISIT Program Privacy Policy

Dated: January 12, 2004.

Nuala O'Connor Kelly,

Chief Privacy Officer.

US–VISIT Program, Increment 1

Privacy Impact Assessment

Executive Summary

December 18, 2003

Contact Point: Steve Yonkers, US–VISIT Privacy Officer, Department of Homeland Security, (202) 298–5200.

Reviewing Official: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, (202) 772–9848.

US–VISIT Program, Increment 1

Privacy Impact Assessment

Executive Summary

Overview

US–VISIT, the United States Visitor and Immigrant Status Indicator Technology, is a legislatively-mandated DHS program that is designed to:

- Enhance the security of American citizens, permanent residents, and visitors.
- Expedite legitimate travel and trade.
- Ensure the integrity of the immigration system.
- Safeguard the personal privacy of visitors.

When fully implemented, US–VISIT will provide a dynamic, interoperable system involving numerous stakeholders across the government. Increment 1, as the name suggests, is the first step in the implementation process. Increment 1 proposes to integrate and modify the capabilities of several information systems in order to accomplish the mission of US–VISIT.

This Privacy Impact Assessment (PIA) focuses on Increment 1 of this entry exit system.

What Information Is Collected

The US–VISIT program will collect and retain biographic, travel, and biometric information (i.e., photograph and fingerprints) pertaining to visitors.

Individuals covered by Increment 1 ("covered individuals") are nonimmigrant visa holders traveling through air and sea ports.[1] The DHS regulations and related **Federal Register** notice for US–VISIT Increment 1 will fully detail coverage of the program.

[1] Nonimmigrant visa entrants comprise a small percentage of the 330 million non-citizens admitted annually through ports of entry. Establishing US–VISIT incrementally with this population will allow DHS to test implementation of the system and to make revisions as needed for future increments.

Why the Information Is Being Collected and Intended Use of the Information

In accordance with Congressional mandates for an entry exit system, information is collected from and used to verify the identity of covered individuals who enter or leave the United States. This enables U.S. authorities to enhance the security of the United States by more effectively identifying covered individuals who are:

- Known to pose a threat or are suspected of posing a threat to the security of the United States;
- Known to have violated the terms of their admission to the United States; or
- Wanted for commission of a criminal act in the United States or elsewhere.

Information Access and Sharing

Information collected and retained by US–VISIT will be accessed by employees of DHS components—Customs and Border Protection, Immigration and Customs Enforcement, Citizenship and Immigration Services, and the Transportation Security Administration—and by consular officers of the Department of State. Strict security controls will be put in place to ensure that only those personnel with a need for the information in the performance of their official duties will be able to access information in the system.

If necessary, the information that is collected will be shared with other law enforcement agencies at the federal, state, local, foreign, or tribal level, who are lawfully engaged in collecting law enforcement intelligence information and who need access to the information in order to carry out their law enforcement duties.

Consent Mechanisms

The admission into the United States of an individual subject to US–VISIT requirements will be contingent upon submission of the information required by US–VISIT, including biometric identifiers. A covered individual who declines to provide biometrics is inadmissible to the United States, unless a discretionary waiver is granted under section 212(d)(3) of the Immigration and Nationality Act. Such an individual may withdraw his or her application for admission, or be subject to removal proceedings.

Security

Information accessible to US–VISIT will be protected through multi-layer security mechanisms that are physical, technical, administrative and environmental and that are in compliance with the DHS IT Security Program Handbook and DHS Baseline Security Requirements for Automated Information Systems. These security mechanisms provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and careful screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

System of Records

A system of records notice (SORN)—normally required under the Privacy Act—is not necessary for US–VISIT because no new system is being developed for Increment 1. However, the ADIS and IDENT SORNs have been revised to reflect US–VISIT usage.

Although US–VISIT derives its capability from the integration and modification of existing systems, it nevertheless represents a new business process that involves new uses of existing data and the collection of new data items. As a result, there is a potential for new privacy risks, which are addressed in the PIA.

Privacy Controls

US–VISIT collects, integrates, and shares personal information of covered individuals. Covered individuals must consent to the collection, use, and disclosure of this personal information if they wish to enter or leave the U.S.

To address the privacy concerns associated with the program, US–VISIT will implement comprehensive privacy controls, which will be modified and updated as the system is revised and expanded. These controls consist of:

- Public education through transparency of the program, including development and publication of a Privacy Policy that will be disseminated prior to the time information is collected from potential visitors;[2]
- Establishment of privacy sensitivity awareness programs for US–VISIT operators[3];
- Establishment of a Privacy Officer for US–VISIT and implementation of an accountability program for those responsible for compliance with the US–VISIT Privacy Policy;
- Periodic strategic reviews of US–VISIT data to ascertain that the collection is limited to that which is necessary for US–VISIT stated purposes;
- Usage agreements between US–VISIT and other agencies authorized to have access to US–VISIT data;
- To the extent permitted by law, regulations, or policy, establishment of opportunity for covered individuals to have access to their information and/or allow them to challenge its completeness;
- Maintenance of security safeguards (physical, electronic and procedural) consistent with federal law and policy to limit access to personal information only to those with appropriate rights, and to protect information from unauthorized disclosure, modification, misuse, and disposal, whether intentional or unintentional; and
- Establishment of administrative controls to prevent improper actions due to data inconsistencies from multiple information sources.

Contact Point and Reviewing Official

Contact Point: Steve Yonkers, US–VISIT Privacy Officer, (202) 298–5200.

[2] A copy of the Privacy Policy is appended to the full report.

[3] The legacy systems on which Increment 1 is built included privacy sensitivity training requirements. This training will be made mandatory for US–VISIT operators.

Reviewing Official: Nuala O'Connor Kelly, Chief Privacy Officer, DHS, (202) 772–9848.

Comments

We welcome your comments on this privacy impact assessment. Please write to: Privacy Office, Attn.: US–VISIT PIA, U.S. Department Of Homeland Security, Washington, DC 20528, or email *privacy@dhs.gov*. Please include US–VISIT PIA in the subject line of the email.

US–VISIT Program, Increment 1

Privacy Impact Assessment

December 18, 2003

Contact Point: Steve Yonkers, US–VISIT Privacy Officer, Department of Homeland Security, (202) 298–5200.

Reviewing Official: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, (202) 772–9848.

US–VISIT Program, Increment 1

Privacy Impact Assessment

1. Introduction

Congress has directed the Executive Branch to establish an integrated entry and exit data system to accomplish the following goals[1]:

1. Record the entry into and exit out of the United States of covered individuals;
2. Verify the identity of covered individuals; and
3. Confirm compliance by visitors with the terms of their admission into the United States.

The Department of Homeland Security (DHS) proposes to comply with this congressional mandate by establishing the United States Visitor and Immigration Status Indicator Technology (US–VISIT) program. The first phase of US–VISIT, referred to as Increment 1, will capture entry and exit information about non-immigrant visitors whose records are not subject to the Privacy Act. Rather than establishing a new information system, DHS will integrate and enhance the capabilities of existing systems to capture this data. In an effort to make the program transparent, as well as to address any privacy concerns that may arise as a result of the program, DHS's Chief Privacy Officer has directed that this PIA be performed in accordance with the guidance issued by OMB on September 26, 2003. As US–VISIT is further developed and deployed, this PIA will be updated to reflect future increments.

2. System Overview

- *What Information Is To Be Collected*

Individuals subject to the data collection requirements and processes of Increment 1 of the US–VISIT program ("covered individuals") are nonimmigrant visa holders traveling through air and sea ports. The DHS regulations and related **Federal Register** notice for US–VISIT Increment 1 will fully detail coverage of the program.

The information to be collected from these individuals includes complete name, date of birth, gender, country of citizenship, passport number and country of issuance, country of residence, travel document type (e.g., visa), number, date and country of issuance, complete U.S. address, arrival and departure information, and for the first time, a photograph, and fingerprints. US–VISIT will capture and store this information from existing systems that already record it or are being modified to allow for its collection.

- *Why the Information is Being Collected*

In numerous statutes, Congress has indicated that an entry exit program must be put in place to verify the identity of covered individuals who enter or leave the United States. In keeping with this expression of congressional intent and in furtherance of the mission of the Department of Homeland Security, the purposes of US–VISIT are to identify individuals who may pose a threat to the security of the United States, who may have violated the terms of their admission to the United States, or who may be wanted for the commission of a crime in the U.S. or elsewhere, while at the same time facilitating legitimate travel.

- *What Opportunities Individuals Will Have To Decline To Provide Information or To Consent to Particular Uses of the Information and How Individuals Grant Consent*

The admission into the United States of an individual subject to US–VISIT requirements will be contingent upon submission of the information required by US–VISIT, including biometric identifiers. A covered individual who declines to provide biometrics is inadmissible to the United States, unless a discretionary waiver is granted under section 212(d)(3) of the Immigration and Nationality Act. Such an individual may withdraw his or her application for admission, or be subject to removal proceedings. US–VISIT has its own privacy officer, however, to ensure that the privacy of all visitors is respected and to respond to individual concerns which may be raised about the collection of the required information. Further, the DHS Chief Privacy Officer will exercise comprehensive oversight of all phases of the program to ensure that privacy concerns are respected throughout implementation. The DHS Chief Privacy Officer will also serve as the review authority for all individual complaints and concerns about the program.

3. Increment 1 System Architecture

US–VISIT Increment 1 will accomplish its goals primarily through the integration and modification of the capabilities of three existing systems:

1. The Arrival and Departure Information System (ADIS).
2. The Passenger Processing Component of the Treasury Enforcement Communications System (TECS)[2]
3. Automated Biometric Identification System (IDENT).

US–VISIT Increment 1 will also involve modification and extension of client software on Port of Entry (POE) workstations and the development of departure kiosks.

The changes to these systems include:

1. Modifications of TECS to give immigration inspectors the ability to display non-immigrant-visa (NIV) data.
2. Modifications to the ADIS database to accommodate additional data fields, to interface with other systems, and to generate various types of reports based on the stored data.
3. Modifications to the IDENT database to capture biometrics at the primary port of entry (POE) and to facilitate identity verification.
4. Establishment of interfaces to facilitate the transfer of biometric information from IDENT to ADIS and from ADIS to TECS.
5. Establishment of other interfaces to facilitate transfer of changes in the status of individuals from two other data bases—the Student and Exchange Visitor Information System (SEVIS) and the Computer Linked Application Information Management System (CLAIMS 3) to ADIS.

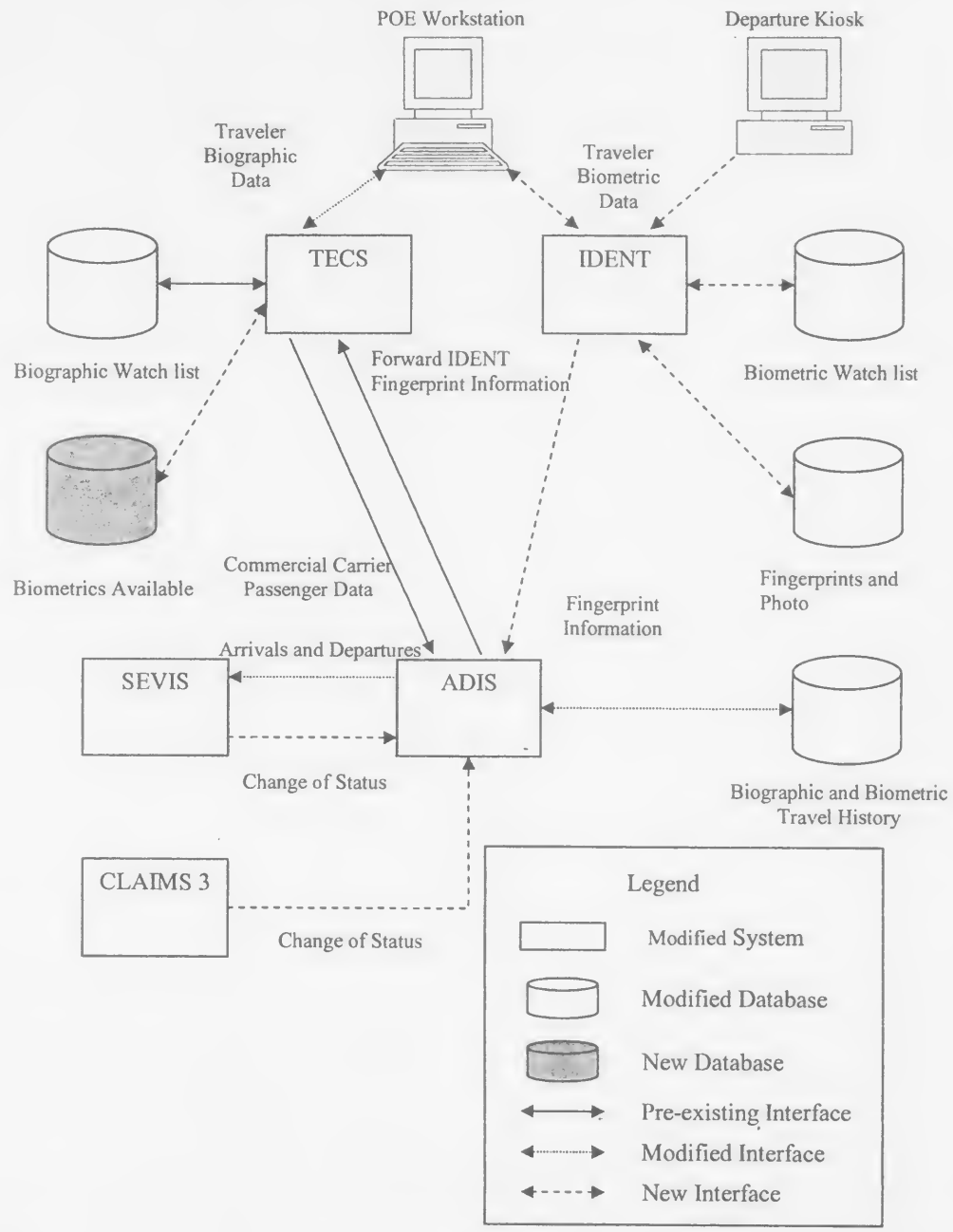
BILLING CODE 4410–10–P

[1] Congress enacted several statutory provisions concerning an entry exit program, including provisions in: The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA) Public Law 106–215; The Visa Waiver Permanent Program Act of 2000 (VWPPA); Public Law 106–396; The U.S.A. PATRIOT Act, Public Law 107–56; and The Enhanced Border Security and Visa Entry Reform Act ("Border Security Act"), Public Law 107–173.

[2] As indicated in the US–VISIT Increment 1 Functional Requirements Document (FRD), the Passenger Processing Component of TECS consists of two systems, where "system" is used in the sense of the E-Government Act, title 44, Chapter 35, section 3502 of U.S. Code; *i.e.*, "a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information." The two systems, and the process relevant to US–VISIT Increment 1 that they support, are (1) Interagency Border Inspection System (IBIS), supporting the lookout process and providing interfaces with the Interpol and National Crime Information Center (NCIC) databases; and (2) Advance Passenger Information System (APIS), supporting the entry process by receiving airline passenger manifest information.

Figure 1 presents data flows in the context of the high-level system architecture.

Source: US-VISIT Increment 1 Functional Requirements Document



BILLING CODE 4410–10–C

- *Intended Use of the Information*

DHS intends to use the information collected and maintained by US–VISIT Increment 1 to carry out its national security, law enforcement, immigration control, and other functions. Through the enhancement and integration of existing database systems, DHS will be able to ensure the entry of legitimate visitors, identify, investigate, apprehend and/or remove aliens unlawfully entering or present in the United States beyond the lawful limitations of their visit, and prevent the entry of inadmissible aliens. US–VISIT thus will enable DHS to protect U.S. borders and national security by maintaining improved immigration control.

US–VISIT will also help prevent aliens from obtaining benefits to which they are not entitled.

4. Maintenance and Administrative Controls on Access to the Data

• *With Whom the Information Will Be Shared*

The personal information collected and maintained by US–VISIT Increment 1 will be accessed principally by employees of DHS components—Customs and Border Protection, Immigration and Customs Enforcement, Citizenship and Immigration Services, and the Transportation Security Administration—and by consular officers of the Department of State. Additionally, the information may be shared with other law enforcement agencies at the federal, state, local, foreign, or tribal level, who, in accordance with their responsibilities, are lawfully engaged in collecting law enforcement intelligence information (whether civil or criminal) and/or investigating, prosecuting, enforcing, or implementing civil and/or criminal laws, related rules, regulations, or orders. The system of records notices for the existing systems on which US–VISIT draws provide notice as to the conditions of disclosure and routine uses for the information collected by US–VISIT, provided that any disclosure is compatible with the purpose for which the information was collected.

US–VISIT transactions will have a unique identifier to differentiate them from other IDENT transactions. This will allow for improved oversight and audit capabilities to ensure that the data are being handled consistent with all applicable federal laws and regulations regarding privacy and data integrity.

• *How the Information Will Be Secured*

The US–VISIT program will secure information and the systems on which that information resides, by complying with the requirements of the DHS IT Security Program Handbook. This handbook establishes a comprehensive program, consistent with federal law and policy, to provide complete information security, including directives on roles and responsibilities, management policies, operational policies, and application rules, which will be applied to component systems, communications between component systems, and at interfaces between component systems and external systems.

One aspect of the DHS comprehensive program to provide information security involves the establishment of rules of behavior for each major application, including US–VISIT. These rules of behavior require users to be adequately trained regarding the security of their systems. These rules also require a periodic assessment of technical, administrative and managerial controls to enhance data integrity and accountability. System users must sign statements acknowledging that they have been trained and understand the security aspects of their systems. In addition, the rules of behavior already in effect for each of the component systems on which US–VISIT draws will be applied to the program, adding an additional layer of security protection.

The table below provides detail on the various measures employed to address potential security threats to US–VISIT Increment 1.

SECURITY THREATS AND MITIGATION METHODS DETAILED

Nature of threat	Architectural placement	Safeguard	Mechanism
Intentional physical threats from unauthorized external entities.	ADIS	Physical protection	The ADIS database and application is maintained at a Department of Justice Data Center. Physical controls of that facility (*e.g.*, guards, locks) apply and prevent entree by unauthorized entities.
Intentional physical threats from unauthorized external entities.	Passenger Processing Component of TECS.	Physical protection	The Passenger Processing Component of TECS is maintained on a mainframe by CBP. Physical controls of the TECS facility (*e.g.*, guards, locks) apply and prevent entree by unauthorized entities.
Intentional physical threats from external enemies.	IDENT	Physical protection	IDENT is maintained on an IBM cluster. Physical controls of the facility (*e.g.*, guards, locks) apply and prevent entree by unauthorized entities.
Intentional physical threats from external entities.	POE Workstation	Physical protection	Physical controls will be specific to each POE.
Intentional and unintentional electronic threats from authorized (internal and external) entities.	System-wide	Technical protection: Identification and authentication (I&A).	User identifier and password, managed by the Password Issuance Control System (PICS).

5. Information Life Cycle and Privacy Impacts

The following analysis is structured according to the information life cycle. For each life-cycle stage—collection, use and disclosure, processing, and retention and destruction—key issues are assessed, privacy risks identified, and mitigation measures discussed. Risks are related to fair information principles—notice/awareness, choice/consent, access/participation, integrity/security, and enforcement/redress—that form the basis of many statutes and codes.

• *Collection*

US–VISIT Increment 1 collects only the personal information necessary for its purposes. While Increment 1 does not constitute a new system of records, it does expand the types of data held in its component systems to include biometric identifiers. By definition this creates a general privacy risk. This risk is mitigated, however, by establishment of a privacy policy supported and enforced by a comprehensive privacy program. This program includes a separate Privacy Officer for US–VISIT, mandatory privacy training for system operators, and appropriate safeguards for data handling.

• *Use and Disclosure*

The IDENT and TECS systems collect data that are used for purposes other than US–VISIT. As a result, data collected for US–VISIT through these systems may become available for another functionality embodied in these component systems. This presents a potential notice risk: will the data be used for a purpose consistent with US–VISIT? This risk is mitigated in several ways. First, US–VISIT isolates US–VISIT data from non US–VISIT data on component systems, and users will be subject to specific privacy and security training for this data. Second, the IDENT and TECS systems already have their own published SORNS, which explain the uses to which the data they collect will be put, for US–VISIT as well as non-US–VISIT purposes. This, too, mitigates the notice risk. Third, Memoranda of Understanding and of Agreement are being negotiated with third parties (including other agencies) that will address protection and use of US–VISIT data, again to mitigate this notice risk.

• *Processing*

Data exchange, which will take place over an encrypted network between US–VISIT Increment 1 component systems and/or applications is limited, and confined only to those that are functionally necessary. Although much of the personal information going into ADIS from SEVIS and CLAIMS 3 is duplicative of data entering ADIS from TECS, this duplication is to ensure that changes in status received from SEVIS or CLAIMS 3 are associated with the correct

individual, even in cases of data element mismatches (*i.e.*, differing values for the same data element received from different sources). This mitigates the data integrity risk. A failure to match generates an exception report that prompts action to resolve the issue. This also mitigates integrity risk by guarding against incorrect enforcement actions resulting from lost immigration status changes. (The data flows from SEVIS and CLAIMS 3 principally support changes in status.)

On the other hand, if a match is made, but there are some data element mismatches, no report is generated identifying the relevant records and data elements (one or more of which must have inaccurate or improper values) and no corrective action is taken. This is due to the resources that would be required to investigate all such events. This integrity risk again creates a possibility of incorrect enforcement actions if the match was made in error as a result of the data element mismatches. However, this aspect of the integrity risk is mitigated by subjecting all status changes that would result in enforcement actions to manual analysis and verification. A quality assurance process will also be used to identify any problem trends in the matching process.

• *Retention and Destruction*

The policies of individual component systems, as stated in their SORNs, govern the retention of personal information collected by US–VISIT. Because the component systems were created at different times for different purposes, there are inconsistencies across the SORNs with respect to data retention policies. There is also some duplication in the types of data collected by each system. These inconsistencies and duplication result in some heightened degree of risk with respect to integrity/security of the data, and to access and redress principles, because personal information could persist on one or more component systems beyond its period of use or disappear from one or more component systems while still in use. These risks are mitigated, however, by having a Privacy Officer for US–VISIT to handle specific issues that may arise, by providing review of the Privacy Officer's decision by the DHS Chief Privacy Officer, and, to the extent permitted by existing law, regulations, and policy, by allowing covered individuals access to their information and permitting them to challenge its completeness. Additionally, as an overarching mechanism to ensure appropriate privacy protections, US–VISIT operators will conduct periodic strategic reviews of the data to ensure that what is collected is limited to that which is necessary for US–VISIT purposes,

US–VISIT Increment 1 will store fingerprint images, both in the IDENT database and transiently on the some POE workstations and departure kiosks. These images are, of course, sensitive, and their storage could present a security as well as a privacy risk. Because retention of fingerprint images is functionally necessary so that manual comparison of fingerprints can be performed to verify biometric watch list matches, appropriate mitigation strategies will be utilized, including encryption on the departure kiosks and physical and logical access controls on the POE workstations and on the IDENT system.

The chart below shows, in tabular form, the privacy risks associated with US–VISIT, Increment One, and the mitigation efforts that will address these risks.

PRIVACY THREATS AND MITIGATION METHODS DETAILED

Type of threat	Description of threat	Type of measures to counter/mitigate threat
Unintentional threats from insiders [3].	Unintentional threats include flaws in privacy policy definitiion; mistakes in information system design, development, integration, configuration, and operation; and errors made by custodians (*i.e.*, personnel of organizations with custody of the information). These threats can be physical (*e.g.*, leaving documents in plain view) or electronic in nature. These threats can result in insiders being granted access to information for which they are not authorized or non consistent with their responsibilities.	These threats are addressed by (a) developing a privacy policy consistent with Fair Information Practices, laws, regulations, and OMB guidance; (b) defining appropriate functional and interface requirements; developing, integrating, and configuring the system in accordance with those requirements and best security practices; and testing and validating the system against those requirements; and (c) providing clear operating instructions and training to users and system administrators.
Intentional threat from insiders.	Threat actions can be characterized as improper use of authorized capabilities (*e.g.*, browsing, removing information from trash) and circumvention of controls to take unauthorized actions (*e.g.*, removing data from a workstation that has been not been shut off).	These threats are addressed by a combination of technical safeguards (*e.g.*, access control, auditing, and anomaly detection) and administrative safeguards (*e.g.*, procedures, training).
Intentional and unintentional threats from authorized external entities [4].	Intentional: Threat actions can be characterized as improper use of authorized capabilities (*e.g.*, misuse of information provided by US–VISIT) and circumvention of controls to take unauthorized actions (*e.g.*, unauthorized access to systems).. Unintentional: Flaws in privacy policy definition; mistakes in information system design, development, integration, configuration, and operation; and errors made by custodians.	These threats are addressed by technical safeguards (in particular, boundary controls such as firewalls) and administrative safeguards in the form of routine use agreements which require external entities (a) to conform with the rules of behavior and (b) to provide safeguards consistent with, or more stringent than, those of the system or program.
Intentional threats from external unauthorized entities.	Threat actions can be characterized by mechanism: physical attack (*e.g.*, theft of equipment), electronic attack (*e.g.*, hacking, interception of commuications), and personnel attack (*e.g.*, social engineering)..	These threats are addressed by physical safeguards, boundary controls at external interfaces, technical safeguards (*e.g.*, identification and authentication, encrypted communications), and clear operating instructions and training for users and system administrators.

[3] Here, the term "insider" is intended to include individuals acting under the authority of the system owner or program manager. These include users, system administrators, maintenance personnel, and others authorized for physical access to system components.

[4] These include individuals and systems which are not under the authority of the system owner or program manager, but are authorized to receive information from, provide information to, or interface electronically with the system.

6. Summary and Conclusions

Legislation both before and after the events of September 11, 2001 led to the development of the US–VISIT Program. The program is based on Congressional concerns with visa overstays, the number of illegal foreign nationals in the country, and overall border security issues. Requirements for the program, including the implementation of an integrated and interoperable border and immigration management system, are embedded in various provisions of The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA) Pub. L. 106–215; The Visa Waiver Permanent Program Act of 2000 (VWPPA); Pub. L. 106–396; The U.S.A. PATRIOT Act, Pub. L. 107–56; and The Enhanced Border

Security and Visa Entry Reform Act ("Border Security Act"), Pub. L. 107–173. As a result, many of the characteristics of US–VISIT were pre-determined. These characteristics include:

- Use of a National Institute of Standards and Technology (NIST) biometric standard for identifying foreign nationals;
- Use of biometric identifiers in travel and entry documents issued to foreign nationals, including the ability to read such documents at U.S. ports of entry;
- Integration of arrival/departure data on foreign nationals, including commercial carrier passenger manifests; and
- Integration with other law enforcement and security systems.

These and other requirements substantially constrained the high-level design choices available to the US–VISIT Program. A major choice for the program concerned whether to develop an entirely or largely new system or to build upon existing systems. Given the legislatively imposed deadline of December 31, 2003 for establishing an initial operating capability, along with the various integration requirements, the program opted to leverage existing systems—IDENT, ADIS, and the Passenger Processing Component of TECS.

As a result of this choice for Increment 1, DHS has determined that a new information system would not be created. Nevertheless, in order to effectively and accurately assess the privacy risks of US–VISIT, and because the program represents a new business process, this Privacy Impact Assessment was performed. In the process of conducting this PIA, DHS identified the need to (1) update the SORNs of the ADIS and IDENT systems to accurately reflect US–VISIT requirements and usage, which has been accomplished, and (2) examine the privacy and security aspects of the existing SORNs and implement any additional necessary strategies to ensure the privacy and security of US–VISIT data.

Based on this analysis, it can be concluded that:

- Most of the high-level design choices for US–VISIT Increment 1 were statutorily pre-determined;
- US–VISIT Increment 1 creates a pool of individuals whose personal information is at risk; but
- US–VISIT Increment 1 mitigates specific privacy risks; and
- US–VISIT, through its own Privacy Officer and in collaboration with the DHS Chief Privacy Officer, will continue to track, assess, and address privacy issues throughout the life of the US–VISIT program and update this PIA to reflect additional increments of the program.

Contact Point and Reviewing Official

Contact Point: Steve Yonkers, US–VISIT Privacy Officer, (202) 298–5200.

Reviewing Official: Nuala O'Connor Kelly, Chief Privacy Officer, DHS, (202) 772–9848.

Comments

We welcome your comments on this privacy impact assessment. Please write to: Privacy Office, Attn.: US–VISIT PIA, U.S. Department Of Homeland Security, Washington, DC 20528, or email *privacy@dhs.gov*. Please include US–VISIT PIA in the subject line of the email.

US–VISIT Program

Privacy Policy

November 2003

What Is the Purpose of the US–VISIT Program?

The United States Visitor Immigrant Status Indicator Technology (US–VISIT) is a United States Department of Homeland Security (DHS) program that enhances the country's entry and exit system. It enables the United States to record the entry into and exit out of the United States of foreign nationals requiring a visa to travel to the U.S., creates a secure travel record, and confirms their compliance with the terms of their admission.

The US–VISIT program's goals are to:

a. Enhance the security of American citizens, permanent residents, and visitors.

b. Facilitate legitimate travel and trade.

c. Ensure the integrity of the immigration system.

d. Safeguard the personal privacy of visitors.

The US–VISIT initiative involves collecting biographic and travel information and biometric identifiers (fingerprints and a digital photograph) from covered individuals to assist border officers in making admissibility decisions. The identity of covered individuals will be verified upon their arrival and departure.

Who Is Affected by the Program?

Individuals subject to the requirements and processes of the US–VISIT program ("covered individuals") are those who are not U.S. citizens at the time of entry or exit or are U.S. citizens who have not identified themselves as such at the time of entry or exit. Non-U.S. citizens who later become U.S. citizens will no longer be covered by US–VISIT, but the information about them collected by US–VISIT while they were non-citizens will be retained, as will information collected about citizens who did not identify themselves as such.

What Information Is Collected?

The US–VISIT program collects biographic, travel, travel document, and biometric information (photographs and fingerprints) pertaining to covered individuals. No personally identifiable information is collected other than that which is necessary and relevant for the purposes of the US–VISIT program.

How Is the Information Used?

The information that US–VISIT collects is used to verify the identity of covered individuals when entering or leaving the U.S. This enables U.S. authorities to more effectively identify covered individuals that:

- Are known to pose a threat or are suspected of posing a threat to the security of the United States;
- Have violated the terms of their admission to the United States; or
- Are wanted for commission of a criminal act in the United States or elsewhere.

Personal information collected by US–VISIT will be used only for the purposes for which it was collected, unless other uses are specifically authorized or mandated by law.

Who Will Have Access to the Information?

Personal information collected by US–VISIT will be principally accessed by Customs and Border Protection, Immigration and Customs Enforcement, Citizenship and Immigration Services, and Transportation Security Officers of the Department of Homeland Security and Consular Officers of the Department of State. Others to whom this information may be made available include appropriate federal, state, local, or foreign government agencies when needed by these organizations to carry out their law enforcement responsibilities.

How Will the Information Be Protected?

Personal information will be kept secure and confidential and will not be discussed with, nor disclosed to, any person within or outside the US–VISIT program other than as authorized by law and in the performance of official duties. Careful safeguards, including appropriate security controls, will ensure that the data is not used or accessed improperly. In addition, the DHS Chief Privacy Officer will review pertinent aspects of the program to ensure that proper safeguards are in place. Roles and responsibilities of DHS employees, system owners and managers, and third parties who manage or access information in the US–VISIT program include:

1. DHS Employees

As users of US–VISIT systems and records, DHS employees shall:

- Access records containing personal information only when the information is needed to carry out their official duties.
- Disclose personal information only for legitimate business purposes and in accordance with applicable laws, regulations, and US–VISIT policies and procedures.

2. US–VISIT System Owners/Managers

System Owners/Managers shall:

- Follow applicable laws, regulations, and US–VISIT program and DHS policies and procedures in the development, implementation, and operation of information systems under their control.
- Conduct a risk assessment to identify privacy risks and determine the appropriate security controls to protect against the risk.
- Ensure that only personal information that is necessary and relevant for legally mandated or authorized purposes is collected.
- Ensure that all business processes that contain personal information have an approved Privacy Impact Assessment. Privacy Impact Assessments will meet appropriate OMB and DHS guidance and will be updated as the system progresses through its development stages.
- Ensure that all personal information is protected and disposed of in accordance with applicable laws, regulations, and US–VISIT program and DHS policies and procedures.
- Use personal information collected only for the purposes for which it was collected, unless other purposes are explicitly mandated or authorized by law.
- Establish and maintain appropriate administrative, technical, and physical security safeguards to protect personal information.

3. Third Parties

Third parties shall:

• Follow the same privacy protection guidance as DHS employees.

How Long Is Information Retained?

Personal information collected by US–VISIT will be retained and destroyed in accordance with applicable legal and regulatory requirements.

Who To Contact for More Information About the US–VISIT Program

Individuals whose personal information is collected and used by the US–VISIT program may, to the extent permitted by law, examine their information and request correction of inaccuracies. Individuals who believe US–VISIT holds inaccurate information about them, or who have questions or concerns relating to personal information and US–VISIT, should contact the Privacy Officer, US–VISIT Program, Department of Homeland Security, Washington, DC 20528. Further information on the US–VISIT program is also available at *http://www.dhs.gov/us-visit.*

[FR Doc. 04–1016 Filed 1–15–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–03]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 11, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 8, 2004.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–729 Filed 1–15–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Amendment of an Existing System of Records

AGENCY: Department of the Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to amend a Privacy Act (PA) system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). Interior/OS–01, "Computerized ID Security System" is being amended because DOI, Office of the Secretary, National Business Center, is replacing its current computerized access control system with a new "Smart Card" access control system. The current access control system is used to maintain access control to the Main Interior complex in Washington, DC. The new access control system will be used to maintain access control to all DOI facilities that have installed smart card access control systems. In addition to the information collected under the current access control system, the new access control system will record the entry/exit locations, access status, and personal identification numbers (PIN) of the smart card holder. Two new routine uses have been added to the system of records to allow DOI to disclose information to both: (1) other agencies that have similar smart card access control systems, when a DOI smart card holder desires access to that agency's facility; and (2) to an official of another Federal agency to provide information needed by that agency in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected or maintained. Additionally, the text and/or scope of the five original routine uses have been modified to varying degrees. The data will be stored on a server located in the Main Interior building in Washington, DC, with a backup server located in the DOI National Business Center facility in Denver, CO. Data exchanged between the servers and between the servers and the client PCs will be encrypted.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Office of the Secretary Privacy Act Officer, Sue Ellen Sloca, U.S. Department of the Interior, Mail Stop (MS)–1414-Main Interior Building (MIB), 1849 C Street, NW, Washington, DC 20240, or by e-mail to *Sue_Ellen_Sloca@nbc.gov*. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: David VanderWeele, Security Specialist, NBC Security Services, MS–1229, 1849 C St., NW, Washington, DC 20240 (*David_A_Vanderweele@nbc.gov*).

A copy of the system notice for OS–01, Computerized ID Security System, follows.

Dated: January 12, 2004.

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, Department of the Interior.

Interior Department—Privacy Act Notice

INTERIOR/OS–01

SYSTEM NAME:

Computerized ID Security System—Interior, OS–01.

SYSTEM LOCATION:

(1) Data covered by this system are maintained in the following locations: U.S. Department of the Interior, Office of the Secretary, National Business Center, Computer Center, 1849 C Street, NW, Washington, DC 20240; U.S. Department of the Interior, Office of the Secretary, National Business Center, 7301 W Mansfield Ave, MS D–2130, Denver, CO 80235–2300. (2) Limited access to data covered by this system is available at Department of the Interior (DOI) locations, both Federal buildings

and Federally-leased space, where staffed guard stations have been established in facilities that have installed the smart card ID system, as well as the physical security office(s) of those locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have had access to DOI facilities that have the smart card access control system installed. These include, but are not limited to, the following groups: current agency employees, former agency employees, agency contractors, persons authorized to perform or use services provided in DOI facilities (e.g., Department of the Interior Federal Credit Union, Interior Department Recreation Association Fitness Center, etc.), other Government employees from agencies with smart card systems, volunteers, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on current agency employees, former agency employees, and agency contractors include the following data fields: Name, Social Security number, date of birth, signature, image (photograph), hair color, eye color, height, weight, organization/office of assignment, telephone number of emergency contact (optional/voluntary data field), date of entry, time of entry, location of entry, time of exit, location of exit, security access category, access status, personal identification number (PIN), number of ID security cards issued, ID security card issue date, ID security card expiration date, and ID security card serial number. Records maintained on all other individuals covered by the system include the following data fields: Name, Social Security number (or one of the following: Driver's License number, "Green Card" number, Visa number, or other ID number), U.S. Citizenship (yes or no/logical data field), date of entry, time of entry, location of entry, time of exit, location of exit, purpose for entry, agency point of contact, company name, security access category, access status, PIN, number of ID security cards issued, ID security card issue date, ID security card expiration date, and ID security card serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

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

The primary purposes of the system are:

(1) To ensure the safety and security of DOI facilities and their occupants in which the system is installed.

(2) To verify that all persons entering DOI facilities or other Government facilities with smart card systems are authorized to enter them.

(3) To track and control ID security cards issued to persons entering and exiting the facilities.

Disclosures outside the DOI may be made:

(1) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(2) To the Federal Protective Service and appropriate Federal, State, local or foreign agencies responsible for investigating emergency response situations or investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when DOI becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(3) To another agency with a similar smart card system when a person with a smart card desires access to that agency's facilities.

(4)(a) To any of the following entities or individuals, when the circumstances set forth in (b) are met:

(i) The Department of Justice (DOJ);

(ii) a court, adjudicative or other administrative body;

(iii) a party in litigation before a court or adjudicative or administrative body; or

(iv) any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) any DOI employee acting in his or her official capacity;

(C) any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(D) the United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) compatible with the purposes for which the records were compiled.

(5) To a congressional office in response to an inquiry an individual covered by the system has made to the congressional office about him or herself.

(6) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

(7) To representatives of the General Services Administration or the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

Note: Disclosures within DOI of data pertaining to date and time of entry and exit of an agency employee working in the District of Columbia may not be made to supervisors, managers or any other persons (other than the individual to whom the information applies) to verify employee time and attendance record for personnel actions because 5 U.S.C. 6106 prohibits Federal Executive agencies (other than the Bureau of Engraving and Printing) from using a recording clock within the District of Columbia, unless used as a part of a flexible schedule program under 5 U.S.C. 6120 *et seq.*

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

STORAGE:

Records are stored in electronic media and in paper files.

RETRIEVABILITY:

Records are retrievable by name, Social Security number, other ID number, image (photograph), organization/office of assignment, agency point of contact, company name, security access, category, date of entry, time of entry, location of entry, time of exit, location of exit, ID security card issue date, ID security card expiration date, and ID security card serial number.

ACCESS SAFEGUARDS:

The computer servers in which records are stored are located in computer facilities that are secured by alarm systems and off-master key access. The computer servers themselves are password-protected. Access granted to individuals at guard stations is password-protected; each person granted access to the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the client PCs at the guard stations and badging office are encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific, ongoing security investigations:

(1) Records relating to individuals other than employees are destroyed two years after ID security card expiration date.

(2) Records relating to date and time of entry and exit of employees are destroyed two years after date of entry and exit.

(3) All other records relating to employees are destroyed two years after ID security card expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

Security Manager, Physical Security Office, Division of Employee and Public Services, National Business Center, MS–1224, 1849 C Street, NW, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should address his/her request to the Security Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.60.)

RECORDS ACCESS PROCEDURES:

An individual requesting access to records maintained on himself or herself should address his/her request to the Security Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.63.)

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on himself or herself should address his/her request to the Security Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Individuals covered by the system, supervisors, and designated approving officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–939 Filed 1–15–04; 8:45 am]
BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Endangered Karst Invertebrate and Karst Feature Survey Guidance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is updating the schedule to revise and make available for public comment draft endangered karst invertebrate and karst feature survey guidance. This document is intended for use in central Texas in surveying karst features for suitable karst invertebrate habitat and to determine the presence or absence of karst invertebrates listed as endangered under the Endangered Species Act of 1973 (as amended).

DATES: We intend to publish a Notice of Availability for public review of the documents by March 31, 2004.

ADDRESSES: Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758; telephone (512) 490–0057; facsimile (512) 490–0974.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Austin Ecological Services Field Office (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Sixteen invertebrate species known to occur in Bexar, Williamson, and Travis Counties, Texas, are listed as endangered under the Endangered Species Act. These invertebrates are only capable of surviving in caves or karstic rock. Karst ecosystems receive nutrients from the surface community in the form of leaf litter and other organic debris that are washed into or fall into the cave, from tree and other vascular plant roots, and/or through the feces, eggs or dead bodies of animals. In addition to providing nutrients to the karst ecosystem, the plant community also filters contaminants and buffers against changes in temperature and humidity. The major threats to karst invertebrates include the loss of habitat due to urbanization; contamination; predation by and competition with nonnative fire ants; and vandalism.

On February 27, 2003, we provided notice (68 FR 9094) of our intention to do the following:

(1) With respect to survey guidance for use in determining the presence of karst features that may contain potential habitat for endangered karst invertebrates in central Texas, we committed to work with the Texas Commission on Environmental Quality (TCEQ) and other partners to update as needed the existing TCEQ guidance on karst feature surveys.

(2) With respect to survey guidance for endangered karst invertebrates, we committed to request a panel of experts to review all new information regarding how to survey for karst invertebrates. We will use the panel's recommendations to modify the section 10(a)(1)(A) permitting requirements and to develop karst invertebrate survey guidance. This guidance was initially intended to be made available for public review and comment through a Notice of Availability to be published in the **Federal Register** by December 30, 2003.

We submitted both draft guidance documents to a panel of 48 individuals with expertise and interest in conservation of karst invertebrates. The panel met with us on September 8, 2003, and individuals on the panel provided feedback on both guidance documents. We are incorporating comments and suggestions provided by the panel into the guidance for surveying for the presence or absence of karst invertebrates. We will resubmit this updated document to the karst panel for additional review and comment. As a result, the notice of availability for public review of this document will be delayed. We now intend to publish the notice by March 31, 2004.

Authority: The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1532 *et seq.*).

Dated: November 28, 2003.

R. M. McDonald,

Acting Regional Director.

[FR Doc. 04–964 Filed 1–15–04; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Class III Gaming Compact.

SUMMARY: This notice publishes the approval of the Class III Gaming Compact between the State of New Mexico and the Navajo Nation. Under the Indian Gaming Regulatory Act of 1988, the Secretary of the Interior is required to publish notice in the **Federal Register** approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact between the Navajo Nation, a federally recognized Indian Tribe, and the State of New Mexico. This Compact is identical in substance to the 2001 New Mexico Compacts that were approved by the New Mexico Legislature by joint resolution on March 12, 2001. The Nation shall pay to the State an amount equal to 8 percent of the Net Win in return for which the State agrees that the Nation has the exclusive right within the State to conduct all types of Class III gaming, with the sole exception of the use of Gaming Machines permitted for racetracks and for veterans and fraternal organizations.

Dated: January 2, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–1023 Filed 1–15–04; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Class III Gaming Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact between the Torres-Martinez Desert Cahuilla Indians, a federally recognized Indian Tribe, and the State of California. The Compact contemplates two gaming facilities, one in Imperial County and one in Riverside County. The Imperial County site would be a 350-machine Gaming Facility. The Compact requires a 5 percent payment of net win from the operation of gaming devices to the State for the exclusive right to operate Class III gaming devices in the State of California, and, as part of the Tribe's commitment to mitigate any significant, adverse impacts resulting from casino development, the Tribe and the State, through Imperial and Riverside County, have agreed to conclude one or more written agreements. All such agreements shall be concluded prior to the commencement of the Project, and shall provide for the identification and implementation of feasible mitigation measures and feasible project alternatives concerning problem and pathological gambling and significant environmental effects.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 7, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–1024 Filed 1–15–04; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–03–1610–00]

Notice of Availability of a Draft Resource Management Plan and Draft Environmental Impact Statement for the King Range National Conservation Area

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, and under authority of the Federal Land Policy and Management Act of 1976, and the King Range Act of 1970, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP)/Draft Environmental Impact Statement (EIS) for the King Range National Conservation Area (NCA). The planning area, which consists of the King Range NCA and adjoining BLM public lands, encompasses approximately 62,000 acres in Humboldt and Mendocino Counties, California. The Draft RMP/Draft EIS provides direction and guidance for the management of public lands and resources within the Planning Area as well as monitoring and evaluation requirements.

DATES: Written comments on the Draft RMP/Draft EIS will be accepted for 90 days following the Environmental Protection Agency's publication of the Notice of Availability for this Draft RMP/Draft EIS in the **Federal Register**. Future public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, the project Web site at *http://www.ca.blm.gov/arcata/*, and/or mailings.

ADDRESSES: Written comments should be sent to Bob Wick, Bureau of Land Management, Planning and Environmental Coordinator, Arcata Field Office, 1695 Heindon Rd, Arcata, CA 95521; Fax (707) 825–2301 or email (*caweb330@ca.blm.gov*).

SUPPLEMENTARY INFORMATION: The King Range Act of 1970 (Pub.L. 91–476) established the King Range National Conservation Area. The Federal Land Policy and Management Act of 1976 (Pub.L. 94–579) expanded the area to its present size of approximately 62,000 acres. The King Range Act requires development of "a comprehensive, balanced, and coordinated plan of land use, development, and management of the Area." The act also states "that the plan will be reviewed and reevaluated periodically." The original plan was completed in 1974, and the present planning effort is the first comprehensive update.

Five scoping meetings were held to solicit input for draft plan formulation. Three of these meetings were held in the communities surrounding the King Range. The other two meetings were held in Eureka and San Francisco. Public input during the scoping process identified 7 issue areas for analysis in the RMP/EIS. The Draft RMP/Draft EIS examines four alternatives that respond to these issues. The issues include: Recreation and Visitor Use, Education/Interpretation, Resource Conservation and Management, Fire Management, Transportation/Access, and Community Involvement. Alternative A is the No Action (current management) Alternative. Alternatives B, C and D present a range of management scenarios with varying amounts of natural resource restoration/use and differing levels of recreation use and facilities. The Preferred Alternative is a combination of components from Alternatives B, C and D.

Please note that comments, including names and street addresses of respondents, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request

confidentiality. Respondents who wish to withhold name and/or street address from public review or from disclosure under FOIA, must state this prominently at the beginning of the written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection in their entirety.

Copies of the Draft RMP/Draft EIS have been sent to affected Federal, Tribal, State and local Government agencies, and to interested publics and are available at the Arcata Field Office. The Draft RMP/Draft EIS and other associated documents may be viewed and downloaded in PDF format at the project Web site at *http://www.ca.blm.gov/arcata/*.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Bob Wick, Planning and Environmental Coordinator (707) 825–2321 at the Arcata Field Office.

Dated: August 22, 2003.

Dan Averill,

Acting Arcata Field Manager.

[FR Doc. 04–2 Filed 1–15–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–930–04–1610–DS]

Notice of Availability of Draft Environmental Impact Statement and Draft Land Use Plan Amendments; Northern Rockies Lynx Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) (acting as cooperating agency to the lead agency, the USDA Forest Service, Northern Region) has prepared a Draft Environmental Impact Statement (EIS) on a proposal to amend land use plans to incorporate management direction for the Canada lynx within the northern Rocky Mountain area.

DATES: The 90-day public comment period begins when the Environmental Protection Agency publishes a notice of the filing of the Draft EIS in the **Federal Register**. Information regarding public meetings on the Draft EIS is posted on the Internet at *http://www.fs.fed.us/r1/planning/lynx.html* and sent to people who commented during scoping or asked to be on the mailing list.

ADDRESSES: Send written comments on the Draft EIS/plan amendments to Northern Rockies Lynx Amendment, Attn: Jon Haber, Project Manager, USDA Forest Service, Northern Region Headquarters, PO BOX 7669, Missoula, MT 59807. Send e-mail comments to *comments-northern-regional-office@fs.fed.us* (Please specify Northern Rockies Lynx Amendment on the subject line.)

FOR FURTHER INFORMATION CONTACT: John Haber (406) 329–3399 or Joan Dickerson, (406) 329–3314. Information regarding lynx and the planning process can also be found at *http://www.fs.fed.us/r1/planning/lynx.html.*

SUPPLEMENTARY INFORMATION: The nine BLM Field Offices and their associated plans included in this plan amendment process are shown below.

Bureau of Land Management Offices and Associated Land Use Plans

Idaho

Upper Columbia-Salmon/Clearwater District

- Salmon Field Office—Lemhi Resource Management Plan (RMP),
- Challis Field Office—Challis RMP,
- Coeur d'Alene Field Office—Emerald Empire Management Framework Plan (MFP),
- Cottonwood Field Office—Chief Joseph MFP

Upper Snake River District

- Idaho Falls Field Office—Medicine Lodge RMP,
- Pocatello Field Office—Pocatello RMP*,
- Shoshone Field Office—Sun Valley MFP

Lower Snake River District

- Four Rivers Field Office—Cascade RMP

Utah

- Salt Lake Field Office—Randolph MFP*

*Only the linkage area direction would apply

Dated: October 10, 2002.

Michael A. Ferguson,

Acting Idaho State Director, BLM.

[FR Doc. 04–1 Filed 1–15–04; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

In the Matter of Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect to One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: 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 ("ID") of the presiding administrative law judge ("ALJ") granting the joint motion of complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., and respondent Monster Cable Products, Inc. to terminate the above-captioned investigation with respect to that respondent on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3041. Copies of the ALJ's ID and all other 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. 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.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 FR 32771 (2003). The complaint as amended alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof,

and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan.

On November 26, 2003, complainants and one respondent, Monster Cable Products, Inc. ("Monster Cable"), jointly moved for termination of the investigation as to Monster Cable on the basis of a settlement agreement and a proposed consent order. On December 8, 2003, the Commission investigative attorney filed a response supporting the motion for termination. No party opposed the motion for termination. The ALJ issued the subject ID on December 18, 2003, terminating the investigation as to Monster Cable on the basis of the consent order.

No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became the determination of the Commission pursuant to 19 CFR 210.42(h)(3). The Commission notes that the reference to "FDK" on line 16, page 4 of the ID should be "Monster."

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Issued: January 13, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–1033 Filed 1–15–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,557]

Agilent Technologies, Design Validation Division Including Temporary Workers of Volt Technical Services, Colorado Springs, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 5, 2003, applicable to workers of Agilent Technologies, Design Validation Division, Colorado Springs, Colorado. The notice was published in the **Federal Register** on May 19, 2003 (68 FR 27107).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Volt Technical Services were employed at Agilent Technologies, Design Validation Division to produce oscilloscopes and logic analyzers, as well as run control and associated accessories at the Colorado Springs, Colorado location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Volt Technical Services working at Agilent Technologies, Design Validation Division, Colorado Springs, Colorado.

The intent of the Department's certification is to include all workers of Agilent Technologies, Design Validation Division who were adversely affected by a shift in production to Malaysia.

The amended notice applicable to TA–W–51,557 is hereby issued as follows:

All workers of Agilent Technologies, Design Validation Division, Colorado Springs, Colorado, including temporary workers of Volt Technical Services, producing oscilloscopes and logic analyzers, and also run control and associated accessories at Agilent Technologies, Design Validation Division, Colorado Springs, Colorado, who became totally or partially separated from employment on or after May 26, 2003, through May 5, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of December, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–1003 Filed 1–15–04; 8:45 am]

BILLING CODE 4910–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,047]

Andrew Corporation Including Temporary Workers of Triangle Temporaries, Inc., Denton, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 16, 2002, applicable to workers of Andrew Corporation located in Denton, Texas. The notice was published in the **Federal Register** on January 9, 2003 (68 FR 1202).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers produce terrestrial microwave antennas, ValuLine antennas, and earth station antennas for the telecommunications industry.

The petitioner reports that some of the workers at Andrew Corporation, prior to being employed permanently by the Andrew Corporation, were temporary workers whose wages were being paid by Triangle Temporaries, Inc. in Denton, Texas.

The intent of the Department's certification is to provide coverage to all workers of Andrew Corporation, Denton, Texas, who were adversely affected by that firm's shift in production to Mexico.

Therefore, the Department is amending the certification to include temporary workers at the subject firm whose wages were reported to Triangle Temporaries, Inc.

The amended notice applicable to TA–W–50,047 is hereby issued as follows:

All workers of Andrew Corporation, Denton, Texas, and temporary workers of Triangle Temporaries, Inc., engaged in employment related to the production of terrestrial microwave antennas, ValuLine antennas, and earth station antennas at Andrew Corporation, Denton, Texas, who became totally or partially separated from employment on or after November 4, 2001, through December 16, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of December 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–1000 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,538]

Custom Tool and Design, Inc., Erie, PA; Notice of Revised Determination on Reconsideration

On November 21, 2003, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration,

applicable to workers of the subject firm. The notice was published in the **Federal Register** on December 19, 2003 (68 FR 70837–70838).

On September 23, 2003, the initial petition investigation for workers of Custom Tool and Design, Inc., Erie, Pennsylvania resulted in a negative decision because criteria I.B. and II.B. of the worker group eligibility requirements of the Trade Act of 1974, as amended, were not met. Sales and production of plastic injection molds increased in January through July 2003 when compared to the same time period of the previous year.

Officials of Custom Tool and Design, Inc. provided new information to the Department showing that sales and production of plastic injection molds declined in January through August 2003 over the corresponding period of 2002.

Subsequently, the Department conducted a survey of major customers of the subject firm regarding their purchases of plastic injection molds during 2001, 2002 and January through August 2003. Results of this survey revealed that major declining customer(s) of Custom Tool and Design, Inc. increased import purchases of plastic injection molds, while reducing purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of plastic injection molds like or directly competitive with those produced by Custom Tool and Design, Inc., Erie, Pennsylvania, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Custom Tool and Design, Inc., Erie, Pennsylvania, who became totally or partially separated from employment on or after July 23, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 6th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–997 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of December 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a) (2) (A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a) (2) (B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(Increased imports) and (a) (2) (B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–53,415; Elementis Chromium LP, formerly known as American Chrome & Chemicals LP, including leased workers of Bay, Harmony, and The Wilson Group, Corpus Christi, TX

TA–W–53,434; Sara Lee Coffee & Tea, Oklahoma City, OK

TA–W–53,718; Brown-Minneapolis Tank-Rocky Mountain, LLC, Orem, UT

TA–W–53,570; Thermo Forma, Marietta, OH

TA–W–53,388; Cavert Wire Co., Inc., Oliver Plant, Oliver, PA
TA–W–53,449; Chevron Phillips Chemical Co., Port Arthur, TX
TA–W–53,584; Advantek, Inc., Minnetonka, MN
TA–W–53,489; Bell Sponging Co., Inc., a div. of The Tom James Co., Allentown, PA
TA–W–53,487; National Textiles, Eden, NC
TA–W–53,429; R. Leon Williams Lumber Co., Clifton, ME
TA–W–53,169; Dresser, Inc., Dresser Piping Specialties Div., Bradford, PA
TA–W–53,687; Olympic Wood Products, Inc., Shelton, WA
TA–W–53,624; General Electric Co., Consumer Products Div., Logan, OH
TA–W–53,411; Cognati Industries, Inc., Bluffton, IN
TA–W–53,326; Weyerhaeuser Co., including leased workers of Manpower, Inc., West Memphis, AR
TA–W–53,478; Edgcomb Metals LLC, a subsidiary of Macsteel Service Centers USA, Indianapolis, IN
TA–W–53,430; EMF Corp., EMK Div., Burkesville, KY
TA–W–53,416; Wolverine Pattern and Machine, Inc., Saginaw, MI
TA–W–53,334; Eugene Aluminum and Brass Foundry, Inc., Eugene, OR
TA–W–53,531; Gen Corp., Inc., GDX Automotive Div., Salisbury, NC
TA–W–53,359; Keystone Powdered Metal Co., St. Marys, PA
TA–W–53,173A; Invista, Inc., formerly Dupont Textiles and Interiors, Commercial Flooring Div., a subsidiary of E.I. DuPont De Nemours & Co., Inc., Athens, GA
TA–W–53,234B; Kendro Laboratory Products, Centrifuge Production, a subsidiary of SPX Corp., Newtown, CT
TA–W–53,196A; Texas Instruments, Inc., Make-Leadframe Div., Attleboro, MA
TA–W–53,115A; Dana Corp., Perfect Circle Jefferson Street Div., Muskegon, MI
TA–W–52,962; Pa-Ted Spring Company of North Carolina, Belmont, NC & PA–Ted Spring Company of El Paso, El Paso, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–53,652; IPWorks, Inc., DNS and DHCP Development Unit, a subsidiary of Ericsson Unit Datacom, a subsidiary of Ericsson, Inc., Framingham, MA
TA–W–53,536; Istonish, Inc., Austin, TX
TA–W–53,605; TA–W–53,605; Taylor Nelson Sofres Intersearch Corp. (TNS), Youngstown, OH
TA–W–53,639; Honeywell Sending and Control, Engineering Group, a subsidiary of Honeywell, Shelby, NC
TA–W–53,401; Pitney Bowes, Inc., Holyoke Facility, Holyoke, MA
TA–W–53,607; Med-Data, Inc., Corvallis, MT
TA–W–53,454; Acusis, LLC, Pittsburgh, PA
TA–W–53,787; ALHU International, Inc., El Paso, TX
TA–W–53,717; Nortel Networks, Billerica, MA
TA–W–53,747; Kmart Corp., Clinton, NC
TA–W–53,810; Orica USA, Inc., Distribution Center, Frankfort, KY
TA–W–53,576; Kraft Foods, Northlake Distribution Center, Northlake, IL
TA–W–53,445; Telewise Communications, Inc., San Jose, CA
TA–W–53,648; International Business Machines Corp., Tulsa, OK
TA–W–53,470; Motorola, Inc., Rockford Service Center, Rockford, IL
TA–W–53,727; CSP Technologies, Inc., High Point, NC
TA–W–53,711; United States Postal Service, Remote Encoding Center, Cohoes, NY
TA–W–53,815; Rowan Regional Medical Center, Salisbury, NC
TA–W–53,673; S&S Distribution Center, a subsidiary of Land N Sea Co., Inc., Roebuck, SC
TA–W–53,812; Advance Transformer Co., Wartburg, TN
TA–W–53,633; IBM Corp., Technology Group, Marketing Support Team, Essex Junction, VT
TA–W–53,448; Texas Instruments, Tucson Make Facility, Hybrids Manufacturing Div., Tucson, AZ
TA–W–53,696; Stinson, Inc., Pittsburgh, PA
TA–W–53,537; Pacific Rim Log Scaling Bureau, Lacy, WA
TA–W–53,713; Exeter Machine Co., Inc., Lomira, WI
TA–W–53,613; Houston/NANA, a subsidiary of Houston Contracting Co., a wholly owned subsidiary of ASRC Energy Services, Inc., a wholly owned subsidiary of Arctic Slope Regional Corp., Fairbanks, AK
TA–W–53,709; Alfmeier Corp., Seating Comfort Systems, a subsidiary of Alfmeier Prazision, Dandridge, TN
TA–W–53,498 & A, B; Anadarko Petroleum Corp. Headquarters, The Woodlands, TX, Midland Div. Office, Midland, TX and Amarillo Div. Office, Amarillo, TX

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–53,386; OSRAM Sylvania, Inc., General Lighting Div., St. Marys, PA
TA–W–53,582; Avondale Mills, Inc., Burnsville, SC
TA–W–53,730; McData Corp., Manufacturing Div., Louisville, CO
TA–W–53,532; Penro Mold and Tool, Inc., Pittsfield, MA
TA–W–53,425; Trane Co., Global Controls and Contracting Div., a subsidiary of American Standard Co., White Bear Lake, MN
TA–W–52,577A; Allen-Edmonds Shoe Corp., Port Washington, WI

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(A)(II.A) (no employment decline) has not been met.

TA–W–53,546; Randolph Products, Carlstadt, NJ

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both, did not decline) and (a) (2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–53,524; Overly Door Co., Greensburg, PA
TA–W–53,184; Wolverine Tube, Inc., Booneville Operations Div., Booneville, MS
TA–W–53,447; Smucker Fruit Processing Co., subsidiary of J.M. Smucker Co., Woodburn, OR
TA–W–53,540; Teikoku USA, Inc., Div., of Chempump and lease workers of Accountemps, Neshaminy and Labor Ready, Warrington, PA
TA–W–53,443; Deco Engineering, Inc., Newcor, Inc., Royal Oak, MI

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–53,621; Rainbow Ranch, Chehalis, WA
TA–W–53,327; Portland Pattern, Inc., Wood Department, Portland, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–53,591; Steward, Inc., including leased workers of Express Personnel Services, Chattanooga, TN: October 29, 2002.
TA–W–53,477; XDU Classics, Inc., Piedmont, AL: October 29, 2002.

TA–W–53,668 & A; Alice Manufacturing Co., Inc., Ellison Plant, Easley, SC and Elljean Plant, Easley, SC: November 25, 2002.

TA–W–53,611; Intercontinental Polymers, Inc., Lowland, TN: November 13, 2002.

TA–W–53,750; Allflex USA, Inc., Dallas/Ft. Worth Airport, TX: November 14, 2002.

TA–W–53,464; U.C.A. Holdings, Turbine Engine Components Technologies Corp., Utica Div., Whitesboro, NY: October 27, 2002.

TA–W–53,571; Maynard Steel Casting Co., Milwaukee, WI: November 3, 2002.

TA–W–53,472; Sherman-Feinberg Corp., South Boston, MA: November 5, 2002.

TA–W–53,383; SMTC Manufacturing Corp., Franklin, MA: October 28, 2002.

TA–W–53,395; Du-Co Ceramics Co., Saxonburg, PA: October 29, 2002.

TA–W–53,410; Nidec America Corp., ADF Div., Canton, MA: October 28, 2002.

TA–W–53,260; Detail Tool and Engineering, Inc., Ramsey, MN: October 9, 2002.

TA–W–53,466; Berkar Knitting Corp., Brooklyn, NY: October 22, 2002.

TA–W–53,526; Royal Home Fashions, Inc., Mebane Div., Mebane, NC: October 31, 2002.

TA–W–53,517; Howell Penncraft, Howell, MI: October 28, 2002. IL October 14, 2002.

TA–W–53,541; Gentry Mills, Inc., a subsidiary of Gentry Knitting, Ltd, Wadesboro, NC: November 10, 2002.

TA–W–53,554; Waltrich Plastic Corp. of Massachusetts, Clinton, MA: November 3, 2002.

TA–W–53,377; Brintons U.S. Axminster, Inc., including leased workers of Greenville Temps, Manpower, Inc. and PSC Staffing, Greenville, MS: October 24, 2002.

TA–W–53,442; Planto Furniture Manufacturing Co., Inc., San Antonio, TX: November 4, 2002.

TA–W–53,324 & A; New River Industries, Inc., Radford, VA and New York, NY: October 15, 2002.

TA–W–53,268; J.S. Popper, Inc., Little Ferry, NJ: October 16, 2002.

TA–W–53,278 & A; Sherwood Harsco Corp., Fluid Control Group, Lockport, New York and Niagara Falls, NY: October 3, 2002.

TA–W–53,439; AM Communications, Inc., Quakertown, PA: September 14, 2003.

TA–W–53,440; Nestronix, Quakertown, PA: September 14, 2003.

TA–W–53,492; Falcon Shoe Manufacturing Co., Lewiston, ME: June 9, 2003.

TA–W–53,574; Springs Industries, Inc., Leroy Plant, including leased workers of Phillips Staffing, Fort Lawn, SC: November 13, 2002.

TA–W–53,302; Kiker Hosiery, Locust, NC: October 15, 2002.

TA–W–53,494; Avery Dennison, Chicopee Plant Paper Business subdivision including leased workers of Adecco, Chicopee, MA: November 7, 2002.

TA–W–53,433; International Resistive Co., Inc. a subsidiary of TT Electronics, PLC, Boone, NC: October 28, 2002.

TA–W–53,527; Van Dorn Demag Corp., a div. of Demag Products Group, Strongsville, OH: November 12, 2002.

TA–W–53,535; International Paper, Auburn, ME: October 29, 2002.

TA–W–53,533; International Paper, Bucksport, ME: November 5, 2002.

TA–W–53,297; DSM Pharma Chemicals, a div. of DSM Pharmaceuticals, Inc., including leased workers of Manpower Temporary Agency, Greenville, NC: October 17, 2002.

TA–W–53,387; Perfect Products Co., Malvern, OH: October 14, 2002.

TA–W–52,962A; Pa-Ted Spring Co of North Carolina, Bristol, CT: September 3, 2002.

TA–W–53,272: Thombas Co., LLC, d/b/a Capitol Manufacturing, including leased workers of Express Personnel, Fayetteville, NC: May 15, 2003.

TA–W–53,698; Holloway Sportswear, Inc., Simmesport, LA: November 25, 2002.

TA–W–53,436; Sanmina—SCI, including leased workers of Manpower and Bonney Staffing, Westbrook, ME: October 27, 2002.

TA–W–53,435; Manar, Inc., Henry Div., Henry, TN: October 24, 2002.

TA–W–53,414; Dupont Photomasks, Inc., Pellicles Div., Danbury, CT: October 31, 2002.

TA–W–53,390; Jore Corp., including leased workers of LC Staffing and Express Personnel, Ronan, MTL: October 25, 2002.

TA–W–53,505; Hunt Corp., Speedball Road Plant, Statesville, NC: November 7, 2002.

TA–W–53,602; GST Autoleather, Inc., Reading, PA: November 20, 2002.

TA–W–53,547; Hartz-Broadway, Inc., a div. of Hartz and Co., Inc., Broadway, VA: November 11, 2002.

TA–W–53,550; Wohlert Corp., Lansing, MI: November 7, 2002.

TA–W–53,622; JVC Magnetics America Co., Tuscaloosa, AL: November 20, 2002.

TA–W–53,623; Fashion Sportswear Corp., Fall River, MA: November 19, 2002.

TA–W–53,643; Stod-Win Co., Inc., Danville, VA: November 17, 2002.

TA–W–53,598; Hercules, Inc., Hattiesburg, MS: November 11, 2002.

TA–W–53,452; Cadillac Curtain Corp., Covington, TN: October 27, 2002.

TA–W–53,450; CHC Industries, Inc., Jacksonville, FL, A; Palm Harbor, FL, B; Cameron, MO, C; Cleveland, OH, D; Valley City, OH, E; Baltimore, MD, F; Brenham, TX, G; Gadsden, AL: November 3, 2002.

TA–W–53,479; Fabricating Engineering, Inc., Davisburg, MI: November 5, 2002.

TA–W–53,534; International Paper, Augusta, ME: October 29, 2002.

TA–W–53,543; Charmilles Technologies Manufacturing Corp., Owosso, MI: November 5, 2002.

TA–W–53,596; Jeld-Wen, Inc., Susanville, CA: November 10, 2002.

TA–W–53,610; Besly Products Corp., South Beloit, IL: November 17, 2002.

TA–W–53,539; E.L. Mansure Co., a div. of CHF Industries, Inc., Clinton, SC: November 11, 2002.

TA–W–53,561; Lucerne Technologies, LLC, Bolivar, TN: October 31, 2002.

TA–W–53,568; EJE Research, a div. of Airsep Corp., Buffalo, NY: November 3, 2002.

TA–W–53,544; Levi Strauss & Co., San Antonio Finishing & Sewing Center Div., San Antonio, TX: November 14, 2002.

TA–W–53,772; Werner Co., Kentucky Div., including temporary workers of CBS Temporary Services, Carrollton, KY: December 9, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–53,677; The Smead Manufacturing Co., Logan, OH: November 18, 2002.

TA–W–53,678; Foam Tech, Inc., Lexington, NC: November 19, 2002.

TA–W–53,817; Tyco Electronics-Gadan, a subsidiary of Tyco International, Franklin, KY: November 17, 2002.

TA–W–53,754; Douglas Quikut, Quikut Div., Walnut Ridge, AR: November 5, 2002.

TA–W–53,671 & A; Lasting Impressions, Inc., New York, NY and Brooklyn, NY: November 18, 2002.

TA–W–53,670 & A; Versailles, Ltd, New York, NY and Brooklyn, NY: November 18, 2002.

TA–W–53,298; Fisher Controls, LLC, Emerson Process Management Div., McKinney, TX: October 21, 2002.

TA–W–53,300; Kraft Foods, Nabisco Biscuit Div., Fair Lawn, NJ: October 2, 2002.

TA–W–53,599; American Allsafe Co., a div. of Jackson Products, Inc., Tonawanda, NY: November 7, 2002.

TA–W–53,608; Avery Dennison Corp., including leased workers of Adecco, Meridian, MS: November 6, 2002.

TA–W–53,553; Level 1, Inc., a div. of Smith's Group PLC, including leased workers of Onsite Commercial Staffing, Rockland, MA: November 14, 2002.

TA–W–53,378; Fila USA, Inc., Peabody Div., Peabody, MA: October 28, 2002.

TA–W–53,467; Gasboy International, LLC, a subsidiary of Gilbarco, Inc., Lansdale, PA: November 7, 2002.

TA–W–53,814; Orcon Corp., Kennesaw, GA: December 2, 2002.

TA–W–53,634; Virginia KMP Corp., Dallas, TX: November 18, 2002.

TA–W–53,587; Sensient Imaging Technologies, Inc. (formerly Formulabs), Industrial Ink Div., Piqua, OH: October 28, 2002.

TA–W–53,700; Spirit Silkscreens, Inc., Irvine, CA: November 13, 2002.

TA–W–53,654; Fresenius Kabi Clayton L.P., Clayton, NC: November 25, 2002.

TA–W–53,575; Textron Fastening Systems, Samuelson Road Operations Div., a subsidiary of Textron, Inc., Rockford, IL: November 5, 2002.

TA–W–53,545; M.J. Soffe Co., a subsidiary of Delta Apparel, Fayetteville, NC: November 14, 2002.

TA–W–53,641; Wentworth Mold, Inc., a subsidiary of Wentworth Technologies Co. Limited, East USA Div., Pawcatuck, CT: November 19, 2002.

TA–W–52,577; Allen-Edmonds Shoe Corp., Milwaukee, WI: August 14, 2002.

TA–W–53,115; Dana Corp., Perfect Circle Harvey Street Foundry Div., Muskegon, MI: April 16, 2002.

TA–W–53,196; Texas Instruments, Inc., Sensors and Controls Div., Attleboro, MA: October 6, 2002.

TA–W–53,234 & A; Kendro Laboratory Products, Machining Div., A subsidiary of SPX Corp., Newtown, CT and Development Engineering Group, a subsidiary of SPX Corp., Newton, CT: September 29, 2002.

TA–W–53,173; Invista, Inc., formerly Dupont Textiles and Interiors, Textile Apparel Div., a subsidiary of E.I. Du Pont De Nemours & Co., Inc., Athens, GA: September 24, 2002.

TA–W–53,620; Creekwood, Inc., Columbia, TN: November 14, 2002.

TA–W–53,651; ITT Industries, Cannon Div., Santa Ana, CA: November 24, 2002.

TA–W–53,569; Irving Tanning Co., Hartland, ME: November 6, 2002.

TA–W–53,446; Hexcel Corp., Kent Facility, Kent, WA: October 31, 2002.

TA–W–53,475; Glenoit Fabrics (HG) Corp., formerly Glenoit Corp., a subsidiary of Hailin USA, Tarboro, NC: October 31, 2002.

TA–W–53,493; Derby Industries, LLC, Galesburg, IL: October 30, 2002.

TA–W–53,206 & A; GE Industrial Systems, Shreveport, LA & Conover, NC: October 9, 2002.

TA–W–53,500; Central Products Co., Intertape Polymer Group, Green Bay, WI: November 9, 2002.

TA–W–53,317; Sofanou, Inc., of Kentucky, Morgantown, KY: October 21, 2002.

TA–W–53,335; Fairchild Semiconductor Corp., Mountaintop, PA: December 1, 2003.

TA–W–53,345; Parkdale America LLC, Plant #22, Landis, NC: October 9, 2002.

TA–W–53,346; Parkdale Mills, Inc., Plant #31, Belmont, NC: October 9, 2002.

TA–W–53,354; TI Automotive, Marysville, MI: October 20, 2002.

TA–W–53,112 & A, B; Stora Enso North America, Stevens Point Paper Mill, Stevens Point, WI, Whiting Paper Mill, Stevens Point, WI and Kimberly Paper Mill, Kimberly, WI: March 13, 2003.

TA–W–53,254; Rutgers Organics Corp., State College, PA: October 7, 2002.

TA–W–53,339; National Manufacturing Co., Sterling, IL: October 15, 2002.

TA–W–53,357; Agrium, Inc., Conda Phosphate Operations, Soda Springs, ID: October 24, 2002.

TA–W–53,362; Parks & Woolson Machine Co., Springfield, VT: October 22, 2002.

TA–W–53,389; Metaldyne Corp., Edon, OH: October 29, 2002.

TA–W–53,468; LF Brands, Inc., New York, NY: November 5, 2002.

TA–W–53,614; Philips Electronics, Advanced Transformer Div., Chicago, IL: November 10, 2002.

TA–W–53,583; Procter and Gamble Paper Products Co., East River Plant, Green Bay, WI: November 11, 2002.

TA–W–53,460; Shelby Elastics of North Carolina, LLC, Mountain City, TN: October 27, 2002.

TA–W–53,413; MTD Southwest, Inc., Chandler, AZ: October 31, 2002.

TA–W–53,513; Amphenol Backplane Systems, Nashua, NH: November 5, 2002.

TA–W–53,502; D'vron Ceramic Studio, Inc., New Castle, PA: October 22, 2002.

TA–W–53,495; Fisher Controls International, LLC, Valve Div., a div. of Emerson Process Management, a div. of Emerson, including leased workers of Manpower, Sherman, TX: November 5, 2002.

TA–W–53,490; Phillips Plastics Corp., Coeur d'Alene Facility and leased workers of Manpower, Post Falls, ID: November 5, 2002.

TA–W–53,694; Metso Minerals Industries, Inc., a div. of Metso Oy, Milwaukee, WI: November 25, 2002.

TA–W–53,655; The John Plant Co., Inc., Ramseur, NC: November 25, 2002.

TA–W–53,688; Elastic Corporation of America, Inc., a div. of Worldtex, Inc., Woolwine, VA: November 24, 2002.

TA–W–53,619; Timken U.S. Corp., Industrial Div., Radial Ball Bearing Manufacturing, Rockford, IL: November 13, 2002.

TA–W–53,618; Day International, Inc., Textile Products Group, Mauldin, SC: November 17, 2002.

TA–W–53,556; Dan River, Inc., Sevierville, TN: November 14, 2002.

TA–W–53,647; Gates Corp., Air Springs Div., including temporary workers of Manpower, Denver, CO: November 24, 2002.

TA–W–53,761; Amhil Enterprises, Inc., Dickson, TN: December 8, 2002.

TA–W–53,615; Teleflex Medical, (formerly known as Genzyme Biosurgery), Cardiothoracic Devices Unit, a div. of Teleflex, Inc., Fall River, MA: November 14, 2002.

TA–W–53,566; Fishman & Tobin, Inc., Samples Div., Conshohocken, PA: November 7, 2002.

TA–W–53,691; A.T. Cross Co., Lincoln, RI: November 25, 2002.

TA–W–53,663; Renfro Corp., Central Supply, Mt. Airy, NC: November 20, 2002.

TA–W–53.712; Dan Post Boot Co., Cowboy Western Boot Div., Waverly, TN: December 1, 2002.

TA–W–53,572; Johnson & Johnson Co., North Brunswick, NJ: November 17, 2002.

TA–W–53,590; Quantum Construction Equipment, d/b/a Noble Construction Equipment, Inc., Lubbock, TX: November 17, 2002.

TA–W–53,764; Traction Motor Transit, Inc., West Mifflin, PA: December 8, 2002.

TA–W–53,749; U.S. Tsubaki, Inc., Power Transmission Components Div., a subsidiary of Tsubakimoto Chain Co., including leased workers of Adecco, Bennington, VT: December 2, 2002.

TA–W–53,660; J.R. Simplot Co., Food Group Div., Caldwell, ID: November 17, 2002.

TA–W–53,697 & A; Raytheon Aircraft Co., Wire Harness Assembly Operations, Wichita, KS and Salina, KS: November 19, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–53,833; Star Machine Shop, Inc., Galax, VA: December 17, 2002.

TA–W–53,625; Valentine Tool and Stamping, Norton, MA: November 21, 2002.

TA–W–53,426; Neutronics, Inc., Phoenix, AZ: October 27, 2002.

TA–W–53,293; Harriet and Henderson Yarns, Inc., Bladen Plant, Clarkton, NC: October 17, 2002.

TA–W–53,293A; Harriet and Henderson Yarns, Inc., Cedartown Plant, Cedartown, GA: October 22, 2002.

TA–W–53,418; Springfield LLC, Limestone Plant, Gaffney, SC: October 27, 2002.

TA–W–53,006; Central Products, d/b/a Intertape Polymer Group, Brighton, CO: "All workers on the film line producing tape film who became totally or partially separated from employment on or after September 15, 2002.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–53,527; Van Dorn Demag Corp., a div. of Demag Products Group, Strongsville, OH

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–53,540; Teikoku USA, Inc., div. of Chempump, and lease workers of Accountemps, Neshaminy and Labor Ready, Warrington, PA

TA–W–53,532; Penro Mold and Tool, Inc., Pittsfield, MA

TA–W–53,425; Trane Co., Global Controls and Contracting Div., a subsidiary of American Standard Co., White Bear Lake, MN

TA–W–53,812; Advance Transformer Co., Wartburg, TN

TA–W–53,633; IBM Corp., Technology Group, Marketing Support Team, Essex Junction, VT

TA–W–53,448; Texas Instruments, Tucson Make Facility, Hybrids Manufacturing Div., Tucson, AZ

TA–W–53,696; Stinson, Inc., Pittsburgh, PA

TA–W–53,537; Pacific Rim Log Scaling Bureau, Lacey, WA

TA–W–53,713; Exeter Machine Co., Inc., Lomira, WI

TA–W–53,613; Houston/NANA, a subsidiary of Houston Contracting Co., a wholly owned subsidiary of ASRC Energy Services, Inc., a wholly owned subsidiary of Arctic Slope Regional Corp., Fairbanks, AK

TA–W–53,709; Alfmeier Corp., Seating Comfort Systems, a subsidiary of Alfmeirer Prazision, Dandridge, TN

TA–W–53,498; Anadarko Petroleum, Corp. Headquarters, The Woodlands, TX, Midland Div. Office, Midland, TX and Amarillo Div. Office, Amarillo, TX

TA–W–53,429; R. Leon Williams Lumber Co., Clifton, ME

TA–W–53,169; Dresser, Inc., Dresser Piping Specialties Div., Bradford, PA

TA–W–53,687; Olympic Wood Products, Inc., Shelton, WA

TA–W–53,624; General Electric Co., Consumer Products Div., Logan, OH

TA–W–53,411; Cognati Industries, Inc., Bluffton, IN

TA–W–53,326; Weyerhaeuser Co., including leased workers of Manpower, Inc., West Memphis, AR

TA–W–53,478; Edgcomb Metals LLC, a subsidiary of Macsteel Service Centers USA, Indianapolis, IN

TA–W–53,430; EMK Corp., EMK Div., Burkesville, KY

TA–W–53,416; Wolverine Pattern and Machine, Inc., Saginaw, MI

TA–W–53,334; Eugene Aluminum and Brass Foundry, Inc., Eugene, OR

TA–W–53,531; Gen Corp., Inc., GDX Automotive Div., Salisbury, NC

TA–W–53,359; Keystone Powdered Metal Co., St. Marys, PA

TA–W–53,234B; Kendro Laboratory Products, Centrifuge Production, a subsidiary of SPX Corporation, Newtown, CT

TA–W–53,115A; Dana Corp., Perfect Circle Jefferson Street Div., Muskegon, MI

TA–W–53,173A; Invista, Inc., formerly Dupont Textiles and Interiors, Commercial Flooring Div., a subsidiary of E.I. Du Pont De Nemours & Co., Inc., Athens, GA

TA–W–53,196A; Texas Instruments, Inc., Make-Leadframe Div., Attleboro, MA

TA–W–52,577A; Allen-Edmonds Shoe Corp., Port Washington, WI

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–53,772; Werner Co., Kentucky Div., including temporary workers of CBS Temporary Services, Carrollton, KY: December 9, 2002.

TA–W–53,544; Levi Strauss & Co., San Antonio Finishing and Sewing Center Div., San Antonio, TX: November 14, 2002.

TA–W–53,568; EJE Research, a div. of Airsep Corp., Buffalo, NY: November 3, 2002.

TA–W–53,561; Lucerne Technologies, LLC, Bolivar, TN: October 31, 2002.

TA–W–53,539; E.L. Mansure Co., a div. of CHF Industries, Inc., Clinton, SC: November 11, 2002.

TA–W–53,610; Besly Products Corp., South Beloit, IL: November 17, 2002.

TA–W–53,596; Jeld-Wen, Inc., Susanville, CA: November 10, 2002.

TA–W–53,543; Charmilles Technologies Manufacturing Corp., Owosso, MI: November 5, 2002.

TA–W–53,534; International Paper, Augusta, ME: October 29, 2002.

TA–W–53,479; Fabricating Engineering, Inc., Davisburg, MI: November 5, 2002.

TA–W–53,450; CHC Industries, Inc., Jacksonville, FL, A; Palm Harbor, FL, B; Cameron, MO, C; Cleveland, OH, D; Valley City, OH, E; Baltimore, MD, F; Brenham, TX and G; Gadsden, AL: November 3, 2002.

TA–W–53,452; Cadillac Curtain Corp., Covington, TN: October 27, 2002.
TA–W–53,598; Hercules, Inc., Hattiesburg, MS: November 11, 2002.
TA–W–53,643; Stod-Win Co., Inc., Danville, VA: November 17, 2002.
TA–W–53,623; Fashion Sportswear Corp., Fall River, MA: November 19, 2002.
TA–W–53,622; JVC Magnetics America Co., Tuscaloosa, AL: November 20, 2002.
TA–W–53,550; Wohlert Corp., Lansing, MI: November 7, 2002.
TA–W–53,547; Hartz—Broadway, Inc., a div. of Hartz & Company, Inc., Broadway, VA: November 11, 2002.
TA–W–53,602; GST Autoleather, Inc., Reading, PA: November 20, 2002.
TA–W–53,505; Hunt Corp., Speedball Road Plant, Statesville, NC: November 7, 2002.
TA–W–53,390; Jore Corp., including leased workers of LC Staffing and Express Personnel, Ronan, MT: October 25, 2002.
TA–W–53,414; Dupont Photomasks, Inc., Pellicles Div., Danbury, CT: October 31, 2002.
TA–W–53,435; Manar, Inc., Henry Div., Henry, TN: October 24, 2002.
TA–W–53,436; Sanmina—SCI, including leased workers of Manpower and Bonney Staffing, Westbrook, ME: October 27, 2002.
TA–W–53,698; Holloway Sportswear, Inc., Simmesport, LA: November 25, 2002.
TA–W–53,272; Thombas Co., LLC, d/b/a Capitol Manufacturing, including leased workers of Express Personnel, Fayetteville, NC: May 15, 2003.
TA–W–53,387; Perfect Products Co., Malvern, OH: October 14, 2002.
TA–W–53,397; DSM Pharma Chemicals, a div. of DSM Pharmaceuticals, Inc., including leased workers of Manpower Temporary Agency, Greenville, NC: October 17, 2002.
TA–W–53,533; International Paper, Bucksport, ME: November 5, 2002.
TA–W–53,535; International Paper, Auburn, ME: October 29, 2002.
TA–W–53,433; International Resistive Co., Inc., a subsidiary of TT Electronics, PLC, Boone, NC: October 28, 2002.
TA–W–53,494; Avery Dennison, Chicopee Plant Paper Business subdivision, including leased workers of Adecco, Chicopee, MA: November 7, 2002.
TA–W–53,302; Kiker Hosiery, Locust, NC: October 15, 2002.
TA–W–53,574; Springs Industries, Inc., Leroy Plant, including leased workers of Phillips Staffing, Fort Lawn, SC: November 13, 2002.
TA–W–53,492; Falcon Shoe Manufacturing Co., Lewiston, ME: June 9, 2003.
TA–W–53,440; Nestronix, Quackertown, PA: September 14, 2003.
TA–W–53,439; AM Communications, Inc., Quackertown, PA: September 14, 2003.
TA–W–53,278 & A; Sherwood Harsco Corp., Fluid Control Group, Lockport, NY and Niagara Falls, NY: October 3, 2002.
TA–W–53,268; J.S. Popper, Inc., Little Ferry, NJ: October 16, 2002.
TA–W–53,324 & A; New River Industries, Inc., Radford, VA and New York, NY: October 15, 2002.
TA–W–53,442; Planto Furniture Manufacturing Co., Inc., San Antonio, TX: November 4, 2002.
TA–W–53,377; Brintons, Ltd, Brintons U.S. Axminster, Inc., including leased workers of Greenville Temps, Manpower, Inc. and PSC Staffing, Greenville, MS: October 24, 2002.
TA–W–53,554; Waltrich Plastic Corp. of Massachusetts, Clinton, MA: November 3, 2002.
TA–W–53,541; Gentry Mills, Inc., a subsidiary of Gentry Knitting, Ltd, Wadesboro, NC: November 10, 2002.
TA–W–53,651; ITT Industries, Cannon Div., Santa Ana, CA: November 24, 2002.
TA–W–53,569; Irving Tanning Co., Hartland, ME: November 6, 2002.
TA–W–53,446; Hexcel Corp., Kent Facility, Kent, WA: October 31, 2002.
TA–W–53,475; Glenoit Fabrics (HG) Corp., formerly Glenoit Corp., a subsidiary of Hailin USA, Tarboro, NC: October 31, 2002.
TA–W–53,493; Derby Industries, LLC, Galesburg, IL: October 30, 2002.
TA–W–52,577; Allen-Edmonds Shoe Corp., Milwaukee, WI: August 14, 2002.
TA–W–53,115; Dana Corp., Perfect Circle Harvey Street Foundry Div., Muskegon, MI: April 16, 2002.
TA–W–53,173; Invista, Inc., formerly Dupont Textiles and Interiors, Textile Apparel Div., a subsidiary of E.I. Du Pont De Nemours & Co., Inc., Athens, GA: September 24, 2002.
TA–W–53,196; Texas Instruments, Inc., Sensors and Controls Div., Attleboro, MA: October 6, 2002.
TA–W–53,234 & A; Kendro Laboratory Products, Machining Div., a subsidiary of SPX Corp., Newtown, CT and Development Engineering Group, a subsidiary of SPX Corp., Newtown, CT: September 29, 2002.
TA–W–53,620; Creekwood, Inc., Columbia, TN: November 14, 2002.
TA–W–53,206 & A GE Industrial Systems Shreveport, LA and Conover, NC: October 9, 2002.
TA–W–53,500; Central Products Co., Intertape Polymer Group, Green Bay, WI: November 9, 2002.
TA–W–53,317; Sofanou, Inc. of Kentucky, Morgantown, KY: October 21, 2002.
TA–W–53,335; Fairchild Semiconductor Corp., Mountaintop, PA: December 1, 2003.
TA–W–53,345; Parkdale America LLC, Plant #22, Landis, NC: October 9, 2002.
TA–W–53,346; Parkdale Mills, Inc., Plant #31, Belmont, NC: October 9, 2002.
TA–W–53,354; TI Automotive, Marysville, MI: October 20, 2002.
TA–W–53,112, A & B; Stora Enso North America, Stevens Point Paper Mill, Stevens Point, WI, Whiting Paper Mill, Stevens Point, WI and Kimberly Paper Mill, Kimberly, WI: March 13, 2003.
TA–W–53,254; Rutgers Organics Corp., State College, PA: October 7, 2002.
TA–W–53,339; National Manufacturing Co., Sterling, IL: October 15, 2002.
TA–W–53,362; Parks and Woolson Machine Co., Springfield, VT: October 22, 2002.
TA–W–053,389; Metalydyne Corp., Edon, OH: October 29, 2002.
TA–W–53,468; LF Brands, Inc., New York, NY: November 5, 2002.
TA–W–53,614; Philips Electronics, Advanced Transformer Div., Chicago, IL: November 10, 2002.
TA–W–53,383; Proctor and Gamble Paper Products Co., East River Plant, Green Bay, WI: November 11, 2002.
TA–W–53,460; Shelby Elastics of North Carolina, LLC, Mountain City, TN: October 27, 2002.
TA–W–53,413; MTD Southwest, Inc., Chandler, AZ: October 31, 2002.
TA–W–53,513; Amphenol Backplane Systems, Nashua, NH: November 5, 2002.
TA–W–53,502; D'vron Ceramic Studio, Inc., New Castle, PA: October 22, 2002.
TA–W–53,495; Fisher Controls International, LLC, Valve Div., a div. of Emerson Process Management, a div. of Emerson, including leased workers of Manpower, Sherman, TX: November 5, 2002.
TA–W–53,490; Phillips Plastics Corp., Coeur d'Alene Facility, and leased workers of Manpower, Post Falls, ID: November 5, 2002.
TA–W–53,694; Metso Minerals Industries, Inc., a div. of Metso Oy, Milwaukee, WI: November 25, 2002.

TA–W–53,655; The John Plant Co., Inc., Ramseur, NC: November 25, 2002.
TA–W–53,688; Elastic Corp. of America, Inc., a div. of Worldtex, Inc., Woolwine, VA: November 24, 2002.
TA–W–53,619; Timken U.S. Corp., Industrial Div., Radial Ball Bearing Manufacturing, Rockford, IL: November 13, 2002.
TA–W–53,618; Day International, Inc., Textile Products Group, Maulkin, SC: November 17, 2002.
TA–W–53,556; Dan River, Inc., Sevierville, TN: November 14, 2002.
TA–W–53,647; Gates Corp., Air Springs Div., Including Temporary Workers of Manpower, Denver, CO: November 24, 2002.
TA–W–53,761; Amhil Enterprises, Inc., Dickson, TN: December 8, 2002.
TA–W–53,615; Teleflex Medical, (formerly known as Genzyme Biosurgery), Cardiothoracic Devices Unit, a div. of Teleflex, Inc., Fall River, MA: November 14, 2002.
TA–W–53,566; Fishman and Tobin, Inc., Samples Div., Conshohocken, PA: November 7, 2002.
TA–W–53,691; A.T. Cross Co., Lincoln, RI: November 25, 2002.
TA–W–53,663; Renfro Corp., Central Supply, Mt. Airy, NC: November 20, 2002.
TA–W–53,712; Dan Post Boot Co., Cowboy Western Boot Div., Waverly, TN: December 1, 2002.
TA–W–53,572; Johnson & Johnson Co., North Brunswick, NJ: November 17, 2002.
TA–W–53,590; Quantum Construction Equipment d/b/a Noble Construction Equipment, Inc., Lubbock, TX: November 17, 2002.
TA–W–53,749; U.S. Tsubaki, Inc., Power Transmission Components Div., a subsidiary of Tsubakimoto Chain Co., including leased workers of Adecco, Bennington, VT: December 2, 2002.
TA–W–53,660; J.R. Simplot Co., Food Group Div., Caldwell, ID: November 17, 2002.
TA–W–53,697; Raytheon Aircraft Co., Wire Harness Assembly Operations, Wichita, KS and Salina, KS: November 19, 2002.
TA–W–53,764; Traction Motor Transit, Inc., West Mifflin, PA: December 8, 2002.
TA–W–53,418; Springfield LLC, Limestone Plant, Gaffney, SC: October 27, 2002.
TA–W–53,293; Harriet and Henderson Yarns, Inc., Bladen Plant, Clarkton, NC and Cedartown Plant, Cedartown, GA: October 22, 2002.
TA–W–53,426; Neutronics, Inc., Phoenix, AZ: October 27, 2002.
TA–W–53,625; Valentine Tool and Stamping, Norton, MA: November 21, 2002.
TA–W–53,833; Star Machine Shop, Inc., Galax, VA: December 17, 2002.

I hereby certify that the aforementioned determinations were issued during the months of December. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 9, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–991 Filed 1–15–04; 8:45 am]

BILLING CODE 4310–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,207]

Extrasport, Inc., a Division of Johnson Outdoors, Including Leased Workers of Oasis, Inc., Miami, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10, 2003, applicable to workers of Extrasport, Inc., a division of Johnson Outdoors, Miami, Florida. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74979).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that Extrasport, Inc. leased workers of Oasis, Inc. to produce personal flotation devices at the Miami, Florida location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Oasis, Inc. working at Extrasport, Inc., a division of Johnson Outdoors, Miami, Florida.

The intent of the Department's certification is to include all workers at Extrasport, Inc., a division of Johnson Outdoors, Miami, Florida, who were adversely affected by a shift in production to China.

The amended notice applicable to TA–W–53,207 is hereby issued as follows:

All workers of Extrasport, Inc., a division of Johnson Outdoors, Inc., Miami, Florida, and leased workers of Oasis, Inc. producing personal flotation devices at Extrasport, Inc., a division of Johnson Outdoors, Inc., Miami, Florida, who became totally or partially separated from employment on or after October 3, 2002, through November 10, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–998 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,666]

Falcon Products, Canton, MS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 28, 2003 in response to a worker petition filed by a company official on behalf of workers at Falcon Products, Canton, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of January 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–992 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,654]

Fresenius Kabi Clayton L.P., Clayton, NC; Notice of Revised Determination on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

By electronic mail dated December 18, 2003, the State of North Carolina requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The request was made because the Department certified the workers of the

subject firm regarding only eligibility to apply for worker adjustment assistance. The certification was signed on December 9, 2003. The notice will soon be published in the **Federal Register.**

The Department issued the limited certification because it did not investigate if workers met the eligibility requirement of Alternative Trade Adjustment Assistance (ATAA), since a copy of the request for determination of eligibility to apply for the ATAA program for Older Workers was not attached to the petition.

Because the State provided documentation that a request for ATAA consideration was properly submitted, an investigation was conducted to determine if workers are eligible to apply for ATAA.

The investigation revealed that a significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable and that competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that there was a shift of production from the workers' firm or subdivision to Sweden of articles like or directly competitive with those produced by the subject firm and that the subject firm will increase imports following the shift abroad. In accordance with the provisions of the Act, I make the following certification:

All workers of at Fresenius Kabi Clayton L.P., Clayton, North Carolina, who became totally or partially separated from employment on or after November 25, 2002 through December 9, 2005, 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 6th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–996 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,471]

GE Automation Services, Inc., Greenville, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 7, 2003 in response to a worker petition filed on behalf of workers at GE Automation Services, Inc., Greenville, South Carolina.

An active certification covering the petitioning group of workers is already in effect (TA–W–50,128). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of December 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–1001 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,128]

GE Greenville Gas Turbines, LLC Including Leased Workers of GE Automation Services, Inc., Greenville, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 7, 2003, applicable to workers of GE Greenville Gas Turbines, LLC, Greenville, South Carolina. The notice was published in the **Federal Register** on March 26, 2003 (68 FR 14708).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of GE Automation Services, Inc. were employed at GE Greenville Gas Turbines, LLC to provide designing and drafting services supporting the production of gas turbines and related components at the Greenville, South Carolina location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of GE Automation Services, Inc. working at GE Greenville Gas Turbines, LLC, Greenville, South Carolina.

The intent of the Department's certification is to include all workers employed at GE Greenville Gas Turbines, LLC who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,128 is hereby issued as follows:

"All workers of GE Greenville Gas Turbines, LLC, Greenville, South Carolina, and leased workers of GE Automation Services, Inc., engaged in employment related to the production of gas turbines and related components at GE Greenville Gas Turbines, LLC, Greenville, South Carolina, who became totally or partially separated from employment on or after November 15, 2001, through February 7, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 30th day of December 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–1002 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,731]

Industrial CAD Services, Inc.; Kannapolis, 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 8, 2003, in response to a petition filed by a company official on behalf of workers at Industrial CAD Services, Inc., Kannapolis, North Carolina.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 6th day of January 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–993 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,324]

New River Industries, Inc. Including Temporary Workers of Southern Employment, Radford, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 12, 2003, applicable to workers of New River Industries, Inc. located in Radford, Virginia. The notice will soon be published in the **Federal Register**.

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers produce broadwoven fabric.

The petitioner indicates that some workers separated from employment at the subject firm, prior to becoming permanent employees of New River Industries in Radford, Virginia, were working at the plant through a temporary employment service agency, Southern Employment.

The intent of the Department's certification is to provide coverage to all workers at New River Industries, Radford, Virginia, who were adversely affected by increases in imports.

Therefore, the Department is amending the certification to include temporary workers at the subject firm whose wages were reported to Southern Employment.

The amended notice applicable to TA–W–53,324 is hereby issued as follows:

"All workers of New River Industries, Inc., Radford, Virginia, and temporary workers of Southern Employment engaged in employment related to the production of broadwoven fabric at New River Industries, Inc., Radford, Virginia, who became totally or partially separated from employment on or after October 15, 2002, through December 12, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended."

Signed at Washington, DC, this 30th day of December 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–999 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,828]

Parallax Power Components, LLC, Goodland, Indiana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 18, 2003, in response to a worker petition filed by the company on behalf of workers at Parallax Power Components, LLC, Goodland, Indiana.

An active certification covering the petitioning group of workers remains in effect (TA–W–40,523). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 5th day of January 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–995 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 26, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 26, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of January 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 12/15/03 and 12/19/03]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,796	Sandvik Mining and Tunneling, LLC (Union)	Bluefield, WV	12/15/03	12/12/03
53,797	Westpoint Stevens (Comp.)	Valley, AL	12/15/03	12/10/03
53,798	Mohican Mills/Fab Industries (Wkrs.)	Lincolnton, NC	12/15/03	12/11/03
53,799	Hoffman Carbon Inc. (Comp.)	Bradford, PA	12/15/03	12/12/03
53,800	Schroeder and Tremayne Inc. (State)	St. Louis, MO	12/15/03	12/12/03
53,801	Aneco Trousers Corp. (Comp.)	Hanover, PA	12/15/03	12/09/03

APPENDIX—Continued

[Petitions instituted between 12/15/03 and 12/19/03]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,802	J and L Specialty Steel, LLC (Union)	Moon Township, PA	12/15/03	12/04/03
53,803	FlisCinKim, Inc. (Comp.)	Ft. Payne, AL	12/15/03	12/08/03
53,804	Keef Hosiery (Comp.)	Ft. Payne, AL	12/15/03	12/10/03
53,805	Encompass Group, LLC (Comp.)	Clio, AL	12/15/03	12/12/03
53,806	Bostik Findley, Inc. (Wkrs.)	Clarks Summit, PA	12/15/03	12/01/03
53,807	Permabond Div. National Starch (Comp.)	Bridgewater, NJ	12/15/03	12/15/03
53,808	GMJ Wood Products (Comp.)	Kingsford, MI	12/15/03	12/11/03
53,809	LTV Cooperweld (USWA)	Piqua, OH	12/16/03	12/15/03
53,810	Orica USA, Inc. (Wkrs.)	Frankfort, KY	12/16/03	11/19/03
53,811	Winkelman Photography (Comp.)	Oak Park, IL	12/16/03	12/05/03
53,812	Advance Transformer Co. (Wkrs.)	Wartburg, TN	12/16/03	11/25/03
53,813	Xtex Inc. (Comp.)	Greenville, SC	12/16/03	12/12/03
53,814	Orcon Corporation (GA)	Kennesaw, GA	12/16/03	12/02/03
53,815	Rowan Regional Medical Center (Comp.)	Salisbury, NC	12/16/03	12/01/03
53,816	Tellabs (Wkrs.)	Lisle, IL	12/16/03	12/12/03
53,817	Tyco Electronics-Gadan (Comp.)	Franklin, KY	12/16/03	11/17/03
53,818	Gross National Product, LLC (Comp.)	Elmhurst, NY	12/17/03	12/16/03
53,819	APL Logistics (Wkrs)	Socorro, TX	11/17/03	11/12/03
53,820	Riverdeep, Inc. (Wkrs.)	Novato, CA	12/17/03	12/09/03
53,821	Parker Hannifin Co. (Union)	Green Camp, OH	12/17/03	12/16/03
53,822	Flint River Textiles (Comp.)	Albany, GA	12/17/03	12/16/03
53,823	Cooper Wood Products ()	Rocky Mount, VA	12/17/03	12/16/03
53,824	J and T Trading Co. (Comp.)	Charlotte, NC	12/17/03	12/16/03
53,825	Georgia Pacific Resins (Wkrs)	White City, OR	12/17/03	12/01/03
53,826	Flex–N–Gate, LLC (Union)	Warren, MI	12/17/03	12/15/03
53,827	Bridgestone/Firestone (Union)	Bloomington, IL	12/18/03	12/18/03
53,828	Parallax Power Components, LLC (Comp.)	Goodland, IN	12/18/03	12/15/03
53,829	Micro Contacts (Wkrs.)	Warwick, RI	12/18/03	11/18/03
53,830	J.S. Technos Corp./Robert Bosch (Comp.)	Russellville, KY	12/18/03	12/12/03
53,831	Green Tree Chemical Technologies, Inc	Parlin, NJ	12/18/03	12/17/03
53,832	Morrill Motors Inc. (Comp.)	Sneedville, TN	12/18/03	12/17/03
53,833	Star Machine Shop (Wkrs.)	Galax, VA	12/18/03	12/17/03
53,834	Snap-on Tools (Union)	Mt. Carmel, IL	12/18/03	12/17/03
53,835	Davidson Printing/Graphic Digital Imagin (Wkr.)	Duluth, MN	12/18/03	12/17/03
53,836	Olon Industries (Wkrs.)	Mocksville, NC	12/18/03	12/05/03
53,837	SPX Dock Products (State)	Milwaukee, WI	12/18/03	12/03/03
53,838	ATT-Wah Chang (Comp.)	Albany, OR	12/18/03	12/16/03
53,839	Benitez Inc. (Comp.)	Corpus Chrisi, TX	12/18/03	12/16/03
53,840	American Eagle Airlines (Comp.)	Lawton, OK	12/18/03	12/16/03
53,841	Komo Machine (Wkrs.)	Sank Rapids, MN	12/19/03	12/17/03
53,842	Cendant Mobility Services Corp (Comp.)	Danbury, CT	12/19/03	12/17/03
53,843	Diversified Dynamics Corp. (Wkrs.)	Blaine, MN	12/19/03	12/17/03
53,844	Hein-Werner (Comp.)	Waukesha, WI	12/19/03	12/15/03
53,845	Rohn Industries (State)	Frankfort, IN	12/19/03	12/18/03
53,846	Danly IEM (Comp.)	Cleveland, OH	12/19/03	12/18/03
53,847	Chicago Rawhide	Frankline, NC	12/19/03	12/18/03
53,848	Hanes Dye and Finishing (Wkrs.)	Easley, SC	12/19/03	12/11/03

[FR Doc. 04–989 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,759]

Tellabs Operations, Bollingbrook, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 10, 2003 in response to a petition filed on behalf of workers at Tellabs Operations, Bolingbrook, Illinois.

The petitioning group of workers is covered by an active certification issued on September 25, 2003 and which remains in effect (TA–W–52,649). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 5th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–994 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Submitted for Public Comment and Recommendations: Data Validation Requirement for Employment and Training Programs

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden,

conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, the reporting burden (time and financial resources) is minimized, the collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Employment and Training Administration (ETA) is soliciting comments on the establishment of a data validation requirement for the following employment and training programs: Workforce Investment Act (WIA) Title IB, Labor Exchange, Trade Adjustment Assistance (TAA), Migrant and Seasonal Farmworkers (MSFW), Native American Employment and Training, and Senior Community Service Employment Program (SCSEP).

DATES: Submit comments on or before March 16, 2004.

ADDRESSES: Send comments to: Gail Eulenstein, Performance and Results Office, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5309, Washington, DC 20210; telephone: (202) 693–3013 (this is not a toll-free number); fax: (202) 693–3991; e-mail: *Eulenstein.Gail@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Gail Eulenstein, Performance and Results Office, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5309, Washington, DC 20210; telephone: (202) 693–3013 (this is not a toll-free number); fax: (202) 693–3991; e-mail: *Eulenstein.Gail@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The accuracy and reliability of program reports submitted by States and grantees using Federal funds are fundamental elements of good public administration, and are necessary tools for maintaining and demonstrating system integrity. The President's Management Agenda to improve the management and performance of the Federal government has emphasized the importance of complete information for program monitoring and improving program results.

States and grantees receiving funding under WIA Title I, Wagner-Peyser Act, TAA, and SCSEP are required to maintain and report accurate program and financial information (WIA section 185 (29 U.S.C. 2935) and WIA Regulations 20 CFR 667.300(e)(2); Wagner-Peyser Act section 10 (29 U.S.C. 49i), Older Americans Act section 503(f)(3) and (4) (42 U.S.C. 3056a(f)(3) and (4)), and TAA Regulations 20 CFR 617.57). Further, all States and grantees receiving funding from ETA and the Veterans' Employment and Training Service are required to submit reports or participant records and attest to the accuracy of these reports and records.

Recent performance audits conducted by the Department of Labor's Office of the Inspector General, however, found that the accuracy of reported performance outcomes cannot be assured due to insufficient local, State, and Federal oversight. To address this concern and meet the Agency's goal for accurate and reliable data, ETA committed to the development and implementation of a data validation process in order to ensure the accuracy of data collected and reported on program activities and outcomes.

Data Validation. The data validation requirement for employment and training programs will strengthen the workforce system by ensuring that accurate and reliable information on program activities and outcomes is available. Data validation is intended to accomplish the following goals:

- Ensure that critical performance data are accurate.
- Detect and identify specific problems with a State's or grantee's reporting process, including software and data issues, to enable the State or grantee to correct the problems.
- Help States and grantees analyze the causes of performance successes and failures by displaying participant data organized by performance outcomes. In addition, the process will allow States and grantees to select appropriate validation samples necessary to compute statistically significant error rates.

Data validation consists of two parts:

(1) Report validation evaluates the validity of aggregate reports submitted to ETA by checking the accuracy of the reporting software used to calculate the reports. Report validation is accomplished by processing an entire file of participant records into validation counts and comparing the validation counts to those reported by the State or grantee.

(2) Data element validation assesses the accuracy of participant data records. Data element validation is performed by reviewing samples of participant records against source documentation to ensure compliance with Federal definitions.

Data Validation Pilot Test. Two States participated in a pilot test of the validation process in the summer and fall of 2002. Grantees in the MSFW program, Native American Employment and Training program, and SCSEP will begin pilot tests by the end of CY 2003. The pilot States conducted validation for the WIA Title IB, Labor Exchange, and TAA programs. The States received preparatory training prior to beginning validation and technical assistance throughout the pilot from ETA's validation contractor. The pilot test indicated the following:

- States and grantees will generally be able to conduct data validation with a reasonable but sustained level of effort.
- The validation process allows States and grantees to identify and address reporting errors.
- States and grantees do make reporting errors which need detecting and fixing.
- The average staff requirements for a State to complete validation for the WIA Title IB, Labor Exchange, and TAA programs will be about 882 hours per year. The average annual time required by grantees operating MSFW programs, Native American Employment and Training programs, and SCSEP to complete validation is approximately 102 hours. Start-up activities in the initial year of validation will require an additional 264 hours on average per State and 74 hours on average per grantee.

II. Desired Focus of Comments

Currently, ETA is soliciting comments about the proposed new collection of information on the validity of data that States and grantees report to the Agency. ETA is seeking Office of Management and Budget (OMB) approval under PRA95 to establish a data validation requirement for the following employment and training programs: WIA Title IB, Labor Exchange, TAA, MSFW, Native American Employment and Training, and SCSEP. Data validation will increase the reporting burden by requiring States and grantees to submit reports on data validity to ETA.

A copy of the proposed information collection request can be obtained by contacting the office listed above in the **ADDRESSES** section of this notice. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, especially whether the information will have practical utility;

- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Discuss how to enhance the quality, utility, and clarity of the information to be collected; and
- Suggest how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

III. Current Actions

The Department proposes the following plan for implementing and operating data validation:

- In order to ensure the accuracy of reported information throughout the workforce investment system, States and grantees will be required to conduct data validation and submit validation output reports to ETA. States will initiate data validation for WIA Title IB, Labor Exchange, and TAA by the end of CY 2003, and grantees operating MSFW programs, Native American Employment and Training programs, and SCSEP will initiate validation during CY 2004.
- Data validation will be required annually. States and grantees will be required to send validation output reports to ETA within 120 days after the submission of required annual reports or participant records to ETA. Report validation will be performed prior to the submission of reports. Data element validation will be completed within 120 days after required annual reports or participant records are due to ETA.
- ETA has developed a set of validation tools discussed below—instructional handbooks, software, and user guides—that States and grantees can use to validate data. States and grantees may use an alternative methodology and tools as long as the methodology meets standards for sampling methods and confidence intervals. States or grantees that do not use the validation tools provided by ETA will be required to document that the alternative methodology is statistically valid.
- In addition to performing validation, the ETA software can be used to generate the aggregate information required in reports submitted to ETA. States or grantees that use the software provided by ETA to generate this aggregate information will not be required to perform report validation.
- ETA will establish acceptable levels for the accuracy of reports and data elements. These accuracy standards will be established in phases. The initial validation year will focus on detecting and resolving any issues with State and grantee data and reporting systems. Error rates collected in the second year will be analyzed, and, based on this information, standards for accuracy will be established prior to the third year of validation.
- Once accuracy standards are established, States and grantees will be held accountable for meeting those standards and will be required to address any issues concerning data accuracy. States and grantees that fail to meet accuracy standards will receive technical assistance from ETA and will develop and implement a corrective action plan. Data that does not meet accuracy standards will not be acceptable for measuring performance, and may keep the State or grantee from being eligible for incentives that are awarded based on performance data. Significant or unresolved deviation from accuracy standards may be deemed a failure to report.

Resources. The requirement to perform validation derives from States' and grantees' responsibility to provide accurate information on program activities and outcomes to ETA. States and grantees are expected to provide resources for conducting validation from their administrative funds. Validation of program performance is a basic responsibility of grantees, who are required to report on program performance, under Department of Labor regulations (29 CFR 95.51 and 97.40). ETA has taken a number of steps to minimize the resources needed for data validation, including developing tools that States and grantees can use to perform validation. The estimates provided below, which are based on state pilot experiences, indicate that annual staff requirements for continuing operations of data validation will be on average 882 hours (or less than ½ of a staff year) for a State and 102 hours (or about 1/20 of a staff year) for a grantee.

Data Validation Tools. To reduce startup costs related to implementing data validation, ETA has developed standardized software, instructional handbooks, and user guides that States and grantees can use to perform data validation:

- Software developed by ETA generates samples, worksheets, and reports on data accuracy. For report validation, the software will validate the accuracy of aggregate reports that are generated by the State's or grantee's reporting software and will produce an error rate for each reported count. For data element validation, the software generates a sample of the participant records and data elements for the state or grantee to validate. The software produces worksheets on which the validator records information after checking the source documentation in the sampled case files. The software calculates error rates for each data element, with confidence intervals of 3.5 percent for large States/grantees and 4 percent for small States/grantees.
- Handbooks provide detailed information on the validation methodology, including sampling specifications and data element validation instructions for each data element to be validated.
- User guides developed for each ETA validation software application guide States and grantees through the process of installing the application, building and loading a validation file, and completing report and data element validation.

Data Recording and Reports. States and grantees will record the results of their validation on spreadsheet software prepared as an accompaniment to their handbooks. Initially, the spreadsheets can be transmitted by e-mail to ETA. Eventually, the results will be submitted in the same manner as other reports. The results will be stored in a dataset in the National Office in Washington, DC, and compiled in an annual validation accuracy report.

Training and Technical Assistance. ETA provided validation training to States in regional sessions during the summer of 2003. Training for grantees of the MSFW and Native American Employment and Training programs will be held during winter 2003/04, and training will be provided for SCSEP grantees during spring 2004. States and grantees may obtain technical assistance on validation procedures and the use of the validation tools by contacting ETA's data validation contractor.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Data Validation Requirement for Employment and Training Programs.

OMB Number: 1205–0NEW.

Recordkeeping: States and grantees must maintain complete records of all validation activities for three years. The retention requirement will apply to records of all validation activities, including files, worksheets, reports, and source documentation.

Affected Public: State, local, and tribal government entities and private non-profit organizations.

Total Respondents: 317 (53 states will perform validation for the WIA Title IB,

Labor Exchange, and TAA programs annually. 264 grantees operating MSFW programs, Native American Employment and Training programs, and SCSEP will perform validation annually).

Frequency: Complete data validation annually.

Total Responses: 317 (53 responses from states annually and 264 responses from grantees annually).

Estimated Time per Response: 882 hours per year on average for a state to complete validation of the WIA Title IB, Labor Exchange, and TAA programs. 102 hours per year on average for a grantee operating a MSFW program, Native American Employment and Training program, or SCSEP to perform validation.

Total Burden Hours: An estimated 46,732 hours per year will be required for all states to complete validation for the WIA Title IB, Labor Exchange, and TAA programs. An estimated 13,992 hours will be necessary by all states for startup activities in the initial year of validation. An estimated 26,830 hours per year will be required for all grantees operating MSFW programs, Native American Employment and Training programs, and SCSEP to perform validation. An estimated 19,552 hours will be necessary by all grantees for startup activities in the initial year of validation.

Total Burden Cost (startup): The start-up cost is estimated to be $454,740 for all states in the initial year of validation for the WIA Title IB, Labor Exchange, and TAA programs ($8,580 on average per state). The start-up cost is estimated to be $312,322 for all grantees in the initial year of validation for MSFW, Native American Employment and Training, and SCSEP ($1,183 on average per grantee).

Total Burden Cost (operating): The cost is estimated to be $1,518,791 per year for all states to complete validation for the WIA Title IB, Labor Exchange, and TAA programs ($28,656 on average per state). The cost is estimated to be $495,767 per year for all grantees operating MSFW programs, Native American Employment and Training programs, and SCSEP to perform validation ($1,878 on average per grantee).

Summary of Burden

CALCULATION OF COMBINED ANNUAL BURDEN FOR WIA TITLE IB, LABOR EXCHANGE, AND TAA

	No. of states	Annual hours	Rate in $/hr[1]	Cost
Large State	18	1,332	$32.50	$43,297
Medium State	18	836	32.50	27,180
Small State	17	453	32.50	14,718
All States	53	46,732	32.50	1,518,791
Average per State		882	32.50	28,656

[1] Hourly rate is the estimated average hourly earnings for employees in State Unemployment Insurance (UI) agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes).

CALCULATION OF COMBINED STARTUP BURDEN FOR WIA TITLE IB, LABOR EXCHANGE, AND TAA

	No. of states	Hours	Rate in $/hr[1]	Cost
State	53	264	$32.50	$8,580
All States	53	13,992	32.50	454,740

[1] Hourly rate is the estimated average hourly earnings for employees in State Unemployment Insurance (UI) agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes).

CALCULATION OF ANNUAL BURDEN FOR MSFW, NATIVE AMERICAN EMPLOYMENT AND TRAINING, SCSEP

	No. of grantees	Annual hours	Rate in $/hr[1]	Cost
MSFW Grantee	52	158	$10.75/32.50	$1,896
Native American Employment & Training Grantee	144	53	10.75	569
SCSEP Grantee	68	162	10.75/32.50	4,637
All Grantees	264	26,830	10.75/32.50	495,767
Average per Grantee		102	10.75/32.50	1,878

[1] Hourly rates used to calcuate cost depends upon the type of organization receiving the grant. For State government grantees, the hourly rate is the estimated average hourly earnings for employees in State Unemployment Insurance (UI) agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes). For private non-private grantees, the hourly rate is the average hourly earnings in the social assistance industry (May 2003, Current Employment Statistics Survey, U.S. Census Bureau).

CALCULATION OF STARTUP BURDEN FOR MSFW, NATIVE AMERICAN EMPLOYMENT AND TRAINING, SCSEP

	No. of grantees	Hours	Rate in $/hr[1]	Cost
MSFW Grantee	52	72	$10.75/32.50	$864
Native American & Training Grantee Employment	144	72	10.75	774
SCSEP Grantee	68	80	10.75/32.50	2,293
All Grantees	264	19,552	10.75/32.50	312,322
Average per Grantee		74	10.75/32.50	1,183

[1] Hourly rates used to calculate cost depends upon the type of organization receiving the grant. For State government grantees, the hourly rate is the estimated average hourly earnings for employees in State Unemployment Insurance (UI) agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes). For private non-profit grantees, the hourly rate is the average hourly earnings in the social assistance industry (May 2003, Current Employment Statistics Survey, U.S. Census Bureau).

Data validation is estimated to require an annual burden of 73,562 hours and $2,015,000 for all six programs subject to the validation requirement. An additional 33,544 hours and $767,000 will be required for startup activities for all six programs in the initial year of validation.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed in Washington, DC, on January 9, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 04–990 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
- RI030001 (Jun. 13, 2003)
- RI030002 (Jun. 13, 2003)

Volume II

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- MD030010 (Jun. 13, 2003)

Pennsylvania
- PA030001 (Jun. 13, 2003)
- PA030002 (Jun. 13, 2003)
- PA030003 (Jun. 13, 2003)
- PA030004 (Jun. 13, 2003)
- PA030005 (Jun. 13, 2003)
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- PA030010 (Jun. 13, 2003)
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CA030029 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of January, 2004.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–784 Filed 1–15–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until February 17, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below: *Clearance Officer:* Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Corporate Credit Union Monthly Call Report.

OMB Number: 3133–0067.

Form Number: NCUA 5310.

Type of Review: Recordkeeping, reporting and monthly.

Description: NCUA utilizes the information to monitor financial conditions in corporate credit unions, and to allocate supervision and examination resources.

Respondents: Corporate credit unions, or "banker's banks" for natural person credit unions.

Estimated No. of Respondents/Record keepers: 33.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Monthly.

Estimated Total Annual Burden Hours: 792 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on January 8, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–937 Filed 1–15–04; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–009]

System Energy Resources, Inc; Notice of Hearing and Opportunity To Petition for Leave To Intervene Early Site Permit for the Grand Gulf ESP Site

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10 of the Code of Federal Regulations, Part 50, Domestic Licensing of Production and Utilization Facilities, Part 52, Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants, and Part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, notice is hereby given that a hearing will be held, at a time and place to be set in the future by the United States Nuclear Regulatory Commission (NRC, the Commission) or designated Atomic Safety and Licensing Board (Board). The hearing will consider the application dated October 16, 2003, filed by System Energy Resources, Inc. (SERI), a subsidiary of Entergy Corporation, pursuant to Subpart A of 10 CFR Part 52 for an early site permit (ESP). The application requests approval of a site for which it has 90 percentage ownership in Claiborne County, Mississippi, approximately 25 miles south of Vicksburg, Mississippi, 6 miles northwest of Port Gibson, Mississippi, and 37 miles north-northeast of Natchez, Mississippi, as a location for one or more new nuclear reactors that would, if authorized for construction and operation in a separate licensing proceeding under Subpart C of 10 CFR Part 52 or under 10 CFR Part 50, have a capacity of no more than 8600 Megawatts (thermal) additional for the site. SERI has the exclusive rights to develop the Grand Gulf site property outside the existing power plant and support facilities. South Mississippi Electric Power Association maintains a 10 percentage ownership interest in the property associated with the existing Grand Gulf Nuclear Station power plant and support facilities. The docket number established for this application is 52–009.

The hearing will be conducted by a Board which will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a later date.

The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report (SER) and an environmental impact statement (EIS). In addition, the Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.23, and the ACRS will report on those portions of the application that concern safety. Upon receipt of the ACRS report and completion of the Nuclear Regulatory Commission (NRC) staff's SER and EIS, the Director, Office of Nuclear Reactor Regulation, NRC, will propose findings on the following issues:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

(1) Whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); and, (2) whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public (Safety Issue 2).

Issue Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

Whether, in accordance with the requirements of Subpart A of 10 CFR Part 51, the ESP should be issued as proposed.

The Board will conduct the hearing in accordance with Subpart G of 10 CFR Part 2. If the hearing is contested as defined by 10 CFR 2.4, the presiding officer will consider Safety Issues 1 and 2 and the issue pursuant to NEPA set forth above.

If the hearing is not a contested proceeding as defined by 10 CFR 2.4, the presiding officer will determine: whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support a negative finding on Safety Issue 1 above, and an affirmative finding on Safety Issue 2 above, as proposed to be made by the Director, Office of Nuclear Reactor Regulation; and whether the review conducted by the Commission pursuant to NEPA has been adequate.

Regardless of whether the proceeding is contested or uncontested, the presiding officer will: (1) Determine whether the requirements of Section 102(2) (A), (C), and (E) of NEPA and Subpart A of 10 CFR Part 51 have been complied with in the proceeding; (2) independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values.

In accordance with 10 CFR 2.714, any person whose interest may be affected by this proceeding and who desires to participate as a party shall file a written petition for leave to intervene. Petitions must set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene with particular reference to the factors set forth in 10 CFR 2.714(d)(1), and the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene.

The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene shall, in ruling on petitions to intervene, consider the following factors, among other things: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

All such petitions must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition, that the petition should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v).

The Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to intervene, or their counsel, to be held at such times as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.751a. Notice of this special prehearing conference will be published in the **Federal Register**. The Board will

convene a prehearing conference of the parties, or their counsel, to be held subsequent to any special prehearing conference, after discovery has been completed, or within such other time as may be appropriate, at a time and place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.752.

Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or if no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his or her petition to intervene that must include a list of the contentions which petitioner seeks to have litigated in the hearing. A petitioner who fails to file a supplement that satisfies the requirements of 10 CFR 2.714(b)(2) with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in 10 CFR 2.714(a)(1).

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention: (1) A brief explanation of the bases of the contention, (2) a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion, and (3) sufficient information (which may include information pursuant to 10 CFR 2.714(b)(2)(i) and (ii)) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under NEPA, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final EIS, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene shall, in ruling on the admissibility of a contention, refuse to admit a contention if: (1) The contention and supporting material fail to satisfy the requirements of 10 CFR 2.714(b)(2); or (2) the contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to 10 CFR 2.714(f). Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

Petitions for leave to intervene may be filed by delivery to the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738, or by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemakings and Adjudication Staff. Because of the continuing disruptions in delivery of mail to United States Government offices, it is also requested that petitions for leave to intervene be transmitted to the Secretary of the Commission either by facsimile transmission to 301–415–1101 or by e-mail to *hearindocket@nrc.gov*. A copy of the petition should also be sent to the Assistant General Counsel for Reactor Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Joseph L. Blount, Entergy Nuclear, 1340 Echelon Parkway, Jackson, Mississippi, 39213, and to Mark J. Wetterhahn, Esquire, Winston & Strawn LLP, 1400 L Street, NW., Washington, DC 20005–3502. All petitions must be accompanied by proof of service upon all parties to the proceeding or their attorneys of record.

A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but may not otherwise participate in the proceeding.

A copy of the SERI ESP application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application is ML032960315. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The application is also available to local residents at the Harriette Person Memorial Library in Port Gibson, Mississippi, and is available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp.html*.

Dated at Rockville, Maryland this 7th day of January, 2004.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–682 Filed 1–15–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27793; File No. 3–11373]

Public Utility Holding Company Act of 1935; Application of Stephen Forbes Cooper, LLC, PGE Trust, and Enron Corporation for Exemption Under the Public Utility Holding Company Act of 1935 (No. 70–10190); Notice of and Order Scheduling Hearing Regarding Request for Order Exempting Holding Companies from Registration Under the Public Utility Holding Company Act of 1935

January 14, 2004.

Enron Corporation ("Enron"), a public utility holding company, Stephen Forbes Cooper, LLC ("SFC"), an entity headed by the Acting President of Enron, and PGE Trust, an entity that Enron may organize (collectively "Applicants"), all located at 1400 Smith Street, Houston, Texas 77002, have filed an application ("Application") with the Securities and Exchange Commission seeking exemption from all provisions of the Public Utility Holding Company Act of 1935 ("Act") except section 9(a)(2). Enron represents that it is a public utility holding company by reason of its ownership of all of the outstanding voting securities of Portland General Electric Company ("Portland General"). Enron requests exemption

under Section 3(a)(4) of the Act.[1] Section 3(a)(4) provides that the Commission shall exempt, "unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers," a holding company if:

> such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities * * *

Section 3(c) of the Act provides that:

> Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application * * *

We cannot, from the face of the Application, conclude that Enron meets the statutory criteria for an exemption pursuant to section 3(a)(4) of the Act. Therefore, we have determined, in accordance with sections 3(c) and 19 of the Act, to conduct a hearing on Enron's Application.[2] Because ownership and control of Portland General has not yet been transferred to the other applicants, there is no basis for taking action on the applications of SFC and PGE Trust. We therefore do not consider these two requests.

The hearing will be conducted on the basis of written submissions to be filed on or before February 2, 2004.[3] We currently believe, given the issues raised in the Application, that a hearing on the basis of written submissions will be sufficient. However, if any person believes that oral testimony or oral argument is necessary, he may request that the Commission consider ordering such testimony or oral argument. Such a request should be filed by February 2, 2004, and should specify why the person making the request believes such testimony or argument is necessary and what the person making the request expects to accomplish thorough such testimony or argument.

Accordingly, *it is hereby ordered* that a hearing shall be conducted, pursuant to Sections 3(c) and 19 of the Act (and in accordance with the Commission's Rules of Practice except as otherwise provided), on February 2, 2004. Enron and the Division of Investment Management shall file with the Secretary of the Commission, on or before February 2, 2004, a written submission that identifies specifically the issues of fact or law in dispute including legal arguments supporting their position, and shall serve simultaneously a copy of such submission on the other participant. A person who files a written submission will receive a copy of any other notice or order issued in this matter; and

It is further ordered that Enron and the Division of Investment Management shall be parties to the proceeding and that Enron, as the proponent of the exemptive order it seeks, shall, pursuant to 5 U.S.C. 556(d), bear the burden of proving that it is entitled to such exemptive order; and

It is further ordered that any person who seeks to intervene as a party pursuant to Rule of Practice 210(b)[4] shall file a motion to intervene with the Secretary of the Commission no later than February 2, 2004, and any person who seeks to participate on a limited basis pursuant to Rule of Practice 210(c)[5] shall file a motion for leave to participate with the Secretary of the Commission no later than February 2, 2004. Any person who seeks to intervene as a party or to participate on a limited basis also shall file with the Secretary of the Commission no later than February 2, 2004, a written submission that identifies specifically the issues of fact or law in dispute including any legal arguments supporting that person's position and identifies the person's interest in the Application, and shall serve all participants with a copy of any document the person files with the Commission; and

It is further ordered that the Secretary of the Commission shall mail copies of this Notice and Order by certified mail to Enron at the address noted above and shall serve a copy on the Division of Investment Management; that notice to all other persons shall be given by publication of this Notice and Order in the **Federal Register**; and this Notice and Order and any subsequent orders granting or denying or otherwise disposing of the Application shall be posted on the Commission's Web site at *www.sec.gov* and published in the SEC Docket.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1102 Filed 1–14–04; 12:20 pm]

BILLING CODE 8010–01–P

[1] We take no position as to whether the Application with respect to any of the Applicants was filed in good faith as required under Section 3(c) in order to exempt the applicant from any obligation, duty, or liability imposed by the Act upon the applicant until the Commission has acted on such application.

[2] Although the Applicants did not request a hearing, they have reserved their right to do so.

[3] No briefs in addition to those specified in this Notice and Order may be filed without leave of the Commission. Attention is called to Rules 150–153, with respect to form and service. Briefs shall not exceed 50 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission. Requests for extensions of time to file briefs are disfavored.

[4] 17 CFR 201.210(b).

[5] 17 CFR 201.210(c).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 49038; January 8, 2004]

Securities Exchange Act of 1934; Order Granting Temporary Exemption for Security Futures Products From the Definition of Penny Stock

The Commodity Futures Modernization Act of 2000 ("CFMA") permits the trading of security futures, *i.e.*, futures contracts on individual securities and on narrow-based security indexes ("security futures").[1] Under the CFMA, security futures are regulated both as "securities" under the federal securities laws,[2] and as futures contracts for the purposes of the Commodity Exchange Act ("CEA").[3] Accordingly, security futures products potentially fall within the statutory definition of penny stock.[4] Thus, absent an exemption, security futures products could be subject to the Commission's regulatory scheme for penny stocks.[5]

We are proposing to amend the definition of penny stock in Exchange Act Rule 3a51–1 to exclude security futures listed on a national securities exchange or an automated quotation system sponsored by a registered national securities association.[6] This

[1] Pub. L. 106–554, 114 Stat. 2763 (2000). Under Section 3(a)(55)(A) of the Securities Exchange Act of 1934 ("Exchange Act"), the term "security future" is defined as a contract of sale for future delivery of a single security or of a narrow-based security index. 15 U.S C. 78c(a)(55)(A). Under Exchange Act Section 3(a)(56), the term "security futures product" is defined as a security future or an option on a security future. 15 U.S.C. 78c(a)(56).

[2] *See, e.g.*, Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10).

[3] The term "security future" is defined in CEA Section 1a(31) [7 U.S.C. 1a(31)] as a contract of sale for future delivery of a single security or of a narrow-based security index. Under CEA Section 1a(33) (7 U.S.C. 1a(33)), the term "security futures product" is defined as a security future or an option on a security future.

[4] 15 U.S.C. 78c(a)(51). This definition is supplemented by Exchange Act Rule 3a51–1, 17 CFR 240.3a51–1, which further defines the term "penny stock.".

[5] Rules 15g–1 through 15g–9 under the Exchange Act (collectively known as the "penny stock rules") 17 CFR 240.15g–2 through 15g–9.

[6] *See* Exchange Act Rel. No. 49037 (January 8, 2004). Section 6(h)(1) of the Exchange Act makes it unlawful for any person to effect transactions in security futures products that are not listed on a

would be consistent with the treatment of exchange-traded options under the penny stock rules.[7] Both exchange-traded options and security futures products are subject to special disclosure requirements.[8] Subjecting security futures to the additional disclosure regime of the penny stock rules, therefore, would likely be duplicative and unnecessarily burdensome.

Security futures commenced trading in the United States on November 8, 2002 on the Nasdaq-Liffe and OneChicago markets.[9] Therefore, the Commission, through this order, is providing an exemption from the penny stock rules for security futures such time as the Commission takes any further action on the proposed amendment to Rule 3a51–1 outlined above. This exemption will allow the Commission to receive and consider comments while, at the same time, temporarily excluding security futures products from the penny stock rules.

Because security futures are subject to an alternative regulatory scheme, and because the CFMA directs the Commission to issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations for firms that are "fully registered" with both the Commodity Futures Trading Commission and the Commission,[10] the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to provide this temporary exemptive relief.

Accordingly, pursuant to Section 36(a)(1) of the Exchange Act,[11]

It is hereby ordered that security futures products are exempted from the definition of penny stock set forth in Exchange Act Section 3(a)(51)(A) and Rule 3a51–1 until such time as the Commission takes any further action on the proposed amendment to Rule 3a51–1.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–882 Filed 1–15–04; 8:45 am]

BILLING CODE 8010–01–P

national securities exchange or a national securities association registered pursuant to section 15A(a). 15 U.S.C. 78f(h)(1).

[7] In particular, the term "penny stock" currently does not include any put or call option issued by the Options Clearing Corporation ("OCC"). *See* 17 CFR 240.3a51–1(c).

[8] Exchange Act Rel. No. 30608 (April 20, 1992) at n. 39, 57 FR 18004 (April 28, 1992) ("In addition, because put and call options issued by the OCC are already subject to special disclosure requirements, they are separately excluded from the definition of penny stock in paragraph (c) of Rule 3a51–1."). *See also* 17 CFR 240.9b–1; CBOE Rules 9.1–9.23; NASD Rule 2860 (16).

[9] Peter A. McKay, *Single Stocks Futures Arrive in the U.S. With Room to Grow*, Wall Street Journal, Nov. 11, 2002, at B6.

[10] *See* Exchange Act Section 15(c)(3)(B), 15 U.S. 78o(c)(3)(B) (directing the Commission to avoid duplicative or conflicting rules relating to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures).

[11] 15 U.S.C. 78mm(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49051; File No. SR–NSCC–2003–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Implement Real-Time Trade Matching for Fixed Income Securities

January 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 27, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to implement a real-time trade matching system ("RTTM") for certain NSCC-eligible corporate bonds, municipal bonds, and unit investment trusts ("NSCC debt securities").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

RTTM was implemented in the fourth quarter of 2000 by the former Government Securities Clearing Corporation ("GSCC"),[4] an NSCC affiliate, for the processing of government securities transactions.[5] It was designed with a vision to use the platform for other fixed income securities. Accordingly, it was implemented in 2002 for mortgage-backed securities transactions processed by the former MBSCC.[6] The purpose of the proposed rule change is to implement RTTM for NSCC debt securities. RTTM will eventually replace NSCC's current Fixed Income Transactions System ("FITS").[7]

The two areas of NSCC debt securities processing rules that require changes to implement RTTM are (1) inbound submissions to NSCC and (2) NSCC's reporting of information related to such submissions to participants. Specifically, interactive messages and the RTTM Web User Interface ("RTTM Web")[8] will be added as ways in which participants can submit trade data and subsequent related trade processing instructions.[9] With respect to output issued by NSCC, initially upon implementation, end-of-day reports will continue to be produced by FITS

[1] 15 U.S.C. 78s(b)(1).

[2] The proposed rule change does not apply to debt securities transactions that are submitted to NSCC via its correspondent clearing service, by regional exchanges/marketplaces, or through qualified securities depositories as defined in NSCC's rules because such transactions will not be processed by RTTM.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into GSCC and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division ("GSD") of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division ("MBSD") of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01).

[5] Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816 (File No. SR–GSCC–2001–01).

[6] Securities Exchange Act Release No. 45563 (March 14, 2002), 67 FR 13389 (File No. SR–MBSCC–2001–02).

[7] In March 2003, the Commission approved certain modifications to FITS in order to prepare NSCC participants for the new RTTM functionality. Securities Exchange Act Release No. 47494 (March 13, 2003), 68 FR 13975 (File No. SR–NSCC–2003–10).

[8] The RTTM Web will replace NSCC's PC Web application for NSCC fixed income securities.

RTTM will be implemented in phases in 2004. Participants will be notified of specific implementation dates by Important Notice. Conversation with Nikki Poulos, Vice President and Associate General Counsel, FICC (January 9, 2004).

[9] Initially, RTTM will support the current batch method of data input.

whereas intraday reports will be produced by RTTM. In addition, NSCC will make output available for interactive message users and RTTM Web users in those respective media.

The following is a summary of the key proposed rule changes needed to implement RTTM:

- References to "Contract Lists" will be replaced with references to "output" or to "information made available" by NSCC to cover the additional types of output that could be generated by RTTM.
- References to the names of specific instructions that participants may submit to resolve uncompared trades (*e.g.*, "Delete of Original Trade Input") will be replaced with general references to "appropriate instructions" to include similar instructions which have different names that may be submitted by interactive message users and RTTM Web users.[10]
- With respect to trades submitted for two-sided comparison processing, interactive message users and RTTM Web users will be able to modify their trades, subject to the timeframes and requirements imposed by NSCC from time to time, and will also be able to remove an unmatched trade from processing by sending an instruction indicating that they do not agree with the terms of a trade that has been submitted against them.[11] Locked-in trade sources and syndicate managers that are interactive message users or RTTM Web users will also be able to modify their trade submissions.
- RTTM will accept cash and next-day transactions for comparison-only processing.
- RTTM will add an intraday money tolerance pursuant to which NSCC will compare a trade using the seller's contract amount if the contract amounts submitted by the buyer and seller are within a net $2 difference for trades of $1 million or less or $2 per million for trades greater than $1 million.[12] In addition, RTTM will compare a trade if trade data matches in all respects, including contract amounts which have been compared pursuant to the money tolerances, except for trade date. In this case, the earlier of the two trade dates submitted will be used. RTTM will not use the summarization process used to compare trades currently set forth in NSCC procedure II, section D.1(e).
- NSCC's rules and procedures will continue to provide that the submission of a locked-in trade or a syndicate takedown trade results in a compared trade. However, RTTM will provide members on behalf of whom locked-in and syndicate takedown trades are submitted ("LI/ST contrasides") the option of submitting matching trade details for their internal reconciliation purposes. In order to facilitate the participants' internal reconciliation process, RTTM has been designed to issue output that indicates a status of "unmatched" or "match request" upon receipt of a locked-in or syndicate takedown trade. Notwithstanding the output indicating unmatched and match request, the proposed rule changes make clear that the submission of matching trade data by LI/ST contrasides will have no legal effect on the status of locked-in and syndicate takedown trades as compared trades. In addition, notwithstanding that output is made available by NSCC as a result of subsequent processing information submitted by LI/ST contrasides that are not specifically provided for in NSCC's rules and procedures, the proposed rule changes make clear that such submissions will have no legal effect and that RTTM has been designed to accept such submissions for participants' internal reconciliation purposes only.

In addition to the above, NSCC is proposing the following additional technical changes and corrections:

- References to the "Automated Bond System" ("ABS") will be deleted because ABS trades submitted by the New York Stock Exchange are locked-in trades and are covered by provisions dealing with locked-in trades. In addition, references to the "AMEX Order File System" will be deleted because that system is no longer operational.
- Technical corrections will be made throughout the debt when-issued section of NSCC's procedure II, section E to clarify the submission requirements for a transaction to be treated as a when-issued transaction. It should be noted that due to the systems development schedule, RTTM will not be available with respect to when-issued corporate debt securities transactions upon implementation. NSCC will file a rule change pursuant to section 19(b)(3) of the Act and will notify members when the service becomes available for these transactions.
- Technical corrections will be made to the use of the term "settlement date" so that when referenced with upper case letters it means the settlement date as established by NSCC.[13]

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[14] and the rules and regulations thereunder applicable to NSCC because it should permit the accurate clearance and settlement of securities by enabling NSCC to process fixed income trades more efficiently.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule changes will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the proposed rule changes have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

[10] For example, in the current version of NSCC's procedures there is a reference to an instruction called a "Delete of Original Trade Input" that is used by batch participants to delete uncompared trade data they have submitted. Interactive message users and RTTM Web users will use an instruction called a "Cancel" to accomplish the same result. Therefore, references to "Delete of Original Trade Input" will be replaced by references to "appropriate instruction" in order to cover the equivalent interactive message and RTTM Web instruction.

[11] RTTM Web users will also be able to subsequently restore a trade to processing by submitting the requisite instruction.

[12] No changes are being proposed to NSCC's existing end-of-day money tolerance currently contained in procedure II, section D.1(a).

[13] For example, if a trade is made on September 15 with a contract settlement date of September 18, but the trade does not match until September 18 or later, NSCC will provide the Settlement Date.

[14] 15 U.S.C. 78q-1.

Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *www.nscc.com/legal/*.

All submissions should refer to File No. SR–NSCC–2003–15 and should be submitted by February 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–952 Filed 1–15–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49061; File No. SR–NSCC–2003–03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Execution Time for CNS Buy-Ins

January 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 24, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 14, 2003, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow NSCC to amend Procedures VII and X to allow NSCC to determine the timeframe for the execution of continuous net settlement ("CNS") buy-ins from time to time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC Procedures VII.J. "CNS Accounting Operation, Recording of CNS Buy-Ins" and X.A.1. "Execution of Buy-Ins, CNS System, Equity Securities and Corporate Debt Securities" with regard to the execution time of CNS buy-ins.

Except with respect to securities subject to a voluntary corporate reorganization, a member having a long CNS position at the end of any day may submit to NSCC a notice of intention to buy-in ("buy-in notice") specifying a quantity of securities (not exceeding such long CNS positions) the member intends to buy-in ("buy-in position"). The day the CNS buy-in notice is submitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes both an evening and daytime allocation. The CNS buy-in position is given high priority for allocation through N+2.

Pursuant to NSCC Procedure VII, if a CNS buy-in position is not satisfied at the end of the day cycle on N+2, the CNS buy-in may be executed. In effect, members have from the completion of the day cycle on N+2 to the close of the markets to execute the CNS buy-in. Operationally, as the day cycle generally completes at 3:10 p.m. eastern standard time ("EST"), participants face a narrow timeframe within which they may execute CNS buy-ins. In the event that settlement and recycle times are extended or delayed, that window of time is further reduced.

At the request of participants and after consultation with the Securities Industry Association Buy-In Committee, NSCC proposes to modify Procedures VII and X to permit the execution of CNS buy-ins if by 3 p.m. EST or such earlier time as established by NSCC with five business days notice because of market events (*e.g.*, days the marketplaces close early). NSCC will advise participants of any earlier execution time via important notice five business days in advance of its effectiveness. This change in time is not intended to be a requirement for executions, but is to serve as an opportunity for participants to execute CNS buy-ins in a more efficient manner.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act[3] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions by providing members sufficient time to execute CNS buy-ins.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC or on NSCC's Web site at *http://www.nscc.com/legal/*. All submissions should refer to File No. SR–NSCC–2003–03 and should be submitted by February 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1013 Filed 1–15–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49053; File No. SR–PCX–2003–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Post-Trade Anonymity to Its ETP Holders

January 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 12, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 9, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to provide post-trade anonymity to its ETP Holders and to modify PCXE Rule 7.41 accordingly. The text of the proposed rule changes is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend anonymity on its Archipelago Exchange ("ArcaEx") through to post settlement. Currently, Users[4] may display and execute orders on an anonymous basis pursuant to PCXE Rules 7.36 and 7.37, respectively. Accordingly, during the execution process, Users' orders are executed without knowledge of the contra-party's identity. At the end of the trading day, the contra-party's identity on a trade-by-trade basis is revealed to ETP Holders[5] for their respective trades through web-based reports. Therefore, anonymity is maintained through execution, but not through the end-of-day settlement process.

The Exchange proposes to modify PCXE Rule 7.41 to clarify that the contra-party to the trade will not be revealed except in specific instances as discussed below. The Exchange believes that due to interest expressed by ETP Holders and the National Association of Securities Dealers, Inc.'s recent approval to implement post-trade anonymity,[6] it is essential for ArcaEx to offer its Users anonymity through the settlement process. To facilitate this, ArcaEx has worked with the National Settlement Clearing Corporation ("NSCC") to accommodate anonymity on a post-trade basis. NSCC will assign ArcaEx trades with a unique clearing number. ArcaEx will submit clearing records to NSCC, which, pursuant to its rules,[7] will report trades executed on ArcaEx back to its clearing firms utilizing the unique clearing number for the contra-party rather than reveal that contra-party's acronym.

To address risk management concerns, ArcaEx will provide ETP Holders with intra day concentration reports that reflect, on an aggregate basis, the share volume and dollar amount executed by each contra-party without identifying the contra-party. In addition, ArcaEx will provide the contra-party's identity when required for legal or regulatory purposes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mai S. Shiver, Acting Director of Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the PCX explained that it currently has rules in place to assure that ETP Holders maintain recordkeeping requirements under the Act. The PCX also clarified that under the PCX's current procedures for adjusting trades, ETP Holders do not need to know the identity of their contra-party in order to adjust an erroneous trade.

[4] *See* PCXE Rule 1.1(yy) for the definition of "User."

[5] *See* PCXE Rule 1.1(n) (definition of "ETP Holder").

[6] *See* Securities Exchange Act Release No. 48088 (June 25, 2003), 68 FR 39605 (July 2, 2003) (SR–NASD–2003–85).

[7] *See* Securities Exchange Act Release No. 48526 (September 23, 2003), 68 FR 56367 (September 30, 2003) (SR–NSCC–2003–14).

Furthermore, when NSCC ceases to act for an ETP Holder or the ETP Holder's clearing firm, and NSCC determines not to guarantee the settlement of the ETP Holder's trade, ArcaEx will reveal the contra-party's identity.

The Exchange believes that post-trade anonymity will benefit investors because preserving anonymity through settlement limits the potential market impact that disclosing the Users' identity may have. Specifically, when the contra-party's identity is revealed, Users can detect trading patterns and make assumptions about the potential direction of the market based on the User's presumed client-base. For example, if the User handles large institutional orders and becomes an active buyer in the security, others could anticipate such demand and adjust their trading strategy accordingly. The Exchange believes that his could result in increased costs. The Exchange states that post-trade anonymity will not compromise an ETP Holder's ability to settle an erroneous trade, because under PCXE Rules 7.10–7.11, the trade adjustment process is coordinated by the Exchange, without the need for contra-parties to know each other's identities.[8] By eliminating the User's identity and mitigating market impact, the Exchange believes that it will help Users meet best execution obligations.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[9] in general, and section 6(b)(5) of the Act,[10] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

[8] *See* Amendment No. 1.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–63, and should be submitted by February 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1014 Filed 1–15–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on January 9, 2004, the date PCX filed Amendment No. 1.

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4586]

United States International Telecommunication Advisory Committee; Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS), which took place in December 2003, including the follow-up to WSIS. The meeting will take place on Wednesday, February 4, 2004 from 10:30 a.m. to 12 p.m. in the auditorium of the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. Persons planning to attend this meeting should send the following data by fax to (202) 647–5957 or e-mail to *jillsonad@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202 647–5205 or e-mail to *jillsonad@state.gov*.

Dated: January 12, 2004.

Anne Jillson,

Foreign Affairs Officer, Department of State.

[FR Doc. 04–1028 Filed 1–15–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. 2001–11213, Notice No. 3]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2004

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2002 rail industry random testing positive rate was 0.79 percent for drugs and 0.19 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2004 through December 31, 2004 will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2004 through December 31, 2004.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2004 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (*see* 49 CFR 219.602, 608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2004 through December 31, 2004, since the industry random drug testing positive rate for 2002 was 0.79 percent. Since the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2004 through December 31, 2004. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on January 12, 2004.

Allan Rutter,

Administrator.

[FR Doc. 04–1060 Filed 1–15–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10044; Notice 3]

Reliance Trailer Co., LLC.; Receipt of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

Reliance Trailer Co., LLC, of Spokane, Washington (Reliance), has applied for a renewal of a temporary exemption of its dump body trailer from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection* (FMVSS No. 224). In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the basis of the request is that compliance would cause substantial economic hardship to a manufacturer that has made a good faith effort to comply with the standard.

We are publishing this notice of receipt of the renewal application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

On October 22, 2001, NHTSA granted Reliance a two-year hardship exemption from the requirements of FMVSS No. 224.[1] That exemption expired on October 1, 2003. Reliance petitioned for renewal on September 24, 2003. Because Reliance did not apply for a renewal more than 60 days prior to expiration of the original exemption, the petitioner is no longer subject to the October 22, 2001 exemption.[2]

FMVSS No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Reliance's dump body trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear Impact Guards*.

In the original petition, Reliance argued that a rear impact guard prevented its trailers from properly discharging asphalt into paving equipment. According to petitioners, compliance with FMVSS No. 224 rendered their dump body trailers useless for performing their intended function. During the two-year temporary exemption period, Reliance anticipated acquiring the revenue necessary to design a complex retractable rear impact guard that would allow for proper interaction with paving equipment. However, petitioners now state that they have not been able to arrive at a practical, and economic solution for

[1] For background information on the company please see original petition (66 FR 36032).

[2] *See* 49 CFR 555.8(e).

complying with the requirements of FMVSS No. 224.

In addition to their inability to design a practicable rear impact guard, Reliance experienced a significant economic downturn in the past two years. Specifically, petitioner's financial statements show a profit of $69,284 for the fiscal year 2000; an operating loss of $1,181,900 for the fiscal year 2001; and an operating loss of $2,477,700 for the 2002 fiscal year. This represents a cumulative loss for a period of 3 years of $3,590,316.[3] In 2003, Reliance produced only 12 dump body trailers, which is significantly less than the output in the previous two years.

Petitioners contend that the renewal of their exemption would be in the public interest for the following reasons. First, Reliance argues that denial of this petition request would reduce their payroll by 15 to 18 employees. Second, Reliance argues that an exemption would allow the company to continue providing paving equipment needed by road building industry.

Petitioners ask NHTSA to renew their exemption from the requirements of FMVSS No. 224 until February 1, 2006. According to Reliance, they will continue to seek a practicable and financially viable solution that would allow dump body trailers with rear impact guards to functionally interact with paving equipment.

How You May Comment on Reliance Application

We invite you to submit comments on the application described above. You may submit comments [identified by DOT Docket Number NHTSA 2001–10044] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on "Help and Information" or "Help/Info."
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

[3] To see Reliance petition for renewal of their temporary exemption, please go to *http://dms.dot.gov/search/searchFormSimple.cfm* and enter Docket No. NHTSA–2001–10044.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket in order to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 17, 2004.

FOR FURTHER INFORMATION CONTACT: George Feygin in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820; E-mail: *GFeygin@nhtsa.dot.gov).*

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: January 12, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–1061 Filed 1–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34454]

Genesee & Wyoming Inc.—Control Exemption—Chattahoochee Industrial Railroad

Genesee & Wyoming Inc. (GWI), a noncarrier, has filed a notice of exemption to permit GWI to acquire control of Chattahoochee Industrial Railroad (CIRR) by purchase of all of CIRR's stock from Great Northern Nekoosa Corp., a subsidiary of Georgia Pacific Corporation. CIRR is a Class III carrier operating in Georgia, between Hilton, GA, and Saffold, GA.

The CIRR transaction was scheduled to be consummated on or after December 26, 2003, the effective date of the exemption (7 days after the notice was filed).

GWI directly controls one Class II carrier (Buffalo & Pittsburgh Railroad, Inc., operating in New York and Pennsylvania) and 15 Class III carriers (Allegheny & Eastern Railroad, Inc., operating in Pennsylvania; Bradford Industrial Rail, Inc., operating in Pennsylvania and New York; Corpus Christi Terminal Railroad, Inc., operating in Texas; Dansville and Mount Morris Railroad Company, operating in New York; Genesee & Wyoming Railroad Company, Inc., operating in New York; Golden Isles Terminal Railroad, Inc., operating in Georgia; Illinois & Midland Railroad, Inc., operating in Illinois; Louisiana & Delta Railroad, Inc., operating in Louisiana; Pittsburg & Shawmut Railroad, Inc., operating in Pennsylvania; Portland & Western Railroad, Inc., operating in Oregon; Rochester & Southern Railroad, Inc., operating in New York; Savannah Port Terminal Railroad Inc., operating in Georgia; South Buffalo Railway Company, operating in New York; Utah Railway Company, operating in Colorado and Utah; and Willamette & Pacific Railroad, Inc., operating in Oregon).

GWI indirectly controls eight additional Class III carriers. Through its ownership of noncarrier Rail Link, Inc., GWI indirectly controls two Class III carriers (Commonwealth Railway, Inc., operating in Virginia; and Talleyrand Terminal Railroad, Inc., operating in Florida). Through its ownership of Emons Transportation Group, Inc., which in turns owns Emons Railroad Group, Inc., GWI indirectly controls three Class III carriers (St. Lawrence & Atlantic Railroad Company, operating in Vermont, New Hampshire, and Maine; St. Lawrence & Atlantic Railroad (Quebec) Inc., operating in Vermont; and York Railway Company, operating in Pennsylvania). Through its ownership of Utah Railway Company, GWI indirectly controls one Class III carrier (Salt Lake City Southern Railroad Company, operating in Utah). Finally, through its ownership of Emons Transportation Group, Inc., GWI indirectly controls two non-operating Class III carriers (Maryland and Pennsylvania Railroad, LLC; and Yorkrail, LLC) that separately hold the

rail assets over which York Railway Company operates.

GWI states: (i) That the rail lines involved in the CIRR transaction do not connect with any rail lines now controlled, directly or indirectly, by GWI; (ii) that the CIRR transaction is not part of a series of anticipated transactions that would connect any of these rail lines with each other; and (iii) that the CIRR transaction does not involve a Class I carrier. Therefore, the CIRR transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The notice of exemption filed with respect to the CIRR transaction is related to the concurrently filed petition for exemption in STB Finance Docket No. 34453, *Genesee & Wyoming Inc.—Control Exemption—Arkansas, Louisiana & Mississippi Railroad Company and Fordyce & Princeton Railroad Company,* wherein GWI seeks to acquire control of two Class III carriers (Arkansas, Louisiana & Mississippi Railroad Company (AL&M) and Fordyce & Princeton Railroad Company (F&P)) by purchase of all of the stock of each from Georgia Pacific Corporation. Because the line operated by AL&M connects with the line operated by F&P, the AL&M/F&P transaction is not covered by the 49 CFR 1180.2(d)(2) class exemption.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the CIRR transaction involves at least one Class II and one or more Class III rail carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34454, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 Nineteenth Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–984 Filed 1–15–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–444 (Sub–No. 1X)]

Lamoille Valley Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—In Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT

Lamoille Valley Railroad Company (LVRC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights* to abandon approximately 96.78 miles of rail line in Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT. The rail lines to be abandoned are: (1) Between approximately milepost 0.057 (SJLC valuation station 3+00) in St. Johnsbury, VT, and approximately milepost 95.324 (SJLC valuation station 5033+10) in Swanton, VT, a distance of approximately 95.26 miles; and (2) the Hardwick and Woodbury Connecting Track (H&W) between approximately H&W valuation station 0+00 (Granite Junction) and approximately H&W valuation station 80+48 (Buffalo Road), a distance of approximately 1.52 miles, in Hardwick, VT (collectively, the line).[1] LVRC also seeks to discontinue trackage rights over the former Central Vermont Railway, Inc. (CVR) line between approximately milepost 9.9 at the north abutment of the Missisquoi River Bridge at Sheldon Junction and approximately milepost 27.4 at Richford (the Richford Subdivision),[2] in Franklin County, VT. The line traverses United States Postal Service Zip Codes 05819, 05828, 05873, 05647, 05873, 05836, 05843, 05842, 05860, 05661, 05655, 05656, 05464, 05444, 05441, 05455, and 05488. The Richford Subdivision traverses United States Postal Service Zip Codes 05483, 05450, 05447, and 05476.

LVRC has certified that: (1) No local traffic has moved over the line or the Richford Subdivision for at least 2 years; (2) there is no overhead traffic on the line or the Richford Subdivision; (3) no formal complaint filed by a user of rail service on the line or the Richford Subdivision (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 17, 2004,[3] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[4] formal

[1] The line is owned by the State of Vermont (State) by and through the State of Vermont Agency of Transportation (VTrans). *See Lamoille County Railroad, Inc. and Vermont Transportation Authority, Acquisition and Operation Between St. Johnsbury and Swanton, VT,* Finance Docket No. 27494, *et al.* (ICC served Apr. 22, 1974). LVRC holds a leasehold interest in the line, pursuant to a lease agreement by and between LVRC and the State dated December 31, 1977.

[2] LVRC states that CVR filed a notice of exemption to abandon the Richford Subdivision in *The Central Vermont Railway, Inc.—Abandonment Exemption—in Franklin County, VT,* Docket No. AB–174 (Sub-No. 3X) (ICC served Feb. 27, 1992), which became effective on March 28, 1992, but it did not consummate the abandonment. Instead it sold the Richford Subdivision to, and entered into a trail use agreement with, VTrans. LVRC states that it did not seek authority to discontinue its trackage rights at the time that CVR initiated its abandonment proceeding. LVRC, in cooperation with VTrans, is now seeking an exemption to discontinue trackage rights on the Richford Subdivision that has not been used since 1989. VTrans still owns and manages a trail on the Richford Subdivision. *See The Central Vermont Railway, Inc.—Abandonment Exemption—in Franklin County, VT,* Docket No. AB–174 (Sub-No. 3X) (ICC served Oct. 8, 1992).

[3] LVRC states that it intends to relinquish its leasehold interest and enter into a trail use agreement with VTrans for the line, and intends to consummate discontinuance of its trackage rights over the Richford Subdivision soon after the notice of exemption becomes effective. It should be noted that, because LVRC plans to enter into a trail use agreement for the line, it may never consummate the abandonment. However, pursuant to 49 CFR 1150.50(d)(2), the earliest possible consummation date for the discontinuance, based on the December 29, 2003 filing date, is February 17, 2004.

[4] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[5] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 26, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[6]

A copy of any petition filed with the Board should be sent to LVRC's representative: Edward J. Fishman, Kirkpatrick & Lockhart, LLP, 1800 Massachusetts Avenue, Second Floor, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

LVRC has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 23, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), LVRC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line and discontinued service over the Richford Subdivision. If consummation has not been effected by LVRC's filing of a notice of consummation by January 16, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–985 Filed 1–15–04; 8:45 am]

BILLING CODE 4915–00–P

exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[5] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[6] On November 10, 2003, Timothy D. Phelps filed a letter expressing his concerns regarding the then-anticipated abandonment proposal and requesting that the Board disallow the sought exemption authority. Mr. Phelps alleges that, despite documented interest by shippers for rail service, LVRC has made no attempt to operate rail freight service on the line since at least 1994. Mr. Phelps states that LVRC abandoned several bridges on the line, dismantled several sections of track, paved over grade crossings along the line, and pursued non-rail uses for the right-of-way. He asserts that these actions communicated a message to the public that there was no intent or possibility that rail service would ever be provided again. Mr. Phelps may file a petition for stay or for other relief within the deadlines established in the notice being issued today.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12815

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 12815, Return Post Card for the Community Based Outlet Participants.

DATES: Written comments should be received on or before March 16, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Return Post Card for the Community Based Outlet Participants.

OMB Number: 1545–1703.

Form Numbers: 12815.

Abstract: This post card is used by the Community Based Outlet Program (CBOP) participants (*i.e.* grocery stores/pharmacies, copy centers, corporations, credit unions, city/county governments) to order products. The post card will be returned to the Western Area Distribution Center for processing.

Current Actions: There are no changes being made to this post card at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 834.

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: January 9, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–1054 Filed 1–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1139

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 1139, Corporation Application for Tentative Refund.

DATES: Written comments should be received on or before March 16, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, 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: Corporation Application for Tentative Refund.

OMB Number: 1545–1582.

Form Number: 1139.

Abstract: Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits, carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is proper.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 42 hr., 23 min.

Estimated Total Annual Burden Hours: 127,140.

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: January 12, 2004.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–1055 Filed 1–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including 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 in St. Louis, Missouri to discuss various IRS issues. The public is invited to make oral comments.

DATES: The meeting will be held Friday, February 6, 2004 and Saturday, February 7, 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 Area 5 Taxpayer Advocacy Panel will be held Friday, February 6, 2004 from 9 a.m. to 5 p.m. CT and Saturday, February 7, 2004 from 9 a.m. through 12 p.m. CT in St. Louis, Missouri. 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, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: January 12, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1052 Filed 1–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Tuesday, February 10, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday,

February 10, 2004 from 11 a.m. EST to 12:30 p.m. EST via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech 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 with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Dated: January 12, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1053 Filed 1–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, 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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request To Reissue United States Savings Bonds.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: Title: Request To Reissue United States Savings Bonds.

OMB Number: 1535–0023.

Form Number: PD F 4000.

Abstract: The information is requested to support a request for reissue and to indicate the new registration required.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 300,000.

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.

Dated: January 12, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–966 Filed 1–15–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, 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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Preferred Creditor for Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: Title: Application By Preferred Creditor For Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

OMB Number: 1535–0042.

Form Number: PD F 2216.

Abstract: The information is requested to support a request for payment by a preferred creditor of a decedent's estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Businesses.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 835.

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.

Dated: January 12, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–967 Filed 1–15–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, 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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Bond Of Indemnity to the United States of America.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity By Purchaser of United States Bonds/Notes Involved in a Chain Letter Scheme.

OMB Number: 1535–0062.

Form Number: PD F 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 665.

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.

Dated: January 12, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–968 Filed 1–15–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Reinvestment Application.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Reinvestment Application.

OMB Number: 1535–0096.

Form Number: PD F 1993.

Abstract: The information is requested to support a request that proceeds of matured Series H savings bonds be reinvested in Series HH bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5,000.

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.

Dated: January 12, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–970 Filed 1–15–04; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing the offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing The Offering Of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1535–0127.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business.

Estimated Number of Respondents: 37.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

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.

Dated: January 12, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–972 Filed 1–15–04; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, January 29, 2004; 9:15 a.m.–5 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 2004 Board Meeting; Approval of Minutes of the One Hundred Twelfth Meeting (November 20, 2003) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Program Reports; Review of Individual Grant Applications; Other Issues.

CONTACT: Ms. Tessie Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: January 12, 2004.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 04–1123 Filed 1–14–04; 1:03 pm]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0523]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 17, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0523." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0523" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Loan Analysis, VA Form 26–6393.

OMB Control Number: 2900–0523.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6393 is used to determine a veteran-borrower qualification for a VA-guaranteed loan. Lenders complete and submit the form to provide evidence that the lender's decision to submit a prior approval loan application or close a loan on the automatic basis is based upon appropriate application of VA credit standards.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2003, at pages 59245–59246.

Affected Public: Business or other for profit.

Estimated Annual Burden: 100,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 200,000.

Dated: December 29, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 04–973 Filed 1–15–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to change account number and/or bank from which a VA MATIC deduction was previously authorized.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 16, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0525" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA MATIC Change, VA Form 29–0165.

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to change the bank account number and/or bank from which VA currently deducts his/her premium payments. VA uses the information to process the veteran's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: December 29, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 04–974 Filed 1–15–04; 8:45 am]

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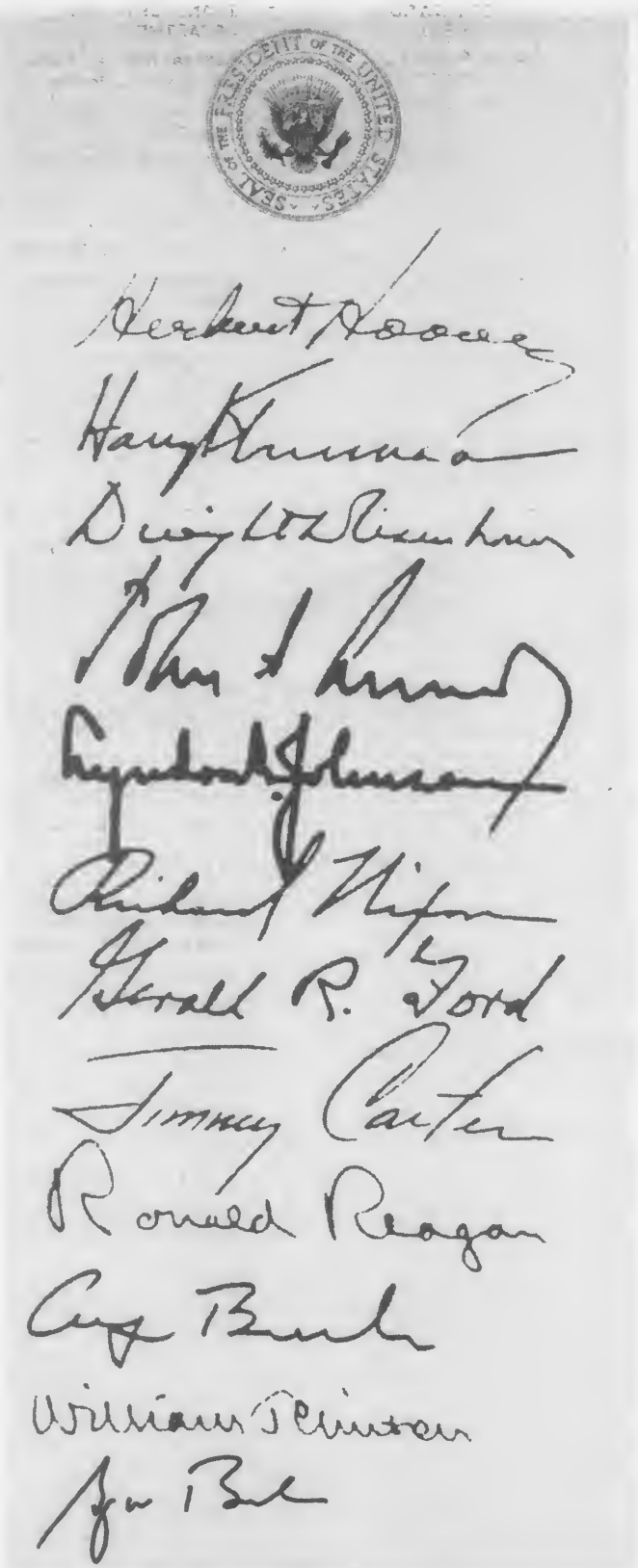

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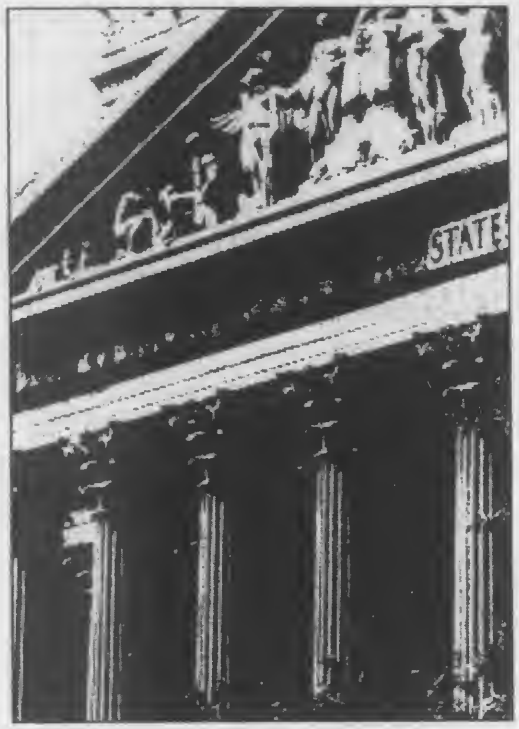

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