AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

2–13–03 Thursday
Vol. 68 No. 30 Feb. 13, 2003
Pages 7301–7410

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

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

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

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

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

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

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

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

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

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

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

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 30

Thursday, February 13, 2003

Agriculture Department
See Forest Service
See Natural Resources Conservation Service
NOTICES
Emergency declarations:
Arizona; exotic Newcastle disease; backyard poultry, 7338

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 7352–7353

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Firearms:
Commerce in explosives—
Fireworks; correction, 7410

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7392

Army Department
See Engineers Corps

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7380–7381

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 7351

Copyright Office, Library of Congress
NOTICES
Vessel Hull Design Protection Act:
Vessel hull designs; protection effects; public hearing and comment request, 7350–7351

Customs Service
NOTICES
Country of origin determinations:
Bowling pinsetters, 7407–7409

Defense Department
See Air Force Department
See Engineers Corps
NOTICES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE programs—
In-utero surgical repair of myelomeningocele; randomized clinical trial; demonstration project, 7351–7352

Employment and Training Administration
NOTICES
Workforce Investment Act; implementation:
Workforce investment issues in U.S.; research conference and papers request, 7392–7393

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7393–7394

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Los Angeles County, CA; dredge material management feasibility study, 7353

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 7321–7322
Air quality planning purposes; designation of areas:
Missouri and Illinois; correction, 7410
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 7327–7337
NOTICES
Meetings:
Science Advisory Board, 7372–7373
Reports and guidance documents; availability, etc.:
Air pollution; standards of performance for new stationary sources and hazardous air pollutants, new stationary sources and national emission standards—
Applicability determination index database system; applicability and monitoring; regulatory interpretations; clarification, 7373–7379

Federal Communications Commission
RULES
Common carrier services:
Wireless telecommunications services—
Telephone numbers portability; wireline carriers obligation; comment request, 7323

Federal Contract Compliance Programs Office
NOTICES
Contracts; eligible bidders:
BFI Waste Services, L.L.C.; debarment, 7394–7399

Federal Deposit Insurance Corporation
RULES
State banks chartered as limited liability companies; insurance eligibility, 7301–7309

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7353–7354

Electric rate and corporate regulation filings:
Detroit Edison Co. et al., 7360–7362
Westar Generating, Inc., et al., 7362–7363
Hydroelectric applications, 7363–7372
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 7355
Calpine California Equipment Finance Co., LLC, 7355–7356
CenterPoint Energy Gas Transmission Co., 7356
CES Marketing, LLC, et al., 7356
Discovery Gas Transmission LLC, 7356–7357
Dominion Transmission, Inc., et al., 7357
Element Re Capital Products, Inc., 7358
Petal Gas Storage, L.L.C., 7358
Questar Pipeline Co., 7358–7359
Texas Gas Transmission Corp., 7359
Trailblazer Pipeline Co., 7359
Transcontinental Gas Pipe Line Corp., 7359–7360
Transwestern Pipeline Co., 7360

Federal Housing Enterprise Oversight Office
RULES
Risk-based capital:
Test methodology and specifications, 7309–7313

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 7379–7380
Formations, acquisitions, and mergers, 7380

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 7385–7387

Food and Drug Administration
NOTICES
Food additive petitions:
Kerry, Inc., 7381
Human drugs:
Patent extension; regulatory review period determinations—
Avandia, 7381–7382
Rapamune, 7382–7383

Forest Service
NOTICES
Environmental statements; notice of intent:
Daniel Boone National Forest, KY, 7338–7340
Meetings:
Resource Advisory Committees—
Lake County, 7340

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Special Projects of National Significance—
Replicating Lessons Learned in Alcohol Screening During Pregnancy Demonstration Program et al., 7383–7384

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Cased pencils from—
China, 7344–7345
Freshwater crawfish tail meat from—
China, 7345–7346
Gray portland cement and clinker from—
Mexico, 7346
Heavy forged hand tools from—
China, 7347–7348

International Trade Commission
NOTICES
Import investigations:
Agricultural vehicles and components, 7388–7389

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
RULES
Security risk assessments:
Aviation and Transportation Security Act—
Aliens and other designated individuals seekeing flight training; screening, 7313–7321
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 7389–7390
Pollution control; consent judgments:
ARCO et al., 7390
Arizona Transportation Department et al., 7390–7391
Charles George Trucking Co., Inc., et al., 7391
Del Webb Communities, Inc., 7391–7392

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Federal Contract Compliance Programs Office

Land Management Bureau
NOTICES
Opening of public lands:
Arizona, 7387
Public land orders:
Alaska, 7387–7388
Utah, 7388

Library of Congress
See Copyright Office, Library of Congress

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Columbia Body Manufacturing Co., 7406–7407

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 7323–7324

NOTICES
Reports and guidance documents; availability, etc.:
Antarctic fishing; conservation measures adoptoin by Commission for Conservation of Antarctic Marine Living Resources, 7348–7350

Natural Resources Conservation Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7340–7344
Environmental statements; availability, etc.:
Williams Creek Watershed, MO, 7344

Nuclear Regulatory Commission
NOTICES
Special nuclear material licensing requirements; exemptions:
Envirocare of Utah, Inc., 7399–7401

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Patent and Trademark Office
NOTICES
Vessel Hull Design Protection Act:
Vessel hull designs; protection effects; public hearing and comment request, 7350–7351

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Great-West Life & Annuity Insurance Co. et al., 7401–7405
Self-regulatory organizations; proposed rule changes:
Pacific Exchange, Inc., 7405–7406

Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
Substance Abuse Prevention and Treatment Block Grant; waiver requirements, 7384–7385
Reports and guidance documents; availability, etc.:
Program announcements; revised applications resubmission procedures; policy rescinded, 7385

Transportation Department
See National Highway Traffic Safety Administration
PROPOSED RULES
Computer reservation systems, carrier-owned:
Expiration date extension, 7325–7327

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

12 CFR
303.....7301
1750.....7309

14 CFR

Proposed Rules:
255.....7325

27 CFR

Proposed Rules:
55.....7410

28 CFR
105.....7313

40 CFR
52.....7321
81.....7410

Proposed Rules:
52 (2 documents) 7327, 7330

47 CFR
52.....7323

50 CFR
679.....7323st

Rules and Regulations

Federal Register
Vol. 68, No. 30
Thursday, February 13, 2003

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AC53

Insurance of State Banks Chartered as Limited Liability Companies

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has adopted a final rule regarding whether and under what circumstances the FDIC will grant deposit insurance to a State bank chartered as a limited liability company (LLC). Pursuant to section 5 of the Federal Deposit Insurance Act (FDI Act) the FDIC may grant deposit insurance only to certain depository institutions. One of the statutory requirements for a State bank to be eligible for Federal deposit insurance is that it must be ''incorporated under the laws of any State.'' In the recent past the FDIC received two inquiries regarding whether a State bank that is chartered as an LLC (a ''Bank-LLC'') could be considered to be ''incorporated'' for purposes of that requirement. The final rule provides that a bank that is chartered as an LLC under State law would be considered to be ''incorporated'' under State law if it possesses the four traditional, corporate characteristics of perpetual succession, centralized management, limited liability and free transferability of interests.

DATES: *Effective date:* March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mindy West Schwartzstein, Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–7221, or Robert C. Fick, Counsel, Legal Division, (202) 898–8962, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, the FDIC may grant deposit insurance only to depository institutions that are engaged in the business of receiving deposits other than trust funds.[1] The term ''depository institution'' is defined in the Federal Deposit Insurance Act (FDI Act) to mean any bank or savings association.[2] The term ''bank'' is also defined in the FDI Act to include any State bank,[3] and ''State bank'' means:

Any bank, banking association, trust company, savings bank, industrial bank * * * or other banking institution which—

(A) Is engaged in the business of receiving deposits other than trust funds * * * and

(B) Is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank),

Including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.[4]

Recently, two banks expressed an interest in obtaining Federal deposit insurance for a State bank that would be chartered as an LLC.[5] The proponents have argued specifically that the term ''incorporated'' should not be interpreted to preclude an LLC from becoming an insured depository institution. The phrase ''incorporated under the laws of any State'' first appeared in the definition of ''State bank'' with the Banking Act of 1935,[6] but the FDI Act provides no definition of the term ''incorporated.'' Furthermore, there is no legislative history nor judicial guidance regarding its meaning as used in the FDI Act. Consequently, it is not clear how the term ''incorporated'' should be interpreted in the context of the FDI Act, and specifically, whether an LLC could be considered to be ''incorporated'' for purposes of determining eligibility for Federal deposit insurance.

II. The Nature of Corporations

At common law there were generally three types of business entities: proprietorships, partnerships, and corporations. A proprietorship is an individual carrying on a business for profit. A partnership is generally an association of two or more persons to carry on as co-owners a business for profit.[7] Proprietorships and partnerships had no existence separate and apart from their owners. Corporations, on the other hand, were created and existed by virtue of a grant of authority from the sovereign. Although there appears to be no universally accepted definition of ''corporation,'' most definitions of the term are pervaded by the notion of ''an 'artificial legal creation,' the continuance of which does not depend on that of the component persons, and the being or existence of which is owed to an act of state.''[8] One of the earliest judicial definitions reflecting that notion is that enunciated in the 1819 case of *Trustees of Dartmouth College* v. *Woodward*.[9] In *Dartmouth College*, Chief Justice Marshall stated that

[A] corporation is an artificial being, * * * existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it * * * Among the most important are immortality and * * * individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual.[10]

Attributes of a Corporation

The lack of any universal agreement as to the characteristics of a corporation

[1] *See* 12 U.S.C. 1815.

[2] *See* 12 U.S.C. 1813(c)(1).

[3] *See* 12 U.S.C. 1813(a)(1).

[4] 12 U.S.C. 1813(a)(2).

[5] Currently, State law in 5 States expressly permits LLCs to engage in the business of banking; the law in 14 other States would not. An informal survey of these 14 States indicated that there appears to be no particular reason for this prohibition. Representatives of two of the States thought that one reason could be that the corporate form lends itself to regulation and supervision. Representatives of two other States mentioned that legislation was being drafted or proposed to remove the prohibition.

[6] *See* Banking Act of 1935, Pub. L. No. 74–305, sec. 101, 49 Stat. 684.

[7] *See* Unif. Partnership Act, sec. 101(6) (1997), 6 U.L.A. 61 (Supp. 2002).

[8] 1 William Meade Flectcher *et al.*, Flectcher's Cyclopedia of the Law of Private Corporations § 4 (perm. ed., rev. vol. 2001).

[9] *Trustees of Dartmouth College* v. *Woodward,* 17 U.S. (4 Wheat.) 518 (1819).

[10] *Id.* at 636.

may have resulted from the fact that those characteristics have evolved over time.[11] However, it has been traditionally recognized that there are four attributes of a corporation that distinguish it from other forms of business entities; those attributes are: perpetual succession, centralized management, limited liability, and free transferability of interests.

Perpetual succession (also sometimes known as continuity of life) is not generally construed to mean immortality; rather perpetual succession means that the entity continues to exist independent of its owners. For example, the death or withdrawal of a shareholder of a corporation does not terminate the existence of the corporation. Perpetual succession is an attribute that distinguishes corporations from partnerships because partnerships are created and exist by agreement of the owners (the partners). The death or withdrawal of a partner generally terminates the partnership. A corporation, on the other hand, is created and exists by virtue of a grant of authority from the State, and the death or withdrawal of a shareholder does not terminate the corporation.

Centralized management generally means that continuing, exclusive authority to manage the entity is vested in a group of individuals appointed or elected by the owners. The owners, therefore, do not have the exclusive authority to directly manage the entity. For example, the shareholders of the corporation elect a group of individuals (who may or may not be owners) to be its Board of Directors, and the Board of Directors manages the corporation. In a partnership, the general partner(s) have the exclusive authority to manage the affairs of the partnership.

Limited liability generally means that an owner of the entity is not personally liable for the debts of the entity; rather, the maximum potential liability of an owner is limited to the owner's investment in the entity. For example, the shareholders of a corporation are generally not liable for the corporation's debts, and the maximum amount that a shareholder could lose if the corporation incurs liabilities beyond its assets is his or her investment. This attribute also distinguishes a corporation from a partnership because in a partnership the general partners typically are fully liable for the debts of the partnership.

Free transferability of interests generally means that an owner of the entity may transfer an ownership interest in the entity without the consent or approval of the other owners. For example, a shareholder of a corporation can generally transfer all or a part of his or her shares to another person without the consent or approval of any other shareholder. However, in closely-held corporations, it is a common practice for shareholders to enter into agreements requiring a selling shareholder to obtain the prior approval of the remaining shareholders. In partnerships, a partner generally cannot transfer his or her interest without the consent of the other partners. This is so because partnerships exist by virtue of an agreement among all of the owners. However, even when the other partners consent, the original partnership technically is terminated, and a new partnership is created.[12]

Tax Treatment of Corporations vs. *Partnerships*

As noted above, a key distinction between a corporation and a partnership is that a corporation is created by a grant of authority from the State, whereas a partnership is created by agreement among the co-owners. A corporation, unlike a partnership, is a legal entity separate and apart from its owners, and the Federal income tax laws reflect that separate existence. As a result, a corporation's income is effectively taxed twice, once at the corporation level, and again at the shareholders' level when the shareholders receive the corporation's income as dividends. However, because a partnership is not a legal entity separate from its owners, a partnership's income is not taxed at the partnership level, but is attributed directly to the partners and taxed only at the individual partners' level. This feature of a partnership is sometimes called ''pass-through tax treatment,'' and is generally considered to be a significant advantage over the tax treatment of a corporation's income.

Since the characterization of a business entity as a ''corporation'' has significant tax implications, the Internal Revenue Service (IRS) established rules to determine whether an entity would be taxed as a corporation or a partnership. Prior to its amendment in 1997, Treas. Reg. § 301.7701–2 classified an association of two or more persons who had the purpose of carrying on a business and dividing the profits as either a partnership or a corporation depending upon whether the association possessed more corporate characteristics than noncorporate characteristics. The four corporate characteristics that the IRS utilized were: continuity of life (perpetual succession), centralized management, limited liability, and free transferability of interests. Under the former IRS regulations, if an association possessed at least three of the four corporate characteristics, it would be treated as a corporation for federal income tax purposes. As noted above, after 1996 the IRS no longer utilized the corporate characteristics test and now permits business entities that are not specifically classified as corporations in the regulation to elect partnership tax treatment.[13] In that regard, we note that one of the entities specifically classified as a corporation in the regulation is a ''[s]tate-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act.''[14] As a result, an FDIC-insured, State bank that is chartered as an LLC would not qualify under existing IRS regulations for partnership tax treatment. Nevertheless, proponents of permitting Federal deposit insurance for Bank-LLCs argue that if the FDIC determines that Bank-LLCs are eligible for Federal deposit insurance, they would then seek a change in the IRS regulations. The proponents argue that they have considered subchapter S status but found it too limiting.

In August 1996 Congress amended the Internal Revenue Code to allow eligible financial institutions to elect subchapter S status for federal income tax purposes.[15] A principal advantage of such status is that a subchapter S corporation is taxed the same as a partnership, *i.e.*, a subchapter S corporation is entitled to pass-through tax treatment. There are, however, limits on both the number and type of shareholders permissible for a subchapter S corporation. The maximum number of shareholders of a subchapter S corporation is 75, and only individuals, estates, certain trusts, and certain tax-exempt organizations may be shareholders.[16] Furthermore, there can only be one class of stock in a subchapter S corporation, and no nonresident aliens may be shareholders.[17]

These limitations on the number and type of permissible shareholders have been cited as principal reasons why subchapter S status does not provide banks with a practical way of gaining

[11] *See* Douglas Arner, Development of the American Law of Corporations to 1832, 55 SMU Law Review 23, 43–54, 2002.

[12] *See* Flectcher, supra note 8, § 20.

[13] *See* Treas. Reg. §§ 301.7701–2, 7701–3 (1997).

[14] Treas. Reg. § 301.7701–2(b)(5) (1997).

[15] *See* Small Business Job Protection Act, Pub. L. 104–188 § 1315, 26 U.S.C. 1361(b) (1996).

[16] *See* 26 U.S.C. 1361(b) (1996).

[17] *See Id.*

pass-through tax treatment. It is recognized that in the past several bills have been introduced in Congress to increase the number of permissible shareholders for subchapter S corporations, but to date none have been enacted into law. Consequently, the proponents have sought a determination from the FDIC regarding the eligibility of Bank-LLCs for deposit insurance. In issuing this final rule it is not the FDIC's intent to influence the IRS either way. This final rule is focused on responding to a request for a determination as to whether under the FDI Act a bank that is chartered as an LLC could be considered to be ''incorporated'' and therefore eligible to apply for Federal deposit insurance as a State bank. Specifically, the FDIC takes no position on how such an entity should be taxed. We note that supporters of deposit insurance for Bank-LLCs argue that even if the IRS declines to amend its regulations to provide pass-through tax treatment for a Bank-LLC, there are still advantages to the LLC structure. State tax laws may provide the desired pass-through tax treatment with respect to State income taxes. Furthermore, it is argued that the increased flexibility provided by the LLC structure is itself a significant advantage over the corporation structure.

III. The Nature of Limited Liability Companies

Generally, an LLC is a business entity that combines the limited liability of a corporation with the pass-through tax treatment of a partnership.[18] Wyoming was the first State to authorize LLCs in 1977; since that time the remaining 49 States and the District of Columbia have all enacted LLC statutes. Generally, LLC statutes were crafted to authorize a business entity that is neither a partnership nor a corporation, but an entity that has some of the more desirable features of each.[19] As a result, an LLC has characteristics of both a partnership and a corporation. However, because an LLC is neither a partnership nor a corporation, State partnership laws and State corporation laws generally do not apply. For example, State corporation laws that require a board of directors, that specify how ownership interests (shares) may be issued, and that impose capital requirements generally do not apply to an LLC. LLC statutes generally allow the owners broad discretion in setting up an LLC. According to some legal scholars, ''[w]hole bodies of corporate law doctrine . . . are rendered irrelevant'' when an LLC is utilized.[20]

An LLC is established by filing articles of organization with the State. These articles are roughly equivalent to a corporation's articles of incorporation. Every LLC has an operating agreement which is a contract executed by the members that sets forth the manner in which the business of the LLC will be conducted. The operating agreement establishes the rights, powers, duties, and liabilities of the members with respect to each other and with respect to the LLC. It contains provisions detailing such matters as the LLC's management structure, capital contributions, accounting, distributions, transfers of a member's interest, and dissolution. As used in many LLC statutes, a ''member'' of an LLC is a person who owns an interest in the LLC and is roughly equivalent to a shareholder of a corporation. Furthermore, a ''member's interest'' in an LLC is generally the member's ownership interest in the LLC, and is sometimes evidenced by a certificate which is roughly equivalent to a stock certificate of a corporation.

Consistency of the LLC Structure With Corporate Attributes

Many LLC statutes authorize entities that do not possess the four corporate attributes. First, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will automatically terminate, or dissolve, or that its operations will be suspended pending the consent of the remaining members, upon the death, disability, bankruptcy, withdrawal, or expulsion of a member, or upon the happening of some other specified event.[21] These automatic termination/dissolution/suspension provisions are inconsistent with the notion of perpetual succession because the continued existence and operation of the entity directly depends upon the existence, condition, or status of its owners. Second, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will be managed solely and directly by the members.[22] Such member-management also tends to be inconsistent with the corporate attribute of centralized management because exclusive authority to manage the institution is vested in the owners who may or may not possess adequate expertise to manage the institution and who, as a group, may be so large or so small as to present operational or supervisory problems for the entity. Third, while members of an LLC generally have limited liability, some LLC statutes permit the LLC to provide for one or more full liability members, *i.e.*, members who are fully liable for all of the liabilities, debts, and obligations of the LLC.[23] Finally, some State LLC statutes require, or permit LLC members to provide in the operating agreement, either that LLC members may not transfer their interests in the LLC without the consent of the remaining members, or that a member may not transfer the managerial or voting rights that accompany an owner's economic interest in the LLC without the consent of the remaining members.[24] Such a provision tends to be inconsistent with the concept of free transferability of interests because the requirement for prior consent prevents, or at least restricts, an owner's transfer of his or her ownership interest.

IV. Overview of Comments Received

On July 23, 2002, the FDIC published a notice of proposed rulemaking in the **Federal Register** (67 FR 48054) (the ''notice of proposed rulemaking'') which generally proposed that a bank chartered as an LLC would be considered to be ''incorporated'' if it had the four traditional, corporate attributes. The notice of proposed rulemaking also requested comments on three specific questions regarding the proposed rule. The FDIC received 23 comment letters from 22 organizations. All of the comment letters were generally in favor of granting deposit insurance to State banks organized as LLCs. The organizations filing comments included nine State trade associations, six State banks, three national trade associations, two law firms, an organization of State bank supervisors, and a State banking commissioner.

The three questions posed and a discussion of the responses received with respect to those questions, as well as the FDIC's analysis of those responses follow.

[18] *See* Mark A. Sargent & Walter D. Schwidetzky, Limited Liability Company Handbook § 1:3 (rev. 2002).

[19] *See* ''Unif. Limited Liability Company Act,'' Prefatory Note, (amended 1996) 6A U.L.A. 426 (Supp. 2002).

[20] *See* Sargent & Schwidetzky, *supra* note 18, § 1:3.

[21] *See, e.g.*, Nev. Rev. Stat. § 86.491 (2001); Mass. Ann. Laws ch. 156C, § 43 (2002).

[22] *See, e.g.*, Mich. Comp. Laws § 450.4401 (2002); Ala. Code § 10–12–22(a) (2002).

[23] *See, e.g.*, Vt. Stat. Ann., tit. 11, § 3043(b) (2002); Cal. Corp. Code § 17101(e).

[24] *See, e.g.*, Mich. Comp. Laws § 450.4506 (2002); Pa. Stat. Ann. tit. 15, § 8924 (2002).

1. Should the FDIC Permit a State Bank That Is Organized as an LLC To Obtain Federal Deposit Insurance?

All of the commenters favored, at least, in general, a determination that a State bank that is organized as an LLC is eligible to apply for Federal deposit insurance.

2. If So, Should the FDIC Interpret the Term ''Incorporated'' Utilizing Some, All, or None of the Traditional Four Corporate Attributes?

Ten commenters thought the FDIC should not use any of the four corporate attributes in determining eligibility for Federal deposit insurance; four commenters thought we should use three of the four corporate attributes; three commenters thought we should use all four attributes; and five commenters did not respond specifically on this question.

Arguments Against Using Any of the Four Corporate Attributes

Of the 10 commenters who opposed using any of the four corporate attributes in determining a Bank-LLC's eligibility to apply for deposit insurance, eight specifically thought that if the particular State permits a bank to be organized as an LLC, and if the FDIC determines that the institution could be operated in a safe and sound manner, that should be sufficient for the entity to be eligible for Federal deposit insurance.

In support of their position the 10 commenters offered their views on the appropriateness of using specific corporate attributes to determine eligibility for Federal deposit insurance.

With regard to the corporate attribute of perpetual succession, several commenters construed the perpetual succession attribute to mean perpetual existence. Several commenters pointed out that in the past many FDIC-insured banks had limited lives (*e.g.*, the legal existence of some banks would terminate after 50 years). Since limited-life banks had never been a problem for the FDIC in the past, the commenters argued, they should not be a problem for the FDIC now. However, perpetual succession does not mean immortality. Rather, perpetual succession means that the existence of an entity is not dependent on the existence, condition, or status of any of its owners, and the death, disability, withdrawal, or bankruptcy of one or more of the owners of the entity does not terminate, dissolve, or suspend the entity. As noted above, some State LLC laws require, or permit an LLC to provide in its organizational documents, that the LLC will automatically terminate, dissolve, or be suspended upon the death, disability, bankruptcy, withdrawal or expulsion of an owner of an LLC or upon the happening of some other specified event. If a Bank-LLC were subject to such automatic termination, dissolution, or suspension provisions, without any advance warning, depositors in that institution might be denied access to their deposits due to an automatic termination of the institution's existence. Generally, the triggers for such automatic provisions may be wholly unrelated to the financial condition of the entity. Consequently, an institution that is well-capitalized, that is otherwise highly-rated for safety and soundness, and that is not subject to any enforcement actions could suddenly be closed for the sole reason that one of the owners died. Depositors would never know with certainty if their bank will be in existence on the day and time when they may need to withdraw their money. Furthermore, without such advance notice, the FDIC would not be prepared to handle the institution's closure and meet its deposit insurance obligation in a timely manner. In addition, not only would a customer be denied access to his or her deposits, but also any checks in transit that had not yet been paid by the bank would be rejected. The uncertainty, confusion, and disruption caused by such a closing would not only cause serious damage to public confidence in the nation's banking system, but also serious disruption to the community. Finally, without an opportunity to locate a healthy institution to purchase the assets and assume the deposits of the institution on a going-concern basis, the cost of the resolution could be substantially higher than necessary. For these reasons, the FDIC continues to believe that it is not only reasonable, but essential, that the term ''incorporated'' be interpreted to include the corporate attribute of perpetual succession.

With regard to the corporate attribute of centralized management, one commenter recognized that in a theoretical sense there may be concerns when a Bank-LLC with a large number of members is proposed to be managed directly by its members. However, rather than requiring a board of directors for every Bank-LLC, the commenter suggested that the FDIC could require a board of directors only if the number of members exceeded 25. The FDIC believes that centralized management is an important attribute for a bank for a couple of reasons. First, if the authority to manage the bank is limited to the owners of the institution, management expertise would necessarily also be limited. The quality of the management of a bank is a key factor in a bank's success or failure. In order to provide the best chance for a bank to compete successfully and to operate profitably, a bank should be free to enlist the best qualified managers available to it. Too small of a group of owners may not provide sufficient management expertise. Too large of a group may dilute the influence of those owners who do have adequate management expertise. For example, even if some of the owners possess adequate expertise, their ability to manage the institution may be negated by a larger segment of the owners that lacks such expertise. Second, management by a group that is too small could severely impair the bank's ability to respond to supervisory and regulatory direction. The volume and complexity of the demands of operating a bank might put too small of a group under excessive pressure and could result in management that is not responsive or at least so slow as to imperil the bank's effectiveness. Too large of a group may make it unwieldy or excessively difficult to disseminate information and get decisions in a timely manner because so many voices are entitled to be heard and considered. For these reasons, the FDIC believes that centralized management is also an important attribute that a bank should have in order to be eligible for deposit insurance.

With regard to the corporate attribute of limited liability, one of the 10 commenters while generally disagreeing with the use of the four corporate attributes, nevertheless thought that requiring limited liability was reasonable, since unlimited liability would certainly reduce the number of prospective shareholders. Another of the 10 commenters thought that in some cases the FDIC might conclude that unlimited liability of one or more members actually reduces the risk to the deposit insurance fund. Furthermore, the commenter argued that bank organizers should be permitted to explain the reasons for unlimited liability and show how unlimited liability impacts the bank's risk to the fund.

The FDIC believes that limited liability tends to attract more potential investors than unlimited liability and, furthermore, that the more attractive an investment generally the greater the chances that the entity will be able to maintain adequate capital. Consequently, the FDIC believes that limited liability is also a very important attribute for a bank to possess.

With regard to the corporate attribute of free transferability of interests several of the 10 commenters also thought it inappropriate to require that attribute. The commenters argued that since many existing, FDIC-insured banks are closely-held corporations that have restrictive share-transfer agreements, it would be inconsistent for the FDIC to require free transferability of interests with respect to a bank that is chartered as an LLC. Furthermore, two of those commenters suggested that rather than requiring free transferability for every Bank-LLC, a better solution would be to require that the Bank-LLC's organizational documents provide that if the primary regulator determines that the institution's capital is inadequate, then the current owners would be required to restore capital or permit free transferability of the interests. The FDIC believes that the free transferability of ownership interests is an important attribute because it tends to ensure that the bank will have the best opportunity to attract and maintain adequate capital. Even well-run business entities can experience economic stress when there is a downturn in their markets or the industry as a whole. Adequate capital provides a cushion that helps a business weather the periods of economic stress. If an owner of an interest in an LLC must obtain the consent of the other owners in order to transfer his or her interest, the transfer may be delayed until that consent can be obtained, or it may be rejected altogether if the consent is not granted. Either circumstance tends to reduce a bank's ability to attract and maintain adequate capital. Indeed, the mere presence of such a consent requirement may discourage investors who can choose from other, more liquid and, perhaps, more familiar investments. As noted above, since an LLC is neither a corporation nor a partnership, State corporation laws and State partnership laws generally would not apply. That fact, coupled with the relative novelty of the LLC form of business entity, may discourage potential investors. Many investors are familiar with, or can readily determine, the general structure of corporations and the rights, powers, privileges, duties and liabilities of a corporation's shareholders, officers, and directors. With an LLC, its structure and the rights, powers, privileges, duties and liabilities of the LLC's owners, officers and managers are all generally subject to modification according to the wishes of the members. Unlike investing in a corporation, a potential investor in an LLC may not be able to rely, to any extent, on his or her general familiarity with corporate law in making an investment decision. A potential investor would have to examine carefully the operating agreement of the particular LLC to determine the LLC's operating structure and the rights, powers, privileges, duties, and liabilities of the LLC's owners, officers, and managers. Such additional burden may also tend to discourage new investors and further reduce the bank's ability to attract and maintain capital. Furthermore, the alternative suggested by one commenter would not cure these problems. The commenter suggested that the FDIC might require a provision in the LLC's organizational documents that if capital fell below a certain level then the existing owners would have to replenish capital or waive the consent requirement. However, if a bank's capital were to fall below the minimum capital requirements, it might then be too late to try to attract new investors. It is not clear that many investors would want to get involved with a bank that has an unfamiliar legal structure at a time when its capital is depleted. Consequently, the FDIC believes that a Bank-LLC should have the corporate attribute of free transferability of interests.

Several of the 10 commenters also offered general comments on how to determine eligibility and suggested some alternative uses for the four corporate attributes. Several thought that the key to eligibility for Federal deposit insurance should simply be whether the bank is chartered in accordance with State banking law. If so, they argue, that should be enough to qualify for eligibility for deposit insurance. The FDIC disagrees with this notion entirely. Congress conferred upon the FDIC the authority to grant Federal deposit insurance to certain institutions described in the FDI Act. Allowing the individual States to determine which institutions are eligible would (i) require the FDIC to ignore the express language of the FDI Act, (ii) require the FDIC to abdicate its statutory responsibility to make such determinations, and (iii) potentially result in a wide variety of notions as to what types of institutions are eligible for deposit insurance. As a result, the FDIC's ability to manage the risks posed to the insurance fund would be seriously jeopardized. The FDIC does not believe such an approach is either reasonable or consistent with the purposes of the FDI Act.

Two commenters pointed out that the four corporate attributes are not mentioned in the factors listed in section 6 of the FDI Act, 12 U.S.C. 1816, (the ''section 6 factors'') that are required to be considered in approving applications for deposit insurance. Therefore, they believe that the FDIC should determine who is eligible for deposit insurance solely by reference to the section 6 factors. One commenter argued that while the ultimate question is whether the bank is a legal entity under State law, it thought that the FDIC could consider the four corporate attributes in assessing whether the institution could be operated in a safe and sound manner. In that regard the commenter thought that perpetual succession and centralized management were important for safety and soundness and should be accorded greater weight, while free transferability of interests was less important. The FDIC believes that while the section 6 factors are required to be considered in determining whether to grant deposit insurance, they do not determine an institution's eligibility to apply for deposit insurance. Eligibility is a threshold issue that must be determined before the section 6 factors are considered. To focus only on the section 6 factors would again require that we ignore the express language of the FDI Act. Congress carefully set out what it meant by a ''State bank,'' and the FDIC declines to ignore that language.

One commenter noted that national banks only need to be chartered pursuant to the National Bank Act (the ''NBA'') to be eligible for Federal deposit insurance and that, therefore, the FDIC should only require that state banks be chartered under State law. The FDIC agrees that in accordance with the language of the FDI Act a national bank is eligible to apply for deposit insurance if it is chartered as a national bank under the NBA. However, the NBA describes a national bank as a ''body corporate'' [25], and national banks are structured and operate essentially the same as corporations. Consequently, requiring a State-chartered, Bank-LLC to have the four corporate attributes does not represent treatment inconsistent with that applicable to national banks.

Arguments in Favor of Using Three of the Four Corporate Attributes

As noted above, four commenters thought we should use three of the four corporate attributes. Three of those four commenters disagreed specifically with requiring free transferability of interests for a Bank-LLC, but concurred with requiring the other three attributes. The other commenter while generally disagreeing with the free transferability requirement thought that the FDIC should require any three out of the four

[25] 12 U.S.C. 24.

corporate attributes. Two of the commenters who specifically disagreed with the free transferability requirement repeated the argument mentioned above that the free transferability requirement has not been viewed by the FDIC in the past as a significant impairment of an institution's ability to raise capital and, therefore, should not be required for Bank-LLCs. As discussed above, the FDIC believes that a Bank-LLC should have the corporate attribute of free transferability of interests. The FDIC's analysis of the need for this attribute is detailed above and will not be repeated here. However, in summary, the FDIC believes that free transferability of interests is necessary to ensure that a Bank-LLC will be able to attract and maintain adequate capital. With regard to the suggestion that the FDIC require any three of the four corporate attributes as its test for eligibility for deposit insurance, the FDIC does not believe that such an approach would be consistent with the purposes of the FDI Act and could lead again to a wide variety of notions about what types of institutions are eligible for deposit insurance. Each of the attributes has its own significance for purposes of the FDI Act, and each is independently justifiable as an essential requirement for the FDIC to determine that a Bank-LLC is ''incorporated.'' Among other things, a three-out-of-four approach would permit a Bank-LLC that does not have perpetual succession to be considered ''incorporated'' for purposes of eligibility for deposit insurance. As fully discussed above, an institution that could terminate without warning could cause substantial harm to depositor confidence in the nation's banking industry, seriously disrupt the communities where the bank operated, and increase the costs of resolutions. Furthermore, the wide variety of institutions that such an approach could permit would jeopardize the FDIC's ability to manage the risks to the insurance fund. Consequently, the FDIC does not believe that a three-out-of-four approach would be consistent with the FDI Act and declines to adopt it.

Comments in Favor of Using All Four Corporate Attributes

Three commenters endorsed the FDIC's use of all four of the corporate attributes. One commenter also expressed the strong belief that the full range of safety and soundness and enforcement mechanisms that currently apply to state banks should also apply to Bank-LLCs. For the reasons discussed above, the FDIC believes that the corporate attributes are not only appropriate, but essential to determining whether a Bank-LLC could be considered to be ''incorporated.'' The FDIC specifically concurs with the comment that the full range of safety and soundness and enforcement mechanisms needs to apply to Bank-LLCs. In that regard, the final rule includes some revisions to further clarify this point. The final rule clarifies that for purposes of the FDI Act (including section 8 of the FDI Act) and the FDIC's regulations, the members, managers, and officers of a Bank-LLC would be equivalent to shareholders, directors, and officers, respectively, of a bank chartered as a corporation. Also, the certificates or other evidences of ownership interests in a Bank-LLC would be equivalent to voting stock, voting shares and voting securities.

3. If the FDIC Should Not Utilize Any of the Four Corporate Attributes, How Should It Interpret the Term ''Incorporated?''

Six commenters thought that the FDIC should interpret ''incorporated'' to mean chartered under State law. Two other commenters thought that an institution should be deemed to be ''incorporated'' if it is chartered under State law and can operate in a safe and sound manner. Another commenter thought that ''incorporated'' should mean ''organized'' or ''operating'' as a bank under State law. Yet another thought that ''incorporated'' should simply mean ''chartered and regulated'' under State law and thought the FDIC should focus on whether the particular structure is consistent with the section 6 factors. All of these suggestions have been fully analyzed and considered above, and will not be repeated here. Central to all of these suggestions is the notion that if the State's laws would charter an entity as a bank, that should be enough for the FDIC. Following that argument, the FDIC should consider to be ''incorporated'' whatever type of institution a State may charter as a bank under its laws. As fully discussed above, such an approach would mean that (i) the FDIC would have to ignore the express language of the FDI Act, (ii) the FDIC would have to abdicate its responsibility under the FDI Act, and (iii) the potential variety of notions about what could be chartered as a bank would seriously impair the FDIC's ability to manage the risks to the insurance fund. For those reasons the FDIC declines to adopt such an approach.

V. Interpretation of ''Incorporated''

In order to determine whether an LLC could qualify as a State bank for purposes of Federal deposit insurance, it is necessary to determine if an LLC could be considered to be ''incorporated.'' In resolving any ambiguity in a statute it is always helpful to try to determine what Congress intended by its choice of the particular words of the statute. In this case, as noted above, there is no legislative or judicial guidance on the meaning of the term ''incorporated'' as used in the FDI Act. Consequently, the FDIC believes that the best approach is to interpret the term in a manner consistent with, and in aid of, the purposes of the FDI Act.

Congress created the Federal Deposit Insurance Corporation in 1933 to restore and maintain public confidence in the nation's banking system by, among other things, promoting the safety and soundness of the institutions whose deposits the FDIC insures.[26] Consequently, the FDIC is charged with maintaining public confidence in the nation's banking system, and promoting the safety and soundness of the institutions that it insures is a critical component of its duty.

A common understanding of the term ''incorporated'' is ''formed or constituted as a legal corporation.''[27] In addition, Black's Law Dictionary defines ''incorporate'' as ''to form a legal corporation.''[28] An institution that is labeled as a corporation under State law would then be ''incorporated'' under the common understanding of the term. One approach that the FDIC could take, therefore, is to treat as incorporated only those entities that are labeled as ''corporations'' under State law. Such an interpretation would be consistent with the language of the statute. However, such an approach might be too narrow in that it may not include all of the State banks that are currently operating as insured institutions even though they are structured and operate with the same characteristics as a corporation. Furthermore, limiting the interpretation to only those entities that are labeled as ''corporations'' would seem unduly restrictive in that it would tend to unnecessarily limit the flexibility, and stifle the innovativeness, of State banking. Thus, such an approach could arguably impair or harm the viability of the nation's banking system.

Another approach to interpreting the term ''incorporated'' is to focus on the attributes of the entity. In other words, if the entity has the four corporate

[26] *See FDIC* v. *Philadelphia Gear Corp.,* 106 S.Ct. 1931, 1935 (1986), *FDIC* v. *Eckert,* 754 F.Supp. 22, 24 (E.D. N.Y. 1990); *FDIC* v. *Rockelman,* 460 F.Supp. 999, 1001 (E.D. WI 1978).

[27] The Random House Dictionary of the English Language 968 (2d ed. 1987).

[28] Black's Law Dictionary 769 (7th ed. 1999).

attributes, it should be considered to be ''incorporated'' regardless of how it is labeled under State law.[29] Clearly, the actual nature of an entity is much more important than its label.

Within the confines of Federal law, and subject to safety and soundness, banks need to be able to take advantage of new forms of business organization in order to maintain maximum viability. Some of these new forms of business entities were never envisioned at the time that Congress passed the FDI Act almost 70 years ago. Part of the FDIC's duty in administering the FDI Act is to interpret it to carry out the purposes of the FDI Act in the modern world. Consistent with that duty, the FDIC believes that it is more reasonable to focus on the essential characteristics of a corporation that distinguish it from other forms of business entities rather than to focus on the presence or absence of a label.

Therefore, mindful of the need to maintain the viability of the nation's banking system, and consistent with the purposes of the FDI Act, the FDIC believes that the better approach, is to interpret the term ''incorporated'' to include those LLCs that have the four traditional corporate attributes.

As noted above, the attributes that are commonly identified as distinguishing a corporation from other forms of business organizations are: perpetual succession, centralized management, limited liability, and free transferability of interests.

Perpetual Succession

The first attribute, perpetual succession, is essential to the FDIC's efforts to promote public confidence in the nation's banking industry. An institution that automatically terminated, dissolved, or suspended operations upon the happening of some event would most likely have a substantial, adverse effect on public confidence. A depositor in such an institution would have no way of knowing from one day to the next whether the institution will continue in existence, and whether he or she will be able to retrieve his or her money when the need arises. Furthermore, such an automatic termination, dissolution, or suspension feature would have a significantly adverse effect on the FDIC's efforts to resolve failed institutions. The FDIC is not only charged with promoting the safety and soundness of banking institutions, but is also charged with the duty of resolving failed institutions in an orderly, least costly manner. The FDIC would have no practical opportunity to plan and execute an orderly, least-costly resolution of an institution that, without any warning or advance notice, was terminated or dissolved or whose operations were suspended. Most likely it would not be possible to arrange for a healthy institution to purchase the assets and assume the deposit liabilities of the failed institution in order to continue to serve the affected community with the least disruption. Checks that were in transit at the time of the bank's failure, but that had not yet been paid, would be rejected. The disruption to the community could be substantial. The cost to the insurance fund of resolving such an institution could be significantly higher than necessary as a result, and the higher costs would tend to deplete the insurance fund more rapidly. Consequently, the FDIC believes that perpetual succession is an essential prerequisite for an insured depository institution, and that automatic termination/dissolution/suspension features are inconsistent with the FDIC's duties and the purposes of the FDI Act.

Centralized Management

Centralized management in the form of a board of directors provides the FDIC and other banking regulators with a discrete group of individuals who are authorized to act for, and represent, the institution in virtually all matters. The typical rights, liabilities, powers, and responsibilities of a board of directors are well-established. On the other hand, management of an institution directly and solely by all of its owners presents a variety of problems both from an operational standpoint and from an enforcement standpoint. First, if the authority to manage the bank is limited to the owners of the institution, management expertise would necessarily also be limited. The quality of the management of a bank is a key factor in a bank's success or failure. In order to provide the best chance for a bank to compete successfully and to operate profitably, a bank should be free to enlist the best qualified managers available to it. If there are too few owners, the group may not provide sufficient management experience and expertise. Too large of a group may also mean that even if adequate banking expertise is represented among the owners, it may be negated by a larger segment of the owners that lacks adequate expertise. Second, management by a group that is too small could severely impair the bank's ability to respond to supervisory and regulatory direction. The volume and complexity of the demands of operating a bank might put too small of a group under excessive pressure and could result in management that is not responsive or, at least so slow as to imperil the bank's effectiveness. Too large of a group may make it unwieldy or excessively difficult to disseminate information, arrange meetings, ensure that all members have the opportunity to be heard, and get decisions in a timely manner. Finally, with a member-managed Bank-LLC, merely determining who represents the institution and the extent of his or her authority could represent a significant task for regulators. Consequently, centralized management is also an important attribute for purposes of the FDIC Act.

Limited Liability

Limited liability, of course, encourages investment in the enterprise. Potential owners are more likely to invest in an enterprise when their liability is limited to the amount of their investment. Attracting and maintaining sufficient capital helps to ensure an adequate cushion to protect an institution during periods of economic stress. Since banks are subject to periods of economic stress just as other businesses are, the FDIC believes that the owners of banks should have limited liability to encourage the maintenance of adequate capital.

Free Transferability of Ownership Interests

The free transferability of ownership interests also tends to aid in attracting and maintaining adequate capital. Conversely, requiring the prior consent of the other owners in order to transfer an ownership interest may decrease the bank's ability to attract and maintain adequate capital. At worst, prior consent to a transfer limits the pool of available investors; at best, it delays interested, potential investors. While the FDIC currently insures approximately 700 mutual institutions (that issue no stock) and more than 1,700 closely-held institutions (some of which may have stock-transfer restrictions in the form of shareholder agreements), the FDIC has substantial experience with their structure, operations, and capital maintenance capabilities. The FDIC has no similar experience with institutions organized as LLCs, and that lack of similar experience argues for facilitating, rather than impairing, the maintenance of a capital cushion.

[29] This approach is not unprecedented. In *Morrissey* v. *Commissioner of Internal Revenue,* 296 U.S. 344, 359, 56 S.Ct. 289, 296 (1935) the Supreme Court held that a trust created for the purpose of carrying on a business that had continuity of life, centralized management, limited liability, and free transferability of interests is sufficiently analogous to a corporation to justify taxation as a corporation.

Indeed, the mere presence of such a prior consent requirement may discourage investors who can choose from other, more liquid and, perhaps, more familiar investments. As noted above, since an LLC is neither a corporation nor a partnership, State corporation laws and State partnership laws generally would not apply. That fact, coupled with the relative novelty of the LLC form of business entity, may also discourage potential investors. Many investors are familiar with, or can readily determine, the general structure of corporations and the rights, powers, privileges, duties and liabilities of a corporation's shareholders, officers, and directors. With an LLC, its structure and the rights, powers, privileges, duties and liabilities of the LLC's owners, officers and managers are all generally subject to modification according to the wishes of the members. Unlike investing in a corporation, a potential investor in an LLC may not be able to rely, to any extent, on his or her general familiarity with corporate law in making an investment decision. A potential investor in an LLC would have to examine carefully the operating agreement of the particular LLC to determine its operating structure and the rights, powers, privileges, duties, and liabilities of the LLC's owners, officers, and managers. Such additional burden may tend to discourage new investors and further reduce the bank's ability to attract and maintain capital. Consequently, the FDIC believes that the free transferability of ownership interests is an important attribute for a bank.

In summary, the FDIC believes that an LLC should have all of the four corporate attributes in order to be ''incorporated.'' Therefore, a banking institution that is chartered as an LLC under the law of any State and that has all of the above four corporate attributes would be considered to be ''incorporated'' under the law of the State for purposes of the definition of ''State bank.'' Furthermore, such a banking institution would be eligible to apply for Federal deposit insurance as a State bank under section 5 of the FDI Act, 12 U.S.C. 1815.

The final rule reflects these conclusions. In general, the rule provides that a banking institution that is chartered by a State as an LLC will be deemed to be ''incorporated'' if (i) it is not subject to any automatic termination/dissolution/suspension provisions, (ii) the exclusive authority to manage the institution is vested in a board of directors or managers, (iii) neither State law nor the LLC's organizational documents provide that any owner is liable for the debts of the institution beyond his or her investment, and (iv) neither State law nor the LLC's organizational documents require the consent of any other owner in order to transfer all or a part of an ownership interest. The final rule also specifies that for purposes of the FDI Act and the FDIC's regulations, an owner of an interest in an LLC is a ''stockholder'' and a ''shareholder;'' a manager of an LLC is a ''director;'' an officer of an LLC is an ''officer;'' and a certificate or other evidence of an ownership interest in an LLC is a ''voting share,'' ''voting security,'' and ''voting stock.'' These provisions are intended to remove any ambiguity as to how the rest of the FDI Act and the FDIC's regulations apply to banking institutions chartered as LLCs, including the enforcement provisions of the FDI Act and the FDIC's regulations.

VI. Paperwork Reduction Act

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

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will apply to all depository institutions that are currently insured under the FDI Act as well as those applying for Federal deposit insurance. The final rule clarifies the circumstances when a banking institution that is chartered under State law as a limited liability company would be considered to be ''incorporated'' for purposes of the definition of ''State bank'' in 12 U.S.C. 1813(a)(2). It does not require any banking institution to organize as, or convert to, a limited liability company, and it imposes no new reporting, recordkeeping or other compliance requirements. Accordingly, the requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. Impact on Families

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

IX. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (government agencies), Bank deposit insurance, Banks, Banking, Bank merger, Branching, Foreign branches, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.15 is added to read as follows:

§ 303.15 Certain limited liability companies deemed incorporated under State law.

(a) For purposes of the definition of ''State bank'' in 12 U.S.C. 1813(a)(2) and this Chapter, a banking institution that is chartered as a limited liability company (LLC) under the law of any State is deemed to be ''incorporated'' under the law of the State, if

(1) The institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event (including, *e.g.*, the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the institution), other than the passage of time;

(2) The exclusive authority to manage the institution is vested in a board of

managers or directors that is elected or appointed by the owners, and that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, as a board of directors of a bank chartered as a corporation in the State;

(3) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and

(4) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights.

(b) For purposes of the Federal Deposit Insurance Act and this Chapter,

(1) Each of the terms ''stockholder'' and ''shareholder'' includes an owner of any interest in a bank chartered as an LLC, including a member or participant;

(2) The term ''director'' includes a manager or director of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of a director of a corporation;

(3) The term ''officer'' includes an officer of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms ''voting stock,'' ''voting shares,'' and ''voting securities'' includes ownership interests in a bank chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

By order of the Board of Directors.

Dated in Washington, DC, this 31st day of January, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Resolution

Whereas, the Board of Directors (''Board'') of the Federal Deposit Insurance Corporation (''FDIC'') is responsible for administering the Federal Deposit Insurance Act (''FDI Act''); and

Whereas, the FDIC is authorized under section 5 of the FDI Act (12 U.S.C. 1815) to approve or disapprove applications for deposit insurance for State banks as well as other depository institutions; and

Whereas, in order for a banking institution to qualify as a ''State bank'' eligible to apply for deposit insurance, section 3(a) of the FDI Act (12 U.S.C. 1813(a)) generally requires that it be engaged in the business of receiving deposits other than trust funds and that it be ''incorporated under the laws of any State''; and

Whereas, the FDI Act does not define the term ''incorporated,'' and there is some uncertainty as to the meaning of the term ''incorporated''; and

Whereas, on July 23, 2002, the Board authorized the publication in the **Federal Register** of a proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies, describing the circumstances under which a bank chartered as a limited liability company would be considered to be ''incorporated'' and, therefore, eligible to apply for deposit insurance; and

Whereas, the Board requested public comment on the proposed rule and received 23 comment letters, and

Whereas, the staff has reviewed and the Board has considered the comments submitted by the public in response to the proposed rule; and

Whereas, the staff has recommended that the Board adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies as set forth in the attached **Federal Register** document; and

Whereas, the Board has decided to adopt the proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies as a final rule with certain modifications.

Now, therefore, be it resolved, that the Board does hereby adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies amending 12 CFR part 303 in the manner set forth in the attached **Federal Register** document.

Be it further resolved, that the Board hereby authorizes publication in the **Federal Register** of the attached final amendment to part 303.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the attached final rule to be published in the **Federal Register** in a form and manner satisfactory to the General Counsel, or his designee, and the Executive Secretary, or his designee.

Be it further resolved, that the Board hereby delegates authority to the General Counsel, or the General Counsel's delegate(s), and to the Executive Secretary, or the Executive Secretary's delegate(s) to make technical, non-substantive changes to the text of the attached **Federal Register** document.

[FR Doc. 03–3387 Filed 2–12–03; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA26

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final Rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is adopting an amendment to Appendix A to Subpart B of 12 CFR part 1750 Risk-Based Capital. The amendment, which more accurately incorporates and implements Financial Accounting Standard 133 in the stress test, is intended to enhance the accuracy of the calculation of the risk-based capital requirement for the Enterprises.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Pomeranz, Senior Accounting Specialist, Office of Risk Analysis and Model Development, telephone (202) 414–3796 or Marvin L. Shaw, Senior Counsel, telephone (202) 414–8913 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test on September 13, 2001, 12 CFR part 1750 (the Rule), which formed the basis for determining the risk-based capital requirement for the federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1]

On September 12, 2002, OFHEO published a notice of proposed rulemaking (NPRM), 67 FR 57760, which proposed twelve technical and corrective amendments to the Rule.

[1] Risked-based Capital, 66 FR 47730 (September 13, 2001, 12 CFR part 1750, *as amended,* 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002), 67 FR 66533 (November 1, 2002).

These proposed amendments were intended to make minor technical corrections to the Rule, and to account more appropriately for Financial Accounting Standard No. 133 (FAS 133).[2] This amendment does not alter the FAS 133 accounting standard; it simply corrects the manner in which FAS 133 is incorporated into the stress test. Although the NPRM was subject to a ten-day comment period, OFHEO reopened and extended the comment period regarding the two FAS 133-related proposed amendments, noting that it might move to final action on any of the other ten.[3] On November 1, 2002, OFHEO published a final rule, which adopted eight of the technical and corrective amendments.[4] OFHEO is adopting three of the other amendments in today's final rule.[5]

Comments

OFHEO received comments in response to the NPRM from Fannie Mae, Freddie Mac, FM Watch, and the Honorable Richard H. Baker. In response to the September 30 notice that extended the comment period, OFHEO subsequently received one supplemental comment, which was submitted by FM Watch. The comments addressed the appropriateness of the proposed amendments related to FAS 133. Commenters also addressed procedural issues such as the effective date for the proposed amendments related to FAS 133 and the AOLTV Table, the length of the comment period, and the use of guidelines to supplement the Rule. Commenters also addressed issues related to regulatory impacts, particularly whether the proposal was ''economically significant'' under Executive Order 12866 and whether the proposal complies with the OFHEO's and the Office of Management and Budget's (OMB's) guidelines on information quality.

Discussion of Issues

1. FAS 133

The NPRM included two changes to reflect the impact of FAS 133 on the stress test. The first of these, number 11 in the NPRM preamble, would modify the calculation of common stock dividends to reflect the effects of FAS 133 adjustments on after-tax income. The second, number 12 in the NPRM preamble, would modify the calculation of risk-based capital to account more fully for changes that FAS 133 required in the computation of Total Capital. As explained below, after considering all the comments on the proposed FAS 133-related changes, OFHEO has determined that the changes are appropriate and timely and is adopting them as proposed. Changes in the language from the proposed amendments clarify the rule, but have no substantive affect.

All five comment letters addressed the FAS 133-related changes. Both Enterprises were supportive of the changes, but suggested that OFHEO not waive the 30-day delay in effective date that is ordinarily required of final rules. Congressman Baker's letter voiced concern that the impact on the Enterprises' capital from amendment number 12 was so significant that OFHEO should extend the comment period.[6]

As noted above, FM Watch provided two comment letters. The first, which was submitted within the initial 10-day comment period, requested additional time for comment and urged OFHEO to delay action on the changes related to FAS 133 until OFHEO had more data on the affect of those changes on the Enterprises' risk-based capital. The letter also questioned whether the thirty percent add-on for management and operations risk should be applied after, rather than before FAS 133-related adjustments were made to the capital requirement. In FM Watch's second letter, received during the extended comment period, it stated that without additional background as to the implications OFHEO anticipates from the amendment, FM Watch was unable to provide informed comments on the proposal. The second letter, therefore, largely reiterated its earlier comments on the FAS 133-related amendments and requested that OFHEO defer action until additional quarters of data on the financial impact of the changes are available.

None of the comment letters took issue with the need for or the importance of the proposed FAS 133-related changes. Two commenters believed it necessary to delay action until the impact of the changes on the Enterprises' capital could be measured for a few more quarters. Neither, however, recommended that the change should not be implemented eventually. Nor did any commenter suggest that the proposed changes did not tie capital more closely to risk or that there was a better alternative methodology.

Commentary regarding the final rule's effective date was unanimous in supporting a delayed effective date for implementation of these amendments. The Administrative Procedure Act, 5 U.S.C. 552(d), provides that the effective date for substantive rules will be delayed at least 30 days after publication, except in certain circumstances not applicable in this case. Accordingly, OFHEO has determined these changes take effect 30 days after the notice is published in the **Federal Register**. The effect of this determination is that OFHEO will incorporate these amendments related to FAS 133 in the capital calculation process starting with data submitted by the Enterprises for the fourth quarter of 2002, which OFHEO anticipates receiving from the Enterprises in early 2003. The first capital classification under the amended rule will occur approximately two months after publication.

Two of the comments suggested that the proposed change related to the effect of FAS 133 on total capital may be in error by adding the effects of FAS 133 after the thirty percent add-on for management and operations risk. After consideration of these comments, OFHEO has decided to utilize the methodology proposed in the NPRM.

As explained in greater detail in the NPRM preamble, the stress test, in essence, measures the amount of capital that would be consumed by an Enterprise during the ten-year stress period. This amount of capital is referred to in the amended regulation as ''stress-test capital.'' The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (1992 Act) provides that stress-test capital should be increased by thirty percent to account for management and operations risk. The proposed amendment follows exactly that approach. However, the statute also requires that the risk-based capital requirement be expressed as an amount of ''total capital,'' which can be compared to an Enterprise's current total capital to determine whether a deficiency exists. Because total capital is adjusted up or down before the start of the stress test to delete the impact of

[2] Financial Accounting Standards Board Statement of Financial Accounting Standards No. 133, ''Accounting for Derivative Instruments and Hedging Activities,'' June 1998.

[3] Risk-based Capital, 67 FR 61300 (September 30, 2002).

[4] Risk-based Capital, 67 FR 66533 (November 1, 2002).

[5] OFHEO has determined that it is appropriate to delay adopting the amendment that would correct the description of ''unamortized balance'' in Table 3–56 and Table 3–57 (amendment #7 in the NPRM), because that same term appears in numerous other places throughout the rule. OFHEO is conducting a systematic review of the entire Rule to ensure that this term is used and defined consistently. In the meantime, users of the stress test code will not be affected, because the Risk-based Capital Report Instructions, which are used to prepare data for the model, are correct.

[6] *Id.* note 3.

FAS 133, it is appropriate to make the opposite adjustment at the end of the calculation, so as to compare apples with apples (or total capital with total capital).[7] Adding the FAS 133 impact in before the thirty percent add-on, as FM Watch suggests, would cause the adjustment at the end to be thirty percent greater than the adjustment at the beginning, overstating the value (in either a positive or negative direction) of the derivatives in an Enterprise's portfolio. OFHEO has not found that modifying its proposed approach in that manner would improve the sensitivity of the stress test to risk. Further, no commenter has identified a compelling rationale for such a change.

FM Watch contends that OFHEO lacks authority under the 1992 Act to add in the FAS 133-related adjustment after the 30 percent add-on. However, the Act expresses no such limitation on OFHEO's broad discretion to determine appropriate losses or gains on interest rate hedging activities, which are, in part, reflected in the changes in derivatives market value that FAS 133 adds to total capital. 12 U.S.C. 4611(a)(4).

2. Use of Guidelines

OFHEO proposed to amend the rule by replacing a static table containing fixed weighted average amortized original LTV (AOLTV) values with a notation that the table would be updated as necessary with a guideline (Guideline 404) that would be available on OFHEO's web site. Other guidelines related to Risk-Based Capital include Guideline 402 ''Interest Rates'' and Guideline 403 ''Average Loan Size.''

Freddie Mac stated that OFHEO is required by statute to issue all provisions related to risk-based capital requirements through notice-and-comment rulemaking, as opposed to OFHEO's reference to guidelines. Specifically, Freddie Mac believes that the Rule must include detailed descriptions of the precise methodologies that such guidelines would apply. Freddie Mac further stated that a change in a guideline should be effective only as of the end of the first reporting period beginning 60 days or more after the publication of such change.

OFHEO disagrees with Freddie Mac's view that guidelines are inappropriate. OFHEO believes that guidelines are necessary and appropriate for various aspects of implementing the Risk-Based Capital Requirement, provided the guideline addresses the finer details of the stress test where OFHEO requires the flexibility to make rapid or frequent changes, such as updating index changes. Such guidelines, which are used by other financial regulators, allow rapid response to rapidly changing circumstances and can be incorporated into the rule at a later date if such an incorporation appears advisable.

As to the effective dates for guidelines, OFHEO does not feel it necessary to announce a fixed rule. In the event that a new guideline or change to a guideline might impact capital significantly, OFHEO will consider the need for the Enterprises to plan their business strategies with capital requirements in mind. In this case, the Enterprises have had sufficient notice of Guideline 404, given its minor impact, to adapt to it. Accordingly, OFHEO has determined that a 30-day delay in effectiveness is adequate.

3. Comment Period

Congressman Baker and FM Watch requested a longer period of time for public comment on the proposed change related to FAS 133. In response to these requests, OFHEO extended the comment period until October 29, 2002. This extension allowed the public approximately six weeks to comment on the initial proposal. Only one commenter, FM Watch, submitted a comment during the extended comment period. Its comment simply amplified its earlier position.

4. Other Comments

Other comments received are beyond the scope of the amendment. Because these comments are not relevant to the substance of the proposal, they are not addressed in the preamble.

Regulatory Impacts

Executive Order 12866

OMB determined that these amendments are ''significant'' for purposes of review under EO 12866.

Two commenters questioned OFHEO's conclusion that the FAS 133 amendments are not economically significant within the meaning of Executive Order 12866. Both comments referred to the fact that the changes would have impacted Freddie Mac's risk-based capital requirement by more than $1.6 billion in a recent period. Neither comment, however, contends that the rule has resulted in costs to the Enterprises in excess of $100 million. Because the minimum capital requirement would have required more capital than the amended risk-based requirement in that period, the change would not have required Freddie Mac to raise any additional capital. Therefore, the commenters have not demonstrated that the change would have created cost for Freddie Mac. However, even if the amendment were to have the affect in some future period of requiring an Enterprise to raise capital or otherwise alter its hedging strategies, it is speculative to opine at this point that, in the absence of this amendment, the Enterprise would not have recognized the capital problem with its internal stress tests and taken equally expensive measures to deal with it.

Further, this essentially technical change, required to implement accounting standards imposed by a separate regulatory authority, does not raise the type of economic issues for which the detailed cost/benefit analysis required by the Executive Order was intended. No commenter has suggested that there is some less expensive means of implementing FAS 133 in the risk-based capital regulation or that OFHEO should continue to account for FAS 133 improperly.

Nevertheless, given the fact that this regulation is new and only recently became fully enforceable, OMB has exercised its discretion to review the FAS 133-related amendments formally to determine whether they have any important policy implications for the Administration or other Federal agencies.

OMB Information Quality Guideline

An additional issue raised by FM Watch concerned the application of OFHEO's recently issued ''Final Guidelines for Ensuring Quality of Disseminated Information and Procedures for Correction by the Public'' (67 FR 63672, September 15, 2002) (the Information Quality Guideline). In its letter, FM Watch indicates that the Rule may not be consistent with OFHEO's Information Quality Guideline because (i) in the two-day period between the posting of the amendment on the OFHEO Web site and publication in the **Federal Register** OFHEO revised the estimated impact of the FAS 133 amendments and (ii) FM Watch was unable to replicate OFHEO's

[7] Mathematically, the same result could be achieved by simply comparing starting capital (the capital at the beginning, ''time zero,'' of the stress period) to stress test capital plus thirty percent. This was the way OFHEO had structured the calculation until FAS 133 altered the composition of total capital by including some changes in the market value of derivatives. OFHEO determined that it is unnecessarily complex to estimate market values throughout the stress test and, therefore, adjusted the starting amount of total capital to remove the market value changes. In order to provide a risk-based capital requirement that can be compared directly to actual, or unadjusted, ''total capital,'' it is necessary to reverse-adjust stress test capital (which does not include market value changes) by adding back the market value changes that were removed at the start of the stress test.

conclusions. OFHEO notes that its revision to the estimate of the impact of the change was not a violation of the guidelines in this area. The initial error was rectified immediately and the correct information was published in the **Federal Register** and was available to all commenters during the entire comment period. With respect to the issue of replicability, the stress test model set forth in the Rule has been replicated by the Enterprises and largely incorporated into their operations. The ability of the Enterprises' to replicate the model demonstrates that OFHEO has met the burden imposed by both OFHEO's and OMB's data quality guidelines. OFHEO will continue to assist others to replicate the stress test by making available the stress test computer code and by publishing a stylized data set for their use in testing and replication.

Paperwork Reduction Act

These amendments do not contain any information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that this regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO amends 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4615, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–59 in paragraph 3.7.2.3;

b. Revise paragraph 3.10.3.2 [a] 2.; and

c. Add new paragraph 3.12.3 [a] 9. after paragraph 3.12.3 [a] 8.

Appendix A to Subpart B of Part 1750-Risk-Based Capital Test Methodology and Specifications

* * * * *

3.7.2.3 * * *

TABLE 3–59—AGGREGATE ENTERPRISE AMORTIZED ORIGINAL LTV ($AOLTV_0$) DISTRIBUTION [1]

Original LTV	UPB Distribution	Wt Avg AOLTV for Range
00<LTV<=60		
60<LTV<=70		
70<LTV<=75		
75<LTV<=80		
80<LTV<=90		
90<LTV<=95		
95<LTV<=100		
100<LTV		

[1] **Source:** RBC Report, combined Enterprises single-family sold loan portfolio. Table 3–59 is updated as necessary with combined Enterprises single-family sold loan group data from the RBC Report in accordance with OFHEO guideline #404. The contents of the table appear at *http://www.OFHEO.gov.*

Note: Amortized Original LTV (also known as the ''current-loan-to-original-value'' ratio) is the Original LTV adjusted for the change in UPB but not for changes in property value.

* * * * *

3.10.3.2 * * *

[a]* * *

2. *Common Stock.* In the first year of the Stress Test, dividends are paid on common stock in each of the four quarters after preferred dividends, if any, are paid unless the Enterprise's capital is, or after the payment, would be, below the estimated minimum capital requirement.

a. *First Quarter.* In the first quarter, the dividend is the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding.

b. *Subsequent Quarters.*

(1) In the three subsequent quarters, if the preceding quarter's after tax income is greater than after tax income in the quarter preceding the Stress Test, (adjusted by the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the larger of (1) the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) the average dividend payout ratio for common stock for the four quarters preceding the start of the Stress Test times the preceding quarter's after tax income (adjusted by the reciprocal of the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost) less preferred dividends paid in the current quarter. In no case may the dividend payment exceed an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter.

(2) If the previous quarter's after tax income is less than or equal to after tax income in the quarter preceding the Stress Test (adjusted by the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the lesser of (1) the dividend per share ratio for common stock for the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter, but not less than zero.

* * * * *

3.12.3 * * *

[a]* * *

9. Subtract the net increase (or add the net decrease) in Retained Earnings related to Fair Value Hedges at the start of the stress test made in accordance with section 3.10.3.6.2[a]1.b. of this appendix.

Dated: January 24, 2003.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–2082 Filed 02–12–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 105

[OAG 104; AG Order No. 2656–2003]

RIN 1105–AA80

Screening of Aliens and Other Designated Individuals Seeking Flight Training

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under section 113 of the Aviation and Transportation Security Act, certain aviation training providers subject to regulation by the Federal Aviation Administration are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless the aviation training provider notifies the Attorney General of the identity of the candidate seeking training and the Attorney General does not notify the aviation training provider within 45 days that the candidate presents a risk to aviation or national security. On June 14, 2002, the Department issued two rulemaking documents, a proposed rule and an interim final rule, requesting comments on both documents.

This final rule implements the Flight Training Candidate Checks Program, by which aviation training providers will provide the required notification for specific categories of flight training candidates. The final rule also sets forth how aviation training providers may begin or resume instruction for candidates whom the Attorney General has determined do not present a risk to aviation and national security as a result of the risk assessment conducted pursuant to section 113 of the Aviation and Transportation Security Act.

DATES: *Effective date:* This rule is effective March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert E. Casey, Jr., Director, Foreign Terrorist Tracking Task Force, Mailbox 27, FBI Headquarters, 935 Pennsylvania Avenue, NW., Washington, DC 20535, Telephone (703) 414–9777.

SUPPLEMENTARY INFORMATION: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (''ATSA''), Pub. L. No.107–71. Upon enactment, section 113 of ATSA, 49 U.S.C. 44939, imposed notification and reporting requirements on certain persons who provide aviation training (hereinafter referred to as ''Providers'') to aliens and other specified individuals. The Department recognized that section 113 of ATSA became immediately effective upon enactment and that Providers had been forced to suspend the training of aliens covered by ATSA pending the implementation of a process for notification to the Attorney General and a determination whether the individual seeking training presents a risk to aviation or national security. The Department issued a notice on January 16, 2002 (''First Advance Consent Notice''), that stated that the Department was granting provisional advance consent for the training of three categories of aliens, based on an initial determination that persons in these categories did not appear to present a risk to aviation or national security. 67 FR 2238 (Jan. 16, 2002). The First Advance Consent Notice was superseded and the categories of advance consent modified in a notice published on February 8, 2002 (''Second Advance Consent Notice''). 67 FR 6051 (Feb. 8, 2002). The Second Advance Consent Notice was rescinded as of June 14, 2002, with the publication of the interim final rule, which instituted ''expedited processing'' in lieu of advance consent for certain alien pilots. 67 FR 41140 (June 14, 2002).

The Department also issued a proposed rule on the same date. 67 FR 41147 (June 14, 2002). The proposed rule set forth the manner in which candidates not eligible for expedited processing would be able to seek aviation training in compliance with section 113 of ATSA. Comments were invited on both the interim final rule and the proposed rule.

The Department received numerous comments from concerned individuals and organizations, including over 20 lengthy submissions. These comments covered numerous areas and all comments were considered. Many recommendations were adopted or taken into account in the preparation of this final rule. In addition, the Department made several stylistic changes to improve the clarity of the rule. A discussion of the comments follows.

1. Advance Consent

A number of commenters expressed the view that the Department should institute the former ''advance consent'' provisions, under which candidates who were both fully licensed and qualified pilots of large aircraft could obtain training without being subject to any risk assessment or background check. It was the opinion of these commenters that checks of these particular candidates serve no legitimate national security interest and merely create a deterrent for foreign candidates to train in the United States.

While the congressionally mandated requirements may have the unintended consequence of deterring some foreign nationals from seeking training from U.S. Providers, section 113 of ATSA requires the Department to conduct the risk assessments and the Department has no authority to waive this requirement. Moreover, the Department believes that the burden of complying with the regulations is comparatively small in relation to the benefits to security. During the brief time in which the expedited processing checks have been in effect, the process has resulted in the discovery and arrest of a number of persons for violations of the immigration and nationality laws, or on the basis of outstanding criminal warrants. The Department believes that the discovery of numerous immigration-related and criminal offenders among the expedited process candidates militates in favor of a thorough check system for all training candidates.

2. Expedited Processing

With regard to the expedited processing regulations that were issued after the advance consent notice, one commenter suggested that ''[a]ir carrier employees under employment contracts with U.S. air carriers that are issued FAA Operations Specifications should be handled differently than those not employed by U.S. air carriers.'' In support of this comment, the commenter noted that an individual hired by an American air carrier must provide detailed professional, medical, and other information to satisfy Federal Aviation Administration (''FAA'') requirements.

The commenter also suggested that the requirement that training dates be specified in advance denied Providers and pilots much-needed flexibility in complying with continuing training requirements. The commenter stated that ''to force the air carriers to list an individual training date, to insist on an individual training course, to specify the exact time and date that a training event will be conducted * * * is not in the intent, or the letter of the Law.''

The Department notes that while the FAA's system does contain certain security features, it is not focused on terrorism prevention in the same way as

section 113 of ATSA. Section 113 of ATSA requires the Department to conduct the risk assessments and the Department has no authority to waive this requirement. Moreover, through implementation of the expedited processing system, the Department already has discovered individuals attempting to seek covered flight training who were not eligible to be trained under the law. Accordingly, the Department will continue checks for all flight training candidates included within the ambit of section 113 of ATSA.

As to the second point, the Department agrees that the vicissitudes of scheduling, in combination with the busy schedules of many professional aviators and Providers, warrants some additional flexibility. Accordingly, § 105.10(b)(4) of the rule has been changed to allow for greater flexibility in training dates.

The Department also received the suggestion that expedited processing should include foreign nationals not ''current and qualified'' under § 105.12(a)(1). While the Department acknowledges that the ''current and qualified'' requirement for expedited processing does leave out certain individuals who might have been made eligible for expedited processing, the Department created easily-enforced and carefully-defined limits for expedited processing. In so doing, it consulted with the FAA and determined that the ''current and qualified'' requirement for expedited processing would be easily understood and enforced. The Department believes that, with the advent of web-based access to the risk assessment system, those candidates not eligible for expedited processing will have a turnaround time for their applications comparable to that of the expedited processing candidates. Accordingly, this aspect of the expedited processing requirement has not been changed.

An aviation industry association suggested that the Department expand the expedited processing categories to include current employees of United States and foreign air carriers operating under Part 129 of the Federal Aviation Regulations regardless of whether the individuals were current and qualified in aircraft weighing 12,500 pounds or more. In addition, some commenters urged that ground training with no flight simulator time be excluded from the scope of the regulation, or at least that candidates be able to undergo ground training pending the completion of their risk assessments. Commenters were concerned that the scope of the regulations was too broad, and imposed too great an administrative burden.

The Department has determined that waiving the ''current and qualified'' requirement could have a deleterious effect on security. While all employees of air carriers subject to FAA regulation do undergo certain background checks, these checks are not an adequate substitute for the risk assessment required pursuant to section 113 of ATSA. Under expedited processing, several individuals not eligible to be trained under the law have been discovered seeking flight training. Therefore, the Department will require thorough risk assessments for these candidates. As to the possibility of allowing certain training events to proceed either prior to or without a risk assessment, the Department cannot waive the requirements of ATSA. As a result, training cannot be allowed to begin before the end of the required 45-day notification period unless the Department has affirmatively authorized it. In most cases, the Department anticipates being able to authorize the commencement of training within a fraction of the 45-day notification period after submission of the candidate's fingerprints. Accordingly, requiring Providers to wait for authorization from the Department before beginning training should not impose a significant burden on those Providers.

An aviation industry association pointed out that existing regulations of the Federal Aviation Administration require crew members of aircraft weighing *more* than 12,500 pounds to have what is known as a ''type rating'' to operate them. Crew members of aircraft weighing 12,500 pounds or less (except in the case of jets) are not required to have type ratings. This causes some confusion with regard to section 113 of ATSA, which, by its terms, does not refer to type ratings, but instead to aircraft weighing 12,500 pounds and more.

To resolve this divergence between section 113 of ATSA and FAA regulations regarding type ratings, the Department has amended § 105.12(a)(1) of the rule. Henceforth, persons who are qualified on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less will not be eligible to obtain expedited processing.

An aircraft manufacturer commented that, in many cases, fully qualified pilots come to receive familiarization training in connection with the purchase of an aircraft. At present, the regulations only provide for expedited processing of training requests for familiarization training provided in order to transport the aircraft to the purchaser or recipient. The commenter also pointed out that the familiarization training that accompanies the purchase of a new aircraft is not always provided directly in conjunction with the ''delivery'' of the aircraft.

The Department agrees that training provided in connection with the sale of a particular aircraft, as long as such training is limited to familiarization training and not basic flight instruction, should be subject to expedited processing. Accordingly, the language of § 105.12(a)(2) has been amended to broaden the expedited processing category that deals with familiarization training. As revised, the section no longer limits familiarization training to pilots directly involved with the transport of an aircraft to the purchaser. Rather, any familiarization training in connection with the sale of a particular aircraft will qualify for expedited processing, regardless of whether the trainee will ultimately be responsible for transporting the aircraft to the purchaser.

3. Candidates Not Eligible for Expedited Processing

The process by which aliens not eligible for expedited processing will receive approval from the Department to be trained is a two-step process. It is generally similar to the process set forth in the proposed rule. As prescribed in this rule, the alien initially will be required to complete a detailed form requesting information regarding his or her background, including employment information and the source of funds being used to pay for the training. After this form is completed, it will be submitted to the Foreign Terrorist Tracking Task Force (''FTTTF'') on behalf of the alien by the Provider. Upon receiving this information, the FTTTF will conduct a detailed risk assessment of the alien. Assuming no potential risks are discovered, the Provider or the alien will be notified that the alien may now proceed to the Provider where he or she will receive the necessary fingerprinting instructions. After receiving this notice, the alien must have his or her fingerprints taken under the direct observation of a law enforcement or consular officer, or another specifically authorized individual.

After the fingerprints are taken, the candidate will receive a receipt that should be given to the Provider. The Provider then will notify the FTTTF electronically that the alien has completed the fingerprinting requirement.

After the Provider has furnished this notification, the Department will complete its final review of the risk presented by the alien. In most cases, the Department anticipates being able to authorize the commencement of training within a fraction of the 45-day notification period after submission of the candidate's fingerprints. If the Department subsequently uncovers a problem, the FTTTF will order the Provider to cease training, in accordance with section 113(b) of ATSA.

4. Training Dates

Concerning flexibility with regard to training dates, one recommendation was that candidates be given up to 13 months to commence training following approval, provided there were no material changes in the information provided to the Department. It was also suggested that candidates be permitted to receive approval for several different courses of training.

The Department has determined that sound security practices require that training take place at a time and place known to the Department and that training occur within a reasonable amount of time following the request. Nevertheless, the Department agrees that some additional flexibility within this program, the Flight Training Candidate Checks Program (''FTCCP''), would not be inconsistent with security interests. Hence, changes have been made to § 105.10(b)(4) to allow actual training to occur within 30 calendar days of the scheduled training date.

5. Fingerprinting

Several concerns were raised by commenters on the subject of the fingerprinting process. Among these was the concern that requiring candidates to go before local law enforcement as the primary method of collecting fingerprints would be unduly burdensome given the possibility of a waiting period of up to 45 days after the candidate arrives in the United States before training can commence.

The Department agrees that requiring candidates to arrive in the United States 45 days prior to training would pose many problems and serve as a significant deterrent to U.S. training for some candidates. The 45-day time frame for action by the Department after the submission of all required information was established by the statute. The Department does not anticipate requiring this much time to conduct the necessary checks and assessments for the vast majority of candidates. The anticipated future use of electronic fingerprinting equipment will permit the fingerprint processing (including all necessary checks) to be completed in most cases in less than 24 hours after the proper electronic submission of a set of prints.

Commenters also expressed a preference for collecting the required fingerprints at U.S. embassies and consulates before a candidate undertakes the expense of traveling to this country and being subject to a 45-day waiting period. This option may prove difficult given limitations on State Department diplomatic personnel. At the present time, embassies and consulates cannot accommodate candidates in this regard. The final rule, however, has been drafted to allow for fingerprints to be taken abroad at U.S. Government agencies as these options become more feasible in the future. In addition, the Department is negotiating to obtain access to a process that may allow candidates to comply with its fingerprint requirements through the Immigration and Naturalization Service and its successor organizational unit in the Department of Homeland Security Directorate of Border and Transportation Security (''INS''), which has the most advantageous system for the prompt electronic processing of fingerprints available in the government, to allow INS to take fingerprints at its Application Support Centers. It is anticipated that INS centers, including centers abroad, may become available for fingerprinting candidates in the future.

Suggestions that fingerprints be collected in electronic format are consistent with the Department's future plans but dependent upon the resources and technology available to the FTCCP.

Another comment questioned the purpose of the fingerprinting provisions. Commenters believed that the databases against which fingerprints would be checked contain, for the most part, information obtained from crimes committed in the United States. Accordingly, they said that such records check on a foreign national would rarely produce any meaningful results. In the past, this may have been true; however, Departmental fingerprint resources are expanding to include substantial amounts of relevant data—including foreign records—that justify the requirement. The requirement also will help to prevent identity fraud by training candidates.

As provided in § 105.13(c) and (f) of the regulation, the Department may authorize private individuals to take the required fingerprints on a case-by-case basis if it determines that such individuals possess the necessary training and will be able to ensure the integrity of the fingerprinting process. The Department anticipates that some Providers may seek to engage the services of dependable fingerprinting experts in order to facilitate the fingerprint submission process.

6. Weight Classes

One commenter inquired about the distinction made in section 113 between large aircraft (over 12,500 pounds, maximum certificated takeoff weight) and smaller aircraft. According to this commenter, ''the statement on the FAQ portion of [the] web page * * * leads [him] to believe that any foreign nationals and nationals of the United States desiring to attend training at any FAA approved and certificated flight school must register.''

At this time, section 113 applies only to training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Training in the operation of a smaller aircraft, however, is included under certain special circumstances. For example, some lines of jets, such as the Cessna Citation and the Lear, are manufactured with several different models with maximum certificated takeoff weights ranging above and below 12,500 pounds. A Provider must furnish the required notification if the Provider is furnishing training that would allow the candidate to fly an aircraft with a certificated takeoff weight of 12,500 pounds or more in accordance with applicable FAA regulations. This matter has been addressed in § 105.10(b)(1) of the rule.

Section 113 applies to students who: (1) Are not citizens or nationals of the United States, or who fall into another category designated by the Under Secretary of Transportation for Security; (2) wish to receive flight training in aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, or if the training would allow the candidate to fly a model of the same or substantially similar type of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more in accordance with FAA regulations; *and* (3) wish to receive flight training from an FAA regulated flight training provider that will lead to an FAA certification, rating, or other FAA-covered distinction, regardless of whether training occurs in the United States or abroad.

Another commenter stated that the rule prevents people from obtaining flight training in the United States, but does not prevent them from gaining the same skills in another country. The commenter also stated that training in the operation of a light aircraft, which is not subject to regulation under

section 113 of ATSA, might be sufficient to allow a potential terrorist to steer a large aircraft.

Because Congress has not, to date, chosen to include training on aircraft with a maximum certificated takeoff weight of less than 12,500 pounds within the scope of the statute, the Department does not have the discretion to expand the scope of this rule to cover training on such aircraft (except where training in such aircraft could lead to a type rating that might enable a candidate to fly a larger aircraft).

7. Dry Leasing

Various organizations commented on the subject of a common industry practice known as ''dry-leasing.'' In a ''dry-lease'' arrangement, an air carrier utilizes an established flight training facility's equipment and classrooms for its crews but provides its own instructors, curriculum, and record keeping. The Department has determined that, in certain circumstances, flight training providers participating in dry leases as lessors will be subject to the reporting requirements of section 113 even though they may not have direct control over who receives training. Many believe that it is inappropriate to impose these requirements on facility owners given that they do not have a direct relationship with the candidate who is to receive training.

The Department is sensitive to this concern. It is, however, the opinion of the Department and the FAA that, if U.S. flight training providers were able to dry lease simulator equipment to unregulated foreign providers, Congress's intent in passing ATSA would be frustrated.

8. The Web Site

The Department also has received various comments on the web-based system designed for initial flight training candidates to submit information. Among the more technical concerns was the observation that the Web site contains a number of information fields designated as ''optional.'' Commenters stated that the information required by the existing system is sufficiently extensive to obviate any need for ''optional'' data. Instead, it was recommended that the Department collect only the data needed to determine if the candidate poses a threat to aviation or national security.

It is not the Department's intention to make any portion of the FTCCP form ''optional.'' Nevertheless, some fields had to be made—at least provisionally—''optional'' from a functional perspective because the information might not be available or applicable to the individual filling out the form. For example, the form requests visa information, which some candidates may not possess at the time they submit their applications. In other cases, candidates filling out the form are asked for ''optional'' information about their Provider (*i.e.*, Provider's Tax ID number, student ID number and end date for training). Commenters note that this information should not be required, as it should already be available to the Department.

All applicable items on the form that can be answered by the candidate must be answered, and all have been selected as helpful in some manner to the necessary risk assessment. In most cases, the form cannot be submitted without complete information. Moreover, in filling out the form, candidates are required to give full and complete answers. Where any item of information sought from a candidate is available to the candidate, the FTCCP form's request for that item of information should not be considered ''optional.''

An industry commenter also found the link on the FTCCP Web site to the FAA's home page confusing and unnecessary. The commenter felt that Providers already would have registered with the FTCCP and that the candidate would be able to locate the Provider through that system without any need to go to the FAA's web page.

The Department believes that it is important to have a link to the FAA on the FTCCP website because the FAA maintains valuable information on this website (including lists of Providers) that will be important to users of the FTCCP Web site. Accordingly, with the advice and cooperation of the FAA, the Department has modified the Web site to eliminate confusion.

9. Relationship to Other Regulations

A commenter pointed out an apparent conflict between the regulations created under section 113 of ATSA and certain regulations established by the INS. Under ATSA, the Department has up to 45 days to notify a Provider not to train a candidate. According to the commenter, this could conflict with an INS regulation requiring individuals admitted to the U.S. under F–1 (student) visas to commence their courses of study within 30 days of arrival. *See* 8 CFR 214.2(f)(5)(i). The Department notes the potential conflict. If students were compelled by ATSA to wait for 45 days after arriving in the United States before beginning training, they might thereby be forced into violating the INS's 30-day requirement. In practice, however, no conflict is anticipated.

For the purposes of flight training and when feasible, the Department encourages students not eligible for expedited processing to arrive in the United States approximately two weeks before their scheduled training. In the vast majority of cases, this will be enough time to satisfy the fingerprint requirement and ensure that training begins when scheduled. It should also be noted that most individuals seeking aviation training independent of an employment contract or as part of a degree program will not have F–1 (student) visas.

A manufacturing association stated that ''any law or regulation which discourages legitimate pilot candidates from training in the U.S. will undoubtedly compromise aviation safety globally, and could harm U.S. citizens traveling abroad.'' While supportive of security measures generally, the association believes that flight training candidates could be more efficiently checked and monitored if the INS and the FTTTF were to combine and coordinate their regulations regarding data collection and processing. In particular, the association made reference to the INS's Student and Exchange Visitor Information System (''SEVIS'') and the Automated Biometric Identification System (''IDENT''). The Department notes that SEVIS and IDENT do not serve the same purpose as the FTCCP. Nevertheless, the Department is making every effort to coordinate the resources of the FTCCP and the INS in implementing this system.

The association also recommended that prospective flight students who were required to apply for M–1 (technical training) or J–1 (exchange visitor programs) visas should submit information regarding their intentions with regard to aviation training at that time. Visas are issued by the State Department; information and risk assessments generated by the FTCCP will be provided to the State Department, which may choose to use these assessments and information in visa determinations.

10. The FTCCP Help Line

Several commenters asked the Department to extend the hours of operation for the help line supporting this system because ''last minute changes in training schedules occur frequently and need to be addressed immediately.'' As noted above, the Department has made amendments to the rule to allow for some additional flexibility with regard to training dates.

Nevertheless, at this time, resource constraints prevent operation of the help line 24 hours per day, seven days per week.

11. Training

There was some confusion as to what constitutes ''training'' within the meaning of section 113 of ATSA. Accordingly, the Department, in consultation with the FAA, has modified § 105.10(a) of this rule to resolve this concern by including a definition of training that specifically includes ''ground school'' but excludes the provision of written materials, such as manuals.

12. Designations by the Under Secretary of Transportation for Security

Section 113 of ATSA provides that the Under Secretary of Transportation for Security may designate individuals who, in addition to aliens, would be subject to the notification requirements of the statute should they seek training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. As of this time, the Under Secretary has made no designations. Because this is a matter within the discretion of the Under Secretary, this rule states only that individuals designated by the Under Secretary will not be eligible for expedited processing.

13. Training by or on Behalf of the Department of Defense

Training by the Coast Guard or a component of the Department of Defense is not covered by section 113 of ATSA and is therefore not subject to this regulation. Likewise, training by Providers pursuant to contracts with the Department of Defense are not covered by the regulation. A question was raised as to whether training by subcontractors was within the ambit of the statute. The Department has added language to § 105.10(a)(2) to clarify that any training conducted at the behest of the Coast Guard or Department of Defense for a military purpose is not subject to this rule, regardless of whether the training itself is administered by a subcontractor.

Conclusion

Initial experience with the regulations implementing section 113 of ATSA generally has been positive. While the Department recognizes the burdens imposed on the aviation industry and individuals by ATSA, it is striving to produce a policy consistent with ATSA that will realize security goals while simultaneously protecting the commercial interests of the aviation industry.

Regulatory Procedures

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), the Attorney General, by approving this regulation, certifies that this rule will have a significant economic impact on a substantial number of small entities. As a result, the Department has prepared the following Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

Section 113 of ATSA requires the Department to conduct risk assessments to determine if providing flight training to certain aliens presents a risk to aviation or national security. The Department has no authority to waive this requirement.

The small entities affected by this rule include virtually all Providers furnishing flight instruction to aliens or other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Pursuant to section 113 of ATSA, Providers are prohibited from furnishing any instruction to such candidates until the Attorney General is able to provide a means for determining whether the candidate presents a risk to aviation or national security. The purpose of this rule is to provide a mechanism by which Providers may instruct candidates deemed by the Attorney General not to present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA.

Because section 113 of ATSA prohibits training of aliens without a prior risk assessment, the issuance of the rule will have a beneficial effect on small businesses because the rule will allow Providers to resume training for aliens determined by the Attorney General not to present a risk to aviation or national security. The only costs incurred by Providers complying with this regulation will be the minimal costs they incur when providing the required notification to the Attorney General. The Department is not aware of any studies or data detailing the effects of this regulation on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (''OMB'') for review.

The amendments made by ATSA prohibit the training by Providers of any alien without notification and clearance by the Attorney General. Notwithstanding the institution of the expedited processing procedures on June 14, 2002, this prohibition continues to impose a substantial economic burden on both Providers and air carriers utilizing alien pilots and flight engineers because aliens not eligible for expedited processing have been prohibited from receiving training since the enactment of the ATSA. These regulations are essential to providing a means to allow Providers and air carriers to function smoothly by allowing flight instruction for those candidates not provided relief through the publication of the interim final rule.

Paperwork Reduction Act of 1995

This information collection has been approved and assigned OMB Control Number 1105–0074. If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW, Washington, DC 20530.

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive

Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 28 CFR Part 105

Administrative practice and procedure, Airmen, Reporting and recordkeeping requirements, security measures, Terrorism.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is amended by revising part 105 to read as follows:

PART 105—SECURITY RISK ASSESSMENTS

Subpart A—[Reserved]

Subpart B—Aviation Training for Aliens and Other Designated Individuals

Sec.

105.10 Definitions, purpose, and scope.
105.11 Individuals not requiring a security risk assessment.
105.12 Notification for candidates eligible for expedited processing.
105.13 Notification for candidates not eligible for expedited processing.
105.14 Risk assessment for candidates.

Authority: Section 113 of Pub. L. 107–71, 115 Stat. 622 (49 U.S.C. 44939).

Subpart B

§ 105.10 Definitions, purpose, and scope.

(a) *Definitions.*

ATSA means the Aviation and Transportation Security Act, Public Law 107–71.

Candidate means any person who is an alien as defined in section 101(a)(3) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(3), or a person specified by the Under Secretary of Transportation for Security, who seeks training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more from a Provider.

Certificates with ratings recognized by the United States means a valid pilot or flight engineer certificate with ratings issued by the United States, or a valid foreign pilot or flight engineer license issued by a member of the Assembly of the International Civil Aviation Organization, as established by Article 43 of the Convention on International Civil Aviation.

Notification means providing the information required under this regulation in the format and manner specified.

Provider means a person or entity subject to regulation under Title 49 Subtitle VII, Part A, United States Code. This definition includes individual training providers, training centers, certificated carriers, and flight schools. Virtually all private providers of instruction in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more are covered by section 113 of ATSA (49 U.S.C. 44939) and are therefore subject to this rule. Providers located in countries other than the United States are included in this definition to the extent that they are providing training leading to a United States license, certification, or rating. Providers who ''dry-lease'' simulator equipment to individuals or entities for use within the United States are deemed to be providing the training themselves if the lessee is not subject to regulation under Title 49. Providers located in countries other than the United States who are providing training that does not lead to a United States pilot or flight engineer certification, or rating are not included in this definition. When the Department of Defense or the U.S. Coast Guard, or an entity providing training pursuant to a contract with the Department of Defense or the U.S. Coast Guard (including a subcontractor), provides training for a military purpose, such training is not subject to Federal Aviation Administration (FAA) regulation. Accordingly, these entities, when providing such training, are not ''person[s] subject to regulation under this part'' within the meaning of section 113 of ATSA.

Training means any instruction in the operation of an aircraft, including ''ground school,'' flight simulator, and in-flight training. It does not include the provision of training manuals or other materials, and does not include mechanical training that would not enable the trainee to operate the aircraft in flight.

(b) *Purpose and scope.*

(1) Section 113 of ATSA (49 U.S.C. 44939) prohibits Providers from furnishing candidates with training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more without the prior notification of the Attorney General. Training in the operation of smaller aircraft is considered to be training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more if the training would lead to a type rating allowing the candidate to operate a model of the same or substantially similar type of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more in accordance with FAA regulations. The purpose of this notification is to allow the Attorney General to determine whether such an individual presents a risk to aviation or national security before training may begin. The Department believes that it is not required to make a candidate wait for 45 days in order to begin training if the Department has completed its risk assessment. Therefore, after providing the required notification to the Attorney General as described in this subpart, the Provider may begin instruction of a candidate if the Attorney General has informed the Provider that the Attorney General has determined as a result of the risk assessment conducted pursuant to section 113 of ATSA that providing the training does not present a risk to aviation or national security. If the Attorney General does not provide either an authorization to proceed with training or a notice to deny training within 45 days after receiving the required notification, the Provider may commence training at that time. All candidates who are not citizens or nationals of the U.S. must show a valid passport establishing their identity to a Provider before commencing training.

(2) The Department may, at any time, require the resubmission of all or a portion of a candidate's training request, including fingerprints. If, after approving any training application, the Department determines that a candidate presents a risk to aviation or national security, it will notify the Provider to cease training. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(3) Providing false information or otherwise failing to comply with section 113 of ATSA may present a threat to aviation or national security and is subject to both civil and criminal sanctions. The United States will take all necessary legal action to deter and punish violations of this section.

(4) Providers should make every effort to ensure that approved training occurs on the dates specified in the training request at the location of the Provider who submitted the request. However, where scheduling problems or other exigent circumstances prevent this from happening, training may be rescheduled for any time within 30 days of the approved training dates without submitting an additional request. If any scheduling change of greater than 30 days occurs, a new request with the

corrected training dates must be submitted. Any proposed change in location or Provider must precipitate a new request, although Providers may employ the assistance of other Providers or their facilities for a portion of the training, provided that the substantial majority of the training occurs at location of the Provider who submitted the request.

§ 105.11 Individuals not requiring a security risk assessment.

(a) *Citizens and nationals of the United States.* A citizen or national of the United States is not subject to section 113 of ATSA unless otherwise designated by the Under Secretary of Transportation for Security. A Provider must determine whether a prospective trainee is a citizen or national of the United States prior to providing training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. To establish United States citizenship or nationality, the prospective trainee must show the Provider from whom he or she seeks training any of the following documents as proof of United States citizenship or nationality:

(1) A valid, unexpired United States passport;

(2) An original or government-issued certified birth certificate with a registrar's raised, embossed, impressed or multicolored seal, registrar's signature, and the date the certificate was filed with the registrar's office, which must be within 1 year of birth, together with a government-issued picture identification of the individual named in the birth certificate (the birth certificate must establish that the person was born in the United States or in an outlying possession, as defined in section 101(a)(29) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(29)));

(3) An original United States naturalization certificate with raised seal, INS Form N–550 or INS Form N–570, together with a government-issued picture identification of the individual named in the certificate;

(4) An original certification of birth abroad with raised seal, Department of State Form FS–545 or Form DS–1350, together with a government-issued picture identification of the individual named in the certificate;

(5) An original certificate of United States citizenship with raised seal, INS Form N–560 or Form N–561, together with a government-issued picture identification of the individual named in the certificate; or

(6) In the case of training provided to a federal employee (including military personnel) pursuant to a contract between a federal agency and a Provider, the agency's written certification as to its employee's United States citizenship/nationality, together with the employee's government-issued credentials or other federally-issued picture identification.

(b) *Exception.* Notwithstanding paragraph (a) of this section, a Provider is required to provide notification to the Attorney General with respect to any individual specified by the Under Secretary of Transportation for Security. Individuals specified by the Under Secretary of Transportation for Security will be identified by procedures developed by the Department of Transportation and are not eligible for expedited processing under § 105.12 of this part.

§ 105.12 Notification for candidates eligible for expedited processing.

(a) *Expedited processing.* The Attorney General has determined that providing aviation training to certain categories of candidates presents a minimal additional risk to aviation or national security because of the aviation training already possessed by these individuals or because of risk assessments conducted by other agencies. Therefore, the following categories of candidates are eligible for expedited processing, unless the candidate is an individual specified by the Under Secretary of Transportation for Security:

(1) Foreign nationals who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the FAA for aircraft with a maximum certificated takeoff weight of over 12,500 pounds, or who are currently employed and qualified by U.S. regulated air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Foreign nationals who are commercial, governmental, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who are receiving training on a particular aircraft in connection with the sale of that aircraft, provided that the training provided is limited to familiarization (*i.e.*, training required by one who is already a competent pilot to become proficient in configurations and variations of a new aircraft) and not initial qualification or type rating; or

(3) Foreign military or law enforcement personnel who must receive training on a particular aircraft given by the United States to a foreign government pursuant to a draw-down authorized by the President under section 506(a)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2318(a)(2)), if the training provided is limited to familiarization.

(b) *Notification.* Before a Provider may conduct training for a candidate eligible for expedited processing under paragraph (a) of this section, the Provider must submit the following information to the Department:

(1) The full name of the candidate;

(2) A unique student identification number created by the Provider as a means of identifying records concerning the candidate;

(3) Date of birth;

(4) Country of citizenship;

(5) Passport issuing authority;

(6) Dates of training; and

(7) The category of expedited processing under paragraph (a) of this section for which the candidate qualifies.

(c) *Commencement of training.* (1) The notification must be provided electronically to the Department by the Provider in the specific format and by the specific means identified by the Department. Notification must be made by electronic mail. Only notifications sent from an electronic mail address registered as a Provider will be accepted. Specific details about the mechanism for the notification will be made available by the Department and distributed through the FAA.

(2) After the complete notification is furnished to the Department, the Provider may commence training the candidate as soon as the Provider receives a response from the Department that the individual does not present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA and the foreign national candidate presents a valid passport establishing his or her identity to the Provider. Receipt of this response from the Department will be deemed approval by the Department to commence training.

(d) *Records.* When a Provider conducts training for a candidate eligible for expedited processing, the Provider must retain a copy of the relevant pages of the passport and other records to document how the Provider made the determination that the candidate was eligible. The Provider also must retain certain identifying records regarding the candidate, including date of birth, place of birth, passport issuing authority, and passport number. The Provider must be able to reference these records by the unique student identification number provided to the Department pursuant to this

section. Providers also are encouraged to maintain photographs of all candidates trained by the Provider. Such records must be maintained for at least three years following the conclusion of training by the Provider. The Provider must also be able to use the unique student identification number to cross-reference any other documentation that the FAA may require the Provider to retain regarding the candidate.

§ 105.13 Notification for candidates not eligible for expedited processing.

(a) A Provider must submit a complete *Flight Training Candidate Checks Program* (FTCCP) form and arrange for the submission of fingerprints to the Department in accordance with this section prior to providing flight training, except with respect to persons whom the Provider has determined, as provided in § 105.11 of this part, are not subject to a security risk assessment. A separate FTCCP form must be submitted for each course or instance of training requested by a candidate. A set of fingerprints must be submitted in accordance with this rule prior to the commencement of any training. Where a Provider enlists the assistance of another Provider in training a candidate, no additional request need be submitted, as long as the specific instance of training has been approved.

(b) The completed FTCCP form must be sent to the Attorney General via electronic submission at *https://www.flightschoolcandidates.gov.* The form must be submitted no more than three months prior to the proposed training dates. No paper submissions of this form will be accepted.

(1) In order to ensure that such electronic submissions are made by FAA certificated training providers, Providers must receive initial access to the system through the FAA. Providers should register through their local FAA Flight Standards District Offices. The FAA has decided that registration will be only by appointment. Upon registration, Providers will be sent (via electronic mail) an access password to use the system.

(2) Candidates may complete the online FTCCP form at *https://www.flightschoolcandidates.gov* to reduce the burden on the Provider. After the form has been completed by a candidate, it will be forwarded electronically to the Provider for verification that the candidate is a bona fide applicant. Verification by the Provider will be considered submission of the form for purposes of paragraph (a) of this section. To reduce the burden on the candidates, personal information needs only to be updated, rather than reentered, for each subsequent training request.

(c) Candidates must submit fingerprints to the Federal Bureau of Investigation (FBI) as part of the identification process. These fingerprints must be taken by, or under the supervision of, a federal, state, or local law enforcement agency, or by another entity approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division. Where available, fingerprints may be taken by U.S. government personnel at a United States embassy or consulate. Law enforcement agencies and U.S. diplomatic installations are not required to participate in this process, but their cooperation is strongly encouraged. Any individual taking fingerprints as part of the notification process must comply with the following requirements when taking and processing fingerprints to ensure the integrity of the process:

(1) Candidates must provide two forms of identification at the time of fingerprinting. In the case of aliens, one of the forms of identification must be the individual's passport. In the case of United States citizens or nationals designated by the Under Secretary of Transportation for Security, a valid photo driver's license issued in the United States may be submitted in lieu of a passport;

(2) The fingerprints must be taken under the direct observation of a law enforcement or consular officer, or another specifically authorized individual. Individuals other than law enforcement or consular officers will only be approved on a case-by-case basis by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division, upon a showing that they possess the necessary training and will ensure the integrity of the fingerprinting process;

(3) The fingerprints must be processed by means approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(4) The fingerprint submissions must be forwarded to the FBI in the manner specified by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(5) Officials taking fingerprints must ensure that any fingerprints provided to the FBI are not placed within the control of the candidate or the Provider at any time; and

(6) Candidates must pay for all costs associated with taking and processing their fingerprints.

(d) In accordance with Public Law 101–515, as amended, the Director of the FBI is authorized to establish and collect fees to process fingerprint identification records and name checks for certain purposes, including non-criminal justice and licensing purposes. In addition to the cost to the FBI for conducting its review, other fees may be imposed, including the cost of taking the fingerprints and the cost of processing the fingerprints and submitting them to the FBI for review. Because the total fee may vary by agency, the candidate must check with the entity taking the fingerprints to determine the applicable total fee. This payment must be made at the designated rate for each set of fingerprints submitted.

(e) In some cases, candidates seeking training from Providers abroad may be unable to obtain fingerprints. If a Provider located in a country other than the United States can demonstrate that compliance with the fingerprint requirement is not practicable, a temporary waiver of the requirement may be requested by contacting the Foreign Terrorist Tracking Task Force. The Director of the Foreign Terrorist Tracking Task Force will have the discretion to grant the waiver, deny the waiver, or prescribe a reasonable, alternative manner of complying with the fingerprint requirement for each Provider location.

(f) The 45-day review period by the Department will not start until all the required information has been submitted, including fingerprints.

§ 105.14 Risk assessment for candidates.

(a) It is the responsibility of the Department of Justice to conduct a risk assessment for each candidate. The Department has made an initial determination that providing training to the aliens in the categories set forth in § 105.12(a) of this part presents minimal additional risk to aviation or national security and therefore has established an expedited processing procedure for these aliens. Based on the information contained in each FTCCP form and the corresponding set of fingerprints, the Department will determine whether a candidate not granted expedited processing presents a risk to aviation or national security.

(b) After submission of the FTCCP form by the Provider, the Department will perform a preliminary risk assessment.

(1) If the Department determines that a candidate does not present a risk to aviation or national security as a result of the preliminary risk assessment, the candidate or the Provider will be notified electronically that the Provider may supply the candidate with the appropriate materials and instructions to complete the fingerprinting process described in § 105.13(c) and (d) of this part.

(2) If the Department determines that the candidate presents a risk to aviation or national security, when appropriate, it will notify the Provider electronically that training is prohibited.

(3) For each complete training request submitted by a Provider, the Department will promptly conduct an appropriate risk assessment. Every effort will be made to respond to a training request in the briefest time possible. In routine cases, the Department anticipates granting approval to train within a fraction of the 45-day notification period after receiving a complete, properly submitted request, including fingerprints. In the unlikely event that no notification or authorization by the Department has occurred within 45 days after the proper submission under these regulations of all the required information, the Provider may proceed with the training, upon establishing the candidate's identity in accordance with paragraph (c) of this section.

(c) Providers must ascertain the identity of each candidate. For candidates who are not citizens or nationals of the United States designated by the Under Secretary of Transportation for Security, a Provider must inspect the candidate's passport and visa to verify the candidate's identity before providing training. Candidates who are citizens or nationals of the United States must present the documentation described in § 105.11(a) of this part. If the candidate's identity cannot be verified, then the Provider cannot proceed with training.

(d) If, at any time after training has begun, the Department determines that a candidate subject to this section being trained by a Provider presents a risk to aviation or national security, the Department shall notify the Provider to cease training. A Provider so notified shall immediately cease providing any training to the person, regardless of whether or in what manner such training commenced or had been authorized. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(e) With regard to any determination as to an alien candidate's eligibility for training, when appropriate, the Department will inform the Secretary of State and the Secretary of Homeland Security as to the identity of the alien and the determination made.

Dated: February 6, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–3384 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–19–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA280–0390B; FRL–7451–1]

Interim Final Determination That State Has Corrected Rule Deficiencies and Stay and/or Deferral of Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rules 2020 and 2201.

DATES: This interim final determination is effective on February 13, 2003. However, comments will be accepted until March 17, 2003.

ADDRESSES: Mail comments to Ed Pike, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rules that are the basis for today's action at our Region IX office during normal business hours: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the submitted rules at the following locations:

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

San Joaquin Valley Unified APCD, 1990 E. Gettysburg, Fresno, CA 93726.

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

FOR FURTHER INFORMATION CONTACT: Ed Pike, EPA Region IX, (415) 972–3970 or send email to *pike.ed@epa.gov.*

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

I. Background

On July 19, 2001, we published a limited approval and limited disapproval of SJVUAPCD Rules 2020 and 2201 as adopted locally on September 17, and August 20, 1998, respectively, and submitted by the State on October 27, and September 29, 1998, respectively. 66 FR 37587 (July 19, 2001). We based our limited disapproval action on certain deficiencies in the submittal. This limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 19, 2001 (the effective date of our limited disapproval) and highway sanctions six months after the offset sanction is imposed, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On December 19, 2002, the SJVUAPCD adopted revisions to Rules 2020 and 2201 that were intended to correct the deficiencies identified in our limited disapproval action. On December 23, 2002, the State submitted these revisions to EPA.

In the Proposed Rules section of today's **Federal Register**, we have proposed approval of revised Rules 2020 and 2201 because we believe the revisions correct the deficiencies specified in our July 19, 2001, limited disapproval action.[1] Based on our proposed approval of the District's revisions to Rules 2020 and 2201, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 19, 2001, limited disapproval.

[1] The Proposed Rules section of today's **Federal Register** also contains our proposal to find that the approved California SIP is substantially inadequate because it cannot provide ''necessary assurances'' that no State law prohibits the State or districts from carrying out the Prevention of Significant Deterioration (PSD) or nonattainment New Source Review (NSR) portions of the SIP because California Health & Safety Code section 42310(e) exempts agricultural sources from permitting requirements. This additional action will require the State to provide the necessary assurances of authority required to implement the NSR program in the District as it applies to major agricultural sources.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination, or our proposed approval of revised Rules 2020 and 2201, we may take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then the sanctions and sanction clocks that were triggered by our July 19, 2001 limited disapproval will be permanently terminated on the effective date of a final rule approval of SJVUAPCD Rules 2020 and 2201.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SJVUAPCD Rules 2020 and 2201 based on our proposal to approve the State's SIP revisions as correcting the specified deficiencies that prompted the finding to initiate sanctions.

Because EPA has preliminarily determined that the SJVUAPCD has corrected the specified deficiencies prompting EPA's limited disapproval action, and has also proposed to find that a State-wide agricultural exemption must be corrected, we have determined that it is appropriate to relieve the SJVUAPCD from sanctions as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the SJVUAPCD's and State's submittal and, through our proposed approval of the District's corrections, is indicating that it is more likely than not that the SJVUAPCD has corrected the deficiencies specified in the limited disapproval. Therefore, it is not in the public interest to impose sanctions solely on the District when the SJVUAPCD has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the SJVUAPCD's revisions of Rules 2020 and 2201. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

The administrator certifies that this 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 does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 13, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: January 31, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–3417 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; DA 03–211]

Petition for Declaratory Ruling That Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for declaratory ruling.

SUMMARY: The Commission seeks comment on a petition for declaratory ruling from the Cellular Telecommunications & Internet Association (CTIA) asking the Commission to rule that wireline carriers are obligated to provide portability of their customers' telephone numbers to wireless carriers whose service area overlaps the wireline carriers' rate centers.

DATES: Comments are due on or before February 26, 2003, and reply comments are due on or before March 13, 2003

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. On January 23, 2003, the Cellular Telecommunications & Internet Association filed a Petition for Declaratory Ruling (Petition), asking the Commission to rule that wireline carriers are obligated to provide portability of their customers' telephone numbers to Commercial Mobile Radio Service (CMRS) providers whose service area overlaps the wireline carriers' rate centers. CTIA contends that some local exchange carriers (LECs) have narrowly construed the number portability obligations (as found at 47 CFR 52.23 and 52.31) with regard to CMRS providers, taking the position that portability is required only where CMRS providers have established a presence in the landline rate center where customers seek to port numbers from the LEC to CMRS providers.

2. We seek comment on the issues raised in the Petition. Interested parties may file comments on or before February 26, 2003. Reply comments are due March 13, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments and reply comments should be filed in the docket number, CC Docket No. 95–116.

3. This is a ''permit but disclose'' proceeding pursuant to § 1.1206 of the Commission's Rules. Ex parte presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, 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, parties should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.*

5. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should include the applicable 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, Vistronix, 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail to *qualexint@aol.com.*

6. The full text of the Petition and responsive comments will be available electronically on the Commission's ECFS under CC Docket No. 95–116. In addition, copies of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov.* This Public Notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cib/dro.* For further information concerning this proceeding, contact Jennifer Salhus, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310 (voice), Pam Slipakoff, at (202) 418–1500 (voice), or (202) 418–1169 (TTY).

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 03–3136 Filed 2–12–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 020603B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 9, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area is 11,741 metric tons (mt) as established by the interim 2003 harvest specifications of groundfish for the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,691 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 10, 2003.

Richard W. Surdi,

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

[FR Doc. 03–3593 Filed 2–10–03; 3:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 30
Thursday, February 13, 2003

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

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2003–14484]

RIN 2105–AD24

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its rules governing airline computer reservations systems (CRSs), 14 CFR part 255, by changing the rules' expiration date from March 31, 2003, to January 31, 2004. If we do not revise the expiration date, the rules will terminate on March 31, 2003. This proposed extension of the current rules would keep them in effect while we carry out our reexamination of the need for CRS regulations. We have tentatively concluded that most of the current rules should be maintained on a temporary basis because they may be necessary for promoting airline competition and protecting consumers, although the Department may determine in its reexamination that the need for most or all of the rules has ended. The Department has previously extended the rules from their original December 31, 1997, expiration date, most recently to March 31, 2003.

DATES: Comments must be submitted on or before February 28, 2003. Late filed comments will be considered to the extent possible.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with Docket Number OST–2003–4484) by only one of the following means:

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

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

(3) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. Comments must be filed in Docket OST–2003–14484.

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

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

Electronic Access: You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on ''search.'' On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on ''search.'' An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/index.html*.

SUPPLEMENTARY INFORMATION: We adopted rules governing CRS operations, 14 CFR part 255, because almost all airlines operating in the United States relied on the CRSs in marketing their airline services and each system was then controlled by one or more airlines or airline affiliates. 57 FR 43780, September 22, 1992. We found then that rules were necessary to ensure that each of the airlines and airline affiliates that controlled a system did not use the system to unfairly prejudice the competitive position of other airlines and to ensure that travel agents and their customers could obtain accurate and unbiased information from the systems. Our rules contained a sunset date to ensure that we would reexamine whether the rules remained necessary and, if so, whether they were effective.

As contemplated by the sunset date provision, we began a proceeding to reexamine whether the rules were necessary and effective by issuing an advance notice of proposed rulemaking. 62 FR 47606, September 10, 1997.

We later issued a supplemental advance notice of proposed rulemaking that asked the parties to update their comments. 65 FR 45551, July 24, 2000.

We recently issued a notice of proposed rulemaking where we tentatively concluded that most of the rules may remain necessary, at least in the short term, although we also proposed to eliminate some rules and to change others. 67 FR 69366, November 15, 2002. Our notice contains a lengthy and detailed discussion of the rulemaking issues, including our tentative findings on the relevant features of the airline distribution and CRS businesses. Comments and reply comments on our tentative findings on the need for CRS regulation and our proposals are due March 16 and May 15, 2003, respectively. 67 FR 72869, December 9, 2002.

By this notice we are proposing to extend the rules' expiration date to January 31, 2004, so that they will remain in force while we complete the rulemaking where we are reexamining the existing CRS rules. We have established a date for comments in that rulemaking proceeding that is only two weeks before the rules' current expiration date, and the reply comments are due several weeks after the current sunset date. We clearly cannot complete that rulemaking by March 31. Allowing the rules to sunset may be contrary to the public interest. Extending the sunset date will give us time to complete our reexamination of the rules as promptly as possible, so that the rules are updated to reflect current industry conditions and economic realities.

We have set a 15-day comment period so that we can publish a final decision on this proposal before the rules' current expiration date.

Notice of Proposed Rulemaking

Our notice of proposed rulemaking set forth our analysis and preliminary findings on the nature of the airline distribution and CRS businesses and on whether CRS rules appear necessary or

unnecessary. Important changes are occurring in the airline distribution system, especially the Internet's erosion of the airlines' dependence on the systems, and these developments may eliminate the need for many or all of our rules. 67 FR 69376–63977. Nonetheless, we tentatively concluded that at present rules should be maintained to protect airline competition and consumers. We have requested comment on whether we can eliminate some rules since airlines may have more bargaining leverage against the systems than we have found in past rulemakings, 67 FR 69368, and we will consider comments contending that additional rules can be eliminated or that the rules have become unnecessary.

Our notice of proposed rulemaking established a 60-day comment period and a 30-day reply comment period. Sabre and 18 other parties jointly asked us to extend the comment period by 60 days and the reply comment period by 30 days. We granted that request because providing the additional time was reasonable, due to the complexity of the issues, the length of our notice of proposed rulemaking, and the inclusion of three major holidays within the comment period. 67 FR 72869, December 9, 2002. Giving the parties adequate time for preparing comments will help us, since their comments should then be more thorough. The parties' petition to extend the comment period also included a request to extend the sunset date to September 30, 2003. We stated that we saw no reason to rule on that request and that we would consider that issue early this year. 67 FR 72870.

More recently Sabre filed a petition for a fact hearing. Sabre alleged that our notice of proposed rulemaking did not set forth an adequate factual basis for our proposals. We will address Sabre's request in a separate notice.

Proposed Extension of the Rules' Sunset Date

We have previously extended the sunset date five times, most recently to March 31, 2003. 62 FR 66272, December 18, 1997; 64 FR 15127, March 30, 1999; 65 FR 16808, March 30, 2000; 66 FR 17352, March 30, 2001; and 67 FR 14846, March 28, 2002.

We are again proposing to extend the expiration date for our CRS rules, to January 31, 2004, in order to maintain the rules while we complete our reexamination of the need for the rules and their effectiveness. The time needed for the parties' preparation of comments on our proposed rules, for our consideration of their comments and drafting of a final rule, and for the review by the Office of Management and Budget (''OMB'') will prevent us from issuing revised final rules by March 31, 2003. By changing the sunset date, we would preserve the status quo until we determine which rules, if any, should be adopted. We have tentatively determined that doing so would be in the public interest.

As noted above, in our notice of proposed rulemaking we tentatively concluded that the rules appear to be necessary, at least in the near term, to protect airline competition and consumers against potentially unreasonable and unfair CRS practices, despite the on-going changes in airline distribution and the CRS business, although those changes may well eliminate the need for CRS rules in the longer term. Furthermore, our obligation under 49 U.S.C. 40105(b), formerly section 1102(a) of the Federal Aviation Act, then codified as 49 U.S.C. 1502(a), to act consistently with the United States' obligations under bilateral air services agreements may justify a short-term continuation of the rules. 67 FR 69384. We may decide in our rulemaking that the elimination of all or most of the rules would be consistent with our bilateral agreement obligations. We have asked the parties to comment on that issue. *See, e.g.*, 67 FR 69399.

In addition, any expiration of the current rules could be disruptive, since systems, airlines, and travel agencies have been conducting their operations in the expectation that each system will comply with the rules. Our preliminary regulatory impact assessment tentatively concluded that the continuation of the existing rules would not impose substantial costs on the systems. 67 FR 69421. If the rules are effective, they may also lower the costs for airline participants and increase the efficiency of travel agency operations. Thus, we tentatively believe that we should maintain the CRS rules in effect for 10 more months, during which we intend to make our final decision on whether CRS rules should be readopted and, if so, with what changes. As stated above, we recognize the importance of adopting final rules that reflect current conditions in the CRS and airline distribution businesses, and we intend to complete our reexamination of our rules as soon as reasonably possible.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. The proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Maintaining the current rules for an additional 10 months should not, however, burden the systems with significant costs. Our notice of proposed rulemaking includes a preliminary regulatory assessment that explains why the existing rules do not appear to impose a significant burden on the systems or their users. 67 FR 69418–69423. We think the regulatory assessment included in our notice of proposed rulemaking should be applicable to our proposal to extend the rules' sunset date and that no new regulatory impact statement appears to be necessary. However, we will consider comments from any party on that analysis before we make this proposal final.

This rule would not impose unfunded mandates or requirements that would have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

This notice of proposed rulemaking sets forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule.

Our notice of proposed rulemaking on our overall reexamination of the CRS rules contains a tentative regulatory flexibility analysis on the rules' impact. That analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we adopt that analysis as our tentative regulatory flexibility statement. We will consider any comments filed on that analysis in response to this proposal.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other Federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. chapter 35.

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not limit the policymaking discretion of the States. Nothing in this proposal would directly preempt any State law or regulation. We are proposing this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. We believe that the policy set forth in this proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. Comments on these conclusions are welcomed and should be submitted to the docket.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and record-keeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255 as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

255.12. Termination.

The rules in this part terminate on January 31, 2004.

Issued in Washington, DC on February 7, 2003, under authority delegated by 49 CFR 1.56a(h)2.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–3606 Filed 2–12–03; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA086–SIP; FRL –7450–8]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority in section 110(k)(5) of the Clean Air Act (CAA or Act), EPA is proposing to find that the California State Implementation Plan (SIP) is substantially inadequate for all nonattainment air pollution control districts in the State and for all attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program because the State cannot provide ''necessary assurances'' that it or the districts have authority to carry out the applicable nonattainment New Source Review (NSR) or PSD portions of the SIP. Specifically, sections 110(a)(2)(C) and (I) and 172 of the Act require the applicable implementation plan to contain a program for issuing permits to major stationary sources of air pollution pursuant to parts C and D of title I of the Act. In addition, section 110(a)(2)(E) requires that each SIP provide necessary assurances that the State or districts have adequate authority to carry out the SIP and that no state law prohibits the State or districts from carrying out any portion of the SIP. The California SIP does not meet these requirements because California Health & Safety Code section 42310(e) exempts new and modified major agricultural sources from all permitting, including PSD and NSR permitting otherwise required by parts C and D of title I of the Act. If EPA finalizes this proposed finding of substantial inadequacy, California will be required to amend its state law to eliminate the permitting exemption as it pertains to major agricultural sources of air pollution and submit the necessary assurances by November 23, 2003 to support an affirmative finding by EPA under section 110(a)(2)(E). If the State fails to submit the necessary assurances of authority or if EPA disapproves any such submittal in response to a final SIP call, sanctions will apply statewide pursuant to section 179 of the Act.

DATES: Comments must sent by March 17, 2003. EPA will respond to comments in its final action on this proposal.

ADDRESSES: Send comments to: Gerardo Rios, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can review and copy the existing SIP rules at EPA's Region 9 office from 8:30 am to 5 pm, Monday-Friday. A reasonable fee may be charged for copying.

Copies of the SIP rules are also available for inspection at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Please call Gerardo Rios, EPA Region IX, at (415) 972–3974 or send e-mail to *rios.gerardo@epa.gov*.

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

Table of Contents

I. Background
- A. What action is EPA proposing?
- B. How does the California Health & Safety Code exemption affect the adequacy of the SIP?
- C. How can California correct the SIP inadequacy?
- D. Are individual districts required to revise approved SIP rules?
- E. What are the consequences if we finalize this proposed finding of substantial inadequacy?

II. Statutory and Executive Order Reviews
- A. Executive Order 12866, Regulatory Planning and Review
- B. Regulatory Flexibility Act
- C. Unfunded Mandates Reform Act
- D. Executive Order 13132, Federalism
- E. Executive Order 13175, Coordination with Indian Tribal Governments
- F. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
- G. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
- H. National Technology Transfer and Advancement Act

I. Background

A. What Action Is EPA Proposing?

CAA section 110(k)(5) provides that whenever EPA finds the applicable implementation plan ''is substantially inadequate to attain or maintain the relevant national ambient air quality

standard, * * * or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.'' EPA today proposes to find that the approved California SIP is substantially inadequate because it cannot provide ''necessary assurances'' that the State or districts have the authority to issue permits under their PSD and nonattainment NSR SIPs to all major sources because Health & Safety Code section 42310(e) exempts major agricultural stationary sources from these permitting requirements.

B. How Does the California Health & Safety Code Exemption for Agricultural Sources Affect the Adequacy of the SIP?

For areas that fail to meet the National Ambient Air Quality Standards (NAAQS), section 110 and title I, part D of the Act require SIPs to contain a program for issuing ''permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173.'' CAA section 172(c)(5). EPA regulations establish that an approvable SIP program for issuing preconstruction permits ''shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment * * *.'' 40 CFR 51.165(a)(2). Neither the Act nor EPA regulations allow any exemptions from permitting for new major sources, and our regulations contain only limited exemptions for major modifications. 40 CFR 51.165(a)(1)(v)(C).

For areas that attain the NAAQS, section 110 and title I, part C of the CAA require a PSD preconstruction permitting program for new and modified major stationary sources. *See, e.g.*, CAA section 165. EPA regulations also set forth the requirements for PSD permitting programs. 40 CFR 51.166. Like nonattainment NSR, neither the Act nor the PSD regulations contain exemptions from permitting for new major sources, and our regulations provide only limited ones for major modifications. *See* 40 CFR 51.166(b)(2)(iii).

California Health & Safety Code section 42310(e) exempts from all air permitting ''equipment used in agricultural operations in the growing of crops or the raising of fowl or animals.'' As a result, the State and districts cannot issue permits to these agricultural sources, even if they are major stationary sources under the Act. The CAA NSR and PSD permitting requirements do not provide for this exemption.

Section 110(a)(2)(E) of the Act requires the State to provide assurances that it has ''adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof) * * *.'' California Health & Safety Code section 42310(e) effectively prohibits the State and districts from fully implementing the SIP-approved NSR and PSD permitting programs for agricultural sources. Thus, the SIP does not comply with the requirement for the State to have adequate legal authority to fully implement the SIP. Therefore, the SIP for nonattainment areas and approved PSD programs in attainment areas in California is substantially inadequate and must be corrected.

C. How Can California Correct the SIP Inadequacy?

To correct the deficiency, EPA recommends that the State legislature amend Health & Safety Code section 42310(e) to remove the exemption as it applies to major agricultural sources. The State is already subject to a sanctions clock based on the Notice of Deficiency (NOD) that EPA issued on May 22, 2002, 67 FR 35990, with respect to the State's title V operating permits program. In that NOD, EPA explained that California Health & Safety Code section 42310(e) improperly exempted major agricultural sources from CAA title V permitting. The NOD stated: ''EPA has determined that significant action in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution.'' A similar correction with respect to NSR and PSD permitting is necessary to comply with this proposed action.

The May 2002 NOD notes that the title V regulations instruct EPA to apply sanctions in accordance with section 179(a) of the Act if California has not corrected the deficiency (removal or revision of the permitting exemption in Health and Safety Code section 42310(e)) prior to November 23, 2003 (18 months after the effective date of the NOD). The State legislature is required to take essentially the same action (*i.e.*, remove the agricultural permitting exemption for major stationary sources) to correct the SIP inadequacy discussed in this proposed action.

If EPA finalizes this SIP call and determines the State has failed to submit the necessary assurances addressing the deficiency by the required date, a sanctions clock would start for this SIP deficiency in accordance with section 179 of the Act. EPA proposes that if EPA determines the State fails to submit the necessary assurances to address the SIP call by November 23, 2003, or if EPA subsequently finds the correction does not adequately provide such assurances, sanctions would apply as specified under 40 CFR 52.31.[1]

D. Are Individual Districts Required To Revise Approved SIP Rules?

EPA is not calling for specific revisions to district rules at this time. We note that several districts may have exemptions for agricultural sources in their local SIP-approved rules.[2] We believe it is reasonable to wait for the State legislature to correct Health and Safety Code section 42310(e) first so that it is clear whether any such exemptions at the district level represent authority problems under section 110(a)(2)(E).[3] EPA, nonetheless, encourages districts to evaluate their SIP-approved rules to ensure that exemptions do not create potential authority problems. Once the State acts to address Health and Safety Code section 42310(e), EPA will work with the districts to determine if further rulemaking is necessary to address specific local deficiencies that remain after the State law change.

[1] EPA is using its authority in section 110(k)(5) to set a deadline that is less then 18 months. We believe the November 23, 2003, deadline is reasonable because action by this date is otherwise required to address the title V problems noted above.

[2] EPA has conducted a preliminary search for local rules exempting agricultural sources from NSR or PSD permitting requirements. The following districts may have one or more exemptions currently approved into the SIP: Bay Area, Butte, County, El Dorado, Feather River, Medocino, Placer, Sacramento and Yolo-Solano. As noted below, EPA will continue to evaluate the rules for all of the districts to identify more accurately any potentially problematic rule provisions in the SIP.

[3] We note that certain local exemptions are tied to exemptions such as Health and Safety Code section 42310(e) provided under State law. Removal of the exemption at the State level could automatically resolve authority problems at the district level. In addition, if the State legislature were to not only revise the language of Health and Safety Code section 42310(e) but also to clarify that any such local exemptions were also void, no further action by the districts may be necessary., Depending on the action at the State level, EPA may be able to make the required finding under 110(a)(2)(E) that the authority to carry out the permitting programs is not prohibited by any State or local law.

E. What Are the Consequences if We Finalize This Proposed Finding of Substantial Inadequacy?

If EPA finalizes this SIP call, as proposed, the State would need to submit to EPA a SIP revision providing the necessary assurances that it (or the districts) can fully implement the required NSR and PSD programs within the State. If the State fails to submit the required assurances or if EPA finds the submittal incomplete or disapprovable, sanctions would apply in accordance with CAA sections 179(a) and (b) and EPA regulations at 40 CFR 52.31. There are two types of sanctions: highway funding sanctions (section 179(b)(1)) and offset sanctions (section 179(b)(2)). Pursuant to our regulations at 40 CFR 52.31, offset sanctions will apply 18 months following a finding by EPA under section 179(a); highway funding sanctions would apply six months later.

II. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has historically exempted from Executive Order 12866 regulatory actions governing revisions to SIPs. It has been determined that today's proposed call for revisions to the SIP would not, in any event, be a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

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

Today's proposed SIP call would not establish requirements applicable to small entities. Instead, it would require the State of California and several local air districts to develop, adopt, and submit SIP revisions that would provide the necessary assurances that the applicable NSR and PSD programs do not exempt major agricultural sources.

This rule will not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities. Therefore, the Administrator certifies that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

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

EPA has determined that the action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed action will require the State of California and several local air districts to revise laws and regulations governing exemptions for agricultural sources. This requirement, even if considered a federal mandate,[4] would not result in aggregate costs over $100 million to either the state or local districts. In addition, this proposed rule, if finalized, will not significantly or uniquely impact small governments.

D. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not impose a new enforceable duty on the State (see *infra* note 1), and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

[4] It is unclear whether a requirement to submit a SIP revision would constitute a federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

E. Executive Order 13175, Coordination With Indian Tribal Governments

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

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

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

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

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

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

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

H. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, New Source Review, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 31, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–3416 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA280–0390A ; FRL–7450–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD or District) revised permit exemption and new source review (NSR) rules, Rules 2020 and 2201, respectively, for stationary sources. The District has revised Rules 2020 and 2201 and submitted them to EPA as a revision to the California State Implementation Plan (SIP). The revisions address deficiencies identified in our July 19, 2001 limited approval and limited disapproval of the previous version of these rules.

EPA is also publishing in today's **Federal Register** an interim final determination that the District has corrected the deficiencies noted in the limited disapproval. The interim final determination will stay the sanctions clock triggered by the July 19, 2001 limited approval/limited disapproval of the previous versions of Rules 2020 and 2201. If EPA takes final action to approve these rules, the sanctions clock for this action will be stopped.

DATES: Comments must be sent by March 17, 2003. EPA will respond to comments in a final action on this proposed approval.

ADDRESSES: Send comments to: Ed Pike, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can review and copy the submitted Rules 2020 and 2201, the existing SIP rules, and EPA's Technical Support Document (TSD) at EPA's Region 9 office from 8:30 am to 5 pm, Monday-Friday. A reasonable fee may be charged for copying.

Copies of the submitted Rules are also available for inspection at the following locations:

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

San Joaquin Valley Unified APCD, 1990 E. Gettysburg Avenue, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Please call Ed Pike at (415) 972–3970 or send e-mail to *pike.ed@epa.gov.*

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

Table of Contents

I. What is EPA proposing to approve?
II. Background
A. History of SJVUAPCD NSR SIP revisions.
B. Deficiencies in SJVUAPCD NSR regulations and required action.
C. How has SJVUAPCD corrected these rule deficiencies?
1. Offset equivalency
a. What is the basis for allowing an annual offset equivalency demonstration?
b. What is the offset equivalency tracking system in Rule 2201 and how does it satisfy the deficiency noted in the limited disapproval?
c. Does the tracking system replace applicable NSR requirements?
d. What are the requirements for being an enforceable emission reduction?
e. What kinds of emission reductions may be creditable?
f. Are pre-1990 emission reductions creditable?
2. Agricultural exemption
a. How has the District corrected this deficiency?
b. How is EPA addressing the State exemption?
3. Lowest Achievable Emission Rate Applicability
D. Summary
III. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Regulatory Flexibility Act

C. Unfunded Mandates Reform Act
D. Executive Order 13132, Federalism
E. Executive Order 13175, Coordination with Indian Tribal Governments
F. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
G. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
H. National Technology Transfer and Advancement Act

I. What Is EPA Proposing To Approve?

EPA today proposes to approve revisions to the California SIP by incorporating the submitted revised versions of District Rules 2020 and 2201 into the SIP. If EPA finalizes this proposed action after considering public comment, the submitted versions of Rules 2020 and 2201 will replace the existing versions of those rules currently in the SIP for the San Joaquin Valley Unified Air Pollution Control District, which includes the following counties: Fresno, Kern,[1] Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

The submitted versions of Rules 2020 and 2201 were adopted by the District on December 19, 2002, and submitted to EPA by the California Air Resources Board (CARB) on December 23, 2002. EPA found the submittal to be complete on December 30, 2002. EPA's Technical Support Document (TSD) accompanying this proposed action describes the portions of Rules 2020 and 2201 that were revised.

II. Background

A. History of SJVUAPCD NSR SIP Revisions

District Rule 2201 specifies the requirements for the review of new and modified stationary sources and outlines the requirements to be included in authorities to construct (ATCs) and permits to operate (PTOs). Rule 2020 specifies the emission units that are not required to obtain ATCs or PTOs. Together, these rules define the applicability and requirements of the District's NSR program.

On July 19, 2001, EPA finalized a limited approval and limited disapproval of previous versions of Rules 2020 and 2201.[2] 66 FR 37587. EPA's final action in July 2001 was a limited disapproval because three provisions in the previous versions of the rules did not comply with the CAA and were not approvable. Because of these three deficiencies, the rules failed to satisfy the requirements of sections 172(c)(5) and 173 of the CAA, EPA finalized a limited disapproval of the previous version of Rules 2020 and 2201 under section 110(k)(3) and part D of CAA title I. EPA's final limited disapproval in July 2001, triggered the sanctions (the ''sanctions clock'') in section 179 of the CAA.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k)(3) for an area designated nonattainment because of the submission's failure to meet one or more of the elements required by the Act, the Administrator is required to apply one of the sanctions set forth in section 179(b) if the deficiency has not been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: limitations on projects and grants for which the Department of Transportation may approve federal highway funding (''highway sanction'') and increasing the NSR offset requirements (''offset sanction''). By regulation, EPA established that we will apply the offset sanction 18 months after rule disapproval and the highway sanction 6 months after the offset sanction. 40 CFR 52.31. The CAA also provides that final disapproval under section 110(k)(3) triggers the federal implementation plan (FIP) requirement. CAA Section 110(c). The 18 month period referred to in section 179(a) and 40 CFR 52.31, began on August 20, 2001, which was the effective date of EPA's final limited disapproval, and will expire on February 20, 2003.

With the limited disapproval, the July 19, 2001 action simultaneously finalized a limited approval of Rules 2020 and 2201. EPA finalized the limited approval under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to prescribe regulations necessary to further air quality by strengthening the SIP. Because Rules 2020 and 2201 strengthened the District's NSR program despite the three cited rule deficiencies, EPA's limited approval incorporated Rules 2020 and 2201 into the SIP subject to the section 179 mandatory sanctions triggered by EPA's limited disapproval.

B. Deficiencies in SJVUAPCD NSR Regulations and Required Action

EPA's limited disapproval cited three deficiencies in the previous versions of Rules 2020 and 2201. First, EPA determined that the previous version of Rule 2201 was not approvable because its offset tracking equivalency system failed to contain a mandatory remedy. We also found the previous version of Rule 2201 deficient because it did not require all sources making modifications that result in a significant increase in emissions to meet the Lowest Achievable Emission Rate (LAER). Finally, we concluded the previous version of Rule 2020 was not approvable because section 4.5 of the rule exempted agricultural sources from permitting. For a more detailed discussion of these three rule deficiencies please see our final limited approval and limited disapproval, 66 FR 37587 (July 19, 2001), and the accompanying Technical Support Document dated August 30, 1999 (''1999 TSD'').

EPA's July 2001 limited disapproval informed the District that the following actions were required to correct the rule deficiencies:

1. The District must revise Rule 2201 to provide a mandatory, enforceable and automatic remedy to cure any annual shortfall and, in the future, prevent shortfalls in the District's New Source Review Offset Equivalency Tracking System.
2. The District must remove the agricultural exemption from District Rule 2020.
3. The District must revise Rule 2201 to ensure that all sources meet LAER[3] if they are allowed to make a significant increase in their actual emissions rate.

See 66 FR at 37590.

C. How Has SJVUAPCD Corrected These Rule Deficiencies?

1. Offset Equivalency

a. What is the basis for allowing an annual offset equivalency demonstration?

Section 173(a)(1)(A) provides that new and modified stationary sources seeking to commence operating in a nonattainment area must be required by the state permitting program to obtain sufficient offsetting emission reductions (''offsets'') such that, ''the total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources * * * so as to represent reasonable further progress * * *.'' In our July 19, 2001 final action, we explained that this statutory focus on total regional emissions supported the approval of a District offset program that

[1] For more information on the District and its jurisdiction see 64 FR 51493 (Sept. 23, 1999).

[2] The previous version of Rule 2020 acted upon in the July 19, 2001 final action was the version adopted by the District on September 17, 1998. The previous version of 2201 was the version adopted by the District on August 20, 1998.

[3] Many California Districts use the term ''Best Available Control Technology'' (BACT) with a definition equivalent to LAER. Please see the TSD for additional information on the District's definition of BACT.

ensured equivalency with the federal requirements on an annual aggregate basis. 66 FR at 37588–89.[4] Thus, we explained that an offset equivalency tracking system with a requirement for a mandatory and enforceable remedy for any shortfall would comply with the requirements of the Act. *Id.* at 37588.[5]

The goal of the District's offset equivalency tracking system, therefore, is to show that, notwithstanding certain differences between the District and federal NSR programs, the District's rules would require offsets that are, in the aggregate, equivalent to offsets required under the federal program.[6] In the 1999 TSD for the proposed limited approval/limited disapproval, 65 FR 58252 (Sept. 28, 2000), we identified areas where the District rules may require fewer offsets than the federal NSR regulations and directed the District to track these sources of potential shortfalls. *See* 1999 TSD at 15–17; *see also* 66 FR at 37588 n.3.[7] In general these differences fall into two categories: (1) Differences in the quantity of offsets required in the first instance and (2) differences in the way the value of emission reductions used to satisfy offset requirements is calculated. Thus, to demonstrate equivalency, the District's rule needs to track and report on both of these categories of differences. Likewise, if the remedy is to cure and prevent future shortfalls, the rule must be tailored to address the root cause of the shortfalls.[8]

b. What is the offset equivalency tracking system in Rule 2201 and how does it satisfy the deficiency noted in the limited disapproval?

Section 7.0 of the revised District Rule 2201 (adopted Dec. 19, 2002) provides for a system to track and demonstrate the equivalency of the District's NSR offset requirements to the offset requirements of the federal NSR program. There are three basic components of the tracking system provisions. Section 7.1 outlines the parameters to be tracked by the District on an annual basis. Sections 7.2 and 7.3 describe how equivalency is to be demonstrated each year. Section 7.4 describes the remedies to take effect to cure any annual shortfall and prevent future shortfalls. While the District action required in EPA's final limited approval/limited disapproval was ''to provide a mandatory and enforceable remedy to cure any annual shortfall and, in the future prevent shortfalls,'' as noted above, the provisions for tracking and demonstrating equivalency are critical for ensuring that the remedy is applied automatically and addresses the cause for the shortfall. Thus, each of the components provided in section 7.0 is necessary to ensure the remedy provision satisfies this deficiency.

The District's tracking system requires two demonstrations to be included in the annual report. First, the District is to track and compare on an annual basis the aggregate quantity of offsets required under Rule 2201 and the quantity of offsets that would have been required under the federal NSR provisions. Rule 2201, section 7.2.1. This comparison will show whether the District rule requires as many offsets as the federal rules, regardless of the ''creditable'' value of the actual emission reduction used to meet the offset requirements. Should there be a shortfall the rule provides for two stages of remedy. The District may first retire unused emission reduction credits that meet federal requirements to make up for the shortfall. Rule 2201, section 7.4.1.1. If sufficient emission reduction credits are not available, the District must apply federal offset requirements to all permits issued after the annual demonstration deadline until the District amends its NSR provisions to require equivalent offsets. Rule 2201, section 7.4.1.2. These remedies reasonably address the source of the demonstrated shortfall and satisfy our requirement for a mandatory, enforceable and automatic remedy.

The second piece of the annual demonstration addresses whether the District's overall approach is equivalent, including the District's decision not to adjust the creditable value of emission reductions at time of use (''surplus adjusting'' or ''discounting'' at time of use). The District will determine the creditable surplus value of the emission reductions actually used each year by applying federal creditability criteria, and compare this adjusted aggregate number to the number of offsets that would have been required under the federal NSR program. The District shall provide an annual report to demonstrate that, in the aggregate, it is achieving an equivalent number of creditable emission reductions as would be achieved under the federal program. Rule 2201, section 7.2.2. If a shortfall is found in this comparison, and it is not the result of different offset requirements identified in the first piece of the demonstration described above, the cause of the shortfall must be related to differences in the way the District determines the creditable value. As a result, the remedy for such a shortfall is to apply federal creditability criteria, including discounting at time of use. In the event of a shortfall in this portion of the annual demonstration, section 7.4.2 will automatically require all ATCs issued after the annual report deadline to ensure emission reductions used to satisfy offset requirements are creditable and that the surplus value of those reductions is determined at the time of ATC issuance. EPA proposes to conclude that this remedy reasonably meets the EPA requirement for a mandatory, enforceable and automatic remedy to cure any shortfall and prevent future shortfalls.

c. Does the tracking system replace applicable NSR requirements?

The tracking system does not replace the applicable requirements of Rule 2201. It is important to clarify that while the tracking system allows EPA to approve the District NSR provisions of Rule 2201 notwithstanding specific differences between the District's rules and federal NSR requirements, nothing in section 7.0 of the rule relieves sources from the obligation to comply with the other requirements of Rule 2201. For example, sources must continue to obtain offsets in compliance with section 4.5 of Rule 2201. Emission reductions used to meet these offset requirements must continue to be ''real, enforceable, quantifiable, surplus, and permanent.'' Rule 2201, section 3.2.1. Therefore, a source could not rely on the annual aggregate demonstration to cure the use of unenforceable (or otherwise non-creditable) emission reductions to meet the District's offset requirements. Such use would be a violation of the

[4] We relied on this statutory interpretation, in part, in approving the RECLAIM Trading Program in the South Coast Air Quality Management District. *See* 61 FR 64291 (Dec. 4, 1996).

[5] We have also noted the ability of States to implement accounting or tracking systems to demonstrate annual aggregate equivalency with federal requirements for surplus adjusting. *See* Memo from John S. Seitz, Dir., Office of Air Quality Planning and Standards (OAQPS) to David Howekamp, Dir., Region IX Air and Toxics Div. (Aug. 26, 1994) (''1994 Seitz Memo'').

[6] *See* 65 FR 58252, 58253 (Sept. 28, 2000) (''The District committed to demonstrate equivalency by calculating on an annual basis the quantity of offsets that would be required under federal nonattainment NSR regulations (*i.e.* the quantity of offsets that meet all Clean Air Act requirements) and the quantity of offsets required under the District program.'').

[7] For example, the District does not require sources to offset the entire quantity of emissions increases (Rule 2201, section 4.5) and, in certain situations, does not impose the minimum offset ratio required under the CAA (Rule 2201, section 4.8).

[8] In our final limited approval/limited disapproval, we noted that the District had identified different remedies to address potential shortfalls including ''using EPA requirements for calculating offset baselines and quantities'' (which could address shortfalls related to differences in the quantity of offsets required in the first instance) and ''using credits that are surplus at the time of use'' (which could address shortfalls related to differences in the valuation of emission reductions used to meet offset requirements). *See* 66 FR at 37590.

District's rules and may be subject to enforcement by the District or EPA even if the District is otherwise required to make up for this shortfall through the offset tracking system.

Major sources (and major modifications) should therefore ensure that the emission reductions used to satisfy offset requirements meet federal creditability criteria.[9] The one potential exception is with regard to the federal requirement to determine the surplus value of an emission reduction at time of use. Rule 2201 allows the surplus value to be determined at the time the ATC for an emission reduction or the application for an emission reduction credit (ERC) is deemed complete. Rule 2201, section 3.2.2. With our final approval of the District tracking system, EPA will allow the District to forgo the federal surplus adjusting requirement and sources will be able to rely on emission reductions EPA might otherwise not consider surplus. This flexibility, however, is only available for sources covered by the District's tracking system. The tracking system only covers permits for sources with ATC applications that were not deemed complete before August 20, 2001. *See* Rule 2201, section 7.3.1. *Sources with ATC applications deemed complete before August 20, 2001 must meet all federal creditability criteria including the requirement that the surplus value of emission reductions be discounted at time of use (i.e., at time ATC is issued).*

Because the criteria for determining the creditability of an emission reduction will continue to be important both for sources seeking permits and for the District in implementing the tracking system,[10] the following sections discuss particular creditability issues that have recently been raised by the District and others.

d. What are the requirements for being an enforceable emissions reduction?

CAA sections 173(a) and (c)(1), require emission reductions to be federally enforceable before a construction permit may be issued, and in effect and enforceable by the time a new or modified source commences operation. EPA has explained that the District can make emission reductions enforceable by modifying the permit for the source reducing emissions or by obtaining SIP approval of the rules that result in the emission reduction. EPA has also explained that while the emission reduction need not occur before the new or modified source commences operation, the specific emission reduction credits to be used by the source under review must be identified and enforceable before the authority to construct may be issued. *See* 57 FR at 13553; *see also* Memo from John S. Seitz, Dir. OAQPS to Regional Air Dirs (June 14, 1994) (''Offsets Required Prior to Permit Issuance''). Thus, even though the emissions reduction may not have occurred by the time the ATC is issued (*e.g.*, the revised permit does not call for the source to actually reduce emissions until a later date), the new or modified source must identify the source of the emissions reduction to be used to meet the offset requirements, must provide an opportunity for review of the proposed emission reduction credits and, once the ATC is issued, cannot change the emission reduction credits unless a new ATC is proposed identifying the new emission reduction credits to be relied upon.

e. What kinds of emission reductions may be creditable?

Section 7.2.2.2 of Rule 2201 allows the District to include in the annual equivalency demonstration, ''the surplus value of additional creditable emission reductions that have not been used as offsets and have been banked or have been generated as a result of permitting actions.'' These unused ''additional credits'' may include emission reductions from a number of actions. Examples of such additional credits include emission reductions used to meet offset requirements by non-major sources and the 10 percent Air quality Improvement Deduction applied under section 4.12 of Rule 2201 for newly banked credits.[11] This section addresses a few other issues the District has raised regarding the creditability of other actions that might be considered to generate ''additional credits.''

The central issue for determining the creditability of a particular action often will be whether the reduction is surplus. The surplus requirement derives from section 173(c)(2) of the Act, which provides, ''Emission reductions otherwise required by this Act shall not be creditable as emissions reductions for purposes of any such offset requirement.'' To be creditable, a particular emission reduction must not be required by the Act or otherwise relied upon to meet a requirement of the Act. Thus, District requirements that are more stringent than an express requirement of the Act may generate surplus credits as long as the emission reductions are not relied upon elsewhere to comply with a requirement of the Act (*e.g.*, to achieve the National Ambient Air Quality Standards (NAAQS)).[12]

The emission reductions must also be real and quantifiable—actual emissions to the air must be reduced. Paper reductions (*i.e.*, changes in a source's permitted emissions that do not require actual emissions to decrease) are not creditable. Likewise, rules that limit the increase in emissions do not generate real, quantifiable reductions in emissions. For example, the District BACT requirements for modifications to existing non-major sources may generate emission reductions where the control requirement results in actual emissions reductions as compared to pre-modification emission levels. By contrast, BACT requirements for new non-major sources cannot generate emission reduction credits because there has been no reduction in actual emissions (instead actual emissions have increased).

It is not possible for EPA to predict the various potential claims that will be made for emission reduction credits. Even for the examples described in this section and in the TSD, case-specific facts may affect the analysis on creditability. It is therefore critical for the District to raise specific questions to EPA so that these issues can be resolved on a case-by-case basis.

f. Are pre-1990 emission reductions creditable?

Pre-1990 emission reduction credits pose particular problems under each of the criteria for creditability because of the age of these credits. Information on their generation may be missing, making it difficult to verify the quantity of emission reductions and ensure their continued enforceability. These problems, however, can be overcome if

[9] The District's amendments to Rule 2201 reiterate these criteria in section 7.1.5. These criteria derive directly from the offset requirements of the CAA section 173(c). *See* 1994 Seitz Memo; *see also* 51 FR 43814 (Dec. 4, 1986) (''Emissions Trading Policy Statement''). As such, EPA will interpret the District requirement in accordance with our federal policy and guidance on creditability.

[10] Section 7.1.5 of Rule 2201 expressly notes that the creditability of a given emission reduction included in the annual demonstration may be subject to EPA review.

[11] These additional credits must of course meet the creditability criteria described herein. This is expressly required by Rule 2201, section 7.4.1.1. The 1999 TSD provides additional discussion on the availability of these additional credits.

[12] The District has asked whether implementation of District rules that are not yet in the SIP could be counted as generating an ERC. Such rules, used to generate innovative offsets, must satisfy EPA requirements for Economic Incentive Programs (*see* EPA's guidance document entitled, ''Improving Air Quality with Economic Incentive Programs'' (January 2001)). EPA would not consider as creditable, emission reductions achieved through early implementation of rules that do not meet these requirements. In addition, any credits generated through these programs must continue to meet the basic criteria for creditability (*e.g.*, permanent, surplus, quantifiable and enforceable).

detailed records are available to support the required findings on creditability. The more difficult issues are related to the requirement that emission reductions be surplus.

The basic purpose of the surplus requirement is to avoid ''double counting'' emission reductions. Double counting can occur where emission reductions are the result of, or would have been achieved by, controls expressly required by the Act or controls used to satisfy requirements of the Act. Double counting can also occur if credit for emission reductions is claimed where the State's planning actions do not recognize that the reduced emissions existed in the first place. This is especially a concern for emission reductions that occurred long ago.

To avoid potential double counting, EPA has issued guidance on how emission reductions should be discounted at the time of use and the planning assumptions an area must make to allow the use of pre-1990 credits to meet NSR offset requirements. The 1992 ''General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990'' (''General Preamble'') describes the planning requirements of the Act as amended in 1990. 57 FR 13498 (April 16, 1992). The General Preamble addresses the issue of pre-1990 (or ''pre-enactment'') emission reductions and how areas need to ensure the use of these does not conflict with planning. The two types of planning actions that need to reflect the use of pre-1990 credits are Rate of Progress (ROP) plans and attainment demonstrations. *See id.* at 13508–509 and 13552–54; *see also* 1994 Seitz Memo.

Section 172(c)(2) requires implementation plans for nonattainment areas to include provisions requiring reasonable further progress toward attainment. The 1990 Amendments added specific reduction requirements necessary to satisfy the general reasonable further progress requirement. For example, ozone areas classified as moderate nonattainment and above must achieve a 15-percent reduction in volatile organic compound (VOC) emissions from 1990 baseline levels within six years of enactment of the CAA Amendments. CAA section 182(b)(1). Ozone areas classified as serious and above must, in general, achieve an additional 3-percent reduction every three years thereafter until the attainment date. CAA section 182(c)(2)(B).

Because the baseline for measuring reasonable further progress is the level of actual emissions from anthropogenic sources in 1990, pre-1990 emission reductions generally are not included in the baseline. Thus, to avoid giving credit for reductions that the baseline already reflects, pre-1990 credits must be ''added back.'' The General Preamble explains that the required emission reductions necessary to meet reasonable further progress (*e.g.*, 15 percent from 1990 levels) must be net of growth and net of any pre-1990 emission reduction credits the area plans to allow for use as offsets. 57 FR at 13508–509. This means that the controls identified to achieve the target level of emissions (*e.g.*, 85 percent of the baseline levels) must also achieve reductions to offset growth and the addition of any pre-1990 emission reduction credits the area wishes to make available.[13]

There are different ways that areas can include pre-1990 credits in ROP plans. EPA has explained, ''A State may choose to show that the magnitude of pre-1990 ERC's (in absolute tonnage) was included in the growth factor, or the State may choose to show that it was not included in the growth factor, but in addition to anticipated growth.'' 1994 Seitz Memo. Under either approach, the quantity of pre-1990 credits added to or included in the growth factor must be distinguishable and identifiable. Id. If the addition of pre-1990 credits cannot be distinguished from general growth, EPA will not be able to determine whether the growth factor used in the plan is reasonable or to compare the actual use of pre-1990 credits to the cap assumed in the plan.[14]

Pre-1990 credits must also be accounted for in an area's attainment demonstration. 57 FR 13509 and 13553; *see also* 1994 Seitz Memo. In addition to demonstrations of reasonable further progress, the Act requires areas to submit a demonstration that the SIP, as revised, will provide for attainment of the NAAQS by the applicable attainment date (''attainment demonstration''). *See, e.g.*, CAA section 182(c)(2)(A) (attainment demonstration required for serious ozone nonattainment areas). Attainment demonstrations, in very general terms, require areas to use modeling or other approved analytical techniques to determine the level of emissions required to achieve the NAAQS and to provide projections of emissions inventories to show how the area will control sources to achieve the necessary level of emissions. Because new and modified major sources are required to offset their emissions increases by obtaining emission reductions from other sources, there should be no net effect on emissions inventories from construction or modification of a major source *if the emissions reduced are included in the inventory.* This means pre-1990 emissions reductions, which would otherwise not be included in inventories of emissions in 1990 and beyond, must be added back into the area's inventories as if these emissions were still in the air in order to be used as offsets and ensure no net effect on emission inventories. *See* 62 FR at 13509 and 13553; *see also* 1994 Seitz Memo.

There are multiple ways that these pre-1990 emissions can be included in the inventories. The simplest would be to include a line item for the emissions to be added for use as potential offsets. No matter what approach an area uses, the demonstration must clearly identify these emissions so that the reasonableness of the approach can be evaluated and the actual use of these pre-1990 credits can be compared to the assumptions in the demonstration.

To date, SJVUAPCD has failed to adequately account for the use of pre-1990 emission reduction credits in its planning activities. As a result, EPA does not consider these reductions to be surplus creditable reductions that can be used to meet federal offset requirements within the District.

The San Joaquin Valley was originally classified as moderate for the PM–10 NAAQS following enactment of the 1990 Clean Air Act Amendments. The District submitted a moderate area plan in December 1991, but this plan was never approved by EPA and, in any event, did not support the use of pre-1990 credits by including these credits in the plan's inventories as emissions in the air. On January 8, 1993, EPA reclassified the San Joaquin Valley as serious for PM–10. 58 FR 3334. The attainment deadline for serious PM

[13] For example, assume the 1990 baseline emissions level is 100 tons per year (tpy) and the area anticipates 10 percent growth and wishes to make available 5 tpy of pre-1990 credits. In order to achieve the target level of 85 tpy (*i.e.*, 15 percent reduction of baseline emissions), the ROP plan will need to identify controls that will achieve 30 tpy of reduction—15 tpy to demonstrate reasonable further progress, 10 tpy to offset growth and 5 tpy to offset the use of pre-1990 credits. This obviously is an overly simplistic example and is intended only to show how these concepts relate to one another.

[14] EPA addressed similar concerns in its 1986 Emissions Trading Policy Statement. 51 FR 43814 (Dec. 4, 1986). In that guidance, EPA described the need to distinguish between shutdowns to be used to generate credits to meet offset requirements and shutdowns built into assumptions on growth. We explained, ''In all cases where net turnover reductions have been quantified and relied on as part of attainment demonstrations, states which seek to grant shutdown credit for use in trading must be prepared to show clearly and unequivocally on the basis of SIP documents or tracking that the credit has not been double-counted or otherwise relied on for SIP planning purposes.''

nonattainment areas was December 31, 2001. CAA section 188(c)(2). The attainment demonstration, due with the serious area plan on February 8, 1997, was withdrawn by the District on February 26, 2002. On July 23, 2002, EPA issued a finding that the San Joaquin Valley failed to attain the PM–10 NAAQS by the applicable deadline. In accordance with CAA section 189(d), the State was required to submit by December 31, 2002, a new attainment demonstration for San Joaquin Valley, along with measures sufficient to achieve an annual reduction in PM–10 or PM–10 precursor emissions of not less than 5 percent. This new demonstration has not been submitted. The District, because it failed to attain the PM standard by the statutory deadline and has not submitted required progress and attainment plans, has failed to show how the use of pre-1990 emission reductions would be consistent with the need for expeditious attainment of the PM NAAQS.[15]

The San Joaquin Valley is currently designated as a severe nonattainment area for the 1-hour ozone NAAQS. 66 FR 56476 (Nov. 8, 2001). EPA approved a serious area plan (the ''1994 ozone plan'') for the District on January 8, 1997. 62 FR 1150. The plan included a demonstration that the area would attain the ozone NAAQS by 1999. The attainment demonstration in the 1994 ozone plan did not specifically identify and account for the possible use of pre-1990 emission reductions. The area failed to attain the ozone standard in 1999, and as a result EPA reclassified the area to severe on November 8, 2001. 66 FR 56476. The severe area plan was due on May 31, 2002. 66 FR at 56481. The attainment deadline for severe areas is November 15, 2005. CAA section 181(a)(1). The District failed to submit the required plan by the May 2002 deadline and is now subject to the offset sanction beginning March 18, 2004, for failure to submit the required plan. 67 FR 61784 (Oct. 2, 2002).

The 1994 ozone plan included ROP milestone provisions for 1996 and 1999. The plan, however, did not include pre-1990 credits in the ROP provisions or attainment demonstration. The District has recently prepared and adopted a ROP plan for the 2002 and 2005 milestones.[16] We will review this ROP plan to determine if the District has properly accounted for the use of pre-1990 credits and met applicable ROP requirements, but this alone will not provide the necessary demonstration that the use of these credits is consistent with the need for the area to attain the ozone NAAQS as expeditiously as possible.[17] Unless and until the area submits a new attainment demonstration that shows expeditious attainment can be achieved while still allowing the use of these credits, EPA cannot reasonably conclude that these pre-1990 reductions are surplus creditable reductions.

Based on these findings regarding the creditability of pre-1990 credits, EPA will consider the creditable value of these credits used in the District's tracking system to be zero. EPA, therefore, encourages the District and sources to avoid using these pre-1990 credits and, if problems arise, to work with EPA to explore options for other sources of emission reduction credits.

2. Agricultural Exemption

a. How has the District corrected this deficiency?

On December 19, 2002, the District adopted a version of Rule 2020 that deleted section 4.5, and thereby eliminated any exemption in its NSR rule for permitting a new or modified major stationary source of air pollutants. The District's deletion of the exemption from its NSR rule corrects the rule deficiency set out in our July 2001 limited disapproval. Because the District removed the exemption from its rule and for the reasons discussed below, EPA is proposing to find that the District has corrected the deficiency and to approve Rule 2020 as revised.

b. How is EPA addressing the State exemption?

EPA is aware, however, that California Health & Safety Code 42310(e) continues to preclude the District, as well as all other districts in California, from permitting agricultural sources under either title I or title V of the CAA. While the State is on notice of the need to remove the exemption for major sources for purposes of title V, the State must also remove the exemption for any major sources for purposes of title I. Therefore, concurrent with today's proposed approval of the District's revised version of Rule 2020 (deleting the exemption), EPA is publishing in the **Federal Register** a proposal pursuant to section 110(k)(5) of the CAA to find the California SIP is substantially inadequate for all nonattainment air pollution control districts in the State and for all attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program because the State cannot provide ''necessary assurances'' that it or the districts have authority to carry out the applicable nonattainment NSR or PSD portions of the SIP.

This concurrent proposal will inform the Executive Officer of the CARB that the California SIP is and will remain inadequate until the California legislature amends Health & Safety Code section 42310(e) to the extent necessary to allow the State of California through the air districts to issue permits under title I, parts C and D, to all major sources, including those involved in agriculture. This action proposes to require the State to correct the inadequacy by November 23, 2003 to avoid a finding under section 179 of the Act which would trigger mandatory sanctions.[18]

3. Lowest Achievable Emission Rate Applicability

EPA determined that the previous version of District Rule 2201 did not always require LAER for major modifications because it did not require LAER if a modification resulted in an increase in actual emissions but not an increase in the emission unit's permitted emission rate. Therefore, EPA required the District to modify Rule 2201 to ensure that all major

[15] This conclusion is consistent with our policy regarding the use of shutdown credits as offsets. Memo from John S. Seitz, Dir., OAQPS to Regional Air Dirs (July 21, 1993). Under the policy described in the 1993 memo, we explained that the use of shutdown credits as offsets was limited to ensure that reductions came out of the area's existing emissions and thus assured reasonable further progress. Before 1990, this could only be accomplished if the area had a demonstration of attainment that made this showing. After 1990, because the deadlines for submitting attainment demonstrations had been extended by the Clean Air Act Amendments, we decided that an attainment demonstration should not be required before shutdown credits could be used. We added, however, ''This policy cannot be extended to situations where an attainment demonstration is lacking.'' Thus if any of the required planning submittals is delinquent, deemed incomplete or disapproved, shutdown credits cannot be used to meet offset requirements.

[16] The 2002 ROP Plan was adopted by the District Board on December 19, 2002, and submitted to ARB. A copy of the Plan can be found at the District's website at *http://www.valleyair.org/Air_Quality_Plans/AQ_plans_Ozone.htm#Amendment 2002 and 2005 ROP 103.*

[17] The 1994 Seitz Memo explains that pre-1990 credits to be used in an area ''must be contained in: (1) The current applicable federally-approved RFP and ROP plans as growth, and (2) all federally-required attainment demonstrations as emissions in the air.'' While an argument could be made that inclusion of these credits in the ROP and not in an attainment demonstration might be sufficient to support their use where the attainment demonstration is not yet due, this argument is not reasonable where, as here, the area has not only failed to meet the plan submission deadlines but has had to be reclassified because of the area's failure to attain by the statutory deadlines.

[18] EPA is proposing this deadline to coincide with the deadline for sanctions under title V to correct the agriculture exemption in that program. *See* CAA Section 110(k)(5) (providing EPA discretion to establish reasonable deadlines).

modifications as defined at 40 CFR 51.165(a)(1)(v) are subject to LAER.

The District has corrected this deficiency by adding a backstop in addition to the current LAER applicability requirements. This backstop requires that any major modifications, as defined at 40 CFR 51.165, must meet LAER. *See* Rule 2201, sections 3.24 and 4.1.3. Sections 4.1.1 and 4.1.2 also continue to require LAER for minor sources regardless of whether changes at those sources are defined as major modifications.

D. Summary

EPA is proposing to approve revised versions of SJVUAPCD Rules 2020 and 2201. The revisions to these rules satisfy the requirements outlined in our July 19, 2001 limited approval/limited disapproval of previous versions of these rules. EPA is simultaneously publishing an interim final determination to stay the sanctions clock started by the limited disapproval. Additional information on the amendments to Rules 2020 and 2201 is contained in the TSD for this proposal.

Concurrent with this proposal, we are also proposing to call in the State to repeal or amend Health and Safety Code Section 42310(e). Once EPA determines that the State has provided the necessary assurances required under section 110(a)(2)(E), the NSR program for the SJVUAPCD will fully meet the requirements of sections 172(c)(5), 173 and 182 of the CAA.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Regulatory Flexibility Act

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

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

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); CAA section 110(a)(2).

C. Unfunded Mandates Reform Act

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

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

D. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. We are merely proposing to approve a state rule implementing a federal standard. EPA's action does not impose requirements on Tribes and the rules being approved do not significantly or uniquely affect Tribes. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

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

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

H. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 31, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–3418 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 68, No. 30

Thursday, February 13, 2003

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03–001–3]

Declaration of Extraordinary Emergency Because of Exotic Newcastle Disease in Arizona

Exotic Newcastle disease (END) has been confirmed in the State of Arizona. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Previously, END had been confirmed in the States of California and Nevada. The Secretary of Agriculture signed a declaration of extraordinary emergency with respect to END in California on January 6, 2003 (*see* 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), and a second declaration of extraordinary emergency with respect to END in Nevada on January 17, 2003 (*see* 68 FR 3507, Docket No. 03–001–2, published January 24, 2003).

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in Arizona represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The United States Department of Agriculture (the Department) has reviewed the measures being taken by Arizona to control and eradicate END and has consulted with the appropriate State Government and Indian tribal officials in Arizona. Based on such review and consultation, the Department has determined that the measures being taken by the State are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists because of END in Arizona.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the State of Arizona, or any portion of the State of Arizona, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END. The appropriate State Government and Indian tribal officials in Arizona have been informed of these facts.

Effective Date: This declaration of extraordinary emergency shall become effective February 7, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–3561 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beech Fork Coal Lease and Project Specific Forest Plan Amendment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement, a Land Resource Management Plan (LRMP) amendment, issue a call for coal and other resource information, and notice of public meeting.

SUMMARY: The U.S. Forest Service (USFS) will prepare an environmental impact statement (EIS) to analyze the environmental impacts of leasing three federal coal reserve tracts. The three tracts total 1,210.44 acres and underlie lands administered by the USFS. The proposed development of the three federal coal reserve tracts involves underground mining of coal using room-and-pillar mining methods. No surface disturbance related to mine openings, haul roads, or processing will occur on the federal tracts. The tracts are adjacent to an existing underground coal mine on private lands.

In conjunction with the EIS, a Land Resource Management Plan Amendment will be prepared in a cooperative effort between the USFS, Bureau of Land Management (BLM) and the Office of Surface Mining (OSM). As part of the initiation of the LRMP Amendment, a Call for Coal and Other Resource Information is being made. This data request solicits (1) information on the coal resource development potential of the three proposed tracts and (2) resources that may be affected by coal development for lands in the project area.

Authority: The Mineral Leasing Act of 1920 (MLS) authorizes the leasing of federal coal in tracts that permit the mining of all economically extractable coal. The Daniel Boone National Forest Land Resource Management Plan provides overall guidance for land management activities, including extraction of mineral resources. The Forest Plan provides for the consideration of lease proposals in the project area and directs that special stipulations be used to protect surface resources. The LRMP Amendment is being prepared to update the 1985 Forest Plan to address leasing of two of the three tracts, as the Tennessee Valley Authority previously owned them.

Since the passage of the MLA, the federal government has had the authority to lease minerals on federal lands. The act requires that the lands be included in a comprehensive land use plan, and the lease be compatible with the plan and meet the requirements of

the National Environmental Policy Act of 1969 (NEPA).

Executive Order 13212, May 18, 2001 is intended to improve the internal management of the federal government in dealing with processing energy-related projects in a timely manner to aid the flow of domestic mineral production. The Forest Plan, as noted previously, identifies standards and guidelines, some of which are applicable to minerals activities. The Daniel Boone National Forest is presently preparing a revision to the Forest Plan that will be accompanied by its own EIS. However, 42 United States Code (USC) Section 885 does not permit the Secretary of Agriculture to delay processing of lease applications pending the completion of the revised Forest Plan. The current Forest Plan guides management of this national forest until the revised plan is completed and the administrative appeal process has ended. The Forest Service is publishing this Notice of Intent pursuant to the Council on Environmental Quality implementing regulations of the National Environmental Policy Act at 40 CFR 1501.7.

Date Comments Are Due: Comments concerning the scope of this planning project and responses to the Call for Coal and Other Resource Information must be received by March 15, 2003. The Draft LRMP Amendment and EIS is expected to be completed in May 2003 and the Final LRMP Amendment and EIS is expected to be completed in September 2003.

Send Comments to: Submit written comments to Corey Miller, Daniel Boone National Forest, 1700 Bypass Road, Winchester, KY 40391. Comments may also be sent by fax at (859) 744–1568; or by electronically to *cmiller09@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Corey Miller is the Interdisciplinary Team Leader for this proposed action. He can be reached by US mail at the Daniel Boone National Forest, 1700 Bypass Road, Winchester, KY 40391; by phone at (859) 745–3149; or by e-mail at *cmiller09@fs.fed.us.*

Lead and Cooperating Agencies: The U.S. Department of Agriculture Forest Service, Daniel Boone National Forest is the lead agency. There will be two cooperating agencies associated with this project—U.S. Department of the Interior (USDI) Bureau of Land Management (BLM), Jackson Field Office, Jackson, MS and the USDI Office of Surface Mining (OSM), Lexington, KY.

Responsible Officials: The Forest Supervisor is the responsible official from the Forest Service for this project. The District Manager—Jackson Field Office is the responsible official from the BLM for this project. The Field Office Director—Lexington, Kentucky is the responsible OSM official for this project.

Decision To Be Made: The responsible official for the Daniel Boone National Forest will determine if the leasing of federal coal tracts underlying these National Forest System lands will occur after the LRMP Amendment and EIS in prepared and what stipulations should be applied if a lease are issued.

The Bureau of Land Management has the responsibility to address coal lease applications (coal lease sales) on federal mineral reserves. In consultation with the USFS, the responsible official for the BLM will decide whether or not to offer the tracts for competitive leasing, and under what terms, conditions and stipulations.

The Office of Surface Mining will be responsible for providing recommendations to the Secretary of the Interior regarding approval, disapproval, or conditional approval of the mine plan on lands contained within the federal lease area. If it is determined that there may be surface impacts resulting from mining in the proposed lease area, the Office of Surface Mining, with input from the U.S. Forest Service, will also be responsible for providing recommendations to the Secretary of the Interior concerning the issuance of findings as to whether or not the proposed lease and mining areas contain significant recreational, timber, economic or other values that may be incompatible with the proposed mining activities.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposal: The purpose and need for the EIS is to determine if federal coal will be leased in response to the lease application submitted for this federal coal. Private coal leases, permitted by the state, surround the proposed federal coal lease tracts. The leasing of this coal would allow for the development of the private and federal coal resources in an economic and efficient manner and would maximize the recovery of the coal.

Scoping Process: Scoping is the process used to determine the scope of issues to be addressed and for identifying the significant issues related to this project. Public involvement is an integral component of coping. The public will be contacted in several different ways, provided information about this project, and given an opportunity to provide input on it. Information will be sent to a mailing list of individuals, groups, and agencies that are known to have an interest in this project or have previously expressed an interest in projects of this nature or general activities in the project area.

In addition to the publication of this Notice of Intent, legal notices will be published in the Lexington (KY) Herald-Leader and the Manchester (KY) Times.

A Public coping open house meeting will be held at the Leslie County Extension Office at 22045 Main Street in Hyden, KY on March 10, 2003 from 6 PM to 9 PM.

Additional hearings pursuant to Title 43 Code of Federal Regulations (CFR) Section 1610.2 and 43 CFR 3425.4, will be announced through the **Federal Register**, local news media and web sites at least 15 days prior to the event.

Preliminary Issues: Preliminary issues of concern include subsidence, and changes in the local hydrologic regime and water quality. The potential for surface and ground water resource impacts will be studied in the EIS.

Preliminary Alternatives: The proposed development of the federal coal reserve tracts involves an economic and efficient method of mining the resource. Other preliminary alternatives include the No Action alternative, which is a rejection of the Proposed Action to mine the federal coal. The adjoining private coal resource leases that surround the three federal tracts have been permitted, and the coal underlying those leases would be mined at a reduced level.

Permits or Licenses Required: A permit is required from the State Department of Surface Mining Reclamation and Enforcement prior to any development of coal resources.

Unsuitability Criteria: The information addressing the Unsuitability Criteria is listed in 43 CFR 3461. Application of the unsuitability criteria will result in a preliminary review of Daniel Boone National Forest lands for leasing. The determination relates only to the specific resources and uses addressed in the 20 unsuitability criteria. Section 43 CFR 3461.1 provides for an exemption in the application of the unsuitability criteria. However, in this case the exemption isn't met, because of the surface impacts resulting from subsidence from underground mines. The unsuitability criteria will be addressed in the EIS.

Lands within the project area, which are acceptable for further leasing consideration after application of the unsuitability criteria will then be addressed in regards to other resource values and uses that could be affected by lease issuance.

Comments Requested: This Notice of Intent initiates the scoping process that begins the preparation of the EIS. As part of the scoping process, the USFS is requesting comments on the proposed action. Comments received will be part of the public record on this project and will be available for public inspection.

Estimated Dates for DEIS and FEIS: The DEIS is expected to be filed with the Environmental Protection Agency and to be available for public review and comment by May 2003. At that time, The Environmental Protection Agency (EPA) will publish a Notice of Availability (NOA) of the DEIS in the **Federal Register.** The comment period on the DEIS will be a minimum of 45 days from the date the EPA publishes the NOA in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Firstly, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns (*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*) Also, environmental objections that could be raised at the draft EIS stage, but are not raised until after completion of the final EIS, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris.* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this project participate by the close of the scoping comment period, so that substantive comments are made available to the Forest Service at a time when the comments can be meaningfully considered and responded to in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed in September 2003. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action.

The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal in accordance with 36 CFR part 215.

Dated: February 6, 2003.

Benjamin T. Worthington,

Forest Supervisor, Daniel Boone National Forest.

[FR Doc. 03–3470 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on March 20, 2003, from 3:30 P.M. to 6 P.M.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–23612; EMAIL *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the September 19, 2002 Meeting; (3) Finalize business for 2002; (4) Discuss excess funds from 2001 projects; (5) Financial Agreements for RAC Projects not Performed by Forest Service; (6) Mendocino County Representatives; (7) Recommend Projects for 2003; (8) Discussion on Next Meeting Date; (10) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 7, 2003.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 03–3578 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent: To Request a Revision of a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Natural Resources Conservation Service's (NRCS) intention to request a revision to a currently approved information collection, Long Term Contracting.

DATES: Comments will be received for a 60-day period commencing with the date of this publication.

Additional Information or Comments: Contact *Phyllis I. Williams,* Agency OMB Clearance Officer, Natural Resources Conservation Service, Department of Agriculture, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.i.williams@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Payment.

OMB Number: 0578–0013.

Expiration Date of Approval: June 30, 2003.

Type of Request: To continue with a change of a currently approved collection for which the approval will expire.

Abstract: The primary objective of the Natural Resources Conservation Service (NRCS) is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources. The purpose of Long-Term Contracting information collection is to provide for programs to extend cost sharing and technical assistance through long-term contracts to landowners and others. These contracts provide for making land use changes and installing conservation measures and practices to conserve, develop, and use the soil, water, and related natural resources on private

lands. For cost-share programs, Federal financial and technical assistance is based on a conservation plan that is made a part of an agreement, contract or easement, for a period of time of no less than 1 year, no more than 15 years. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, Federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment. NRCS purchases easement programs and provides for the protection and management for the life of the easement.

The information collected through this package is used by NRCS to ensure the proper use of program funds, including the application for participation, contract implementation, conservation planning, and application for payment. The table below lists the forms in this collection, the use of each document, and the applicable programs for the information collection. These forms constitute this information collection, and reflect the documents used by Department of Agriculture (USDA) program participants to indicate their desire to participate in one or more of the applicable programs. To obtain copies of forms referenced, access the Service Center Web site address at *http://www.sc.egov.usda.gov*. You may also e-mail your request and/or comments, including your address, phone number, and form number, to *terri.jackson@usda.gov*, or call the Forms Manager at (301) 504–2164.

OMB 0578–0013, LONG-TERM CONTRACTING INFORMATION COLLECTION PACKAGE—FORMS INCLUDED—7 CFR 630

Form No.	Forms superceded	Form title and usage	Previous OMB No.	Program [1]
AD–1153	NRCS–LTP–01 and CCC–1250.	Application for Long-Term Contracted Assistance—(Used for the initial program application).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, GRP; FPP
AD–1154	NRCS–LTP–02 and CCC–1251.	Long Term Contract/Agreement for NRCS Cost-Share Programs—(Used for contract obligation).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, GRP; FPP
AD–1154D	New Program	Appendix; Special Provisions for the Grassland Reserve Incentives Programs.	New Program	GRP
AD–1154E		Appendix; Special Provisions for the Farmland Protection Program.	0578–0013	FPP
AD–1155	NRCS–LTP–11; CCC–1252.	Conservation Plan/Schedule of Operations—(Used to develop and list the applicable conservation practices/measures to be applied, the amounts to be applied, and the estimated financial assistance obligation).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP
AD–1155A	NRCS–LTP–11B; CCC–1252B.	Conservation Plan/Schedule of Operations—Acceptance Page—(Used by the agency and participant to accept the Conservation Plan, summarize the obligations, and finalize the contract).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP
AD–1156	NRCS–LTP–12; CCC–1253.	Revision of Plan or Schedule of Operations or Modifications of Contract—(Used to make any modifications to the practices and/or measures to be applied during the contract period).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP
AD–1157	NRCS–LTP–20A; CCC–1255A.	Option Agreement to Purchase—(Used by the participant to indicate his/her desire to continue in the program after an initial acceptance of eligibility has been provided).	0578–0013	WRP, EWP–FPE; GRP
AD–1157A	CCC–1255A; NRCS–LTP–20.	Option Agreement to Purchase, Amendment 1.	0578–0013	WRP; EWP–FPE; GRP
AD–1158	NRCS–LTP21; CCC–1256.	Subordination Agreement and Limited Lien Waiver '' (Used to remove encumbrances of the title for USDA to acquire an easement).	0578–0013	WRP; EWP–FPE; GRP
AD–1159	NRCS–LTP–24; CCC–1257.	Notification of Intent to Continue—(Used by the participant to indicate his/her desire to continue in the program after an initial acceptance of eligibility has been provided).	0578–0013	WRP; EWP–FPE; GRP
AD–1160	NRCS–LTP–25; CCC–1258.	Compatible Use Authorization—(Used by the agency to authorize uses compatible with the program purposes as requested by the program participant on easement acquisitions).	0578–0013	EWP–FP; WRP; GRP

OMB 0578–0013, LONG-TERM CONTRACTING INFORMATION COLLECTION PACKAGE—FORMS INCLUDED—7 CFR 630—Continued

Form No.	Forms superceded	Form title and usage	Previous OMB No.	Program [1]
AD–1161	NRCS–FNM–141; CCC–1202.	Application for Payment—(Used by the program participant to apply for payment in exchange for implementing one or more conservation practices or measures).	0578–0018	CRSCP; EWP; FIP; GPCP; IEQIP; RC&D; RAMP; FPP; WPFPP; WRP (direct appropriated funds); WHIP
CCC–1200		Conservation Program Contract—(Used to make initial application, and serve as the contractual document upon acceptance into the program).	0560–0174 (Pkg transferred from FSA) and 0578–0028.	EQIP, AMA, CSP, GRP, FPP, SWCA
CCC–1200A		Appendix; Special Provisions for the Environmental Quality Incentives Program.	0560–0174 (Pkg transferred from FSA) and 0578–0028.	EQIP
CCC–1200 AMA		Appendix; Special Provisions for the Agricultural Management Assistance Program.	0560–0174 (Pkg transferred from FSA) and 0578–0028.	AMA
CCC–1200C	New Program	Appendix; Special Provisions for the Conservation Security Program.	New Program	CSP
CCC–1201	New	Application Evaluation Worksheet—(Used by the agency to evaluate the environmental benefits of a participants proposed conservation plan of operations and for ranking the applications).	0560–0174	EQIP
CCC–1245		Practice Approval and Payment Application (Used by the program participant to apply for payment in exchange for implementing one or more conservation practices or measures).	0560–01740174 (Package transferred from FSA) and 0578–0028.	EQIP, AMA, CSP, GRP, FPP; SWCA
CCC–1255		Warranty Easement Deed (Permanent)—(Used to encumber the easement acreage and transfer easement to USDA).	0578–0013	WRP
CCC–1255A	New	Option to Purchase Agreement (30-year)—(Used by the participant to indicate his/her desire to continue in the program after an initial acceptance of eligibility has been provided).	Form No. Previously used for another purpose.	WRP
CCC–1255B	New	Warranty Easement Deed (30-year)—(Used to encumber the easement acreage and transfer easement to USDA).	Form No. Previously used for another purpose.	WRP
NRCS–CPA–38		Request for a Certified Wetland Determination—(Used by USDA participants to request a certified wetland determination).	0578–0013	WC; WRP; EWP–FPEP; WHIP; CRP
NRCS–LTP–13		Conservation Program Status Review—(Used by the agency and the participant to review the status of contract or agreement implementation).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP, CTA; HELC/WC
NRCS–LTP–20		Warranty Easement Deed (Permanent)—(Used to encumber the easement acreage and transfer easement to USDA).	0578–0013	EWP–FPE
NRCS–LTP–151		Notice of Agreement or Contract Violation—(Used by the agency to notify contract holders of contract violations).	0578–0013	CRSCP; GPCP; IEQIP; RAMP; RCWP; WBP; WHIP
NRCS–LTP–152		Transfer Agreement—(Used by the agency and the program participant to transfer the program contract or agreement to another entity).	0578–0013	CRSCP; GPCP; IEQIP; RAMP; RCWP; WBP; WHIP

OMB 0578–0013, LONG-TERM CONTRACTING INFORMATION COLLECTION PACKAGE—FORMS INCLUDED—7 CFR 630—Continued

Form No.	Forms superceded	Form title and usage	Previous OMB No.	Program [1]
NRCS–LTP–153	.....	Agreement Covering Non-Compliance with Contract Provisions—(Used by the agency to notify program participants of non-compliance with program contracts or agreements).	0578–0013	CRSCP; GPCP; IEQIP; RAMP; RCWP; WBP; WHIP

[1] Conservation Programs and Authorities are as follows:
AMA—Agricultural Management Assistance; Pub. L. 106–224, Section 133(b); Pub. L. 107–171, Section 2501
EWP–FPEC—Emergency Watershed Program, Floodplain Easement Component; 16 U.S.C. 2203; 7 CFR 624
CRP—Conservation Reserve Program; 16 U.S.C. 3831–3836; 7 CFR 1410
CRSCP—Colorado River Salinity Control Program; 7 CFR 702
CSP—Conservation Security Program; Pub. L. 107–171, Sections 2001–2006
CTA—Conservation Technical Assistance; 16 U.S.C. 590 a–f
ECP—Emergency Conservation Program; 7 CFR 701
EQIP—Environmental Quality Incentives Program; 16 U.S.C. 3839aa; 3839aa(1–8); 7 CFR 1466
HELC/WC—Highly Erodible Land and Wetland Conservation Compliance; 7 CFR 12
FIP—Forestry Incentives Program; Pub. L. 95–313, Sec. 4, July 1, 1978, 92 Stat. 367; Pub. L. 101–624, title XII, Secs. 1214, 1224(1), Nov. 28, 1990, 104 Stat. 3525, 3542; 7 CFR 701
FPP—Farmland Protection Program; 16 U.S.C. 3830 note; 7 CFR 1469; Pub. L. 107–171, Section 2503
GPCP—Great Plains Conservation Program; 16 U.S.C. 590p(b); 7 CFR 631
GRP—Grassland Reserve Program; Pub. L. 107–171, Section 2401
IEQIP—Interim Environmental Quality Incentives Program; 7 CFR 631 and 7 CFR 702
RAMP—Rural Abandoned Mine Program; 30 U.S.C. 1236 *et seq.*; 7 CFR 632
RC&D—Resource Conservation & Development Program; Pub. L. 107–171, Section 2504
RCWP—Rural Clean Water Program; 33 U.S.C. 1288 *et seq.*; Pub. L. 7 CFR 634
SWCA—Soil and Water Conservation Assistance Program; Pub. L. 106–244, Section 211(b)
WBP—Water Bank Program; 16 U.S.C. 1301–1311; 7 CFR 752
WC—Wetland Conservation Compliance; 16 U.S.C. 3801–3824; 7 CFR 12
WHIP—Wildlife Habitat Incentives Program; 16 U.S.C. 3836a; 7 CFR 636
WPFPP—Watershed Protection and Flood Prevention Program; Pub. L. 83–566; 7 CFR 622
WQIP—Water Quality Incentives Program: 7 CFR 701
WRP—Wetlands Reserve Program; 16 U.S.C. 3837; 3837(a–f); 7 CFR 1467

This request represents a combination of four Information Collection Packages, as follows: OMB Number: 0578–0013, Long Term Contracting; OMB Number: 0578–0018, Application for Payment; OMB Number 0578–0028, Risk Protection Programs; and OMB Number 0560–0174, Environmental Quality Incentives Program, (transferred from the Farm Service Agency). The above table represents all of the forms incorporated into this one information collection, OMB Number 0578–0013. The table below shows a summary of the changes in the package since the previous authorization:

Previous Burden Hours		162,351.3
Burden Transferred from OMB Number 0560–0174	444,609	(+) Adjustment
Burden Transferred from OMB Number 0578–0018	20,731	(+) Adjustment
Burden Transferred from OMB Number 0578–0028	2,917	(+) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0578–0013	1,909.2	(−) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0578–0018	2,961.6	(−) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0578–0028	416.5	(−) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0560–0174	66,691.4	(−) Adjustment
Proposed Burden Hours	.....	558,930

NRCS will ask for 3-year OMB approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.41 hours or 84.7 minutes per response.

Respondents: Farms, individuals, or households, or State, local, or Tribal governments.

Estimated Number of Respondents: 396,077.

Estimated Total Annual Burden on Respondents: 558,930.

Copies of this information collection and related instructions can be obtained without charge from Phyllis Williams, the Agency OMB Clearance Officer, at 5602 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.i.williams@usda.gov.*

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology. Comments may be sent to: Phyllis Williams, Agency OMB Clearance Officer, U.S. Department of Agriculture, Natural Resources Conservation Service, 5602 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.williams@usda.gov.*

All responses to this notice will be summarized and included in the request

for OMB approval. All comments also will become a matter of public record.

Signed in Washington, DC, on January 24, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–3569 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Williams Creek Watershed, Clay County, MO

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Williams Creek Watershed Clay County, Missouri.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, State Conservationist, Natural Resources Conservation Service, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, Missouri 65203. Telephone: (314) 876–0901.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roger A. Hansen, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are to rehabilitate an existing structure in order to comply with state and federal dam safety regulations, maintain flood prevention, flood damage reduction, and recreational benefits. The planned works of improvement include raising the height of Structure 2, improving the stilling basin/plunge pool, widening the auxiliary spillway, lowering the second stage of the principal spillway, installing wave protection on the front slope of the dam, installing an additional foundation drain, and replacing all recreational facilities during the construction process.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harold L. Deckerd, Assistant State Conservationist (WR).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,

State Conservationist.

[FR Doc. 03–3570 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part: Certain Cased Pencils From the People's Republic of China

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

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the Department of Commerce's (the Department's) regulations, The Smencil Company (Smencil Co.) filed a request for a changed circumstances review of the antidumping duty (AD) order on certain cased pencils from the People's Republic of China (PRC). Specifically, Smencil Co. requests that the Department revoke the AD order with respect to the specialty pencil it produces, which is described below. The domestic industry has affirmatively expressed a lack of interest in the continuation of the order with respect to this product. In response to the request, the Department is initiating a changed circumstances review and issuing a notice of preliminary intent to revoke, in part, the AD order on certain cased pencils from the PRC. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Howard Smith, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5505 and (202) 482–5193, respectively.

Background

On December 23, 2002, Smencil Co. filed a request with the Department to revoke the AD order on certain cased pencils from the PRC with respect to the patented, scent-infused pencils produced in the PRC that it imports. *See* Smencil Co.'s letter to the Secretary, dated December 10, 2002 (Smencil Co. Request Letter). Specifically, Smencil Co. requested that the Department revoke the AD order with respect to imports meeting the following description: scent-infused pencils manufactured in the PRC under U.S. patent number 6,217,242,[1] (Patent) that are made from rolled sheets of paper, namely rolled sheets of recycled newspaper, and infused with various scents so as to create scented pencils named Smencils. *See* Smencil Co. Request Letter at 1–2.

Smencil Co. attached to its request a letter dated December 10, 2002 from the petitioners in the pencils AD proceeding,[2] stating that they are not interested in having the AD order on certain cased pencils from the PRC apply to pencils manufactured in the PRC under patent number 6,217,242 that are made from rolled sheets of recycled newspaper that are infused with various scents, thereby creating

[1] Patent number 6,217,242 (April 17, 2001) describes the invention as a ''scented writing implement (comprising) * * * a fragrant pencil and a method for making same.'' (*See* Smencil Co. Request Letter at Appendix 2) The patent is owned by Evaco, Ltd., doing business as The Smencil Company (*See* Smencil Co. Request Letter at 1).

[2] The petitioners are the Writing Instrument Manufacturers Association, Pencil Section (WIMA) (a trade association comprised, in part, of domestic pencil producers) and six domestic pencil producers: Aakron Rule, Inc., Dixon-Ticonderoga Corporation, Musgrave Pencil Company, Moon Products, Inc., Sanford Corporation, and Tennessee Pencil Company (collectively, the petitioners).

products with odors distinct from those that may emanate from pencils made without the scent infusion. The petitioners indicated that the exclusion of the above-described pencils from the order should be narrowly drawn and not encompass pencils manufactured from recycled paper products without the scent infusion or with odors infused by means not covered by the Patent.

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and for U.S. Customs Service (Customs) purposes, our written description of the scope of the order is dispositive.

Initiation and Preliminary Results of Changed Circumstances AD Administrative Review, and Intent To Revoke in Part

Section 751(d)(1) of the Act and section 351.222 (g) of the Department's regulations provide that the Department may revoke an AD or countervailing duty order, in whole or in part, after conducting a changed circumstances review and concluding from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. *See* section 782(h) of the Act and section 351.222 (g)(1) of the Department's regulations. Based on an affirmative statement by domestic producers of the like product, we find that no interest exists in continuing the AD order with respect to the pencils described above in the ''Background,'' section. Therefore, we are hereby notifying the public of our preliminary intent to revoke, in part, the AD order on certain cased pencils from the PRC with respect to imports of pencils that meet the above-mentioned description. We intend to modify the scope of the AD order to read as follows:

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Furthermore, pursuant to section 351.221(c)(3)(ii) of the Department's regulations, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted and have combined the notices of initiation and preliminary results.

If the final partial revocation occurs, we intend to instruct Customs to liquidate, without regard to applicable antidumping duties, all unliquidated entries of pencils that meet the above-noted specifications, and to refund any estimated antidumping duties collected on such merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001 (the first day of the period covered by the most recently initiated administrative review), in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on pencils that meet the above-noted specifications will continue unless, and until, we publish a final determination to revoke the order in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs and/or written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Pursuant to section 351.309(d) of the Department's regulations, rebuttals to written comments, limited to the issues raised in the case briefs, may be filed not later than five days after the deadline for submission of case briefs. Also, interested parties may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. All written comments shall be submitted in accordance with section 351.303 of the Department's regulations and shall be served on all interested parties on the Department's service list. The Department will issue the final results of this review within the time limits established in section 351.216 (e) of its regulations.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: February 6, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3591 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Final Results of Administrative Antidumping Review

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than April 14, 2003. The period of review is September 1, 2000, through August 31, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Eli Blum-Page or Maureen Flannery, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 and (202) 482–3020, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the tariff Act of 1930 (the Act) requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested, and 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 the prescribed time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 and 180 days, respectively.

Background

Based on timely requests from petitioner and two respondent companies, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China, for the period of September 1, 200, through August 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 54195 (October 26, 2001).

On May 28, 2002, the Department published an extension of time limits for the preliminary results of this administrative review. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China,* 67 FR 36856. Following this extension, the preliminary results were issued on September 30, 2002. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 63877 (October 16, 2002).

Extension of Time Limits for Final Results

This case involves complex issues, including affiliation and the application of facts available. As such, the Department finds that is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1). Therefore, in accordance with sections 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for the completion of these final results to 180 days from the date of publication of the preliminary results. These final results will now be due no later than April 14, 2003.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 7, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3517 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–Mt

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 14, 2003, the Department of Commerce published the final results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2000, through July 31, 2001. Based on a correction of an ministerial error, we have changed the assessment rate calculation for CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2003, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (68 FR 1816) (*Final Results*).

On January 14, 2003, CEMEX, S.A. de C.V. (CEMEX), and GCC Cemento, S.A. de C.V. (GCCC), alleged that the Department made an ministerial error in calculating the dumping margin for CEMEX and GCCC in the *Final Results* of the 2000/01 administrative review. Specifically, CEMEX and GCCC alleged that the Department inadvertently did not convert the variable for entered value from short tons to metric tons when calculating the assessment rate. CEMEX and GCCC argue that, by not converting the entered-value variable to a metric-ton basis, the assessment-rate calculation overstates the actual assessment rate. The petitioner did not comment on the ministerial-error allegation.

We agree with respondents' assertion that we neglected to convert the entered-value variable from short tons to metric tons in our calculations. Therefore, we have recalculated the assessment rate for CEMEX and GCCC by converting the entered-value variable from short tons to metric tons.

Correction of this ministerial error does not change the weighted-average margin of 73.74 percent that we calculated for the *Final Results.* Making the correction only changes the importer-specific assessment rate. See Analysis Memorandum dated February 3, 2003, for further information.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. As amended by this determination and in accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate value. For the sales in the United States through the respondents' affiliated U.S. parties, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the entries during the review period (see 19 CFR 351.212(a)).

We are issuing and publishing this determination and notice in accordance with sections 751 (h) and 777(i) (1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3516 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Amended Final Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China

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

ACTION: Notice of amended final results of antidumping duty administrative reviews.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Thomas Futtner at (202) 482–3936 or (202) 482–3814, respectively, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2002, the Department published the final results of review for the tenth review of heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 67 FR 57789 (September 12, 2002) *(Final Results).* On September 16, 2002, the petitioner Ames True Temper, and the respondents, Shandong Machinery Import & Export Corporation (SMC), Tianjin Machinery Import & Export Corporation (TMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong General Group Corporation (Huarong), timely filed allegations that the Department made several ministerial errors in its final results. On September 23, 2002, the petitioner and respondents filed rebuttal comments. On September 30, 2002, the respondents (*i.e.,* TMC, LMC, Huarong, and SMC) filed a summons and complaint with the U.S. Court of International Trade. On October 8, 2002, the respondents amended their complaint to include all four classes or kinds of merchandise. The respondents filed a second amended complaint on November 8, 2002, whereby SMC and LMC were removed as party-plaintiffs. The second amended complaint removed TMC's claims with respect to bars/wedges, limiting litigation to axes/adzes, hammers/sledges, and picks/mattocks. Huarong's claims were limited to bars/wedges. This notice addresses the clerical error allegations pertaining to LMC, SMC, and TMC's sales of bars/wedges.

Scope of Investigation

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Allegation of Ministerial Errors

The petitioner alleges (1) that the Department made an error when it did not publish cash deposit rates for the PRC-wide entity; (2) that the Department miscalculated the importer-specific assessment rates; (3) that the Department miscalculated the surrogate values for several factors of production; (4) that the Department miscalculated marine insurance and international freight with respect to SMC; (5) that the Department erred when it excluded certain sales from SMC's margin calculation; (6) that the Department miscalculated inland freight with respect to LMC; and (7) that the Department should apply an adverse facts available margin to LMC for the hammers/sledges class that is higher than the PRC-wide rate. The respondents allege (1) that the Department miscalculated two of the surrogate values that were also cited by the petitioner; and (2) that the Department erred when it did not exclude aberrational values from two surrogate value calculations affecting LMC.

According to 19 CFR 351.224(e), ''the Secretary will analyze any comments received and, if appropriate * * * correct any significant ministerial error by amending the final determination or the final results of review * * *'' The term ''ministerial error'' is defined under 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''

After reviewing the allegations made by the petitioner and respondents, we have determined, in accordance with 19 CFR 351.224(e), that the *Final Results* did include several ministerial errors. However, we did not agree with several other allegations of ministerial errors. For a detailed discussion of our analysis, *see* Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, ''Tenth Antidumping Duty Review of Heavy Forged Hand Tools from the People's Republic of China—Amended Final Determination,'' (*Amended Final*) dated February 6, 2003. Also, in addition to these ministerial errors, the Department found a ministerial error that had not been raised by the parties in the margin calculations for LMC, and three ministerial errors regarding TMC's margin for sales of bars/wedges that were not raised by the parties.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the antidumping duty review of HFHTs from the PRC to reflect the correction of ministerial errors made in the margin calculations for SMC and LMC under the hammers/sledges and bars/wedges orders, and TMC under the bars/wedges order. These firm's revised weighted-average dumping margins are listed in the ''Amended Final Results'' section, below.

Amended Final Results of Review

We are amending the final results of the antidumping duty review of HFHTs from the PRC to reflect the correction of

certain ministerial errors, as noted in the Amended Final. The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Time period	Margin (percent)
Liaoning Machinery Import & Export Corporation:		
Bars/Wedges	2/1/00–1/31/01	0.00
Hammers/Sledges	2/1/00–1/31/01	45.42
Shandong Machinery Import & Export Corporation: Hammers/Sledges	2/1/00–1/31/01	3.71
Tianjin Machinery Import & Export Corporation: Bars/Wedges	2/1/00–1/31/01	0.48

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review. We will direct the Customs Service to assess the resulting assessment rates for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of amended final results of administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore, *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies with a separate rate not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates; (4) for all non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. The current PRC-wide cash deposit rates are 18.72 percent for Axes/Adzes, 47.88 percent for Bars/Wedges, 27.71 percent for Hammers/Sledges and 98.77 percent for Picks/Mattocks. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 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 order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: February 6, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3592 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013103A]

Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

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

ACTION: Final notice.

SUMMARY: At its Twenty-first meeting in Hobart, Tasmania, October 21 to November 1, 2002, the Commission for the Conservation of Antarctic Marine Living Resources (the Commission or CCAMLR), of which the United States is a member, adopted conservation measures, pending members' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These have been agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources (the Convention) and are in effect with respect to the United States.

ADDRESSES: Copies of the CCAMLR measures and the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, 301–713–2282.

SUPPLEMENTARY INFORMATION:

Background

See 50 CFR part 300, subpart G - Antarctic Marine Living Resources, and 67 FR 77876 (December 19, 2002).

The measures restrict overall catches and bycatch of certain species of fish, krill and crab; limit participation in several exploratory fisheries; restrict fishing in certain areas and to certain gear types; set fishing seasons; amend and clarify the catch documentation scheme for *Dissostichus* species; amend

a previously adopted measure on the use of automated satellite-linked vessel monitoring systems (VMS) on Contracting Party vessels fishing in the Convention Area; and promote compliance by Contracting and non-Contracting Party vessels. Resolutions urge Member efforts to reduce illegal, unregulated and unreported (IUU) fishing in Convention Areas adjacent to high seas Statistical Areas 51 and 57 and by flags of non-compliance.

The measures and resolutions were announced by the Department of State by a preliminary notice in the **Federal Register** on December 19, 2002 (67 FR 77887). Public comments were invited, but none were received. Through this action, NMFS notifies the public that the United States has accepted the measures adopted at CCAMLR's twenty-first meeting, and that pursuant to the Convention and 16 U.S.C. 2431 *et seq.*, these measures are in effect. For the full text of the measures adopted, see 67 FR 77887, December 19, 2002. NMFS provides the following summary of the measures as a courtesy.

Compliance

The Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures is revised to establish a list of non-Contracting Party vessels (Vessel List) whose fishing activities in the Convention Area have diminished the effectiveness of CCAMLR conservation measures in force.

The Scheme to Promote Compliance by Contracting Party Vessels with CCAMLR Conservation Measures is a new measure. It requires the Commission to identify those Contracting Parties whose vessels have engaged in fishing activities in the Convention Area in a manner which has diminished the effectiveness of CCAMLR conservation measures in force, and to establish a list of such vessels (IUU Vessel List).

Measures regulating new and exploratory fisheries are revised to restrict access to these fisheries to vessels that are equipped and configured so that they can comply with all relevant conservation measures. A vessel with a confirmed involvement in IUU fishing with respect to the CCAMLR schemes to promote compliance by Contracting and non-Contracting Party vessels is not allowed to participate in these fisheries.

The measure on Port Inspections of Vessels Carrying Toothfish is revised to require that Contracting Parties promptly provide the CCAMLR Secretariat with a report on the outcomes of each inspection conducted under the conservation measure.

The measure requiring the use of an Automated Satellite-Linked Vessel Monitoring System on vessels fishing within the Convention Area is revised to require that both the hardware and software components of the VMS must be tamper proof, i.e., must not permit the input or output of false positions nor be capable of being manually overridden. In addition, Contracting Parties may not issue licenses to fish in the Convention Area unless the VMS used on licensed vessels complies with every specification of the conservation measure.

The Commission adopted a resolution on Flags of Non-Compliance (FONC), urging all Contracting and non-Contracting Parties cooperating with the Commission to: (1) without prejudice to the primacy of the responsibility of the Flag State, to take measures or otherwise cooperate to ensure, to the greatest extent possible, that the nationals subject to their jurisdiction do not support or engage in IUU fishing, including engagement on board FONC vessels in the Convention Area is this is consistent with their national law; (2) ensure the full cooperation of their relevant national agencies and industries in implementing the measures adopted by CCAMLR: (3) develop ways to ensure that the export or transfer of fishing vessels from their State to FONC State is prohibited; and (4) prohibit the landings and transhipments of fish and fish products from FONC vessels.

Catch Documentation Scheme (CDS)

The CDS measure is revised in two ways. First, it requires that the master of a vessel completing a Dissostichus Catch Document(DCD)indicate whether a *Dissostichus* catch was caught in an Exclusive Economic Zone or on the high seas, as appropriate. Second, the Flag State can only issue a DCD confirmation number when it is convinced that the information submitted by the vessel requesting the confirmation number fully satisfies the provisions of the CDS conservation measure.

Incidental Mortality of Seabirds

The measure to minimize the incidental mortality of seabirds in the course of longline fishing or longline fishing research is amended to require that fishers remove fish hooks from all discarded material, including offal and fish heads.The Commission adopted minor changes to the bottle test in the experimental line-weighting trials required in all longline fisheries.

Research Vessel Activity

The conservation measure specifying the application of CCAMLR conservation measures to scientific research is revised to include a taxa-specific schedule for use by Members in notifying the CCAMLR Secretariat of research vessel activity.

Krill

Data requirements for the fisheries for *Euphausia superba* (krill) in Statistical Area 48 and Statistical Divisions 58.4.1 and 58.4.2 are revised to require that each Contracting Party obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form for trawl fisheries and that it aggregate these data monthly by 10 x 10 nautical mile rectangle and 10–day periods and transmit them to the CCAMLR Secretariat no late that 1 April of the following year. While fishers have been required previously to collect this data, Contracting Parties have not routinely provided it to the CCAMLR Secretariat.

Crab

The Commission eliminated a measure requiring fishers to process crab sections on board.

Champsocephalus gunnari

The Commission set the overall catch limit for *C.gunnari* in Statistical Subarea 48.3 for the 2002/2003 season at 2,181 tons, and otherwise continued previously adopted restrictions on the fishery.

The Commission set the catch limit for *C. gunnari* within defined areas of Statistical Division 58.5.2 for the 2002/03 season 2,980 tons and otherwise continued previously adopted restrictions on the fishery.

Electrona carlsbergi

The Commission set the catch limit for *E. carlsbergi*in Statistical Subarea 48.3 at 109,000 tons for the 2002/03 season. A special provision for Shag Rocks applies.

Dissostichus species

The Commission prohibited directed fishing for *Dissostichus* species in Statistical Subareas 48.5, 88.2 north of 65°S and 88.3, and Divisions 58.4.1, 58.5.1 and 58.5.2 outside the French EEZ and east of 79° 20′E outside the Australian EEZ from December 1, 2002 to November 30, 2003.

The Commission prohibited directed fishing for *Dissostichus* species in Statistical Division 58.4.4 and Subarea 58.6 outside areas of national jurisdiction until such time that further scientific information is gathered and

reviewed by the Working Group on Fish Stock Assessment and the Scientific Committee.

The Commission amended the general measures for exploratory fishing for *Dissostichus* species to limit longline soak times, except in the case of exceptional circumstances beyond the control of a vessel, to 48 hours, measured from the completion of the setting process to the beginning of the hauling process. In addition, the measure was modified to more precisely define the fine-scale rectangle within which vessels are to fish.

The Commission set the catch limit for the longline fishery for *D. eleginoides* in Subarea 48.3 in the 2002/03 season at 7,810 tons, counting any catch of *D. eleginoides* taken in other fisheries in Subarea 48.3 against the catch limit.

The Commission set the catch limit for trawl fishing in Division 58.5.2 during the December 1, 2002, to November 30, 2003, season and for longline fishing for *D. eleginoides* in Division 58.5.2 west of 79°20′E from May 1, 2003 to August 31, 2003, at 2,879 tons. This is the first season a longliner may operate in this fishery.

The Commission approved several fisheries as exploratory fisheries for the 2002/03 fishing season. These fisheries are limited total allowable catch (TAC) fisheries and are open only to the flagged vessels of the countries that notified CCAMLR of an interest by participants in the fisheries. The United States was not a notifying country, and, thus, U.S. fishers are not eligible to participate in them.

The exploratory fisheries for *Dissostichus* species are for longline fishing in Statistical Subarea 48.6 by Japan, New Zealand, South Africa and Uruguay; longline fishing in Statistical Division 58.4.2 by Australia; longline fishing in 58.4.3a (the Elan Bank) outside areas under national jurisdiction by Australia and Japan; longline fishing in Statistical Division 58.4.3b (the BANZARE Bank) by Australia and Japan; longline fishing in Statistical Subarea 88.1 by Japan, New Zealand, Russia, South Africa and Spain; longline fishing in Statistical Subarea 88.2 by Japan, New Zealand and South Africa.

The Commission extended the limitations on bycatch in new and exploratory fisheries in 58.5.2 for the 2002/03 season.

The Commission limited the bycatch of *Macrourus* species, skates and rays and other species in new and exploratory fisheries small-scale research units for *Dissostichus* in Statistical Area 48.6, Statistical Divisions 58.4.2, 58.4.3a, 58.4.3b, and Statistical Areas 88.1 and 88.2 for the 2002/03 season.

The Commission adopted a resolution relating to Harvesting *D. eleginoides* in Areas Outside of Coastal State Jurisdiction Adjacent to the CCAMLR Area in FAO Statistical Areas 51 and 57. The resolution recommends that Members provide data and other information, subject to their laws and regulations, relevant to understanding the biology and estimating the status of stocks in these areas. It also recommends that Members take steps necessary to conduct only that level of toothfish harvesting in these areas, which will ensure the conservation of this species in the Convention Area.

Authority: 16 U.S.C. 2431 *et seq.*

Dated: February 7, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3590 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–22–S

LIBRARY OF CONGRESS

Copyright Office

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–1]

Vessel Hull Design Protection Act

AGENCIES: The United States Copyright Office, Library of Congress; and the United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments and notice of public hearing.

SUMMARY: In preparation for the report to the Congress on the Vessel Hull Design Protection Act, the United States Copyright Office and the United States Patent and Trademark Office are requesting written comments and are announcing a public hearing.

DATES: Written comments must be received on or before March 20, 2003. Reply comments must be received on or before April 14, 2003. The public meeting will be held on March 27, 2003, starting at 10 a.m. at the address below. Requests to participate or attend the public meeting are on a first-come, first-served basis and must be received by close of business on March 20, 2003.

ADDRESSES: If sent by mail, five copies of written comments and replies each should be addressed to: William J. Roberts, Jr., Senior Attorney, GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400 and Linda S. Lourie, Attorney-Advisor, Office of External Affairs, United States Patent and Trademark Office, Box 4, Department of Commerce, Washington, DC 20231. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenues, SE., Washington, DC and the Office of External Affairs, United States Patent and Trademark Office, Suite 902, 2121 Crystal Drive, Crystal Park 2, Arlington, VA. The public meeting will take place in LM–414 (CARP Hearing Room), James Madison Memorial Building, First and Independence Avenue, SE., Washington, DC. Notices of intent to participate in the public hearing should be faxed to (202) 252–3423 or e-mailed to *wroberts@loc.gov*.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366. Linda S. Lourie, Attorney-Advisor, Office of External Affairs, U.S. Patent and Trademark Office, Box 4, Department of Commerce, Washington, DC 20231. Telephone: (703) 305–9300. Telefax: (703) 305–8885.

SUPPLEMENTARY INFORMATION:

Background

As a part of the Digital Millennium Copyright Act of 1998, Congress passed the Vessel Hull Design Protection Act (''VHDPA'') which created sui generis protection for original designs of watercraft hulls and decks. The VHDPA was slated to sunset after two years but in 1999, as part of the Intellectual Property and Communications Omnibus Reform Act, the VHDPA was made a permanent part of the law. See 17 U.S.C. chapter 13. In making the VHDPA permanent, Congress directed the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to conduct a study on the effectiveness of the VHDPA and report their findings to the Judiciary Committees of the Senate and House of Representatives by November 1, 2003.

In conducting the study, the Copyright Office and the U.S. Patent and Trademark Office are required to consider a number of factors. See Section 504 of the Digital Millennium Copyright Act of 1998, Pub. L. No. 105–304, 112 Stat. 2860. First, we must examine the extent to which the VHDPA has been effective in suppressing infringement of protected vessel hull

designs. Second, we must consider the extent to which the vessel hull design registration process contained in chapter 13 of title 17 has been utilized by those eligible to claim protection. Third, we must consider the extent to which the creation of new designs of vessel hulls have been encouraged by the VHDPA. Fourth, we must examine the effect, if any, that the VHDPA has had on the price of protected vessel hulls.

Finally, we are directed to consider any other factors deemed relevant to accomplishing the purpose of this study. One item for consideration under this category is what, if any, amendments need to be made to the VHDPA to improve its function and/or effectiveness.

Request for Written Comments

In order to accomplish our assigned task, the cooperation and participation of marine manufacturers, designers and those affected by the VHDPA is essential. Consequently, we request interested parties to submit written comments and information/data relevant to the study factors described above. Although we are desirous of information related to all factors, we are particularly interested in receiving information as to how the VHDPA has stimulated the creation of new vessel hull designs, and what effect, if any, protection for designs has had on the price of watercraft. Interested parties submitting data or information that they consider confidential should appropriately mark such documents so that they are not included in the public record of this proceeding.

Public Hearing

To further the goal of obtaining relevant information and drafting the report, a public hearing will be held at the Copyright Office (see above for the specific address) on Thursday, March 27, 2003, at 10 a.m. The public hearing is intended to allow participants to present relevant information and answer questions from staff preparing the report. Those wishing to attend should notify the Copyright Office by fax or e-mail no later than March 20, 2003.

Dated: February 10, 2003.

David O. Carson,

General Counsel, Copyright Office.

Jonathan W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–3749 Filed 2–12–03; 8:45 am]

BILLING CODE 1410–30–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Friday, February 21, 2003, 10 a.m.

LOCATION: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Product Registration Cards (Petition CP 01–1)

The staff will brief the Commission on Petition CP 01–1 submitted by the Consumer Federation of America (CFA) requesting that the Commission issue a rule requiring product registration cards with every product intended for children.

Certain members of the public have been invited to give oral presentations based on their written comments previously submitted to the Commission.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–7923.

Dated: February 11, 2003.

Todd A. Stevenson,

Secretary

[FR Doc. 03–3748 Filed 2–11–03; 2:16 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE: In-Utero Surgical Repair of Myelomeningocele Randomized Clinical Trial

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties of a demonstration project in which the Department of Defense (DoD) will participate in a clinical trial for prenatal and postnatal myelomeningocele repair approved by the National Institute of Child Health and Human Development (NICHD). The study is being done to find out whether it is better to close a spina bifida defect before the baby is born or shortly after birth. Participation in this clinical trial will improve access to prenatal and postnatal surgical intervention for the repair of myelomeningocele for active duty members, former members, and their dependents when their condition meets protocol eligibility criteria. DoD financing of this procedure will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of intrauterine repair of fetal myelomeningocele. It is anticipated that new enrollments into the clinical trial will end in April 2004, with those enrolled having periodic examinations during a three-year follow-up period. This demonstration project is being conducted under the authority of 10 U.S.C. 1092.

EFFECTIVE DATES: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, Health Care Policy Analyst, Medical Benefits and Reimbursement Systems, TRICARE Management Activity (TMA), 16401 East Centretech Parkway, Aurora, CO 80011–9066, telephone (303) 676–3401.

SUPPLEMENTARY INFORMATION:

A. Background

Myelomeningocele is the most severe form of spina bifida. In a fetus with myelomeningocele, there is evidence that neurologic function deteriorates during gestation. While myelomeningocele is not necessarily life threatening, it is the most common debilitating birth defect. Those who survive are likely to experience significant life-long disabilities. Approximately 2,000 fetuses annually are affected with some kind of open neural tube defect in the United States, half of which are open spina bifida. The surgical repair of myelomeningocele in utero is the technique that may provide early intervention in preserving the neurologic integrity of these children. To date, clinical results of fetal surgery for myelomeningocele are based on comparisons with past controls and addresses efficacy rather than safety. A randomized clinical trial for myelomeningocele is necessary to determine whether fetal repair of myelomeningocele, with its attendant maternal and neonatal morbidity, is warranted.

The Department of Defense (DoD) provides and maintains readiness to provide medical services and support to the Armed Forces during military operations, and to provide health services and support to members of the uniformed forces, their family members, and to others entitled to DoD medical care. The services offered to TRICARE beneficiaries other than active duty members must be medically necessary, appropriate, and proven care and are governed by 10 U.S.C. 1079(a)(13).

Active duty service members are authorized civilian medical care under 10 U.S.C. 1074(c), and may be referred for unproven therapy when controlled in a formal clinical research trial. The trial must be operating under the structure of an institutional review board process, which conforms to the requirements of DoD Directive 3216.2, Protection of Human Subjects and Adherence of Ethical Standards in DoD Supported Research, the requirements of 32 CFR part 219, Protection of Human Subjects, as well as Service specific human experimentation regulations.

DoD has the authority to waive the statutory limitation for all other DoD beneficiaries that health care services must be medically necessary, appropriate, and proven care, as long as these services are provided within the context of an interagency agreement with the National Institutes of Health (NIH) for beneficiary participation in NIH-sponsored or approved clinical trials. The Secretary of Defense must also determine that such waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

B. Caseload, Costs

Each year approximately 60,000 TRICARE births occur at the Military Treatment Facilities (MTFs). Approximately 40,000 TRICARE births occur in civilian hospitals. According to the Center of Disease Control, in 2001 there were 20.09 cases of spina bifida per 100,000 births. Based on various studies, we estimate that 95 percent of these reported cases are related to myelomeningocele. We then interpret that approximately 19 cases would occur annually in TRICARE. We expect six to sixteen TRICARE members each year would have a fetus with a prenatal diagnosis of spina bifida that would be eligible for the NICHD clinical trial and would agree to participate.

Treatment protocol costs are estimated between $300,000 and $1.3 million over Fiscal Years 2003 through 2006 for TRICARE participation in the NICHD clinical trial of myelomeningocele fetal repair.

C. Operation of the Demonstration

The National Institute of Child Health and Human Development (NICHD) will fund an unblinded randomized controlled clinical trial conducted by three participating centers. The NICHD will provide administrative support, all NICHD enrollments, and study monitoring activities. DoD will provide a Project Officer who will coordinate DoD activities.

The DoD will develop initiatives to educate military healthcare providers and civilian TRICARE network providers about this initiative and the processes that are available for referral and pre-authorization of individuals with affected fetuses. DoD will require pre-authorization for any clinical services necessary or resultant from participation in an NICHD sponsored clinical trail before reimbursement by TRICARE. A pre-authorization for enrollment in the trial will suffice to cover each incidental expense or claim related to participation in the clinical trial extending through the duration of the clinical trial. The pre-authorization process will include verification with the NICHD that the patient has been enrolled in the study.

The TRICARE contractor(s) would not be involved in clinical issues or in directing patients to a particular institution.

D. Requirements for Participation

Active duty members, former members, and their dependents eligible for TRICARE who meet the clinical trial protocol would be eligible to participate in the demonstration. NICHD anticipates a total of two hundred patients whose fetuses have been diagnosed with myelomeningocele at 16 to 25 weeks' gestation who are over the age of 18 years would be enrolled and referred to the Data and Study Coordinating Center (DSCC) at George Washington University in Rockville, Maryland, to undergo an initial evaluation. Those individuals who remain eligible and interested would be assigned by the DSCC to one of the three centers (Vanderbilt University medical Center in Nashville, the University of California at San Francisco, and Children's Hospital of Philadelphia) where final evaluation and screening will be performed. Patient selection to the three Management of Myelomeningocele Study (MOMS) Centers would be based on convenience to the individual as well as the need to divide evenly the participants among the three centers.

E. Costs

Patients who choose to participate in the clinical trial will have no additional costs for prenatal care beyond what is normally paid by the beneficiary. If TRICARE beneficiaries have other health insurance, the other health insurance is required to pay first before TRICARE to the extent the health care is a benefit under the other plan as stated under 10 U.S.C. 1079(j)(1). If patients are in a prenatal surgery group, the travel, meal and lodging costs for the patient and a relative or friend will be covered by NICHD grant support or the grantee institution until delivery and after delivery, until the patient and baby go home.

If patients are in a postnatal surgery group, travel back to the center for the patient and a support person will be covered by NICHD grant support or the grantee institution, as well as meals and lodging before and after delivery, until the baby and patient are able to go home. The cost of the study follow up, returning at one year and two and a half years of age will also be covered. Meals and lodging will be covered for those visits as well.

Dated: February 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–3512 Filed 2–12–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2003 S&T Review and the Chief of Staff and Secretary of the Air Force. The purpose of the meeting is to allow the SAB leadership to advise the Air Force leadership on the outcome of the 2003 Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: February 20, 2003.

ADDRESSES: Room 4E869, The Pentagon.

FOR FURTHER INFORMATION CONTACT: Maj John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–3638 Filed 2–12–03; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2003 S&T Review and the leadership of the Air Force Materiel Command. The purpose of the meeting is to allow the SAB leadership to advise the commander of the AFMC on the outcome of the 2003 Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: February 18, 2003.

ADDRESSES: Room 4E987, The Pentagon.

FOR FURTHER INFORMATION CONTACT: Maj John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–3639 Filed 2–12–03; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Dredged Material Management Plan Feasibility Study, Los Angeles County, CA

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), the Port of Los Angeles, the City of Long Beach, and the County of Los Angeles propose to evaluate options for managing dredge materials in Los Angeles County.

DATES: A scoping meeting will be held on February 26, 2003, from 6:30 to 8:30 p.m. at the Cesar Chavez Communitiy Center located at 401 Golden Avenue in Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) may be directed to Mr. Paul Rose, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, CA, 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The Corps estimates that, within the Los Angeles Region, approximately 5 million cubic meters (m^3) of sediments deemed suitable for ocean disposal and 2.5 million m^3 of sediments deemed unsuitable for ocean disposal will need to be dredged from the Ports and Harbors of Los Angeles County over the next 10 years. However, there is currently a lack of readily available disposal options for the unsuitable sediments. The U.S. Army Corps of Engineers, L.A. District has determined that there is a federal interest to participate in a detailed feasibility study to develop a regional dredged material management plan.

2. *Alternatives:* Alternatives that may be considered include: no action, upland disposal, aquatic capping, near shore confined disposal facility (California Department of Fish and Game), shallow water habitat creation, chemical stabilization, washing, blending, physical separation, thermal desorption, construction fill, landfill daily cover, reclamation fill, oil well injections, and geotextile encapsulation. These alternatives, and any additional, reasonable, alternatives recommended through the public scoping process, will be evaluated by the Corps of Engineers.

3. *Scoping Process:* The Corps, the Port of Los Angeles, the City of Long Beach, and the County of Los Angeles are preparing a joint EIS/EIR to address potential impacts associated with the proposed project. The Corps is the lead Federal agency for compliance with National Environmental Policy Act (NEPA) for the project, and the County of Los Angeles is the Lead State Agency for compliance with the California Environmental Quality Act (CEQA) for the non-Federal aspects of the project. The draft EIS/EIR (DEIS/EIR) document will incorporate public concerns in the analysis of impacts associated with the proposed action and associated project alternatives. The DEIS/EIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The final EIS/EIR (FEIS/EIR) will address the comments received on the DEIS/EIR during public review, and will be furnished to all who commented on the DEIS/EIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final steps involves, for the Federal EIS, preparing a record of decision (ROD) and, for the State EIR, certifying the EIR and adopting a mitigation monitoring and reporting plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FEIS/EIR.

The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA. A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on Wednesday, February 26, 2003 (*see* **DATES**).

Dated: January 31, 2003.

Richard G. Thompson,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–3587 Filed 2–12–03; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

[Docket No. IC03–423–000, FERC Form No. 423]

Federal Energy Regulatory Commission

Commission Collection Activities, Proposed Collection; Comment Request; Extension

February 6, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by April 9, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. 03–423–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions

for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic fillings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 208–2425 and by E-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 423, ''Monthly Report of Cost and Quality of Fuels for Electric Plants'' (OMB No. 1902–0024) is used by the Commission to carry out its responsibilities in implementing provisions of the Federal Power Act (FPA) as amended by the Public Utility Regulatory Policies Act (PURPA).

The Commission uses the information reported on FERC Form No. 423 to conduct fuel reviews under section 205(a) and (e)of the FPA, and to prepare expert testimony in electric utility rate cases filed with the Commission. The Form 423 data provides the only effective means for assessing the potential impact of new developments on the future utility fuel supply patterns. The Commission's staff compare delivered fuel costs for utilities receiving like fuels of similar quality; detect consistently high cost patterns or irregularities indicative of possible uneconomic fuel purchase practices; evaluate the economic effect of unusual fuel purchases practices, such as buying fuel from affiliate fuel sources, as opposed to selecting buyers by competitive bids, and investigate a broad range of fuel costs and fuel purchase practice issues raised in contested rate proceedings.

With the transition to power markets the data from FERC Form 423, in conjunction with other data sources, allow Commission staff to identify potential out-of-merit dispatch practices by system operators, a quick source for estimating the thermal efficiency of individual plants and when used in conjunction with bid data, indicates the efficiency of markets by identifying the key components associated with generators' variable costs.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 141.61. The statutory authorities for this mandatory information collection requirement are sections 205, of the Federal Power Act, as amended by section 208 of the Public Utility Regulatory Policies Act (49 Stat. 851; 16 U.S.C. 824d).

Action

The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection of data. It should be noted that during OMB's last review of Form 423, the Commission was directed prior to its next submission to OMB, to make a determination as to whether the information reported on Form 423 should be confidential. In order to assist the Commission in making that determination, the Commission seeks comments on how the public disclosure of information contained on Form 423 harms the competitive position of reporting parties and adversely affects the competitiveness of the market.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per respondent (2)	Average burden hours per response (3)	Total burden hours (1)×(2)×(3)
584	12	1	7,008

Estimated Burden: 7,008 total burden hours, 584 respondents, 12 responses annually, 1.0 hours per response (average). In Order No. 622, 66 FR 67076 (December 28, 2001), the Commission amended its regulations to provide for electronic filing of Form No. 423 commencing with the January 2002 filing. These changes to the reporting requirements resulted in a reduction in burden for all respondents.

Estimated cost burden to respondents is $394,338; (*i.e.*, 7,008 hours divided by 2,080 hours per full time employee per year multiplied by $117,041 per year equals $394,338)(rounded off).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3529 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–061]

ANR Pipeline Company; Notice of Negotiated Rate Filing

February 6, 2003.

Take notice that on January 31, 2003, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to a Service Agreement between ANR and Wisconsin Public Service Corporation, which revises the No-Notice Entitlement and rates under such Agreement. ANR requests that the Commission accept and approve the amendment to be effective February 1, 2003.

ANR states that copies of the filing has been mailed to each of ANR's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3545 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–067]

ANR Pipeline Company; Notice of Negotiated Rate Filing

February 6, 2003.

Take notice that on January 31, 2003, ANR Pipeline Company, (ANR) tendered for filing three negotiated rate agreements between ANR and Kerr-McGee Corporation pursuant to ANR's Rate Schedules PTS–2, ITS and ITS (Liquefiables). ANR states that it is tendering these agreements, as well as a Lease Dedication Agreement, pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective February 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3546 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–290–000]

Calpine California Equipment Finance Company, LLC; Notice of Issuance of Order

February 6, 2003.

Calpine California Equipment Finance Company, LLC (''CCEFC''), a wholly owned subsidiary of Calpine Corporation, filed an application requesting authority to transact at market-based rates, along with the accompanying tariff. The proposed market-based rate tariff provides for sales of capacity and energy at market-based rates, the sale of ancillary services at market rates, the resale of firm transmission rights, and the reassignment of transmission capacity. CCEFC also requested waiver of various Commission regulations. In particular, CCEFC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CCEFC.

On January 24, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CCEFC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 24, 2003.

Absent a request to be heard in opposition by the deadline above, CCEFC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CCEFC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approval of CCEFCs' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3528 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–239–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes to FERC Gas Tariff

February 6, 2003.

Take notice that on January 23, 2003., CenterPoint Energy Gas Transmission Company (CEGT), formerly Reliant Energy Gas Transmission Company, tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets attached as Appendix A to the filing, to be effective February 28, 2003. The purpose of this filing is to reflect CEGT's name change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment date: February 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3542 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–205–000, ER03–206–000, ER03–207–000, ER03–208–000 and ER03–209–000]

CES Marketing, LLC, CES Marketing II, LLC, CES Marketing III, LLC, CES Marketing IV, LP, CES Marketing V, LP; Notice of Issuance of Order

February 6,2003.

CES Marketing, LLC, CES Marketing II, LLC, CES Marketing III, LLC, CES Marketing IV, LP, and CES Marketing V, LP (collectively, ''Applicants'') filed applications requesting authority to transact at market-based rates along with the accompanying tariffs. The proposed market-based rate tariffs provide for sales of capacity, energy, and ancillary services at market-based rates, and for the reassignment of transmission capacity. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On January 16, 2003., pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 18, 2003.

Absent a request to be heard in opposition by the deadline above, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3527 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–219–002]

Discovery Gas Transmission LLC; Notice of Withdrawal of Filing and Notice of Additional Tariff Sheets

February 6, 2003.

Take notice that on February 3, 2003., Discovery Gas Transmission LLC (Discovery) hereby respectfully (1) requests withdrawal of Substitute First Revised Sheet No. 186 filed on January 13, 2003. in Docket No. RP03–219–001 and (2) tenders for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 101 and Second Substitute First Revised Sheet No. 186, to be effective February 1, 2003.

Discovery states that this filing is made in response to the Commission's letter order issued in the above-captioned proceeding on January 30, 2003.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3541 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–46–000]

Dominion Transmission, Inc. and Texas Eastern Transmission, LP; Notice of Application

February 6, 2003.

Take notice that on January 30, 2003., Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, and Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–53101, filed in Docket No. CP03–46–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to uprate the horsepower on three electric engines at the Oakford Compressor Station and two electric engines at the South Oakford Compressor Station all located within Westmoreland County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

DTI and Texas Eastern state that these proposed uprates will provide greater operating flexibility and will potentially improve the performance of the Oakford Storage Complex. DTI and Texas Eastern state that as joint owners of the Oakford Storage Complex they are requesting authorization to operate the two existing 5,000 HP Engines #3 and #4 located at the South Oakford Station to an ISO-rated HP of 5,750 each and to operate the three existing 4,000 HP Engines #13, #14 and #15 located at the Oakford Station to an ISO-rated HP of 4,600 each. According to DTI and Texas Eastern, this operation at the higher HP rating is intended to improve the efficiency of the Oakford Storage Complex by allowing them to use the existing certificated level of capacity more efficiently and to maintain design pressures more effectively. In addition, DTI and Texas Eastern state that these operational improvements will facilitate more reliable and more flexible storage and transportation service to DTI and Texas Eastern's existing customers, at no additional cost. DTI and Texas Eastern add that they propose to modify the software controls so that each of the engines may be operated at the design rating described above; that this operation will not require any installation, construction or facility reconfiguration beyond the modifications of the software controls; and, that there will be no air emission issues since these compressor units are powered by electric motors.

Any questions concerning this application may be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301, at (304) 627–3462 or fax (304) 627–3305; or to Steven E. Tillman, General Manager, Regulatory Affairs, Texas Eastern Transmission, LP, P. O. Box 1642, Houston, Texas 77251–1642, at (713) 627–5113 or fax (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3525 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2610–000]

Element Re Capital Products, Inc.; Notice of Issuance of Order

February 6, 2003.

Element Re Capital Products, Inc. (Element Re) filed an application requesting authority to transact at market-based rates, along with the accompanying tariff. The proposed market-based rate tariff provides for sales of capacity and energy at market-based rates. Element Re also requested waiver of various Commission regulations. In particular, Element Re requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Element Re.

On November 19, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Element Re should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 17, 2003.

Absent a request to be heard in opposition by the deadline above, Element Re is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Element Re, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Element Re's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3526 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–491–003, RP02–188–002 and CP01–69–006]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

February 6, 2003.

Take notice that on January 31, 2003., Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of FERC Gas Tariff, Original Volume No. 1, Substitute Original Sheet No. 11A, with an effective date of May 1, 2002.

Petal states that this filing is being made in compliance with the Commission's Order issued on January 22, 2003., directing Petal to remove any references to Petal's Electronic Bulletin Board from Petal's tariff.

Petal states that a copy of this filing has been mailed to all parties who have intervened in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3539 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–023]

Questar Pipeline Company; Notice of Negotiated Rates

February 6, 2003.

Take notice that on February 3, 2003, Questar Pipeline Company's (Questar) submitted a tariff filing to implement a negotiated-rate contract for BP Energy Company. Questar states that the contract was authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.*

Questar states that a copy of this filing has been served upon all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3547 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–248–000]

Texas Gas Transmission Corporation; Notice of Annual Cash-out Report

February 6, 2003.

Take notice that on January 31, 2003, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a report that compares its cash-out revenues with its cash-out costs incurred for the annual billing period November 1, 2001 through October 31, 2002, in accordance with its tariff. Texas Gas states that there is no rate impact to customers as a result of this filing.

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 13, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3543 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–10–001

Trailblazer Pipeline Company; Notice of Compliance Filing

February 6, 2003.

Take notice that on January 31, 2003., Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 2003.

Trailblazer states that the purpose of this filing is to cancel Trailblazer's Rate Schedules T and I, which provided for firm and interruptible transportation services for Northern Natural Gas Company (Northern) and Natural Gas Pipeline Company of America (Natural) pursuant to service agreements dated October 8, 1982, as amended.

Trailblazer states that these sheets have been submitted in compliance with Ordering Paragraph (A) of the Commission's order issued January 28, 2003 in Docket No. CP03–10–000 (January 28th Order). Such order authorized Trailblazer to abandon firm and interruptible transportation services performed by Trailblazer for Northern and Natural authorized in Docket No. CP79–80, as amended.

Trailblazer states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. CP03–10–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3524 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–009; RP00–553–012; and RP00–481–009]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

February 6, 2003.

Take notice that on January 31, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets list on Appendix A attached to the filing, with a proposed effective date of April 1, 2003.

Transco states that the tariff sheets enumerated in Appendix A are submitted to comply with the Commission's August 29, 2002 order in the referenced proceedings, which directed that Transco update certain tariff sheets related to the implementation of Transco's new business system, 1Linesm. In addition, Transco proposes to move into effect on April 1, 2003. certain tariff sheets identified in Appendix C, attached to the filing, which require no updating and which already have been accepted by the Commission in the referenced proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available

for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3540 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–288–029 and RP01–507–003]

Transwestern Pipeline Company; Notice of Compliance Filing

February 6, 2003.

Take notice that on February 4, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 83; Substitute Fourth Sheet No. 84; and Original Sheet No. 84A, to become effective February 5, 2003.

Transwestern states that on December 10, 2002, it filed a Stipulation and Agreement (Settlement) resolving issues raised in the above referenced dockets. The Settlement included, among other things, pro forma tariff sheets setting forth new capacity posting and contract procedures in a new Section 24 of the General Terms and Conditions (GTC) of Transwestern's Tariff. Transwestern explains that, by Order issued January 31, 2003. (January 31 Order), the Commission accepted the Settlement and the pro forma tariff sheets, and directed Transwestern to file actual tariff sheets within five days of the date of the order. Transwestern states that this filing is made in compliance with the January 31 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3544 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–324–004, et al.]

Detroit Edison Company, et al.; Electric Rate and Corporate Filings

February 4, 2003.

The following filings have been made with the Commission.

The filings are listed in ascending order within each docket classification.

1. Detroit Edison Company, DTE Energy Trading, Inc., DTE Edison America, Inc, DTE Energy Marketing, Inc., DTE Georgetown, LLC, DTE River Rouge No. l, LLC, Crete Energy Venture, LLC

[Docket Nos. ER97–324–004, ER97–3834–010, ER98–3026–007, ER99–3368–003, ER00–1746–001, ER00–1816–002, and ER02–963–002]

Take notice that on January 31, 2003, the Detroit Edison Company, DTE Energy Trading, Inc., DTE Edison America, Inc., DTE Energy Marketing, Inc., DTE Georgetown, LLC, DTE River Rouge No. 1, LLC, and Crete Energy Venture, LLC tendered for filing a joint triennial market power analysis in compliance with the Commission's orders in the captioned proceedings. Detroit Edison Co., 77 FERC ¶ 61,279 (1996); DTE Energy Trading, Inc., 80 FERC ¶ 61,348 (1997); DTE Edison America, Inc., 84 FERC ¶ 61,028 (1998); DTE Energy Marketing, Inc., 88 FERC ¶ 61,189 (1999); DTE Georgetown, LLC, 91 FERC ¶ 61,073 (2000); DTE River Rouge No. l, LLC, 91 FERC ¶ 61,139 (2000); Crete Energy Venture, LLC, letter order, Docket No. ER02–963–000, March 15, 2002.

Comment Date: February 21, 2003.

2. ISO New England Inc.

[Docket No. ER01–316–008]

Take notice that on January 31, 2003, ISO New England Inc., filed its Index of Customers for the fourth quarter of 2002 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: February 21, 2003.

3. New York Independent System Operator, Inc., ISO New England Inc.

[Docket No. ER03–246–001]

Take notice that on January 31, 2003., the New York Independent System Operator, Inc. (NYISO) and ISO New England Inc. (ISO New England), tendered for filing a compliance report in connection with the Commission's December 30, 2002, order in the above-referenced dockets.

The NYISO and ISO New England have served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in docket number ER03–246–000.

Comment Date: February 21, 2003.

4. Virginia Electric and Power Company

[Docket No. ER03–383–001]

Take notice that on January 31, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a Substitute First Revised Generator Interconnection and Operating Agreement (Substitute First Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) containing additional information describing the units at ODEC's generating facility and correcting internal references.

Dominion Virginia Power respectfully requests that the Commission allow the Substitute First Revised Interconnection Agreement to become effective February 1, 2003, the day after filing. Dominion Virginia Power also states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: February 21, 2003.

5. American Transmission Systems, Incorporated

[Docket No.ER03–474–000]

Take notice that on January 31, 2003, American Transmission Systems, Incorporated submitted for filing Service Agreement No.313 under its Open Access Transmission Tariff, an Agreement for Construction, Operation, and Compensation of Delivery Points with the Village of Grafton dated January 29, 2003. The purpose of the Service Agreement is to establish the terms and conditions for a second 69 kV delivery point for the Village of Grafton's distribution system. An effective date of April 2, 2003, is requested for the Service Agreement.

American Transmission Systems Inc., states that copies of this filing were served on the representatives of the Village of Grafton, American Municipal Power-Ohio, Inc., and the Public Utilities Commission of Ohio.

Comment Date: February 21, 2003.

6. Minnesota Power

[Docket No. ER03–475–000]

Take notice that on January 31, 2003, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Hibbing, Minnesota—Public Utilities Commission (Hibbing). This filing included revised rates, which would allow Hibbing the option to purchase wholesale, municipal non-firm energy service from Minnesota Power, for resale to Hibbing's retail customers.

Minnesota Power requests January 1, 2003, as the effective date for these revised rates.

Comment Date: February 21, 2003.

7. Interstate Power & Light Company

[Docket No.ER03–476–000]

Take notice that on January 31, 2003, Interstate Power and Light Company (IPL), tendered for filing Amendment No. 7 to Rate Schedule FERC No. 48 with the City of Bellevue. IPL states that this Amendment will terminate Rate Schedule FERC No. 48 effective April 1, 2003, and indicates that copies of the filing have been provided to the City of Bellevue and to the Iowa Utilities Board.

Comment Date: February 21, 2003.

8. Southern California Edison Company

[Docket No. ER03–477–000]

Take notice that on January 31, 2003, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and the City of Corona (Corona), California. SCE respectfully requests the Agreements become effective on January 4, 2003.

The Agreements specify the terms and conditions under which SCE will provide wholesale distribution service form the California Independent System Operator Controlled Grid at SCE's Mira Loma Substation 230 kV bus to the Corona Crossings Business Center development, located at the Northwest corner of Cajalco Road and Temescal Canyon Road in the City of Corona.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: February 21, 2003.

9. PPM Energy, Inc.

[Docket No. ER03–478–000]

Take notice that on January 31, 2003, PacifiCorp Power Marketing, Inc., informed the Federal Energy Regulatory Commission (Commission) that effective January 15, 2003, the name of PacifiCorp Power Marketing, Inc., had been changed to PPM Energy, Inc. in accordance with 18 CFR 35.16.

Comment Date: February 21, 2003.

10. Great Bay Power Marketing, Inc.

[Docket No. ER03–479–000]

Take notice that on January 31, 2003, Great Bay Power Marketing, Inc. (GBPM), filed a notice of succession with the Federal Energy Regulatory Commission pursuant to sections 35.16 and 131.51 of the Commission's rules and regulations, 18 CFR 35.16 and 131.51. This filing was made as a result of the transfer of a purchased power agreement entered into between Great Bay Power Corporation (GBPC) and Unitil Power Corp. (Unitil PPA) from GBPC to GBPM. GBPM adopted and ratified the Unitil PPA. GBPM requested that the revised rate schedule be made effective as of January 1, 2003.

Comment Date: February 21, 2003.

11. Oklahoma Gas and Electric Company

[Docket No. ER03–480–000]

Take notice that on January 31, 2003, Oklahoma Gas and Electric Company (OG&E) submitted for filing a delivery point and transmission interconnection agreement (the Agreement) between OG&E and The City of Paris, Arkansas (Paris).

OG&E requests an effective date of February 1, 2003, for the Agreement. Accordingly, OG&E requests waiver of the Commission's notice requirements. Copies of this filing were served upon Paris and the Oklahoma Corporation Commission.

Comment Date: February 21, 2003.

12. Duke Energy Corporation

[Docket No.ER03–481–000]

Take notice that on January 31, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing the First Amended and Restated Generation Interconnection and Operating Agreement (Restated IOA) between Duke and Rowan County Power, LLC, as the successor in interest to Carolina Power and Light Company. Duke seeks an effective date for the restated IOA of January 30, 2003.

Comment Date: February 21, 2003.

13. Duke Energy Corporation

[Docket No.ER03–482–000]

Take notice that on January 31, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing (1) a revised Service Agreement for Network Integration Transmission Service (NITSA) and (2) a revised Network Operating Agreement (NOA) between Duke and North Carolina Municipal Power Authority No. 1. Duke seeks an effective date for the revised NITSA and NOA of January 1, 2003.

Comment Date: February 21, 2003.

14. Unitil Power Corp.

[Docket No. ER03–483–000]

Take notice that on January 31, 2003., in accordance with section 35.13 of the Commission's regulations, 18 CFR 35.13, Unitil Power Corp. (UPC) and Unitil Energy Systems, Inc. (UES) (collectively, Unitil Companies) submitted for filing the Amended Unitil System Agreement between UPC and UES. The Amended Unitil System Agreement is Attachment I to Rate Schedule FERC No. 1 (the Unitil System Agreement). The Amended Unitil System Agreement is necessary to facilitate the divestiture of the portfolio of entitlements in generation and transmission facilities acquired by UPC to supply the requirements of UES. Following the divestiture of such portfolio and upon receipt of the necessary regulatory approvals, the terms and conditions, including rate provisions of the Amended Unitil System Agreement will replace those of the Unitil System Agreement. The Unitil Companies request an effective date of May 1, 2003, for the Amended Unitil System Agreement, but reserves the right not to implement the Amended Unitil System Agreement if the necessary regulatory approvals are not obtained.

The Unitil Companies states that a copy of the filing was served upon the

New Hampshire Public Utilities Commission.

Comment Date: February 21, 2003.

15. New England Power Pool

[Docket No. ER03–484–000]

Take notice that on January 31, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include Lake Road Generating Company, LP (Lake Road) and Outback Power Marketing, Inc., (Outback); and (2) to terminate the memberships of Allied Utility Network (Allied), Enron Power Marketing, Inc., (EPMI), Great Bay Power Corporation (GBPC), MIECO Inc., (MIECO), and PSEG Power Connecticut, LLC, (PSEG PCT). The Participants Committee requests the following effective dates: January 1, 2003, for the termination of Allied, EPMI, GVPC, MIECO, and PSEG PCT; February 1, 2003, for the commencement of participation in NEPOOL by Lake Road; and March 1, 2003, for commencement of participation in NEPOOL by Outback.

The participants Committee states that copies these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: February 21, 2003.

16. Gilroy Energy Center, LLC

[Docket No. ER03–485–000]

Take notice that on January 31, 2003, Gilroy Energy Center, LLC (Gilroy) filed an executed Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Gilroy and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Gilroy will provide reliability must-run services to the ISO.

Comment Date: February 21, 2003.

17. PJM Interconnection, LLC

[Docket No. ER03–486–000]

Take notice that on January 31, 2003, PJM Interconnection, LLC (PJM), submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff to include WPS Westwood Generation LLC's (Westwood) revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service that the Federal Energy Regulatory Commission (Commission) accepted for filing, subject to refund, in WPS Westwood Generation, LLC, 101 FERC ¶ 61,290.

Consistent with the effective date of the Commission's acceptance of Westwood's revenue requirements in WPS Westwood Generation, LLC, 101 FERC ¶ 61,290 PJM requests an effective date of November 1, 2002, for the amendments.

PJM states that copies of this filing have been served on all PJM members, Westwood, and each state electric utility regulatory commission in the PJM region.

Comment Date: February 21, 2003.

18. Idaho Power Company

[Docket No. ER03–487–000]

Take notice that on January 31, 2003, Idaho Power Company (Idaho Power) tendered for filing two Service Agreements for Network Integration Transmission Service (NITSAs) (with attached Network Operating Agreements (NOAs)) with Idaho Power Company—Power Supply.

Comment Date: February 21, 2003.

19. Idaho Power Company

[Docket No. ER03–488–000]

Take notice that on January 31, 2003, Idaho Power Company (Idaho Power) tendered for filing (1) four Service Agreements for Network Integration Transmission Service (NITSAs) (with attached Network Operating Agreements (NOAs)) ; and (2) the Boise Diversion Dam Letter Agreement between Idaho Power and Bonneville Power Association (BPA).

Comment Date: February 21, 2003.

20. Mid-America Energy Company

[Docket No. ES03–22–000]

Take notice that on January 28, 2003, Mid-American Energy Company (Mid-American) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue promissory notes and other evidences of short-term, unsecured indebtedness, in an amount not to exceed $500 million.

Comment Date: February 24, 2003.

Standard Paragraph

Any person desiring to be hear 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 rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 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. 03–3554 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Westar Generating, Inc., et al.; Electric Rate and Corporate Filings

[Docket No. ER01–1305–006, et al.]

Federal Energy Regulatory Commission

February 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Westar Generating, Inc.

[Docket No. ER01–1305–006]

Take notice that on February 3, 2003., Westar Generating, Inc., (WG) submitted for filing a revised Rate Schedule FERC No. 1, Purchase Power Agreement between WG and Westar Energy, Inc., (WE). WG states that the purpose of this revision is to remove certain language with respect to WE's purchase option for WG's ownership interest in the State Line combined-cycle generating project.

This revision is proposed to be effective February 1, 2003. WG states that copies of the filing were served upon WE and the Kansas Corporation Commission.

Comment Date: February 24, 2003.

2. Tampa Electric Company

[Docket No. ER03–169–002]

Take notice that on February 3, 2003, Tampa Electric Company (TEC) tendered for filing in compliance with the January 2, 2003, letter order a revised Interconnection and Operating Agreement between TEC and Cargill

Fertilizer, Inc. as a service agreement under TEC's Open Access Transmission Tariff.

Comment Date: February 24, 2003.

3. Unitil Energy Systems, Inc.

[Docket No. ER03–374–001]

Take notice that on January 30, 2003, Unitil Energy Systems, Inc. (UES), filed a supplemental to the January 2, 2003, notice of succession, with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.16 and 131.51. UES adopted and ratified all applicable rate schedules filed with the Commission by Concord Electric Company and Exeter & Hampton Electric Company. UES also resubmitted its rate schedules to conform them to the formatting requirements of Order No. 614. UES requested that the revised rate schedules be made effective as of December 2, 2002.

Comment Date: February 20, 2003.

4. Florida Power & Light Company

[Docket Nos. ER03–489–000]

Take notice that on February 3, 2003, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an executed Service Agreement for Point-to-Point Transmission Service between FPL and Georgia Transmission Corporation (an Electric Membership Corporation). This Service Agreement No. 219 provides for 5 Megawatts of firm point-to-point transmission service for the period January 1, 2003, through December 31, 2004, which is a continuation of service begun on January 1, 2002. The preceding firm point-to-point service between FPL and Georgia Transmission Corporation that begun on January 1, 2002 was provided under Service Agreement No. 192. The parties have filed a notice of cancellation of Service Agreement No. 192.

FPL states that a copy of this filing has been served on Georgia Transmission Corporation and the Florida Public Service Commission.

Comment Date: February 24, 2003.

5. Westar Energy, Inc.

[Docket No. ER03–490–000]

Take notice that on February 3, 2003, Westar Energy, Inc., (WE) submitted for filing revisions to rate schedule FERC No. 300 removing certain agreements inadvertently submitted in an earlier docket and revising a Control Area Service Agreement between WE and Missouri Joint Municipal Electric Utility Commission (MJMEUC). WE states that the purpose of these changes is to permit MJMEUC to continue taking Scheduling, System Control, and Dispatch Services from WE. These changes are proposed to be effective January 1, 2003.

WE states that copies of the filing was served upon MJMEUC and the Kansas Corporation Commission.

Comment Date: February 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3553 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12327–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kaskaskia L&D Hydroelectric Project would be located on the Kaskaskia River in Randolph County, Illinois. The project would utilize the U.S. Army Corps of Engineers' existing Kaskaskia Lock and Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *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.

j. *Description of Project:* The proposed project, using the Corps' existing dam, would consist of: (1) Two 50-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 1.6 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 10 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the

specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', 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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3530 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12352–000.

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Cave Run Lake Dam Hydroelectric Project would be located on the Licking River in Rowan County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Cave Run Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *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.

j. *Description of Project:* The proposed project, using the Corps' existing dam would consist of: (1) Two 50-foot-long, 42-inch-diameter steel penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 5 megawatts, (3) a 1/4-mile-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 31 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the

particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', 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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3531 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12357–000.

c. *Date filed*: August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project*: The Nolin Lake Dam Hydroelectric Project would be located on the Nolin River in Grayson County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Nolin Lake Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *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.

j. *Description of Project*: The proposed project, using the Corps' existing dam would consist of: (1) One 50-foot-long, 42-inch-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1 megawatt, (3) a 200-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 6 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', 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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3532 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No*: 12377–000.

c. *Date Filed:* September 23, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* The Mississippi Lock & Dam #5 Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Mississippi River in Winona County, Minnesota.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments*: 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.

k. *Competing Application*: Project No. 12369–000, *Date Filed:* September 17, 2002, *Due Date*: December 24, 2002.

l. *Description of Project*: The proposed project, using the Corps' existing dam, would consist of: (1) six 80-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing six generating units with a total installed capacity of 10 megawatts, (3) a 200-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 61 gigawatthours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or

notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in 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 the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3533 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12409–000.

c. *Date filed*: November 1, 2002.

d. *Applicant:* The Green Power Company of Kentucky.

e. *Name and Location of Project*: The Barren River 1 Hydroelectric Project would be located on the Barren River in Warren County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Barren Lock & Dam 1.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. David Brown Kinloch, Soft Energy Associates, 414 S. Wenzel Street, Louisville, KY 40204, (502) 589–0975

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *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.

j. *Description of Project*: The proposed project, using the Corps' existing Barren Lock & Dam 1, would consist of: (1) an existing lock chamber containing the six proposed generating units with a total installed capacity of 2 megawatts, (2) an existing 100-yard three-phase distribution line connecting to the existing control building, and (3) appurtenant facilities. The project would have an average annual generation of 8 gigawatt-hours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', 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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3534 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12411–000.

c. *Date filed*: November 12, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project*: The Opekiska L&D Hydroelectric Project would be located on the Monongahela River in Monongalia County, West Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Opekiska Lock & Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *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.

j. *Description of Project*: The proposed project, using the Corps' existing Opekiska Lock & Dam would consist of: (1) Five 50-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing five generating units with a total installed capacity of 6.8 megawatts, (3) a 500 -yard-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 4.2 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', 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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3535 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

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. *Project Nos.:* 12417–000 and 12415–000

c. *Dates Filed*: November 13 and November 14, 2002.

d. *Applicants:* Coralville Hydro, LLC and Universal Electric Power Corporation

e. *Name and Location of Project*: The proposed project would be located on the existing Coralville Dam, owned by the U.S. Army Corps of Engineers, located on the Iowa River in Johnson County, Iowa.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C.791(a)—825(r).

g. *Applicant Contacts*: For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115. For Coralville Hydro, LLC: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *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.

j. *Description of Projects*: Coralville Hydro, LLC (P–12417–000): The proposed run-of run project would utilize the Corps' existing dam and consist of : (1) Two 15-foot-diameter, 100-foot-long steel penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 4.5 MW, (3) a 67-kv transmission line approximately 8 miles long, and (4) appurtenant facilities. The project would have an annual generation of 39.4 GWh.

Universal Electric Power Corp (P–12415–000): The proposed run-of-river project would utilize the Corps' existing dam and consist of: (1) Two proposed 80-foot-long, 9-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units having an installed capacity of 1.5 MW, (3) a proposed 400-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 9.3 GWh.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. Copies are also available for inspection and reproduction at the appropriate addresses in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified

development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', 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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3536 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit

b. *Project No.:* 12419–000

c. *Date Filed*: November 14, 2002

d. *Applicant:* Universal Electric Power Corporation

e. *Name and Location of Project*: The Mississippi L&D #21 Hydroelectric Project would be located on the Mississippi River in Adams County, Missouri. The project would utilize the U.S. Army Corps of Engineers' existing Mississippi Lock & Dam #21.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C.791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *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.

j. *Description of Project*: The proposed project, using the Corps' existing Mississippi Lock & Dam #21, would consist of: (1) Five 80-foot-long, 9-foot-diameter steel penstocks, (2) a powerhouse containing turbine/generating units with a total installed capacity of 10 megawatts, (3) a 1000-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 61 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified

development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', 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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3537 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1927–008]

Notice of Amendment to Settlement Agreement and Soliciting Comments, Reply Comments, and Any Revised Recommendations, Terms and Conditions, and Prescriptions

February 6, 2003.

Take notice that the following Amendment to the North Umpqua Hydroelectric Project Settlement Agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment to Settlement Agreement

b. *Project No.:* 1927–008

c. *Date Filed*: November 4, 2002; supplemented February 3, 2003.

d. *Applicant:* PacifiCorp

e. *Name of Project:* North Umpqua Hydroelectric Project

f. *Location:* On the North Umpqua River, in Douglas County, Oregon. The project occupies about 2,725 acres of land within the Umpqua National Forest, and about 117 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to*: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* John Sample, Senior Hydropower Attorney, PacifiCorp 825 NE Multnomah, Suite 1500, Portland, OR 97232, (503) 813–6688, and James M. Lynch, Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101–3197, (206) 624–0900.

i. *FERC Contact:* John Smith, 202–502–8972, *john.smith@ferc.gov*.

j. Deadline for filing comments: February 25, 2003. Reply comments and any revised recommendations, terms and conditions, and prescriptions are due March 7, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing*: PacifiCorp filed the Amendment to the North Umpqua Hydroelectric Project Settlement Agreement (Amendment) and an explanatory statement supporting the Amendment on behalf of itself and the U.S. Department of Agriculture's Forest Service, U.S. Department of Commerce's National Marine Fisheries Service, U.S. Department of the Interior's Fish and Wildlife Service and Bureau of Land Management, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon Water Resources Department (Governmental Parties). The purpose of the Amendment is to revise and modify sections 5.1, 7.1, 7.2, and 8.3 of the Settlement Agreement filed June 21, 2001. The signatories request that the Commission accept and incorporate, without material modification, as

license articles in the new license all relevant provisions of the Settlement Agreement, Amendment, and the Governmental Parties' Final Terms and Conditions filed with the Commission in connection with this agreement. Comments, reply comments, and any revised recommendations, terms and conditions, and prescriptions are due on the dates listed above in item j.

l. A copy of the Amendment is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3538 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7452–1]

EPA Science Advisory Board; Executive Committee Teleconference; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee of the U.S. EPA Science Advisory Board (SAB) will meet on Wednesday, March 5, 2003 from 11 am–2 pm Eastern Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Betty Fortune (see contact information below). The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included in the FR citations given below.

Purpose of the Meeting—In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Science and Technology Review Panel (S&TRP) (EC)*—Review of the FY2004 Science and Technology (S&T) Budget: An SAB Report (*see* 67 FR 79912, December 31, 2002 for further details).

(b) *Contaminant Sediment Science Plan Review Panel (EC)*—Review of the Contaminated Sediment Science Plan: An SAB Report (see 67 FR 61622, October 1, 2002 for further details).

(c) *Human Health Research Strategy Review Panel (EC)*—Review of the Human Health Research Strategy (HHRS): An SAB Report (see 67 FR 63422, October 11, 2002 for further details).

Please check with Ms. Betty Fortune (see contact information below) prior to the meeting to determine which reports will be on the agenda as last minute changes can take place.

Availability of Review Materials: Drafts of the SAB reports that will be reviewed at the meeting will be available to the public at the SAB Web site under the heading for the Executive Committee Public Teleconference, March 5, 2003 (*http://www.epa.gov/sab/whatsnew.htm*) approximately two weeks prior to the meeting.

Charge to the Executive Committee: The focus of the EC review of these reports will be on the following questions: (a) Has the SAB adequately responded to the questions posed in the Charge? (b) Are the statements and/or responses in the draft report clear? And (c) Are there any errors of fact in the report?

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions that are the focus of the review. Written comments should be received in the SAB Staff Office by February 27, 2003. Forward comments to Ms. Betty Fortune (see contact information below).

The SAB will have a brief period available for applicable public comment. Therefore, anyone wishing to make oral comments on the three focus questions above, but that are not duplicative of the written comments, should contact the Designated Federal Officer for the Executive Committee, Mr. A. Robert Flaak (see contact information below).

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Flaak no later than noon Eastern Standard Time on February 27, 2003. Written comments should be sent to: Ms. Betty Fortune, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (Telephone (202) 564–4533, FAX (202) 501–0323; or via e-mail at: *fortune.betty@epa.gov.* Submission by e-mail to Ms. Fortune will maximize the time available for review by the Executive Committee.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the face-to-face meetings. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format).

Those providing written comments and who attend face-to-face meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in *The FY2001 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our Web site.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Fortune at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 5, 2003.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3584 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7451–9]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS), 40 CFR part 60; the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR parts 61 and 63; and the Stratospheric Ozone Protection Program, 40 CFR part 82. This notice also clarifies the Notice of Availability published in the **Federal Register** on November 15, 2001 (66 FR 57453).

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/assistance/applicability.* The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION: *Background:* The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. *See* 40 CFR 60.5 and 61.06. Although the 40 CFR part 63 NESHAP and section 111(d) of the Clean Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. *See* 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 55 such documents added to the ADI on December 20, 2002. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/assistance/applicability.*

Clarification to November 15, 2001 Notice of Availability

EPA has received questions regarding the applicability of the documents whose availability was noticed in the November 15, 2001 Notice of Availability (66 FR 57453). EPA has reviewed those documents, and through today's notice clarifies that to the extent any of those documents constituted ''final action of the Administrator'' for purposes of section 307(b)(1) of the Clean Air Act, they were not ''nationally applicable'' actions within the meaning of section 307(b)(1). For purposes of establishing venue for judicial review of any such document, the document may be considered a ''local or regionally applicable'' action as that phrase is employed in section 307(b)(1).

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on December 20, 2002; the applicable category; the subpart(s) of 40 CFR parts 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI DETERMINATIONS UPLOADED ON DECEMBER 20, 2002

Control No.	Category	Subpart	Title
A020001	Asbestos	M	Moving Structures.
M020008	MACT	RRR	Alternative Scrap Inspection Monitoring.
M020009	MACT	S	UNOX Alternative Monitoring.
M020010	MACT	R, CC	Waiver for Backup Portable Combustion Unit.
M020011	MACT	T	Degreaser Freeboard Temperature Measurement.
M020012	MACT	RRR	Aluminum Foil Delaminator.
M020013	MACT	S	Alternative Monitoring.
M020014	MACT	F, G	Gas Streams Combusted in Fuel Gas System.
M020015	MACT	T	Cold Clean Operation or Stripping Operation.
M020016	MACT	T	Cold Clean Operation or Stripping Operation.
M020017	MACT	RRR	Aluminum Delacquering Kiln & Chip Dryers.
M020018	MACT	G	Classification of Drains Subject to HON.
M020019	MACT	LLL	Alternative Testing for Roller Mill Transfer Chutes.
M020020	MACT	LLL	Alternative Monitoring for Finish Mill Stacks.
M020021	MACT	LLL	Method 9 Waiver for Portland Cement Facility.
M020022	MACT	LLL	Method 9 Waiver for Coal Mill Stack.
0200050	NSPS	GG	Custom Fuel Monitoring.
0200051	NSPS	GG, A	Initial Performance Test Waiver.
0200052	NSPS	GG	Custom Fuel Monitoring.
0200053	NSPS	GG	Custom Fuel Monitoring.
0200054	NSPS	GG	Custom Testing & CEMS QA/QC Approval.
0200055	NSPS	O	Alternative Monitoring for Oxygen.
0200056	NSPS	GG	Exemption for Test Turbine Facility.
0200057	NSPS	PPP	Definition of Wet Scrubbing Control Devices.
0200058	NSPS	GG	Alternative Testing for Simple Cycle Gas Turbine Units.
0200059	NSPS	J	Alternative Monitoring for Portable Combustor at Loading Rack.
0200060	NSPS	A, J	FCCU Air Grid Replacement.
0200061	NSPS	WWW	Use of Higher Temperature Operating Value.
0200062	NSPS	Y, A	Reporting and Recordkeeping Exemption.
0200063	NSPS	A	Reporting and Recordkeeping Exemption.
0200064	NSPS	K, Ka, Kb	Custody Transfer Exemption Clarification.
0200065	NSPS	GG	Custom Fuel Monitoring.
0200066	NSPS	GG	Custom Fuel Monitoring/Alternate Test Method.
0200067	NSPS	GG	Alternate Test Method.
0200068	NSPS	GG	Custom Fuel Monitoring.
0200069	NSPS	GG, Da	Custom Fuel Monitoring/Alternate Test Plan.
0200070	NSPS	GG	Custom Fuel Monitoring.
0200071	NSPS	GG	Custom Fuel Monitoring.
0200072	NSPS	GG	Custom Fuel Monitoring.
0200073	NSPS	GG	Custom Fuel Monitoring/Alternate Test Plan.
0200074	NSPS	Dc	Custom Fuel Usage Monitoring.
0200075	NSPS	GG, A	Alternate Test Plan.
0200076	NSPS	J, A	Alternative Monitoring for Refinery Facility.
0200077	NSPS	GG	Custom Fuel Monitoring.
0200078	NSPS	GG	Approval of Flow Meters.
0200079	NSPS	GG	Custom Fuel Monitoring.
0200080	NSPS	GG	Custom Testing & CEMS QA/QC Approval.
0200081	NSPS	NNN, RRR	Use of Alternate Control System.
0200082	NSPS	NNN, RRR	Gas Streams Combusted in a Fuel Gas System.
0200083	NSPS	AA, AAa	Electric Arc Furnaces.
0200084	NSPS	DDDD, CCCC	Outdated Pharmaceutical & CISWI.
0200085	NSPS	H	Definition of Sulfuric Acid Plant.
0200086	NSPS	OOO, UUU	Lightweight Aggregate Production Facilities.
0200087	NSPS	OOO, A	Notification & Reporting Requirements.
0200088	NSPS	OOO	Applicability to Conveyors.

Abstract

Abstract for [A020001]:

Q1: Are residential structures owned by the State subject to the asbestos NESHAP if they have less than four dwelling units?

A1: Yes, if the structures are part of a State project such as road construction or urban renewal.

Q2: Is spray on ceiling texture considered part of the wall system like tape joint compound?

A2: No. The analyses of these individual layers may not be composited with the wallboard analyses.

Q3: If the ceilings are not disturbed or demolished during the move, does the asbestos need to be removed before the move?

A3: Prior to the move, the owner or operator must determine if the move will break up, dislodge, or similarly disturb the asbestos. If such disturbances occur, the owner or operator may be subject to enforcement action.

Q4: Can the State avoid the requirements of the asbestos NESHAP by having the demolition of a residential structure occur prior to the State taking official ownership?

A4: If the structure is part of an installation, as occurs when a group of houses are demolished for a project, such activities would be considered

circumvention which is prohibited by the part 61 NESHAP general provisions.

Q5: Is the movement of a single-family home purchased from a private party subject to the asbestos NESHAP?

A5: No, unless the home is part of an installation, planned development, or public project.

Q6: Is the movement of a single-family home purchased from a land developer subject to the asbestos NESHAP?

A6: Yes. Residential structures that are demolished or renovated as part of a commercial or public project are not exempt from the rule.

Q7: Is the movement of a structure that has been used for educational purposes and will contain four or less dwelling units subject to the asbestos NESHAP?

A7: Yes. Mobile classroom structures are considered institutional buildings.

Q8: Is the movement of a single-family home (not modular or mobile) purchased from a house manufacturing company subject to the asbestos NESHAP?

A8: No, based on the limited information provided.

Q9: Is the movement of portable school classrooms subject to the asbestos NESHAP?

A9: Yes. Large mobile structures for public or commercial use are regulated.

Q10: Is the movement of agricultural buildings subject to the asbestos NESHAP?

A10: Agricultural buildings used for commercial purposes, such as a dairy barn or crop storage structure, are subject. However, the rule does not apply to sheds used to store equipment for a homeowner's garden, or to farm stands that sell fresh produce and have no utilities.

Q11: Is the movement of garages subject to the asbestos NESHAP?

A11: Yes, if the residential structure associated with the garage is subject, if the garage is located at a commercial operation, or if the garage itself is used for commerce.

Abstract for [M020008]:

Q: Will EPA approve an alternative scrap inspection monitoring program for a facility that accepts no fabrication or press scrap containing paint or coatings?

A: Yes, provided the facility includes a recordkeeping provision like 40 CFR 63.1510(p)(6).

Abstract for [M020009]:

Q: Can the Boise Cascade paper mill in International Falls, Minnesota use the UNOX system biomass, as calculated using the mixed liquor volatile suspended solids (MLVSS), to meet the continuous monitoring requirements for kraft pulping condensates? The pulp and paper NESHAP does not specify a monitoring parameter for closed biological systems.

A: Yes. The UNOX system destruction efficiency depends on the number of biological organisms in the system, the biomass accounts for the majority of organic solids, and MLVSS is a measure of organic solids. Boise Cascade must use the average MLVSS measured during a compliant performance test as the minimum MLVSS demonstrating continuous compliance.

Abstract for [M020010]:

Q: Will EPA waive the performance test for a backup portable vapor combustion unit that Marathon Ashland Petroleum (MAP) has used at its St. Paul Park, Minnesota refinery to control VOC emissions from a gasoline loading rack during maintenance and repair work on the primary carbon adsorption unit controls?

A: Yes. Tests showed that the unit's VOC emissions were only 15 percent of the emission standard at another MAP location. The unit is scheduled for use at other MAP facilities, and bringing it back to St. Paul Park for a test would not provide any new information.

Abstract for [M020011]:

Q: What is the correct location for measuring freeboard refrigeration temperature in a halogenated solvent cleaning machine?

A: The temperature should be measured in the center of the chilled air blanket, at the center cooling coil of the machine.

Abstract for [M020012]:

Q: Is a facility that includes a chamber that delaminates aluminum foil from paper and plastic subject to the secondary aluminum NESHAP?

A: No. Subpart RRR defines a scrap dryer as a unit used to remove organic contaminants from aluminum scrap prior to melting. No melting occurs at the facility in question, and there are no other affected sources subject to subpart RRR.

Abstract for [M020013]:

Q: Will EPA approve surrogate parameters for daily monitoring of an open biological treatment system?

A: Yes, based on the information submitted, EPA approves the request. However, EPA may require use of another specified monitoring method if it finds reasonable grounds to dispute the results obtained under this alternative monitoring method.

Abstract for [M020014]:

Q: A refinery has process area reactors and distillation columns whose only gas streams are combusted in the refinery's fuel gas system. These gas streams are exempt from any compliance monitoring requirements under 40 CFR part 63, subpart G. Does 40 CFR 63.110(d)(10) also exempt those gas streams from the requirements of NSPS subparts NNN and RRR?

A: No. 40 CFR 63.110(d)(10) does not exempt the gas streams from meeting the requirements of NSPS subparts NNN and RRR.

Abstract for [M020015]:

Q: Do the halogenated solvent cleaner NESHAP standards apply to the process described for stripping epoxy resins from steel bowls?

A. The applicability section of this rule, 40 CFR 63.460(a), states that if any of the named solvents, including methylene chloride, which this facility uses, is used in any of four types of solvent cleaning machines as a cleaning and/or drying agent, then the subpart applies. Although the hand cleaning portion of the removal of the epoxy resin from the steel bowl is exempt from Subpart T, the mechanical cleaning inside the custom design tank is not exempt, but rather is an applicable batch cold cleaning machine under the halogenated solvent MACT standard.

Abstract for [M020016]:

Q: Do the halogenated solvent cleaner NESHAP standards apply to the stripping (thinning/diluting) of a coating of catalyzed epoxy resin in various stages of cure from metal bowls in the following process? The metal bowl is placed upside down in a custom designed tank containing approximately 3″ of Methylene Chloride liquid. The tank cover is closed and spray is directed upward into the part in a 45 minute stripping process. The parts are removed and then hand cleaned about 15 minutes per bowl. Is this a cold cleaning operation or a stripping operation?

A: 40 CFR 63.461 defines a cold cleaning machine as any device or piece of equipment that contains and/or uses liquids, into which parts are placed to remove soils from the surface of the parts. In this case, the cleaning of the parts once they exit the solvent bath using spray headers to begin the stripping process and then the continued cleaning of parts by hand would identify this operation as a stripping operations. Based on the information supplied, EPA has determined that the operation is not subject to the halogenated solvent cleaning NESHAP.

Abstract for [M020017]:

Q1: USGC Almeg has a processing chamber in which foil is delaminated from paper and plastic. This processing chamber operates at a maximum temperature of 900 degrees Fahrenheit; no melting occurs here, nor does melting occur subsequently in any of

USGC Almeg's operations. Is USGC Almeg subject to subpart RRR?

A1: Yes. Units that use heat to remove contaminants from scrap aluminum are subject to 40 CFR part 63, subpart RRR, irrespective of whether the aluminum is subsequently melted.

Q2: USGC Almeg has a unit that dries aluminum chips in the absence of any melting of aluminum at the site. Is the unit subject to subpart RRR?

A2: Yes. A device that uses heat to evaporate water, oil, or oil/water mixtures from unpainted/uncoated aluminum chips is subject to the requirements of subpart RRR.

Abstract for [M020018]:

Q: What is the correct wastewater classification of low-point drains which are drained on a routine basis as part of proper function of the process?

A: The procedures followed by Celanese result in process wastewater because the draining of the wastewater is essential to maintaining the proper function of the process equipment; the draining occurs at a frequent, routine, planned interval; and the draining is not done for the purposes of maintenance or repair.

Abstract for [M020019]:

Q: Will EPA approve an alternative initial performance test for roller mill transfer chutes at a Portland cement facility?

A: Yes. Because of the design and operation of the chutes and the nature of the material being processed, EPA believes that emissions are not likely and accordingly approves the request for an alternative initial performance test.

Abstract for [M020020]:

Q: Will EPA approve alternative monitoring using a bag leak detection system in lieu of daily visual observations for finish mill stacks?

A: Yes. EPA approves a request for the use of a bag leak detection system (BLDS) in lieu of daily visual observations on finish mill stacks.

Abstract for [M020021]:

Q: Will EPA approve a waiver from Method 9 initial performance testing for transfer chutes, load spouts and Magnetic Separator Discharge Chute at a Portland cement facility?

A: EPA approves the waiver from Method 9 for transfer chutes, load spouts and Magnetic Separator Discharge Chute at the facility on condition that any change in operation will require further EPA review.

Abstract for [M020022]:

Q: Will EPA approve a waiver from Method 9 initial performance testing and monitoring for the coal mill stack and related air pollution control device at a Portland cement facility?

A: Yes. EPA approves a waiver of performance testing and alternative monitoring for the coal mill stack. Performance test requirements and the monitoring requirements shall be applicable to the main kiln stack and its related air pollution control device.

Abstract for [0200050]:

Q: Can Consolidated Edison Energy Massachusetts obtain a relaxed sulfur-in-fuel monitoring schedule under NSPS subpart GG for the operation of two stationary gas turbines which operate solely on natural gas?

A: Yes, EPA routinely grants custom monitoring schedules under 40 CFR part 60, subpart GG for units burning low sulfur fuels.

Abstract for [0200051]:

Q: Can Consolidated Edison Energy Massachusetts obtain a waiver from the requirement to conduct an initial performance test for NO_X under 40 CFR part 60, subpart GG?

A: Yes, EPA will waive the performance test requirement where it believes that the source can demonstrate compliance with the standard using other means. In this case, the source will demonstrate compliance with the subpart GG NO_X limit by installing, operating, and maintaining a NO_X continuous emission monitoring (CEM) system in accordance with 40 CFR part 75, and conducting an initial RATA certification for the CEM system.

Abstract for [0200052]:

Q: Can Massachusetts Institute of Technology obtain a relaxed sulfur-in-fuel monitoring schedule under NSPS subpart GG for the operation of a stationary gas turbine which operates solely on natural gas?

A: Yes, EPA routinely grants custom monitoring schedules under 40 CFR part 60, subpart GG for units burning low sulfur fuels.

Abstract for [0200053]:

Q: Can Sithe's Fore River and Mystic facilities obtain a relaxed sulfur-in-fuel monitoring schedule under NSPS subpart GG for the operation of stationary gas turbines with a primary fuel of natural gas and a secondary fuel of very-low sulfur distillate oil?

A: Yes, EPA routinely grants custom monitoring schedules under 40 CFR part 60, subpart GG for units burning low sulfur fuels.

Abstract for [0200054]:

Q: May Sithe's Fore River and Mystic facilities measure nitrogen oxides (NO_X), sulfur dioxide (SO_2), and particulate matter (PM) at the heat recovery steam generator (HRSG) outlet instead of measuring upstream and downstream of the duct burner during the subparts GG and Da initial performance test? Also, may Sithe use method 20 instead of method 7E for the initial performance test? Can Sithe obtain a custom CEMS quality assurance/quality control (QA/QC) regimen?

A: Yes, EPA has determined that in these specific cases the proposed alternatives to the test methods, sampling points, and CEMS QA/QC requirements will continue to ensure compliance with the emission limits.

Abstract for [0200055]:

Q: Contrary to what is required under 40 CFR 60.153(b)(2), subpart O, is it permissible to locate an oxygen monitor downstream of any multiple hearth incinerator rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air?

A: Yes, providing certain conditions are met. EPA has concurred with a multiple hearth incinerator owner/operator's determination that a stack gas extractive oxygen CEMS can provide a valid surrogate indicator of incinerator exhaust gas oxygen content with minimal interference from sources of dilution air, provided certain testing and operation and maintenance (O&M) practices are implemented, including reporting requirements.

Abstract for [0200056]:

Q: Will EPA exempt the U.S. Navy under 40 CFR 60.332 for a new Turbine Test Facility to be installed in the City of Philadelphia?

A: Yes, Region III approves the exemption from the nitrogen oxides standard in subpart GG because this new installation meets the conditions specified in 40 CFR 60.332 as both a military turbine installation and a manufacturer test facility for efficiency improvements and emissions reductions.

Abstract for [0200057]:

Q: Does EPA consider a ''drop out'' box with water sprays an example of a wet scrubbing control device?

A: Yes. The Stationary Source Control Techniques Document for Fine Particulate Matter (EPA, 1998) defines wet scrubbers as ''particulate matter (PM) control devices that rely on direct and irreversible contact of a liquid with the PM.'' Therefore, a ''drop-out'' box with water sprays is considered to be an example of a wet scrubbing control device and should be in compliance with the regulations accordingly.

Abstract for [0200058]:

Q: Will EPA approve an alternative testing procedure for four simple cycle combustion turbines that use a certified continuous emission monitor that has been certified under 40 CFR part 75?

A: The owner has demonstrated that the concentration of oxygen is not

stratified across the diameter of the exhaust stack. Therefore, subject to certain conditions, EPA approves this request.

Abstract for [0200059]:

Q: Will EPA approve an alternative monitoring plan for a portable combustor at the gasoline loading rack at Marathon Ashland Petroleum LLC's Detroit, Michigan refinery?

A: Yes. Because the request is consistent with EPA's policy for approval of an alternative monitoring plan for miscellaneous fuel gas streams, EPA approves the request.

Abstract for [0200060]:

Q1: Does the replacement of an air grid on an FCCU catalyst regenerator trigger NSPS subpart J?

A1: If the Air Grid Replacement Project does not cause an increase in the emission rate of PM, SO_2, or CO, as presented by MAP, it will not trigger NSPS. MAP is required to demonstrate that there will be no emission increase via CEM data and emissions tests.

Q2: Does the Air Grid Replacement Project qualify for the exemption of modification for routine maintenance, repair, and replacement in 40 CFR 60.14(e)(1)?

A2: No. The Air Grid Replacement Project is not a regular, customary or standard undertaking for the purposes of maintaining the plant in its present condition.

Abstract for [0200061]:

Q: Will EPA approve a higher operating temperature for ten wells at a landfill?

A: Yes. Based on the supporting information presented by the landfill, it appears that the methanogenic process is still at an anaerobic phase at the higher landfill gas temperatures and no evidence of subsurface landfill fire is present at the site.

Abstract for [0200062]:

Q: Will EPA grant a coal preparation plant a waiver from the NSPS general provision reporting and recordkeeping requirements for all of its coal handling system, except the dust collector?

A: No. The NSPS general provisions do not provide for the complete waiving of such reporting or recordkeeping requirements.

Abstract for [0200063]:

Q: Will EPA grant a waiver from the NSPS general provision reporting and recordkeeping requirements for a coal mine's processing and conveying equipment?

A: No. The NSPS general provisions do not provide for the complete waiving of such reporting or recordkeeping requirements.

Abstract for [0200064]:

Q: At what point does the custody transfer exemption apply to petroleum liquid storage vessels in natural gas production processes?

A: There is no set point for every facility where the custody transfer exemption applies. If the petroleum liquid storage vessels are located after any type of processing or treatment, the custody transfer exemption does not apply. It is possible that the custody transfer exemption may apply to different facilities at different points in the natural gas production process.

Abstract for [0200065]:

Q1: Are turbines manufactured before October 3, 1977 and maintained by Alyeska before that date, but that did not begin initial operation on the Trans-Alaska Pipeline System (TAPS) until after that date subject to NSPS subpart GG?

A1: In the case of stationary gas turbines that are mass-produced and purchased in completed form, EPA considers the manufacturer as the original owner or operator. The turbines are not subject to subpart GG provided that they were not modified or reconstructed after October 3, 1977.

Q2: Are turbines manufactured before October 3, 1977 and not purchased by Alyeska until after that date, and that therefore did not begin initial operation on the TAPS until after that date subject to subpart GG?

A2: In the case of stationary gas turbines that are mass-produced and purchased in completed form, EPA considers the manufacturer as the original owner or operator. The turbines are not subject to subpart GG provided that they were not modified or reconstructed after October 3, 1977.

Q3: Are turbines manufactured before October 3, 1977, and purchased by Alyeska after that date from another owner who bought them before that date, subject to subpart GG even if they may not have been placed into operation by the previous owner before October 3, 1997?

A3: In the case of stationary gas turbines that are mass-produced and purchased in completed form, EPA considers the manufacturer as the original owner or operator. The turbines are not subject to subpart GG provided that they were not modified or reconstructed after October 3, 1977.

Q4: Do the requirements of subparts A and GG apply only to a turbine, as the ''affected facility,'' so that a turbine that is subject to these subparts is operated as a GG turbine no matter where it is operated on the TAPS?

A4: Under subparts A and GG, the turbine is the affected facility and the requirements of these subparts follow a turbine constructed, modified, or reconstructed after October 3, 1977, regardless of where the turbine is relocated. The affected facility is the stationary gas turbine and does not include the equipment that is powered by the turbine (such as a generator or pump).

Q5: Do turbines manufactured before October 3, 1977, become subject to subpart GG if they are treated as a pool of identical turbines and moved from location to location between TAPS pump stations to allow for the maintenance of turbines?

A5: Assuming that the maintenance does not result in a modification or reconstruction, and that the turbines are not otherwise modified or reconstructed, relocation of the turbine as part of a pool of identical turbines would not subject the turbine to subpart GG.

Q6: Does a turbine that is not subject to subpart GG (because it was not constructed, modified, or reconstructed after October 3, 1977) become subject to subpart GG if it is rotated into a location to replace a turbine that is subject to this subpart?

A6: No. A turbine that was not constructed, modified, or reconstructed after October 3, 1977, does not become subject to subpart GG simply because it is rotated into a location to replace a turbine that is subject to this subpart.

Abstract for [0200066]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 2,000 ppmw threshold.

Abstract for [0200067]:

Q: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Abstract for [0200068]:

Q: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel

monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen and on following specific conditions for confirming sulfur variability of the pipeline natural gas.

Abstract for [0200069]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen and on following specific conditions for confirming sulfur variability of the pipeline natural gas.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Q3: Will EPA approve a request to perform fuel sampling and analysis in lieu of sulfur dioxide stack testing under subpart Da?

A3: Yes, based upon the fact that sulfur dioxide emissions generated by burning pipeline quality natural gas should be at least one order of magnitude below the standard in subpart Da, EPA approves the request to perform fuel sampling in lieu of stack testing.

Abstract for [0200070]:

Q1: Will EPA grant a request to use the procedures for fuel sulfur content determination in section 2.3.3.1 of appendix D to part 75?

A1: Yes, EPA approves the use of this method when pipeline quality natural gas is the only fuel being burned.

Q2: Will EPA approve a custom fuel monitoring schedule under subpart GG for a facility?

A2: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen.

Abstract for [0200071]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the sulfur content of the fuel being used and an understanding that there is no fuel-bound nitrogen.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Abstract for [0200072]:

Q: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the sulfur content of the fuel being used and the understanding that there is no fuel-bound nitrogen.

Abstract for [0200073]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the sulfur content of the fuel being used and the understanding that there is no fuel-bound nitrogen.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Q3: Will EPA approve use of NO_X CEMS as an alternative monitoring method to monitor the ratio of water to fuel?

A3: Yes, EPA grants this request because it is consistent with approval in a March 12, 1993, EPA guidance memorandum.

Q4: Will EPA approve a request not to have to correct NO_X CEMS data to ISO conditions?

A4: Yes, EPA finds it acceptable to maintain NO_X emissions below 25 ppmvd at 15 percent oxygen as it would ensure compliance with the applicable ISO—corrected subpart GG under all reasonably ambient conditions.

Q5: Will EPA allow use of NO_X reference test method data collected during a RATA conducted on the plant's CEMS as an alternative to the initial NO_X performance test?

A5: Yes, EPA will allow this use because the amount of sampling conducted during the RATA (a minimum of nine 21-minute test runs using the EPA reference methods) provides enough representative emissions data to determine compliance status.

Abstract for [0200074]:

Q: Will EPA approve a custom fuel usage monitoring schedule under subpart Dc for a facility?

A: Yes, the request is consistent with previous custom fuel usage monitoring schedules allowed under subpart Dc.

Abstract for [0200075]:

Q: Will EPA approve an alternative ASTM test method for monitoring the nitrogen content of fuel being burned?

A: Yes, because the proposed alternative method is capable of measuring close to the test target levels with minimal deviation and well within 5 percent of the mean, EPA approves the test method.

Abstract for [0200076]:

Q: Will EPA approve alternative monitoring requests for a refinery facility subject to subpart J?

A: Yes, EPA will approve the alternative monitoring requests, but with specific conditions and one modification from the proposed approach.

Abstract for [0200077]:

Q: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen and on following specific conditions for confirming sulfur variability of the pipeline natural gas.

Abstract for [0200078]:

Q: Will EPA approve water and fuel flow meters for two gas turbines?

A: Yes, EPA approves these meters because their accuracy meets the requirements of 40 CFR 60.334(a).

Abstract for [0200079]:

Q: Will EPA approve custom fuel monitoring for nitrogen and sulfur for a planned natural gas-fueled, turbine-driven pipeline compressor subject to subpart GG?

A: Yes, EPA approves a custom monitoring schedule, per 40 CFR 60.334(b)(2), that allows for no monitoring of fuel nitrogen as long as the affected source is supplied with solely pipeline quality natural gas. In addition, EPA approves a custom fuel monitoring schedule for sulfur. The

schedule requires monitoring twice monthly for the first six months, and, if the affected source has test results less than 50 percent of the sulfur limit, then twice a year, during the first and third calendar quarters, as long as the affected source maintains compliance.

Abstract for [0200080]:

Q1: Will EPA allow Mirant Kendall to measure NO_X, SO_2, and PM for the new natural gas unit number 4 at the HRSG outlet instead of upstream and downstream of the duct burner during the subpart GG and subpart Da initial performance test? Can Kendall use Method 20 instead of Method 7E for the initial performance test?

A1: Yes, EPA has determined that in these specific cases the proposed alternatives to the test methods and sampling points will continue to ensure compliance with the emission limits.

Q2: Will EPA allow a custom CEMS QA/QC regimen?

A2: Yes, EPA has determined that in these specific cases the proposed alternative to the CEMS QA/QC requirements will continue to ensure compliance with the emission limits.

Abstract for [0200081]:

Q: Is the use of an adsorber and incinerator an acceptable alternate control system for subpart NNN and subpart RRR affected facilities?

A: Yes. Use of the control system and the proposed procedures for monitoring and ensuring proper operation and maintenance are acceptable.

Abstract for [0200082]:

Q: A refinery has process area reactors and distillation columns whose only gas streams are combusted in the refinery's fuel gas system. These gas streams are exempt from any compliance monitoring requirements under 40 CFR part 63, subpart G. Does 40 CFR 63.110(d)(10) also exempt those gas streams from the requirements of NSPS subparts NNN and RRR?

A: No. Section 63.110(d)(10) does not exempt the gas streams from meeting the requirements of NSPS subparts NNN and RRR.

Abstract for [0200083]:

Q: Are electric arc furnaces in steel forging plants regulated by subparts AA and AAa?

A: If a plant manufactures a product that comes from a mold and that product, as it comes out from the mold, is modified by rolling, forging, hot or cold working to alter its shape, the furnaces are regulated.

Abstract for [0200084]:

Q. Is outdated pharmaceutical waste considered an industrial waste that would make an incinerator a Commercial and Industrial Solid Waste Incineration (CISWI) Unit?

A. No. As the waste in question is from a warehouse, it is a municipal waste and, as a result, the unit is not subject to the CISWI regulations.

Abstract for [0200085]:

Q: For purposes of NSPS subpart H, what portions of a facility containing both sulfuric acid and liquid sulfur dioxide operations constitute a sulfuric acid plant?

A: On the basis of the information provided on this particular facility, only the sulfuric acid operations constitute a sulfuric acid plant under subpart H.

Abstract for [0200086]:

Q: A facility mines and crushes argillite and then fires it in kilns to produce lightweight aggregate. Are the lightweight aggregate product crushers/grinders, conveyors, screeners, and storage bins which follow the kilns subject to subpart OOO?

A: Yes. Even if no crushing or grinding takes place after the kilns, the subsequent material handling equipment would still be subject to subpart OOO as it is part of the nonmetallic mineral production line in which crushing and grinding of raw material takes place. The lightweight aggregate product is a nonmetallic mineral. The facility should also consider the potential applicability of subpart UUU to specific operations at the facility.

Abstract for [0200087]:

Q: Should facilities subject to NSPS subpart OOO submit routine reports to the appropriate agency with delegated authority for implementing the regulation, instead of EPA Region 4?

A: Yes. Facilities subject to NSPS subpart OOO only need to submit routine reports to the appropriate agency with delegated authority for implementing the regulation. There is no need to submit the reports to EPA Region 4.

Abstract for [0200088]:

Q: A facility crushes and grinds clay and then deposits it onto a storage pile. The clay is later removed from the storage pile and transferred by a conveyor to brick manufacturing equipment in a making room. Is the conveyor subject to subpart OOO?

A: No. The conveyor is not an affected facility in a production line at a nonmetallic mineral processing plant.

Dated: February 4, 2003.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 03–3585 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 26, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Larry Dale Williams, Boise Idaho; to retain control of Idaho Banking Company, Boise, Idaho.

Board of Governors of the Federal Reserve System, February 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3514 Filed 2–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice

President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Philip R. Forstrom, Clara City, Minnesota, Perry D. Forstrom, Spicer, Minnesota, and John T. Forstrom, Independence, Minnesota; as a group acting in concert, to acquire control of First State Agency of Lake Lillian, Inc., Lake Lillian, Minnesota, and thereby indirectly acquire control of First State Bank, Lake Lillian, Minnesota.

Board of Governors of the Federal Reserve System, February 7, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–3515 Filed 2–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with First Georgia Holding, Inc., Brunswick, Georgia, and thereby indirectly acquire voting shares of First Georgia Bank, Brunswick, Georgia.

Board of Governors of the Federal Reserve System, February 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3513 Filed 2–12–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: DHHS/ACF/ASPE Enhanced Services for the Hard-to-Employ

OMB No.: New Collection

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on previous and ongoing research by rigorously testing a wide variety of approaches to promote employment and improve family functioning and child well-being. The HtE project will ''conduct a multi-site evaluation that studies the implementation issues, program design, net impact and benefit-costs of selected programs'' [1] designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low income parents who are hard-to-employ. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) of the Administration for Children and Families (ACF), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor. The evaluation involves an experimental, random assignment design in 6 sites, testing a diverse set of strategies to promote employment for low-income parents who face serious obstacles to employment, including physical and mental health problems, substance abuse, human capital deficiencies, and situational barriers. At least two of the sites included in the evaluation will feature ''two generation'' models, serving both parents and their children. Over the next several years, the HtE project will generate a wealth of rigorous data on implementation, effects, and costs of these alternative approaches. The data collected will be used for the following purposes:

- To study the extent to which different HtE approaches impact employment, earnings, income, welfare dependence, and the presence or persistence of employment barriers;
- To collect data on a wider range of outcome measures than is available through Welfare, Medicaid, Food Stamps, Social Security, the Criminal Justice System or Unemployment Insurance records in order to understand the family circumstances and attributes and situations that contribute to the difficulties in finding employment; job retention and job quality; educational attainment; interactions with and knowledge of the HtE program; household composition; childcare; transportation; health care; income; physical and mental health problems; substance abuse; domestic violence; and criminal history.
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of individuals who are hard-to-employ;
- To obtain participation information important to the evaluation's benefit-cost component;
- And to obtain contact information for possible future follow-up, information that will be important to achieving high response rates for the 42-month survey.

Respondents: The respondents of the baseline survey are Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low-income individuals who are hard-to-employ from six states likely to be participating in the HtE Project: California, Georgia, Kansas, New York, Pennsylvania, and Wisconsin. Survey respondents can be grouped according to 4 target populations: prisoners with children; low-income mothers with mental health problems; populations connected to the TANF system; and programs working with two-generations (parents and their children). Prior to random assignment, basic demographic information for all survey respondents will be obtained wherever possible from the program's automated system. In addition, all survey respondents will receive a core set of questions that will be administered by Audio-Computer Assisted Self Interview (ACASI-Core). In the site operating a program aimed

[1] From the Department of Health and Human Services RFP No.: 233–01–0012.

specifically at ex-offenders, an additional supplementary module will be administered by Audio-CASI. Similarly, an additional supplementary module will be administered by Audio-CASI in the site operating a program aimed at survey respondents with mental health problems. Finally, in the two-generation sites (two of the six sites), survey respondents will complete a two-generation survey administered by a Computer Assisted Personal Interview (CAPI). Approximately 12,000 respondents will complete the core survey, 2,000 will complete the criminal justice module, 2,000 will complete the mental health module, and 4,000 will complete the two-generation CAPI survey.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Audio-CASI Core	12,000	1	10 minutes or .17 hrs	2,000
Criminal Justice Module	2,000	1	10 minutes or .17 hrs	333.33
Mental Health Module	2,000	1	10 minutes or .17 hrs	333.33
Two Generation	4,000	1	30 minutes or .5 hrs	2,000
Estimated Total Annual Burden Hours				4,666.66

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 6, 2003.

Gerald L. Fralick,

Director, Office of Information Systems.

[FR Doc. 03–3446 Filed 2–12–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03F–0023]

Kerry, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kerry, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of gum arabic as a thickener, emulsifier, or stabilizer in the manufacture of creamers for use in alcoholic beverages at a maximum level of use of 20 percent.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (S–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 1A4730) has been filed by Kerry, Inc., c/o Bell, Boyd, and Lloyd LLC, Three First National Plaza, 70 West Madison St., suite 3300, Chicago, IL 60602–4207. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of gum arabic as a thickener, emulsifier, or stabilizer in the manufacture of creamers for use in alcoholic beverages at a maximum level of use of 20 percent.

The food additive petition filed as FAP 1A4730 was initially filed as a generally recognized as safe (GRAS) affirmation petition GRP 3G0287 as announced in a notice that was published in the **Federal Register** of October 13, 1983 (48 FR 46626) (The GRAS affirmation petition was filed by Beatrice Foods Co., now Kerry, Inc.). Kerry, Inc., requested in a letter dated September 6, 2001, that FDA convert the GRAS affirmation petition (GRP 3G0287) to a food additive petition (FAP 1A4730).

The agency has determined under 21 CFR 25.32(r) 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 19, 2002.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–3557 Filed 2–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1249]

Determination of Regulatory Review Period for Purposes of Patent Extension; Avandia

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for

Avandia and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Avandia (rosiglitazone maleate). Avandia is indicated for use in combination with a sulfonylurea in patients with type 2 diabetes mellitus when diet and exercise with either single agent does not achieve adequate glycemic control. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Avandia (U.S. Patent No. 5,002,953) from Smithkline Beecham Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Avandia represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Avandia is 2,042 days. Of this time, 1,859 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: October 23, 1993. The applicant claims October 22, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 23, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: November 24, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Avandia (NDA 21–071) was initially submitted on November 24, 1998.

3. *The date the application was approved*: May 25, 1999. FDA has verified the applicant's claim that NDA 21–071 was approved on May 25, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,021 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by April 14, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3555 Filed 2–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1239]

Determination of Regulatory Review Period for Purposes of Patent Extension; Rapamune

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Rapamune and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Rapamune (sirolimus (also rapamycin)). Rapamune is indicated for prophylaxis of organ rejection in patients receiving renal transplants. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Rapamune (U.S. Patent No. 5,100,899) from Sir Roy Caine, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 13, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Rapamune represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Rapamune is 2,709 days. Of this time, 2,434 days occurred during the testing phase of the regulatory review period, while 275 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective: April 17, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 17, 1992.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the act: December 15, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Rapamune (NDA 21–083) was initially submitted on December 15, 1998.

3. The date the application was approved: September 15, 1999. FDA has verified the applicant's claim that NDA 21–083 was approved on September 15, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,492 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by April 14, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3556 Filed 2–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Grant Awards

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grant awards.

SUMMARY: The Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA), has awarded the following grants. Funds for these grants were appropriated under Public Law 107–116, the ''Departments of Labor, HHS, Education, and Related Agencies Appropriations Act for FY 2002.'' The awards are Special Projects of Regional and National Significance (SPRANS), authorized by Section 501(a)(2) of the Social Security Act, the MCH Federal Set-Aside Program (42 U.S.C. 701(a)(2)).

• *Replicating ''Lessons Learned'' in Alcohol Screening During Pregnancy Demonstration Program.* (CFDA #93.110) This grant promotes replication of strategies found to motivate providers to systematically screen for alcohol use during pregnancy, provide information on associated risks, and refer clients for interventions. Competition for this award was open to only two existing grantees of a preceding three-year initiative entitled: ''Improving Screening for Alcohol Use During Pregnancy Among Providers Demonstration Program.'' Each of the following two grantees was awarded $150,000 for the first year of the three-year grant period with second and third year grant awards subject to acceptable performance and the availability of funds:

- Illinois Department of Human Services, Office of Family Health; and
- Massachusetts Department of Public Health, Bureau of Family.

FOR FURTHER INFORMATION: Contact Ellen Hutchins, ScD, Division of Perinatal Systems and Women's Health, Maternal and Child Health Bureau, 5600 Fishers Lane, Room 11A–55, Rockville, MD 20857, (301) 443–9534.

• *New Investigators in MCH Research: Dissertation Awards.* (CFDA #93.110RD) This grant program supports doctoral candidates' research-based

dissertation in maternal and child health (MCH) or an MCH-related discipline. Competition for this award was limited to existing grantees of ''Long-Term Leadership Training Grants.'' The following grantees received awards for a single project:

- The University of Maryland, School of Social Work; $29,411;
- The Johns Hopkins University, School of Public Health; $30,000;
- The Boston University, School of Public Health; $19,972;
- The University of Illinois at Chicago, School of Public Health; $20,560;
- The University of California, Los Angeles, School of Public Health; $22,482;
- The University of Minnesota, School of Public Health; $22,525; and
- The University of North Carolina at Chapel Hill, School of Social Work; $6,052.

FOR FURTHER INFORMATION: Contact Hae Young Park, M.P.H., Division of Research, Training and Education, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18A–55, Rockville, MD 20857, (301) 443–2127.

- *New Investigators in MCH Research: Training Program Enhancement Awards.* (CFDA #93.110TU) This grant program supports the development, demonstration and dissemination of program models in five institutions of higher education to enhance the research training of their MCH trainees. Competition for this award was limited to existing grantees of ''Long-Term Leadership Training Grants.'' Each of the following two grantees received a maximum grant award of $20,000 for the first year of a 3-year project period:
- The University of Minnesota Center for Adolescent Health and Research—Leadership Education in Adolescent Health Training Program; $20,000;
- The Children's Hospital Los Angeles—Leadership Education in Neurodevelopmental Disabilities Training Program; $20,000;
- The Boston University School of Public Health—MCH Training Program; $20,000;
- The Virginia Commonwealth University—Leadership Education in Neurodevelopmental Disabilities Training Program; $20,000; and
- The University of Rochester—Leadership Education in Adolescent Health and Leadership Education in Neurodevelopmental Disabilities Training Programs; $20,000.

FOR FURTHER INFORMATION: Contact Hae Young Park, M.P.H., Division of Research, Training and Education, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18A–55, Rockville, MD 20857, (301) 443–2127.

Dated: February 6, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–3594 Filed 2–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Substance Abuse Prevention and Treatment Block Grant: Waiver for U.S. Territories (Other Than Puerto Rico) of Synar Program Requirements

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

SUMMARY: In keeping with the Substance Abuse and Mental Health Services Administration's (SAMHSA) delegation of authority from the Secretary and in compliance with title XIX, subpart II, section 1932(c) and with section 1926 of the Public Health Service Act, SAMHSA is issuing the following guidance to be used in determining whether to approve a U.S. Territory's request for a waiver from the requirements of section 1926 of the Public Health Service (PHS) Act (the Synar Amendment), and its implementing regulations, 45 CFR 96.130.

This guidance will become effective only at such time that an appropriation act for the Department of Health and Human Services (HHS) does not contain a prohibition on penalizing the territories under section 1926 of the PHS Act that receive less than $1,000,000. (*See, e.g.*, section 214 of Departments of Labor Health and Human Services, and Education, and Related Agencies Appropriation Act, Pub. L. 107–116 (Jan. 10, 2002).) SAMHSA, however, is seeking comment from the public on this guidance.

Section 1926 of the Public Health Service (PHS) Act and its implementing regulation, require each State, the District of Columbia and each U.S. Territory, as a condition for receiving a Substance Abuse Prevention and Treatment (SAPT) Block Grant award, to enact and enforce laws making illegal the sale or distribution of tobacco products to individuals under the age of 18 years. States, the District of Columbia and the Territories are also required to annually conduct unannounced inspections of tobacco retail outlets to ensure compliance with the law. These inspections must be based on a statistically valid random sample of retail outlets across the State, the District of Columbia or the Territory. Additionally, States, the District of Columbia and Territories are required, unless extraordinary circumstances exist, to meet negotiated annual retailer violation target rates, and to annually submit a report to the Secretary describing their activities to enforce the laws and reduce the availability of tobacco products to minors. Section 1926 also stipulates that any State, the District of Columbia or Territory failing to meet the requirements stated above may receive a 40 percent penalty against their SAPT Block Grant.

Section 1932(c) of the PHS Act authorizes the Secretary, in the case of any territory of the United States except Puerto Rico, to waive such provisions of this subpart II and subpart III as the Secretary determines to be appropriate, * * *'' The reference is to subpart II and III of title XIX of the PHS Act which authorize the SAPT Block Grant. This discretionary authority extends to section 1926. This authority has been delegated by the Secretary to the Administrator of SAMHSA. This guidance explains the conditions under which the Administrator of SAMHSA, in his discretion, will grant a waiver for any Territory other than Puerto Rico from the requirements of section 1926.

DATES: Comments on the guidance must be in writing and should be sent to Mr. David Robbins, Acting Director, Division of State and Community Systems Development, Center for Substance Abuse Prevention (CSAP), Rockwall II Building, Room 930, 5600 Fishers Lane, Rockville, MD 20857, by April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. David Robbins, Acting Director, Division of State and Community Systems Development, Center for Substance Abuse Prevention (CSAP), Rockwall II Building, Room 930, 5600 Fishers Lane, Rockville, MD 20857. Mr. Robbins may be reached on (301) 443–2068.

SUPPLEMENTARY INFORMATION: U.S. Territories have faced many challenges in meeting the Synar legislative and regulatory requirements. Specifically, cultural issues have created significant challenges for the conduct of tobacco outlet inspections to assess the youth tobacco access rates within each of the U.S. Territories, as required by the Synar legislation. For example, in some Territories it is customary for individuals under the age of 18 to buy provisions, including tobacco, for their elders. In others, it is considered inappropriate to ask a person's age for

any reason, even as part of a retail transaction. Additionally, the Territories are predominately comprised of small community centers within islands. Family loyalties toward merchants and the fear of community ostracism increase the difficulty of recruiting youth for retail outlet inspections. Ensuring youth safety is also a significant concern when retailer inspections are combined with enforcement. Territories report that maintaining the anonymity of youth inspectors is extremely difficult, if not impossible, in many of these small communities. Youth inspectors have been threatened, verbally harassed, and even injured as a result of their participation in the inspections.

In addition to cultural barriers to the conduct of inspections, accessibility to tobacco outlets often presents significant human and resource challenges for the U.S. Territories. Many Territories include outlying islands with very small populations. In order to conduct compliance inspections in these outlying areas, travel by boat and overnight stays are often required. Such travel is often costly and requires staff to work substantial numbers of hours to complete the required work. These logistical issues further burden the process of complying with the Synar legislative and regulatory requirements. Currently, a Territory must commit significant resources toward the development, implementation, and analysis of the survey of tobacco retail outlets across the Territory, as well as the conduct of law enforcement activities for violators of a Territory's youth tobacco access control law. Given that eligible Territories receive relatively small SAPT Block Grant awards (between $85,919 and $756,531), SAMHSA believes that resources expended directly toward the implementation of broader tobacco prevention and control programming would be more productive for obtaining the overall goal of the Synar program—reducing the use of tobacco products by youth.

Waiver Criteria: The Administrator of SAMHSA, in his discretion, will grant a waiver to any eligible Territory if:

- A waiver is requested by the eligible Territory at the same time it submits its application for SAPT funds;
- The waiver request is signed by the chief executive officer of the Territory in question;
- The request contains a comprehensive tobacco prevention and control program acceptable to the Administrator; and
- The Territory in question agrees to submit to the Administrator an annual report on its progress in implementing the plan.

A waiver may be granted for up to three years during which period the Territory in question will be obligated to submit an annual progress report. However, a waiver may be withdrawn as determined appropriate by the Administrator of SAMHSA if the territory fails to submit an annual report or if the progress is determined to be unsatisfactory by the Administrator of SAMHSA. If that should occur, the territory will be required to once again abide by the legislative and regulatory requirements of Synar.

SAMHSA recommends that Territories include the following in their comprehensive tobacco prevention and control plans:

- Public education including information regarding the health consequences of tobacco use, and the problem of youth access to tobacco. Public education may include media campaigns.
- Education and training for retail store owners, managers, and sales clerks on the health consequences of tobacco use and the problem of youth access to tobacco.
- Distribution of culturally sensitive educational materials.
- Community mobilization, which may occur through the formation of community-based coalitions. To be effective, such community coalitions shall support the Territorys capacity to reduce youth use of tobacco products by involving youth in tobacco issues, and by gaining support of the community to reduce a minor's access to tobacco products.
- Environmental strategies including proposals to change or enforce Territorial laws and policies to support efforts to reduce youth use of tobacco products. Examples of possible policy initiatives may include, but not be limited to, encouraging clean indoor air policies, increasing tobacco taxes, or formally supporting youth tobacco cessation programs.

Dated: January 6, 2003.

Charles G. Curie,

Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–3568 Filed 2–12–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Rescinding Policy for Resubmitting Revised Applications in Response to SAMHSA Program Announcements

SUMMARY: On March 12, 2001, (FR Vol. 66, No. 48, pages 14410–14411), the Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, published policy outlining procedures that applicants were required to follow when resubmitting revised applications in response to SAMHSA Program Announcements. The purpose of this notice is to rescind the policy effective February 1, 2003.

SUPPLEMENTARY INFORMATION: The Substance Abuse and Mental Health Services Administration and its three Centers, the Center for Substance Abuse Treatment (CSAT), the Center for Mental Health Services (CMHS), and the Center for Substance Abuse Prevention (CSAP), publish Program Announcements and Requests for Applications (RFAs) to solicit applications for their grant programs. Program Announcements, unlike RFAs, have continuous application receipt dates; thereby, giving applicants an opportunity to resubmit, for a later receipt date, revised applications that were not funded. Although applicants may still revise and resubmit applications, effective February 1, 2003, SAMHSA is rescinding the policy that outlined specific instructions for revising and resubmitting the applications.

Contact: Ms. Sandra Stephens, Extramural Policy Team Leader, Division of Planning and Budget, Office of Policy, Planning, and Budget, Substance Abuse and Mental Health Services Administration. Telephone: (301) 443–9916; Fax: (301) 443–1659.

Dated: February 7, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–3595 Filed 2–12–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement for the Urban Wildlands Group, Inc., Los Angeles County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application.

SUMMARY: The Urban Wildlands Group, Inc. (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (SHA) between the Applicant and the Service. The SHA provides for habitat enhancement and creation for the El Segundo blue butterfly *(Euphilotes bernardino allyni)* on approximately 2 acres of bluff habitat on private property in Los Angeles County, California. The proposed duration of both the SHA and permit is 30 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

DATES: Written comments must be received by 5 p.m. on March 17, 2003.

ADDRESSES: Comments should be addressed to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009, facsimile number (760) 918–0638 (see **SUPPLEMENTARY INFORMATION,** Public Review and Comment).

FOR FURTHER INFORMATION CONTACT: Karen A. Evans, Assistant Field Supervisor, at the above address or by calling (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

The primary objective of this SHA is to encourage voluntary habitat restoration or enhancement activities to benefit El Segundo blue butterfly by relieving a landowner, who enters into the provisions of a Cooperative Agreement with the Applicant, from any additional Section 9 liability under the Endangered Species Act beyond that which exists at the time the Cooperative Agreement is signed (''regulatory baseline''). A SHA encourages landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased endangered species restrictions should their beneficial stewardship efforts result in increased endangered species populations. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22(c). As long as enrolled landowners allow the agreed upon habitat improvements to be completed on their property and maintain their baseline responsibilities, they may make any other lawful use of the property during the permit term, even if such use results in the take of individual El Segundo blue butterflies or harm to their habitat.

Landowners within the Torrance Recovery Unit identified by the El Segundo Blue Butterfly Recovery Plan may be enrolled with the Applicant under the SHA. They will receive a Certificate of Inclusion when they sign a Cooperative Agreement. The Cooperative Agreement will include: (1) A map of the property; (2) delineation of the portion of the property to be enrolled and its acreage; (3) a description of the vegetation of the enrolled area of the property; (4) a description of the habitat improvements that will be completed, and; (5) the responsibilities of the Cooperator and the Applicant.

The Applicant will provide draft copies of Cooperative Agreements to the Service for an opportunity to review and concur with the recommended habitat management activities. The Service will have a period of 30 days in which to make comments. If no comments are received within 30 days, the Applicant may proceed to finalize the Cooperative Agreement. The Applicant, as the permittee, will be responsible for annual monitoring and reporting related to implementation of the SHA and Cooperative Agreements and fulfillment of their provisions. Upon request by the Service, the Applicant will make available records and materials related to implementation of the program.

Each Cooperative Agreement will cover restoration activities to create or enhance habitat for El Segundo blue butterfly and achieve species' recovery goals. These actions, where appropriate, could include (but are not limited to): (1) Removal of exotic vegetation to allow for native plant revegetation or to reduce the adverse effect on existing habitat; (2) revegetation with food plant for El Segundo blue butterfly as part of a native dune scrub or bluff scrub community; (3) repair or installation of fences to protect existing or created habitat from human disturbance; and (4) facilitation of the implementation of other objectives recommended by the El Segundo Blue Butterfly Recovery Plan. None of the Cooperative Agreements entered into under this SHA will allow conversion of native habitat into another habitat type.

Each Cooperative Agreement will stipulate that the habitat improvement measures be maintained for a period that is expected to result in the maturation of plants used in revegetation and for a period of 5 years beyond. Most Cooperative Agreements are expected to last at least 13 years. Based on experience elsewhere, this term is more than adequate to allow native plant revegetation to mature to a point usable by the butterflies for nectaring and egg-laying, as well as multiple seasons for dispersal to and from adjacent occupied habitat patches.

After maintenance of the restored/created/enhanced El Segundo blue butterfly habitat on the property for the agreed-upon term, Cooperators may then conduct otherwise lawful activities on their property that result in the partial or total elimination of the restored habitat and the incidental taking of El Segundo blue butterfly as a result of such habitat elimination. However, the restrictions on returning a property to its original baseline condition include: (1) El Segundo blue butterflies may not be captured, killed, or otherwise directly ''taken''; (2) the Applicant and the Service will be notified a minimum of 60 days prior to the activity and given the opportunity to capture, rescue, and/or translocate any El Segundo blue butterflies, if necessary and appropriate; and (3) return to baseline conditions must be completed within the 30-year term of the permit issued to the Applicant. Cooperative Agreements may be extended if the Applicant's permit is renewed and that renewal allows for such extension.

In emergency situations, such as storm-related geological instability, the Service may authorize a Cooperator to carry out an action likely to result in incidental taking of El Segundo blue butterfly before the end of the agreed-upon duration of habitat maintenance, as identified in the Cooperative Agreement, provided the landowner notifies the parties to the Agreement in writing at least 14 days prior to the action, with the nature of the emergency, and an explanation of the extenuating circumstances.

The Service has made a preliminary determination that approval of the SHA qualifies as a categorical exclusion under the NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on

other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the SHA, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (*see* **ADDRESSES**).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and SHA, including names and addresses, will become part of the administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Decision

We will evaluate the permit application, the SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the El Segundo blue butterfly incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: February 5, 2003.

David G. Paullin,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–3549 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 020–03–1430–EU; AZA–31744FD]

Termination of Segregation, Opening Order; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice cancels and terminates the segregative effect of a proposed land exchange of 16,929.85 acres. The land will be opened to location and entry under the general land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, BLM Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, 623–580–5500.

SUPPLEMENTARY INFORMATION: A Decision was issued on May 16, 2001, which segregated the land described therein from location and entry under the general land laws, including the mining laws, subject to valid existing rights for a five-year period. The Bureau of Land Management has determined that the proposed land exchange of the following described lands will not be needed and has been canceled.

Gila and Salt River Meridian, Arizona

T. 12 N., R. 1 E.
Secs. 3, 10, 11, 24 and 28 (Portions of).
T. 12 N., R. 2 E.
Secs. 3, 4, 5, 8, 9, 10, 15, 19, 20, 21, 28, 29, 30, 31, 32 and 33 (Portions of).
T. 13 N., R. 1 E.
Secs. 27, 28, 32, 33 and 34 (Portions of).
T. 13 N., R. 2 E.
Secs. 6, 7, 17, 18, 19, 20, 29, 30, 31 and 32 (Portions of).
T. 14 N., R. 2 E.
Secs. 30 and 31 (Portions of).

Above described property aggregates approximately 16,929.85 acres in Yavapai County.

At 9 a.m. on March 17, 2003 the land will be opened to the operation of the general land laws and to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All valid applications under any other general land laws received at or prior to 9 a.m. on March 17, 2003 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Kathryn E. Pedrick,

Acting Field Manager, Phoenix Field Office.

[FR Doc. 03–3551 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–ET; AA–82857]

Public Land Order No. 7555; Withdrawal of National Forest System Land for the Russian River and Upper Russian Lake Recreation Corridor; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,998 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years to protect the Russian River and Upper Russian Lake Recreation Corridor. The land will remain open such uses as may by law be made of National Forest System lands, and all public uses consistent with the recreational utilization and protection of the Russian River watershed.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch.2 (1994)) to protect the Russian River and Upper Russian Lake Recreation Corridor:

Seward Meridian

Chugach National Forest

T. 3 N., R. 4 W., unsurveyed,
Sec. 4, N½ lying east of forest boundary, and SE¼ lying east of forest boundary;
Sec. 9, NE¼ lying east of forest boundary;
Sec. 10, N½ lying north of forest boundary;
Sec. 11, that portion lying north of forest boundary, excluding the N½NE¼;
Sec. 12, S½ lying northeast of the forest boundary;
Sec. 13, N½ lying north of the ordinary high water mark along the northeast shore of Upper Russian Lake.
T. 4 N., R. 4 W., unsurveyed,
Sec. 9, SE¼NE¼ and E½SE¼;
Sec. 10, SW¼NW¼ and W½SW¼;
Sec. 16, E½NE¼ and SE¼;
Sec. 21, W½E½, S½NW¼ lying east of forest boundary, and SW¼ lying east of forest boundary;
Sec. 28, W½E½ and W½ lying east of forest boundary;
Sec. 29, E½ lying east of forest boundary;
Sec. 32, NE¼ lying east of forest boundary;
Sec. 33, W½E½ and W½ lying east of forest boundary.

The area described contains approximately 2,998 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1994), the Secretary determines the withdrawal shall be extended.

Dated: January 29, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–3552 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–78566]

Public Land Order No. 7552; Withdrawal of National Forest System Lands for the Trial, Washington, and Lost Lake Dams, Bonneville Unit, Central Utah Project; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 268.40 acres of National Forest System lands from location and entry under the United States mining laws, for a period of 50 years, for protection, operation and maintenance of the Bureau of Reclamation's Trial, Washington, and Lost Lake Dams in the Upper Provo River component of the Bonneville Unit of the Central Utah Project.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: David Krueger, Bureau of Reclamation, Provo Area Office, 302 East 1860 South, Provo, Utah 84606–7317; 801–379–1083.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (1994), to protect the Bureau of Reclamation's Trial, Washington, and Lost Lake Dams in the Upper Provo River component of the Bonneville Unit of the Central Utah Project:

Salt Lake Meridian

Wasatch National Forest

T. 2 S., R. 9 E.,
Sec. 4, SW¼NW¼SW¼ and NW¼SW¼SW¼;
Sec. 5, lot 4, SE¼SW¼NE¼, SW¼SE¼NE¼, N½NW¼SW¼NW¼, NW½NE¼SE¼, SE¼NE¼SE¼, E½NW¼SE¼, and N½SE¼SE¼;
Sec. 6, lot 1, SW¼NE¼, N½NE¼SE¼NE¼, and N½NW¼SE¼;

Excepting therefrom a cabin lot situated in the NE¼ of sec. 6, being more particularly described as follows:

Beginning at a point, which lies North, 4,460 feet and West, 366 feet from the Southeast Corner of said Section 6; thence West, 134 feet; thence North, 163 feet; thence East, 132 feet; thence along the high water line of Trial Lake, South 02°26′45″ West, 54.60 feet; thence South 09°20′17″ East, 34.14 feet; thence South 09°45′06″ East, 36.13 feet; thence South 21°48′53″ West, 31.75 feet; thence South 24°15′26″ East, 10.66 feet; to the point of beginning. Containing 0.50 acre, more or less.

The areas described aggregate 268.40 acres in Summit County.

2. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: January 9, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–3566 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–487]

In the Matter of Certain Agricultural Vehicles and Components thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 8, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Deere & Company of Moline, Illinois. Letters supplementing the complaint were filed on January 27 and 28, 2003. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademark Nos. 1,254,339, 1,502,103, 1,503,576, and 91,860. The complaint further alleges that an industry in the United States exists as required by subsections (a)(1)(A) and (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained

therein, are 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 6, 2003, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain agricultural vehicles or components thereof by reason of infringement of U.S. Registered Trademark No. 1,254,339, 1,502,103, 1,503,576, or 91,860, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain agricultural vehicles or components thereof by reason of dilution of U.S. Registered Trademark No. 1,254,339, 1,502,103, or 1,503,576, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Deere & Company, One John Deere Place, Moline, Illinois 61250.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Jiangsu Yueda Co. Ltd., 71 Renmin Road Central, Yangcheng City, Jiangsu Province, China 224002
Dongfeng Agricultural Machinery Group, No. 10 Xinye Road, Changzhou, Jiangsu Province, China 213012
Jiangling Tractor Co., 509 Northern Yingbing Avenue, Nanchang City, Jiangxi Province, China 330001
Agra-Infocentrum-Benelux, Postbus 49, 5110 AA Baarle-Nassau, The Netherlands
Agrideal, Chemin des Perrines, 3550 Vitre, France
Erntetechnik Franz Becker, Naendorf 6, Metelen 48629, Germany
Agracat, Inc., 57 E. Main St., Farmington, Arkansas 72730
Bolton Power Equipment, 39 Whitcomb Road, Bolton, MA 01740
Bourdeau Bros., Inc., 590 Mason Road, Champlain, NY 12919–4855
China America Imports, 33898 Adler Lane, Creswell, OR 97426
Co-Ag LLC, 894 County Road, Theresa, WI 53091
Crossroads Technologies International, 815 Bedford St., Chesapeake, VA 23322
Dale Ilgen Enterprises, W. 6897 Firelane 4, Menasha, WI 54952
Davey-Joans Tractor & Chopper Supermarket, 980 SR 13 Box 173, Williamstown, NY 13493
Fitzpatrick Farms, 12210 Stone Road, Fowler, MI 48835
J & T Farms, 370 Spring Grove Road, Ephrata, PA 17522
Lenar Equipment, LLC, 3261 Northeast Alexander Lane, Albany, OR 97321
OK Enterprises, 55617 County Road 13, Mountain Lake, MN 56159
Pacific Avenue Equipment, 1015 Pacific Avenue, Yakima, WA 98901
SamTrac Tractor and Equipment, 3199 Plummers Lane, No. 13, Chico, CA 95973
Stanley Farms, 3821 County Hwy H, Stanley, WI 54768
Sunova Implement Co., 196679 19th Line RR #1, Lakeside, Ontario, Canada N0M 2G0
Task Master Equipment LLC/Tractors Etc., 83969 N. Pacific Highway 99, Creswell, OR 97426
Workhorse Tractors, 36616 N. 27th Ave., Phoenix, AZ 85806

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.
Issued: February 7, 2003.

Marilyn R. Abbott,
Secretary.

[FR Doc. 03–3567 Filed 2–12–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Drug Intelligence Center

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired; national drug threat survey.

The United States Department of Justice, National Drug Intelligence

Center has submitted the following request for a reinstatement with change of a previously approved information collection to the Office of Management and Budget (''OMB'') for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed reinstatement with change of the information collection is published to obtain comments from the public and affected agencies.

The proposed information collection was previously published in the **Federal Register** on December 6, 2002, Volume 67, Number 235, Page 72701, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 17, 2003. This process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NDIC Form #A–34c. U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Federal, State and Local law enforcement agencies. *Abstract:* This survey is a critical component of the National Drug Threat Assessment. It provides direct access to detailed drug offense data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 3500 respondents who will each require an average of 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1750 hours.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: February 10, 2003.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 03–3564 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–DC–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environment Response, Compensation and Liability Act

In accordance with Departmental policy, 28 U.S.C. 50.7, and in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* v. *ARCO, et al.,* Civil Action No. *03–0180,* was lodged on January, *31,* 2003, with the United States District Court for the Western District of Louisiana.

In this action the United States sought the recovery of its response costs that were incurred by the United States Environmental Protection Agency in response to releases or threatened releases of hazardous substances from the Gulf Coast Vacuum Services Site located 3.5 miles southwest of Abbeville, Vermillion Parish, Louisiana. The Consent Decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607. The Consent Decree provides that *ARCO, et al.,* will pay the United States $523,970 dollars for response costs incurred in conducting a removal action at the Gulf Coast Vacuum Services Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *ARCO, et al.,*D.J. Ref. #90–11–2–506/1.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Louisiana, 800 Lafayette Street, Suite 2200, Lafayette, Louisiana 70501; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas. During the pubic comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P. O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $*8.25* (25 cents per page reproduction costs), payable to the U.S. Treasury.

Tom Mariani,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3520 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on January 17, 2003, a proposed Consent Decree in *United States* v. *Arizona Department of Transportation, et al.,* Civil Action Number 03–CV–128, was lodged with the United States District Court for the District of Arizona.

In this action the United States sought injunctive relief and civil penalties under Sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413, and the National Emission Standards for

Hazardous Air Pollutants for Asbestos (''NESHAP''), 40 CFR part 61, subpart M, against the Arizona Department of Transportation, Cornerstone Properties, Inc., Mel Price Associates, Breinholt Contracting Co., Inc., and Granite Construction Co. The claims arise out of demolition activities in 1998 at four facilities located in Mohave County, Arizona. The proposed Decree provides that the defendants will pay a $115,000 penalty, comply with the Clean Air Act and the asbestos NESHAP in all future demolition and/or renovation operations, amend their standard contracts to provide for and require compliance with the NESHAP, and provide training.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Arizona Department of Transportation, et al.,* DOJ Ref. # 90–5–2–1–06520.

The Consent Decree may be examined at the Office of the United States Attorney, District of Arizona, U.S. Courthouse, 230 N. First Ave., Phoenix, AZ 85025, and at U.S. EPA Region IX, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3521 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation Recovery Act

In accordance with Departmental Policy, 28 U.S.C. 50.7, notice is hereby given that on February 3, 2003, a proposed consent decree in *United States* v. *Charles George Trucking Company, Inc., et. al.,* Civil Action No. 85–2463–WD, was lodged with the United States District Court for the District of Massachusetts.

In this action the United States sought cost recovery and natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') and the Resource Conservation Recovery Act (''RCRA'') against Charles George, Sr., Dorothy George and the Charles George Land Reclamation Trust (collectively, the ''settling defendants'') and other defendants (who have settled under prior agreements) with respect to the Charles George Land Reclamation Trust Superfund Site in Tynsborough, Massachusetts. Under the terms of the proposed settlement, the settling defendants will pay up to $3.8 million to reimburse the United States and the Commonwealth of Massachusetts for costs incurred at the Site. In addition, to resolve the governments' claims of natural resource damages at the Site, the settling defendants will impose a conservation restriction on approximately 15 acres of undeveloped land in Tynsborough, Massachusetts. This settlement is the third and final settlement entered into by the United States concerning response costs at this Site.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Charles George Trucking Company,* et. al., D.J. Ref. 90–11–3–91. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02210, and at U.S. EPA Region I, One Congress Street—Suite 1100, Boston, Massachusetts 02114. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3522 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on January 27, 2003, a proposed consent decree in *United States* v. *Del Webb Communities, Inc.*, No. CV–S–03–0096–LDG–LRL, was lodged with the United States District Court for the District of Nevada.

The Consent Decree resolves claims brought in a complaint filed concurrently with the lodging of the Consent Decree. The complaint alleges that defendant Del Webb Communities, Inc. failed to comply with Clean Air Act requirements to control fugitive dust at construction projects in Clark County, Nevada.

Under the proposed Consent Decree, Del Webb will pay a $50,000 civil penalty. In addition, Del Webb will commit to injunctive relief requiring that it implement necessary work practices to control dust emissions in the future and provide training in such practices to its employees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Del Webb Communities, Inc.*, D.J. Ref. No. 90–5–2–1–07313.

The consent decree may be examined at the offices of U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, and at the Office of the United States Attorney, District of Nevada, 333 Las Vegas Blvd. So., #5000, Las Vegas, Nevada 89101 (refer to NSAO No.: 2000V00330). During the public comment period, the consent decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611, U.S. Department of Justice, Washington, DC 20044–7611, or by e-mailing or faxing a request to Tonia

Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3523 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 14, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.11, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Other: Business or other for-profit. *Abstract:* Authorization of this form is requested as the Violent Crime Control and Law Enforcement Act requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco, Firearms and Explosives and to the appropriate local authorities any theft or loss of a firearm from the licensee's inventory or collection, within a specific time frame after the theft or loss is discovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,000 respondents will complete a 24 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,600 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: February 10, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–3563 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF LABOR

Employment & Training Administration

Office of Policy Development Evaluation and Research; Call for Papers; Biennial National Research Conference on ''Workforce Investment Issues in the United States''; Washington, DC June 4–5, 2003

Summary: The Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is the federal government agency responsible for implementing a national workforce investment and security system that enables workers and employers to compete and succeed in an ever-changing economy. This task is accomplished through the provision of world class labor market information, labor exchange services, job search assistance, training, and unemployment insurance benefits. These programs assist in the management of the risks associated with unemployment, declining income and skill shortages. They help workers in their search for work and their efforts to upgrade their human capital. They help employers find new employees who meet their skill requirements and upgrade the skills of their incumbent workers.

In 1998, the Workforce Investment Act, the nation's most comprehensive effort at streamlining and transforming public employment, job training and education programs and agencies into a system that meets the skill needs of today's economy, was passed. The implementation of the Workforce Investment Act (WIA) of 1998 combines a variety of workforce development programs and initiatives under one umbrella—the One-Stop System—to effectively serve the needs of job-seekers, workers and employers in the changing workforce development environment at the onset of the 21st century economy.

Under the provisions of the WIA, the Secretary of Labor is required every two years to prepare a five-year research plan for research, pilot and demonstration initiatives. This research plan reflects a strategic vision for research efforts based upon input from stakeholders in employment and training research, a review of recent efforts, an identification of areas where future research may be needed, and a review of possible research methodologies.

In light of major changes in the macro-economy that have taken place in the areas of technological transformation, increasing globalization and changing demographics over the

recent years, and the resulting effects of rising workforce insecurity, the Employment and Training Administration will hold its second national research conference since the enactment of WIA. The conference will focus on issues related to trends, challenges and impacts of the macro-economy to workforce investment, significance of recent changes in workforce investment, workforce competitiveness in the global economy, changing business requirements, workforce security in our new economy, and major policy options to increase productivity by meeting the skill needs of business and promoting economic opportunities for the United States workforce. A plenary session is planned to discuss the soon-to-be published 2002–2007 plan and lay the groundwork for the 2004–2009 research plan.

This is a call for empirical/non-empirical papers related to workforce investment issues. ETA is seeking recently completed papers and papers that will be completed prior to the conference. We encourage contributions by researchers from academia, state or local agencies, business organizations, labor associations, research consulting firms and other relevant organizations. Possible topics may include, but are not limited to:

- Workforce Investment Act (program implementation and administration of adult, dislocated worker and youth programs; issues relating to WIA reauthorization).
- Skills Requirements of Employers (skills needed by employers in particular sectors and industries, the effect of new technologies, including the internet and e-commerce, on skill needs of employers).
- Changes in the Structure and Organization of Work (changes in tenure and the rise of contingent work arrangements).
- Effect of Contingent Work on Hiring Practices (the effect of hiring practices of employers and the job search behavior of individuals).
- Role of Intermediaries in the Labor Market (whether intermediaries offer new approaches and techniques that can be adapted by the public-sector employment and training community).
- Adaptability of the Unemployment Insurance Program to an evolving U.S. economy. (program administration, coverage, eligibility, benefit adequacy, benefit duration, recipiency, benefit financing, economic stabilization, special populations and changing work patterns).
- Changes in Wages and Compensation (effect of education on workers' earnings).
- Wages and Compensation Trends (recent trends in the receipt of benefits, including health insurance and retirement benefits) Interventions (employment and training intervention responses to wage and compensation trends).
- Impact of technology, Internet and Labor Market Information on labor exchange processes.
- Education—Workforce Training Continuum (appropriate roles of public K–12 and higher education integrated with Workforce Investment System).

Time and Place: The conference will be held from 1 p.m. to 5 p.m. on June 4, 2003 and from 9 a.m. to 4:30 p. m. on June 5, 2003 at the Holiday Inn, Capital Hill, 550 C Street, SW., Washington, DC 20024.

Submission of Papers: All papers submitted will be reviewed by a panel of DOL experts in the workforce development arena and presenters will be notified if their papers are selected. Papers reporting on research and development, evaluation studies, pilot efforts, or applied practices are encouraged. Selected papers selected for the conference will be published as part of the ETA Occasional Paper Series. Travel and accommodation for invited presenters will be paid by the Employment and Training Administration. If interested, please submit your paper and abstract if possible in hard copy and diskette/CD (Word) by March 1, 2003. Papers should be doubled-spaced and single sided. You will be notified by April 4, 2003, if your paper is selected; you will have to confirm your attendance by April 15, 2001. Please send your papers and abstract to the logistical contractor for this contract, HMA Associates, Inc., 1680 Wisconsin Avenue, NW., 2nd Floor, Washington, DC, 20007, Attn: Peggie Edwards-Jefferies. She may be reached at 202–342–8258. We also encourage submitting abstracts for papers that have not yet been completed, but will be completed before the deadline for submission of papers.

Public Participation: This Conference is open to the public; there is no registration fee. For registration information, please send name, address, e-mail address, affiliation, and telephone number to H.M.A Associates, Inc., 1680 Wisconsin Avenue, NW., 2nd Floor, Washington, DC, 20007, Attn: Peggie Edwards-Jefferies or email them to *hmaassociates.com.*

Signed at Washington, DC, this 5th day of February.

Gerard F. Fiala,

Administrator, Office of Policy Development, Evaluation and Research.

[FR Doc. 03–3559 Filed 2–12–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: 29 CFR part 825, The Family and Medical Leave Act of 1993. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 14, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *hbell@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Family and Medical Leave Act of 1993 (FMLA), Public Law 103.3, 107 Stat. 6, 29 U.S.C. 2601, which became effective on August 5, 1993, requires private sector employers of 50 or more employees, and public agencies to provide up to 13 weeks of unpaid, job-protected leave during any 12-month

period to ''eligible'' employees for certain family and medical reasons. Leave must be granted to ''eligible'' employees because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform any of the essential function of his or her job. This information collection contains recordkeeping and notification requirements associated with the Act and regulations. Implementing regulations are found at 29 CFR Part 825. Two optional forms are included in this information collection request. The WH–380, Certification of Health Care Provider, may be used to certify a serious health condition under FMLA. The WH–381, Employer Response to Employee Request for Family or Medical Leave may be used by an employer to respond to a leave request under FMLA. Both forms are third-party notifications and are sent to the employee; they are not submitted to the Department of Labor. This information collection is currently approved for use through July 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under FMLA, and in order for the Department of Labor to carry out its statutory obligation under FMLA to investigate and ensure employer compliance have been met. Since OMB extended the expiration dates of the forms in July 2002, the Department has initiated a review of FMLA's implementing regulations to address issues raised by the U.S. Supreme Court in *Ragsdale* v. *Wolverine World Wide, Inc.,* 122 S. CT 1155 (2002), and decisions of other courts.

The Department expects to revise Forms WH–380 and WH–381, and these forms also may need to reflect changes that may be proposed to the FMLA regulations. The Department is requesting a one-year extension on the expiration date to the ICR. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CFR Part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Agency Number: WH–380, WH–381.

Affected Public: Individuals or household, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Total Respondents: 6.655 million.

Total Responses: 15.056 million.

Time per Response: 1 to 20 minutes.

Frequency: On Occasion (Recordkeeping, Third-Party Disclosure).

Estimated Total Burden Hours: 1,210,654.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 6, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–3558 Filed 2–12–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of debarment: BFI Waste Services, L.L.C.'s 260 West Dickman Street, Baltimore, facility (Division #50).

SUMMARY: This notice advises of the debarment of BFI Waste Services, L.L.C.'s 260 West Dickman Street, Baltimore, Maryland Facility (Division #50), (hereinafter ''BRI''), as an eligible bidder on Government contracts or extensions or modifications of existing contracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Charles E. James, Sr., Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, 200 Constitution Ave., NW., Room C–3325, Washington, DC 20210 (202–693–1062).

SUPPLEMENTARY INFORMATION: On January 30, 2003, the United States Department of Labor's Administrative Law Judge Thomas M. Burke approved a Consent Decree, pursuant to Executive Order 11246, and its implementing regulations (41 CFR parts 60–1 *et seq.*). Under the terms of the Consent Decree, BFI Waste Service, L.L.C., its officers, agents, servants, employees, successors, divisions, subsidiaries, and persons in active concert or participation with them, agrees not to bid for or enter into Government contracts for a period of one hundred eighty (180) days from the effective date of this Consent Decree. The debarment shall be lifted at the conclusion of the one hundred eighty (180) day period, if BFI satisfies the Deputy Assistant Secretary that it is in compliance with Executive Order 11246. Further, the Consent Decree provides that during the debarment period, on BFI Facility will enter into any Government contracts and subcontracts that BFI's 260 West Dickman Street, Baltimore, Maryland Facility (Division #50), would have otherwise bid for and entered into during the debarment period.

Dated: February 3, 2003, Washington, DC.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

BILLING CODE 4510–CM–M

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

****

In the Matter of

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR
Plaintiff

Date Issued: JAN 30 2003
Case Number: 2003-OFC-0002

v.

BFI WASTE SYSTEMS OF
NORTH AMERICA, INC.
Defendant

****

ORDER PURSUANT TO CONSENT DECREE

This case arises under Executive Order 11246 (30 Fed. Reg. 12319) as amended by Executive Order 11375 (32 Fed. Reg. 14303) and Executive Order 12086 (43 Fed. Reg. 46501) and the regulations issued at 41 C.F.R. Part 60. On January 7, 2003, the Department of Labor (DOL) filed an Administrative Complaint and Consent Decree in this Office.

Review of the Consent Decree shows that it is in compliance with 29 C.F.R. § 18.9 and that it fairly and adequately resolves all pending issues in this matter. Accordingly, the Consent Decree is hereby **APPROVED** and **ADOPTED** in its entirety.

So **ORDERED**,

Thomas M. Burke
Associate Chief Judge

TMB/lmr

SERVICE SHEET

Case Name: BFI Waste Systems
Case Number: 2003-OFC-0002
Title: Order

I certify that a copy of the above entitled document was sent to the last known addresses of the following parties on: JAN 30 2003

Lynn Marie Rongaus
Paralegal

Solicitor of Labor
Room S2002 FPB
200 Constitution Avenue NW
Washington, DC 20210

Civil Rights Division/USDOL
Room N2464 FPB
200 Constitution Avenue NW
Washington, DC 20210
Attn: Sarah Crawford, Esq.

Office of Federal Contract
Compliance Programs/USDOL
Room C3325 FPB
200 Constitution Avenue NW
Washington, DC 20210

Douglas White, Esq.
Associate Regional Solicitor
US Department of Labor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209

Matthew Halpern, Esq.
Jackson Lewis LLP
1000 Woodbury Road, Suite 402
Woodbury, NY 11797

Jo Lynn White
BFI Waste Services
260 West Dickman Street
Baltimore, MD 21230

BILLING CODE 4510–CM–C

Office of Administrative Law Judges; Consent Decree

This Consent Decree (hereinafter ''Consent Decree'' or ''Decree'') is entered into between the Plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs (hereinafter ''OFCCP''), and Defendant BFI Waste Services, LLC (hereinafter ''BFI'' or ''Defendant''), in resolution of the Administrative Complaint filed by OFCCP pursuant to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303) and Executive Order 12086 (43 FR 46501) (''Executive Order''). The Administrative Complaint alleged that Defendant violated the terms of a Conciliation Agreement that was executed by Defendant and OFCCP and that became effective in March 2000.

Part A. General Provisions

1. The record on the basis of which this Consent Decree is entered shall consist of the Complaint and the Consent Decree and the attachments thereto.

2. Attachment A of the Consent Decree consists of the Conciliation Agreement between OFCCP and Defendant which became effective in March 2000.

3. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge, and the effective date of the Decree shall be the date it is signed by the Administrative Law Judge.

4. This Consent Decree shall be binding upon Defendant and any and all purchasers, successors, assignees, and/or transferees, and shall have the same force and effect as an order made after a full hearing.

5. All further procedural steps to contest the binding effect of the Consent Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties, except as provided hereunder.

6. Subject to the performance by Defendant of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. However, nothing herein is intended to relieve Defendant from compliance with the requirements of Executive Order 11246, Section 503 of the Rehabilitation Act, the Vietnam Era Veterans' Readjustment and Assistance Act, or their regulations, nor to limit OFCCP's right to review Defendant's compliance with such requirements.

7. Defendant agrees that there will be no retaliation of any kind against any beneficiary of this Consent Decree, or against any person who has provided information or assistance in connection with this Decree.

8. Defendant denies that it violated Executive Order 11246.

9. Defendant does not admit any violation of law or obligation. The parties agree that this Consent Decree is not, and may not be used, as an admission of any violation by Defendant, or as a basis for asserting Defendant's noncompliance with any labor and employment law, rules, or regulations, except for any action initiated pursuant to Paragraphs 27 to 30 of this Decree.

Part B. Jurisdiction and Procedural History

10. In its initial compliance review of Defendant in November 1999, OFCCP identified three violations of Executive Order 11246.

11. In March 2000, OFCCP and Defendant entered into a Conciliation Agreement to resolve the three violations.

12. Defendant was obligated to correct three alleged violations under the Conciliation Agreement, including: (1) Defendant's failure to provide accurate applicant flow data in support of its Affirmative Action Program; (2) Defendant's failure to offer equal employment opportunity to an applicant, Ms. Julie Ann Dunlap, for a position in the office and clerical job group; and (3) Defendant's failure to make good faith efforts to develop and execute an affirmative action plan to recruit women for the underutilized craftworker and laborer job groups.

13. The Conciliation Agreement obligated Defendant to provide two annual reports to enable OFCCP to monitor the company's compliance with the terms of the Conciliation Agreement. After Defendant submitted the first of the two reports, OFCCP determined that Defendant failed to comply with two provisions of the Conciliation Agreement. Specifically, OFCCP found that Defendant failed to (1) offer a customer service position to Ms. Julie Ann Dunlap with retroactive seniority and vesting status dating back to September 8, 1998, as well as a check for $32,708.98 in back pay and interest through December 31, 1999; and (2) provide the specified recruitment sources with timely notice of its employment opportunities in the craftworker and laborer job groups.

14. Defendant contends that it made good faith efforts to offer Ms. Julie Ann Dunlap employment, but that Ms. Dunlap never responded.

Part C. Specific Provisions

Job Offer to Ms. Julie Ann Dunlap

15. If Ms. Dunlap executes and returns the General Release and Covenant Not to Sue described in paragraph 16 below, Defendant will offer the next available full-time customer service position at its Baltimore, Maryland facility to Ms. Julie Ann Dunlap as set forth below. The terms of this job offer will include retroactive seniority and vesting status dating back to September 8, 1998, the date of Ms. Dunlap's original application. The job offer will be made in writing by certified mail, return receipt requested, and will describe the job title, rate of pay, job site, description of job benefits, start date, expected duration of the job, and will specify a time period of at least two weeks for Ms. Dunlap to respond to the employment offer. The written job offer will explicitly state that it includes retroactive seniority and vesting status dating back to September 8, 1998. If Ms. Dunlap's address is unknown, Defendant will make all reasonable efforts to obtain Ms. Dunlap's current address. When Ms. Dunlap's current address is obtained, BFI will offer her the next available full-time customer service position. If Ms. Dunlap does not respond or execute and return the General Release and Covenant Not to Sue described in paragraph 16 below to ''BFI Waste Services, L.L.C., at 260 West Dickman Street, Baltimore, Maryland 21230, Attn: Bill Booth, General Manager'', within (14) days of receiving the offer, Defendant's hiring obligation hereunder shall cease. Defendant's hiring obligation will also cease if Ms. Dunlap fails the drug screen or the background check (consisting of a check of criminal records and references). Defendant affirms that these screens are administered to all applicants for customer service positions, and will be handled in a non-discriminatory manner and in accordance with policy and procedure. If Defendant determines that the results of Ms. Dunlap's drug screen or background check preclude her from employment, Defendant will provide information and documentation to OFCCP demonstrating that the failure to hire Ms. Dunlap is non-discriminatory and consistent with Defendant's policies and practices. Defendant will provide the name, job title, and business telephone number of each employee who made, or

contributed to, the decision not to hire Ms. Dunlap. Defendant agrees that OFCCP may review compliance with this Paragraph, and will provide OFCCP within a reasonable time with all documents that are reasonable and are requested by OFCCP. Defendant also agrees that, upon reasonable advance notice, OFCCP may come onsite at the BFI 260 West Dickman Street, Baltimore, Maryland facility as is necessary to review compliance with this Paragraph.

Monetary Relief to Ms. Julie Ann Dunlap

16. Within 10 days of the date upon which it receives a fully executed copy of this Decree, Defendant will send Ms. Dunlap by certified mail, return receipt requested the letter contained in Attachment B, along with a W–4 form and a General Release and Covenant Not to Sue, and ask that she complete both and return them at the address specified in the letter to Defendant within 14 days of her receipt thereof (as determined by the date she signs the return receipt card). Within 10 days of receiving the completed W–4 form and executed General Release and Covenant Not to Sue, Defendant will submit by certified mail, return receipt requested two checks to Ms. Julie Ann Dunlap in the total amount of $44,838.91 minus legal payroll deductions. The parties agree that this payment represents back pay (the first check) and interest (the second check) due to Ms. Dunlap for the period of September 8, 1998, to December 31, 2002. For tax purposes, the parties agree that $35,289.58 of the total payment represents back pay and the remaining $9,549.33 represents interest.

17. If Ms. Dunlap's address is unknown as of 10 days from the date upon which Defendant receives a fully executed copy of this Decree, Defendant will deposit the check for Ms. Dunlap into an interest bearing escrow account at that time. Defendant and OFCCP, jointly, will make all reasonable efforts to obtain Ms. Dunlap's current address. Defendant will pay Ms. Dunlap the balance of the escrow account, including accrued interest, within 10 days of the date upon which Defendant receives a completed W–4 form and the executed General Release and Covenant Not to Sue. In the event Ms. Dunlap does not receive the letter from BFI, the money shall remain in the escrow account until the cessation of the term of this Consent Decree. At the cessation of the term of the Consent Decree, the escrow account shall revert to the Department of Labor, which will maintain the escrow account for Ms. Dunlap's benefit. If Ms. Dunlap is located thereafter, the Department of Labor will tender the money to Ms. Dunlap upon receipt of the executed General Release and Covenant Not to Sue, which it will forward to Defendant.

Recruitment Efforts

18. For a period of two years from the effective date of this Consent Decree, Defendant agrees to notify the recruitment and community agencies listed on page 11 of the Conciliation Agreement at least two weeks before interviewing is initiated for positions in the craftworker and laborer job groups. Defendant shall inform such recruitment sources of the minimum job qualifications required, wages, closing date for the vacancy, a job description, and the application procedures.

Reporting Requirements

19. Defendant agrees to provide reports to the U.S. Department of Labor, Office of the Solicitor, Division of Civil Rights, 200 Constitution Avenue NW., Room N–2464, Washington, DC 20210. Defendant will file a total of four reports according to the following schedule:

Report number	Covering period (after effective date of Consent Decree)	Due to be sent (after effective date of Consent Decree)
1	Days 1–60	Day 90.
2	Days 61–120	Day 150.
3	Days 121–360	Day 390.
4	Days 361–720	Day 750.

The reports will include documentation verifying the following information:

a. Defendant's job offer to Ms. Dunlap; or, if Ms. Dunlap is not hired due to the results of a drug screen and/or background check, Defendant will provide the information specified in Paragraph 15 of this Decree;

b. Defendant's deposit of monetary relief into an interest bearing escrow account, if Ms. Dunlap's address in unknown or she does not respond, send a W–4 form or execute the General Release and Covenant Not to Sue, including a statement of the balance of the account;

c. Defendant's payment of monetary relief to Ms. Dunlap when (and if) her current address is obtained, including the address to which the check was sent, the amount of the check, the date on which the check was mailed, and documentation verifying payment on the check; and

d. Defendant's good faith efforts to recruit and hire women in the craftworker and laborer job groups. Such documentation shall include, but shall not be limited to copies of letters sent to recruitment sources and an applicant log for positions in the craftworker and laborer job groups, specifying the name, gender, position applied for, job group number, date of application, referral source, and disposition of each applicant.

Debarment

20. The Office of Administrative Law Judges shall retain jurisdiction in this case for a period of two years from the effective date of this Consent Decree.

21. Defendant's 260 West Dickman Street, Baltimore, Maryland facility (Division #050) agrees not to bid for or enter into Government contracts or subcontracts for a period of one-hundred and eighty (180) days from the effective date of this Consent Decree. This debarment period shall be effective against the officers, agents, servants, employees, successors, divisions, subsidiaries, and persons in active concert or participation with Defendant's 260 West Dickman Street, Baltimore, Maryland facility (Division #050). During the debarment period, no BFI facility will enter into any Government contracts or subcontracts that BFI's 260 West Dickman Street, Baltimore, Maryland facility (Division #050) would have otherwise bid for and entered into during the debarment period.

22. Notice of the debarment of ''BFI's 260 West Dickman Street, Baltimore, Maryland facility (Division #050)'' shall be printed in the **Federal Register**. In addition, OFCCP shall notify the Comptroller General of the United States General Accounting Office and all Federal Contracting Officers that ''BFI's 260 West Dickman Street, Baltimore,

Maryland facility (Division #050)'' is ineligible for the award of any Government contracts or subcontracts.

23. The debarment shall be lifted at the conclusion of the one-hundred and eighty (180) day period if Defendant satisfies the Director of OFCCP that it is in compliance with Executive Order 11246.

24. OFCCP shall review each of Defendant's reports and shall determine whether Defendant has complied with the terms of this Consent Decree and the terms of Executive Order 11246 and its implementing regulations. OFCCP shall notify Defendant in writing, within 30 days of receipt of the report, if there is a deficiency. Defendant shall have 30 days from its receipt of the deficiency notice to correct such deficiency.

25. If OFCCP finds that Defendant has complied with the terms of this Consent Decree and with the terms of Executive Order 11246, the debarment shall be lifted and Defendant shall be free to enter into future Government contracts and subcontracts. Beginning 30 days before the conclusion of the 180-day period, Defendant may request reinstatement pursuant to 41 CFR § 60–1.31. Reinstatement proceedings shall be in accordance with 41 CFR § 60–1.31. Notice of the reinstatement shall be printed in the **Federal Register** and shall be made to the Comptroller General of the General Accounting Office and all Federal Contracting Officers.

Part D. Implementation and Enforcement of the Decree

26. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of two years from the date this Consent Decree becomes final. If any motion is pending before the Office of Administrative Law Judges two years from the date this Consent Decree becomes final, jurisdiction shall continue beyond two years and until such time as the pending motion is finally resolved.

27. If at any time during the two years OFCCP believes that Defendant has violated any portion of this Consent Decree, Defendant will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Defendant with 15 days to respond in writing except where OFCCP alleges that such a delay would result in irreparable injury.

28. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 15-day period referred to in Paragraph 24 has elapsed (or sooner, if irreparable injury is alleged) upon filing with the Court a motion for an order of enforcement and/or sanctions. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

29. Liability for violation of this Consent Decree shall subject Defendant to sanctions set forth in the Executive Order and its implementing regulations, as well as other appropriate relief, including contract cancellation.

30. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by the plaintiff or Defendant, as appropriate, the application or motion may be presented to the Court without hearing and the proposed Order may be implemented immediately. If an application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

31. The Consent Decree herein set forth is hereby approved and shall constitute the final Administrative Order in this case.

32. It is so ordered adjudged and decreed.

Agreed and Consented to:

On Behalf of BFI Waste Services, LLC:

Dated: December 19, 2002.

Jo Lynn White,
Officer, BFI Waste Services, LLC.

On Behalf of the Office of Federal Contract Compliance Programs:

Eugene Scalia, *Solicitor of Labor.*
Gary M. Buff,
Associate Solicitor.
Richard L. Gilman,
Counsel for Litigation.
Dated: December 27, 2002
Sarah C. Crawford,
Attorney, U.S. Department of Labor, Room N–2464, 200 Constitution Ave., NW., Washington, DC 20210, (202) 693–5287.

Thomas M. Burke,
Administrative Law Judge.

Notice to Readers

Attachments A & B are available from the U.S. Department of Labor's Wirtz Labor Library, 200 Constitution Avenue, NW., Room N2439, Washington, DC 20210. It is open to the public from 8:15 am to 4:45 pm. For further information call (202) 693–6613.

[FR Doc. 03–3560 Filed 2–12–03; 8:45 am]
BILLING CODE 4510–CM–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989 SMC–1559]

Envirocare of Utah, Inc.; Order Modifying Exemption From Requirements Relative to Possession of Special Nuclear Material

Envirocare of Utah, Inc. (Envirocare) operates a low-level waste (LLW) disposal facility in Clive, Utah. This facility is licensed by the State of Utah, an Agreement State. Envirocare is also licensed by Utah to dispose of mixed radioactive and hazardous wastes. In addition, Envirocare has a U.S. Nuclear Regulatory Commission (NRC) license to dispose of by product material as defined in 10 CFR part 40.

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer special nuclear material (SNM) to obtain a license pursuant to the requirements in 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities as defined in 10 CFR 150.11.

Pursuant to 10 CFR 70.14, ''the Commission may * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.''

On May 24, 1999, NRC transmitted an Order to Envirocare of Utah, Inc. The Order was published in the **Federal Register** on May 21, 1999, (64 FR 27826). The Order exempted Envirocare from certain NRC regulations and permitted Envirocare, under specified conditions, to possess waste containing SNM, in greater quantities than specified in 10 CFR part 150, at Envirocare's low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The methodology used to establish these limits is discussed in the 1999 Safety Evaluation Report (SER) that supported the 1999 Order.

Envirocare, in a letter dated July 3, and 29, 2002, proposes that NRC issue further exemptions by amending the 1999 Order as follows: (1) Include stabilization of liquid waste streams containing SNM; (2) include the thermal

desorption process; (3) change the homogenous contiguous mass limit from 145 kg to 600 kg; (4) change the language and SNM limit associated with footnotes ''c'' and ''d'' of Condition 1 to reflect all materials in Conditions 2 and 3; and (5) omit the confirmatory testing requirements for debris waste.

A principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The staff considers that criticality safety can be maintained by relying on concentration limits, under the conditions specified. Safeguarding SNM against diversion or sabotage is not considered a significant issue because of the diffuse form of the SNM in waste meeting the conditions specified. These conditions are considered an acceptable alternative to the criticality definition provided in 10 CFR 150.11, thereby assuring the same level of protection. The staff reviewed safety aspects of the proposed action (*i.e.*, granting Envirocare's request) in the Safety Evaluation Report, dated January 14, 2003. The staff concluded that additional conditions were required to maintain sufficient protection of health, safety and the environment. The exemption conditions would be revised as follows:

1. Concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

Radionuclide	Maximum concentration (pCi/g)	Measurement uncertainty (pCi/g)
U–235[a]	1,900	285
U–235[b]	1,190	179 [1]
U–235[c]	26	10
U–235[d]	680	102
U–233	75,000	11,250
Pu–236	500	75
Pu–238	10,000	1,500
Pu–239	10,000	1,500
Pu–240	10,000	1,500
Pu–241	350,000	50,000
Pu–242	10,000	1,500
Pu–243	500	75
Pu–244	500	75

[a] For uranium below 10 percent enrichment and a maximum of 20 percent of the weight of the waste of materials listed in Condition 2.

[b] For uranium at or above 10 percent enrichment and a maximum of materials listed in Condition 2 of the weight of the waste of materials listed in Condition 2.

[c] For uranium at any enrichment with unlimited quantities of materials listed in Conditions 2 and 3.

[d] For uranium at any enrichment with sum of materials listed in Conditions 2 and 3 not exceeding 45 percent of the weight of the waste.

The measurement uncertainty values in column 3 above represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms of waste.

2. Except as allowed by notes a, b, c, and d in Condition 1, waste must not contain ''pure forms'' of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (*e.g.*, a pallet of drums, a B–25 box). By ''pure forms,'' it is meant that mixtures of the above elements such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc. do not contain other elements. These chemicals would be added to the waste stream during processing, such as at fuel facilities or treatment such as at mixed waste treatment facilities. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

3. Except as allowed by notes c and d in Condition 1, waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one percent of the total weight of the waste. The presence of the above materials will be determined by the generator, based on process knowledge, physical observations, or testing.

4. Waste packages must not contain highly water soluble forms of uranium greater than 350 grams of uranium-235 or 200 grams of uranium-233. The sum of the fractions rule will apply for mixtures of U–233 and U–235. Highly soluble forms of uranium include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, and uranyl sulfate. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

5. Waste processing of waste containing SNM will be limited to stabilization (mixing waste with reagents), micro-encapsulation, macro-encapsulation using low-density and high-density polyethylene and thermal desorption.

When waste is processed using the thermal desorption process, Envirocare shall confirm the SNM concentration following processing and prior to returning the waste to temporary storage.

Liquid waste may be stabilized provided the SNM concentration does not exceed the SNM concentration limits in Condition 1. For containers of liquid waste with more than 600 kilograms of waste, the total activity (pCi) of SNM shall not exceed the SNM concentration in Condition 1 times 600 kilograms of waste. Waste containing free liquids and solids shall be mixed prior to treatment. Any solids shall be maintained in a suspended state during transfer and treatment.

6. Envirocare shall require generators to provide the following information for each waste stream:

Pre-Shipment

1. Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

2. Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

3. Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

4. Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

Envirocare shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that Envirocare has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, Envirocare shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. Envirocare shall retain this information as required by the State of Utah to permit independent review.

At Receipt

Envirocare shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

7. Sampling and radiological testing of waste containing SNM must be performed in accordance with the following: one sample for each of the first ten shipments of a waste stream; or one sample for each of the first 100 cubic yards of waste up to 1,000 cubic yards of a waste stream, and one sample for each additional 500 cubic yards of waste following the first ten shipments or the following the first 1,000 cubic yards of a waste stream. Sampling and radiological testing of debris waste containing SNM (that is exempted from sampling by the State of Utah) can be eliminated if the SNM concentration is lower than one tenth of the limits in Condition 1.

8. Envirocare shall notify the NRC, Region IV office within 24 hours if any of the above conditions are not met, including if a batch during a treatment process exceeds the SNM

concentrations of Condition 1. A written notification of the event must be provided within 7 days.

9. Envirocare shall obtain NRC approval prior to changing any activities associated with the above conditions.

Based on the staff's evaluation, the Commission has determined, pursuant to 10 CFR 70.14, that the exemption of above activities at the Envirocare disposal facility is authorized by law, and will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission grants an exemption subject to the stated conditions. The exemption will become effective after the State of Utah has incorporated the above conditions into Envirocare's radioactive materials license. In addition, at that time, the Order transmitted on May 24, 1999, will no longer be effective.

Pursuant to the requirements in 10 CFR part 51, the Commission has prepared an Environmental Assessment for the proposed action and has determined that the granting of this exemption will have no significant impacts on the quality of the human environment. This finding was noticed in the **Federal Register** on January 23, 2003; 68 FR 3281.

The requests for the modifying the Order are available for inspection at NRC's Public Electronic Reading Room at <*http://www.nrc.gov/NRC/ADAMS/index.html*> ML021900394 and ML022180270. The staff's Environmental Assessment and Safety Evaluation Report may be obtained at the above web site using ML023470617 and ML023470587. Any questions with respect to this action should be referred to Timothy Harris, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613, Fax: (301) 415–5398.

Dated at Rockville, Maryland this 30th day of January 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–3571 Filed 2–12–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25929; File No. 812–12576]

Great-West Life & Annuity Insurance Company et al.; Notice of Application

February 7, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application (the ''Application'') for an order under Sections 12(d)(1)(J), 17(b) and 6(c), of the Investment Company Act of 1940, as amended (the ''Act''), providing exemptions from the limitations of Sections 12(d)(1)(A) and (B) and 17(a) of the Act.

Applicants: Great-West Life & Annuity Insurance Company (''GWL&A''), GW Capital Management, LLC, doing business as Maxim Capital Management, LLC (the ''Adviser''), and Maxim Series Fund, Inc. (the ''Fund'') (collectively with GWL&A and the Adviser, the ''Applicants'').

Relevant 1940 Act Sections: Order requested under Sections 12(d)(1)(J), 17(b) and 6(c) of the Act for exemption from Sections 12(d)(1)(A) and (B) and 17(a) of the Act.

Summary of Application: Applicants seek an order of the Commission permitting any series of the Fund and any other registered open-end investment company that is part of the same ''group of investment companies,'' as defined in Section 12(d)(1)(G)(ii) of the Act, as the Fund and is, or will be, advised by the Adviser or any entity controlling, controlled by, or under common control with GWL&A, lawfully operating as a ''fund of funds'' (the ''Profile Portfolios''), to purchase guaranteed interest annuity contracts issued by GWL&A (''Fixed Contracts''), as well as contracts GWL&A may issue in the future that are substantially similar in all material respects to the Fixed Contracts (''Future Fixed Contracts''), and GWL&A to sell to any Profile Portfolio such Fixed Contracts or Future Fixed Contracts. Applicants request that the relief extend to any future series of the Fund and any other future investment company advised by the Adviser lawfully operating as a ''fund of funds'' (''Future Profile Portfolios'').

Filing Date: The Application was filed on July 16, 2001, and amended and restated on February 6, 2002.

Hearing or Notification of Hearing. An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this Application by writing to the Commission's Secretary and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 4, 2003, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Great-West Life & Annuity Insurance Company, GW Capital Management, LLC, and Maxim Series Fund, Inc., 8515 East Orchard Road, Greenwood Village, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Patrick F. Scott, Attorney, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. GWL&A is a stock life insurance company organized and existing under the laws of the State of Colorado. GWL&A was originally organized udner the laws of the State of Kansas as National Interment Association, and later changed its name to Ranger National Life Insurance Company, and then to Insuramerica Corporation until 1982 when it was changed to GWL&A. In 1990, GWL&A was re-domesticated as a Colorado corporation.

2. GWL&A is an indirect, wholly owned subsidiary of Great-West Lifeco Inc., an insurance holding company. Great-West Lifeco Inc. is a subsidiary of Power Financial Corporation, a financial services holding company based in Montreal, Canada. Power Corporation of Canada, a holding and management company, has voting control of Power Financial Corporation. Mr. Paul Desmarais, through a group of private holding companies, which he controls, has voting control of Power Corporation of Canada.

3. GWL&A is authorized to write annuities and life insurance in forty-nine states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. As of December 31, 2001,

GWL&A had assets of over $28 billion. GWL&A is the issuer of the Fixed Contracts, which GWL&A will offer for sale to the Profile Portfolios, as described more fully below.

4. The Adviser is a limited liability company organized under the laws of the State of Colorado and a wholly owned subsidiary of GWL&A. The Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended. The Adviser serves as an investment adviser to the Fund. In addition to the Fund, the Adviser serves as an investment adviser to the Orchard Series Fund, a Delaware business trust that is registered with the Commission under the Act as an open-end management investment company of the series type. The Adviser also serves as investment adviser to Great-West Variable Annuity Account A, a managed separate account of GWL&A. As of December 31, 2001, the Adviser's assets under management totaled $7.5 billion.

5. The Fund is a Maryland corporation registered with the Commission under the Act as an open-end management company of the series type. The Fund is managed under the direction of its board of directors, and is not required to hold annual meetings of shareholders. The Fund currently consists of 36 series. Each series represents a separate investment portfolio (each a ''Portfolio''). Each Portfolio has its own investment objectives and policies. Shares of the Portfolios are offered for sale pursuant to a registration statement filed with the Commission under the Securities Act of 1933, as amended (the ''1933 Act''). Shares of the Portfolios are offered for sale to insurance companies, including GWL&A and its affiliates, for the purpose of funding variable life insurance policies and variable annuity contracts issued by those insurance companies. Shares of the Portfolios are also offered for sale to qualified plans of the type described in Treasury Regulation 1–817.5(f)(3)(iii), as permitted under an order of the Commission granting to the Fund an exemption from certain provisions of the Act.

6. There are currently ten Profile Portfolios, each an existing Portfolio of the Fund. Each Profile Portfolio operates as a ''fund of funds'' pursuant to an order of the Commission permitting the Profile Portfolios to invest in other funds that are part of the same group of investment companies as the Profile Portfolios and in funds that are not part of the same group of investment companies in reliance on Section 12(d)(1)(F) of the Act. Each Profile Portfolio is designed to provide a different asset allocation program based on an investor's investment goals, risk tolerance, and investment horizon. The Profile Portfolios currently pursue their investment objectives by investing in other registered, open-end management companies that are part of the same group of investment companies as the Profile Portfolios (''Underlying Portfolios''). In addition, pursuant to an order of exemption issued in 1999 (the ''1999 Order''), the Profile Portfolios may invest in funds that are not part of the same group of investment companies in accordance with section 12(d)(1)(F) of the Act (''Other Portfolios'').

7. The Profile Portfolios are designated into two groups, Profile I Portfolios and Profile II Portfolios, designed for two different distribution channels. Each group has one Portfolio with one of the following investment objectives: (i) *Aggressive Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios that emphasize equity investments; (ii) *Moderately Aggressive Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios that emphasize equity investments, and to a lesser degree, in Underlying Portfolios that emphasize fixed income investments; (iii) *Moderate Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios with a relatively equal emphasis on equity and fixed income investments; (iv) *Moderately Conservative Profile*—seek capital appreciation primarily through investments in Underlying Portfolios that emphasize fixed income investments, and to a lesser degree, in Underlying Portfolios that emphasize equity investments; and (v) *Conservative Profile*—seek capital preservation primarily through investments in Underlying Portfolios that emphasize fixed income investments.

8. Subject to the supervision of the Board of Directors of the Fund, the Adviser uses a proprietary investment process for selecting Underlying Portfolios and Other Portfolios, which are placed in one of four equity asset classes (International, Small-Cap, Mid-Cap or Large-Cap) or one of two fixed income asset classes (Bond or Short-Term Bond). The assets of each Profile Portfolio are allocated among those asset classes within specified percentages of assets based on the Profile Portfolio's investment objective. Each Profile Portfolio is periodically ''balanced'' to maintain the appropriate asset allocation based on the Profile Portfolio's investment objective, policies and restrictions. Additional Profile Portfolios may be established in the future. Any Future Profile Portfolio that purchases a Fixed Contract as a portfolio investment will be subject to the terms and conditions of this Application.

9. GWL&A will issue the Fixed Contracts from its general account. As owner of a Fixed Contract, a Profile Portfolio will have the right to deposit funds from time to time with GWL&A. The deposits will accrue interest at a declared rate of interest, adjustable on a calendar quarter or other periodic basis, which is guaranteed to be no less than 3% on an annual basis. A Profile Portfolio or GWL&A will be able to terminate a Fixed Contract at any time upon seven-days' written notice to the other party. Upon termination, GWL&A will be obligated to pay the Profile Portfolio within seven days the amount of the Profile Portfolio's deposits, plus interest earned thereon.

10. The Profile Portfolios will pay no sales load of any kind in purchasing a Fixed Contract, and the guaranteed interest rate paid on the Fixed Contract will be at least as favorable as the guaranteed interest rate paid on other similar Fixed Contracts issued by GWL&A or other comparable companies. In addition, each Profile Portfolio will also be permitted to terminate a Fixed Contract at any time without the imposition of a market value adjustment or other charge or reduction.

11. The Profile Portfolios currently pursue their investment objectives by investing exclusively in Underlying Portfolios and Other Portfolios. At a special meeting of shareholders held on April 4, 2002, the Fund sought and obtained shareholders' approval of a proposal that would allow the Profile Portfolios to pursue their overall investment objectives by investing primarily in Underlying Portfolios, and also in liquid, short-term fixed income investments, the Fixed Contracts, and ''government securities'' as defined in Section 2(a)(16) of the Act. Applicants believe that they will be able to implement the asset allocation programs of the Profile Portfolios more efficiently and cost-effectively, and therefore at less expense to shareholders, if the Profile Portfolios are able, consistent with their investment objectives, to invest in Fixed Contracts and other short-term fixed income investments.

12. The registration statement for each Profile Portfolio will describe the nature and extent of the Profile Portfolio's permissible investments in Underlying Portfolios and Other Portfolios, subject

to receipt of the order granting the requested exemption, in Fixed Contracts and other short-term fixed income investments. Each Profile Portfolio will limit its investments in Fixed Contacts and other short-term fixed income investments to the amount of portfolio assets that the Profile Portfolio may allocate to the ''Short-Term Bond'' asset class, as specified in the Profile Portfolio's then-current registration statement, subject to such other limitations as may apply under the Act or the Profile Portfolio's other investment policies and restrictions. Currently, the percentages of portfolio assets allocable to the Short-Term Bond asset class based on overall investment objective are as follows: (i) 25–40% for the Conservative Profile; (ii) 5–25% for the Moderately Conservative Profile; (iii) 5–250% for the Moderate Profile; (iv) 0–10% for the Moderately Aggressive Profile; and (v) 0–10% for the Aggressive Profile.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that Section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) of the Act by a securities association registered under Section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on Section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Profile Portfolios will invest in shares of Other Portfolios, they cannot rely on the exemption from Sections 12(d)(1)(A) and (B) afforded by Section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that Section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, Section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

4. Applicants may not rely on the exemption provided by Section 12(d)(1)(G) for several reasons. First, Section 12(d)(1)(G)(i)(I) requires that a fund of funds relying on subparagraph (G), as well as all underlying funds, be part of the same ''group of investment companies'' as defined in Section 12(d)(1)(G)(ii). Pursuant to the 1999 Order, the Profile Portfolios may invest not only in shares of Underlying Portfolios, but also, subject to the limitations described above, in shares of Other Portfolios. Second, Section 12(d)(1)(G)(i)(II) limits the types of investments which a fund of funds relying on subparagraph (G) may hold to securities of funds that are part of the same ''group of investment companies'' as the fund of funds, Government securities and short-term paper. The Profile Portfolios, however, propose to invest not only in the types of securities that are described in Section 12(d)(1)(G)(i)(II) and in Other Portfolios, but also in shares of the Fixed Contracts.

5. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of Section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

6. Applicants request relief under Section 12(d)(1)(J) of the Act from the limitations of Sections 12(d)(1)(A) and (B) to permit the Profile Portfolios to invest in the Underlying Portfolios and the Fixed Contract. Applicants are not requesting relief from any provision of Section 12(d)(1)(F), upon which the Profile Portfolios rely to invest in Other Portfolios.

7. Applicants state that the Profile Portfolios' investments in the Underlying Portfolios do not raise the concerns about undue influence that Sections 12(d)(1)(A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

8. The Profile Portfolios will invest in Other Portfolios only within the limits of Section 12(d)(1)(F).

9. Section 17(a)(1) prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered company. Section 17(a)(2) of the Act prohibits any of the persons described in subsection (a)(1) from purchasing any security or other property from such registered investment company.

10. Section 2(a)(3) of the Act defines ''affiliated person'' of another person in pertinent part as (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (ii) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; or (iv) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

11. The Applicants submit that the Adviser may be deemed to be an affiliated person of the Fund because the Adviser is an investment adviser of the Fund and GWL&A may be deemed to be an affiliated person of the Adviser because GWL&A owns more than five percent of the outstanding voting securities of the Adviser, a wholly owned subsidiary of GWL&A. Therefore, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could be deemed, absent relief, to be a principal transaction between the Fund and an affiliated person of an affiliated person

of the Fund in violation of Section 17(a)(1). The Applicants also submit that the Commission may determine that control by GWL&A over the Profile Portfolios exists because a wholly owned subsidiary of GWL&A, the Adviser, serves as an investment adviser of the Fund. Thus, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could also be deemed, absent relief pursuant to Section 17(b), to be a principal transaction between the Fund and an affiliated person of the Fund in violation of Section 17(a)(1).

12. Section 17(b) of the Act provides that, notwithstanding Section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned as recited in its registration statement and reports filed under the Act; and (iii) the proposed transaction is consistent with the general purposes of the Act.

13. Section 6(c) of the Act provides that the Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule or regulation thereunder. The Commission shall grant such exemption if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

14. Applicants seek an order of the Commission under Section 17(b) and Section 6(c) of the Act, granting an exemption from the prohibitions of Section 17(a), that would permit GWL&A to sell, and any Profile Portfolio to purchase, from time to time, one or more Fixed Contracts in a manner consistent with the applicable Profile Portfolio's investment objective, policies and restrictions. Applicants are seeking relief pursuant to Section 6(c) in addition to Section 17(b) because Section 17(b) could be interpreted as giving the Commission power to exempt only a single transaction from Section 17(a), as opposed to an ongoing series of future transactions. Applicants contend that relief is appropriate under Section 17(b) because the proposed arrangement meets the requirements of that section, for the reasons set forth herein. Applicants also contend that relief under Section 6(c) is appropriate for the same reasons.

15. Applicants assert that the terms of the proposed arrangement are fair and reasonable and do not involve overreaching. The proposed arrangement is not susceptible to the kinds of serious harms that could result from a violation of Section 17(a). For example, Section 17(a) was intended to guard against the possibility that ''an unscrupulous investment company might ''dump'' undesirable securities on a registered investment company or transfer desirable securities from a registered investment company to another more favored advisory client in the complex.'' Therefore, the Applicants contend that, under the facts presented in this Application, there is no likelihood of any overreaching in this regard because the Fixed Contracts will not be transferable. A Profile Portfolio will only invest in a Fixed Contract in a manner consistent with its investment policies and restrictions, and will not be permitted to transfer its ownership of a Fixed Contract to any other Profile Portfolio or other person. Rather, each Profile Portfolio will be permitted to remove its assets from a Fixed Contract at any time without imposition of any market value adjustment or other charge or deduction.

16. Applicants further assert that Section 17(a) was also designed to guard against the possibility that an affiliated transaction might be effected at a price that is disadvantageous to the registered investment company. Under the proposed arrangement, however, the Applicants emphasize that the Profile Portfolios will pay no type of sales load in purchasing a Fixed Contract, and the guaranteed rate paid on the Fixed Contract will be at least as favorable as the guaranteed rate paid on other similar Fixed Contracts issued by GWL&A or other comparable companies, leaving no likelihood of overreaching by an affiliated person.

17. Applicants assert that subject to any necessary shareholder approvals, the proposed transaction will be consistent with the investment objectives and policies of each Profile Portfolio. The assets of each Profile Portfolio will be invested in the Fixed Contracts in accordance with the investment policies and restrictions of the applicable Profile Portfolio, as set forth in its then-current registration statement.

18. Applicants assert that the proposed arrangement is consistent with the general purposes of the Act. Section 17(a) is intended to prohibit affiliated persons in a position of influence or control over an investment company from furthering their own interest by selling securities or property that they own to an investment company at an inflated price, purchasing securities or property from an investment company at less than its fair value, or selling or purchasing securities or property on terms that involve other types of self-dealing or overreaching by the affiliated person. For the reasons discussed above, Applicants contend that the proposed arrangement does not involve any such overreaching or self-dealing.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies,'' as defined in Section 12(d)(1)(G)(ii) of the Act, as the Profile Portfolios.

2. No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions. No Profile Portfolio will acquire securities of an Other Portfolio if, at the time of acquisition, the Other Portfolio owns securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act.

3. No Profile Portfolio will impose a front-end sales charge in excess of one and one-half percent. Furthermore, any sales charges, distribution-related fees and service fees relating to the shares of the Profile Portfolios, when aggregated with any sales charges, distribution-related fees and service fees paid by the Profile Portfolios relating to their

acquisition, holding or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in Rule 2830 of the National Association of Securities Dealer Conduct Rules.

4. Before approving any advisory contract under Section 15 of the Act, the Board, including a majority of the Directors who are not ''interested persons,'' as defined in Section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

Conclusion

For the reasons stated herein, the Applicants submit that the terms of the contemplated transaction meet all of the requirements of Sections 12(d)(1)(J), 17(b) and 6(c) of the Act. Pursuant to Section 12(d)(1)(J), exemption of this transaction is consistent with the public interest and the protection of investors. Pursuant to Section 17(b), the terms of the proposed transaction are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the investment objectives and policies of each Profile Portfolio, and the proposed transaction is consistent with the general purposes of the Act. Similarly, under Section 6(c) of 3 the Act, Applicants submit that their request for an order is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Furthermore, Applicants seek relief relating to Future Profile Portfolios and Future Fixed Contracts in order to avoid incurring the expense and effort of drafting, and to relieve the Commission from the corresponding burden of reviewing, duplicative exemptive applications. Applicants submit that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3579 Filed 2–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47330; File No. SR–PCX–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges for Options Intermarket Linkage Orders

February 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In connection with the launch of the options intermarket linkage (''Linkage''), the PCX proposes to amend its Schedule of Fees and Charges for Exchange Services in order to clarify that unless otherwise provided, executions resulting from Linkage orders will be subject to the same billing treatment as current executions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage Plan'' or ''Plan'')[3] which linkage now includes participation by the five option exchanges (''Participant Exchanges'').[4] The PCX proposed to adopt new rules relating to the operation of the Linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. Along with all of the Participant Exchanges, the Exchange launched phase I of Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exhange seeks to clarify its Schedule of Fees and Charges for Exchange Services in order to add a provision stating that executions resulting from Linkage orders will be subject to the same billing treatment as current executions. Accordingly, executions arising from either a Principal Acting as Agent (''P/A'') Linkage order, or a Principal Linkage Order that are routed to the Exchange from other market centers will be subject to the same trade related charges assessed on market maker executions originating from the PCX. The proposal specifies that no fees will apply to Satisfaction Orders, which result after a trade-through.[5]

The Exchange does not seek to make any other changes to its Schedule of Fees and Charges for Exchange Services.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act, [7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) and 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) thereunder.[9] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–05 and should be submitted by March 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3580 Filed 2–12–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13955; Notice 2]

Columbia Body Manufacturing Co.; Grant of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are granting the application by Columbia Body Manufacturing Co. (''Columbia'') of Clackamas, Oregon, for an exemption of three years from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* Columbia asserted that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published a notice of receipt of the application on December 4, 2002, asking for comments from the public (67 FR 72266).

Why Columbia Needs an Exemption

Columbia manufactures and sells a dump body type of trailer (the ''trailer'') requiring that the body's front end be lifted in order to discharge the load out of the back. The load is asphalt, used in road construction. This design of trailer generally has an overhang at the rear for funneling asphalt material into a paving machine; consequently, the trailer needs 16 to 18 inches of unobstructed clearance behind its rear wheels to hook up with the paving machine and dump its load. Standard No. 224 specifies that the rearmost surface of an underride guard to be located not more than 305mm (12 inches) from the ''rear extremity'' of the trailer.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Columbia's, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Columbia argued that installation of the rear impact guard would prevent its trailer from operating with the paving machine, and ''would interfere with the hook-up of the asphalt machine and dump operation of the trailer.'' Columbia averred that it ''has investigated the retrofit and modifications needed to bring our products into compliance with FMVSS 224 without success.'' We discuss below its efforts to conform in greater detail.

Columbia's Reasons Why it Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Columbia is a small volume manufacturer. Its average production over the past three years has been 12 trailers a year, ''none of which were asphalt paving trailers.'' Normally, it would produce 10 to 40 trailers annually. The company employs 30 people full time and has annual sales of $4–5,000,000. Columbia ''has had requests to quote on 14'' trailers and ''14 truck mounted dump boxes, bringing the total sales figure to around $750,000.00.'' Absent an exemption, Columbia ''will be unable to quote these units substantially decreasing our projected sales figures.'' Its application reflected that its cumulative net loss for the fiscal years 1998, 1999, and 2000 was $99,764. We asked Columbia to provide data on its fiscal year ending December 31, 2001, while the application was pending, and the company replied that its net loss for 2001 was $755,722.19.

Columbia asserted that it has sought manufacturers of underride guards since 1998. As a result of its search,

> We only found one English company, Quinton-Hazell that is no longer making either type, telescoping or hydraulic. Their research found that because of the expense of these two types of guards they would not be marketable. We have also investigated the work done by SRAC, located in Los Angeles, CA in the hopes that we might be able to use or modify the guards they designed for the trailers we wish to build. Neither was suitable because retracting the bumper and finding a way to keep the build up of asphalt off of any moving parts was not possible.

The company stated that it intended to continue to try and resolve the problems through continued research.

Columbia's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Columbia argued that an exemption would be in the public interest and consistent with traffic safety objectives because, ''our type of trailer helps state and municipal governments to produce the safe highways that are needed.'' It contemplates building less than 50 units a year while an exemption is in effect. According to Columbia, the amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens.

Public Comment on the Application

We received one comment in response to our notice of December 4, 2002. The National Truck Equipment Association (NTEA) recommended granting the petition, commenting that ''the type of trailer for which Columbia Body is representing a temporary exemption is vital to the proper construction and maintenance of the

highways.'' Like the applicant, NTEA was ''unaware of any device that would meet the requirements of FMVSS 224 while allowing this particular type of trailer to perform its intended function.'' It reminded us that we have temporarily exempted similar types of trailers from compliance with Standard No. 224.

The Agency's Findings in Support of an Exemption

Columbia's present average production of only 12 trailers a year has been insufficient to generate a net profit for the company, and its net loss of over $750,000 in 2001 reflects a severe downturn in the company's financial fortunes. It anticipates that it could realize $750,000 in sales of 14 trailers of the type for which it has requested exemption, and for which potential customers have requested a price quotation. The company has investigated, unsuccessfully, means of compliance with Standard No. 224. There seems to be agreement, as indicated by NTEA's comment, that there is no feasible way for these trailers to be brought into compliance without compromising the function for which they were designed.

The public interest is served by allowing the production of these special-purpose road construction trailers, balanced against the limited number in which they are produced and the relatively limited time that they spend in transit on the public roads from one job site to another. Further, there is no substantial difference between Columbia Body's petition and other hardship applications that we have granted in the past (*e.g.*, Red River Manufacturing, Inc. and Dan Hill & Associates, Inc., 66 FR 20028).

Accordingly, for the reasons set above, we hereby find that compliance with Standard No. 224 would cause substantial economic hardship to Columbia Body, which has tried in good faith to comply with Standard No. 224, and we further find that an exemption would be in the public interest and consistent with the objectives of traffic safety. We accordingly grant NHTSA Temporary Exemption No. 2003–1 to Columbia Body Manufacturing Co. for its dump body type trailer only, from 49 CFR 571.224 Standard No. 224, Rear Impact Protection, expiring February 1, 2006.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on February 10, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–3588 Filed 2–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning Bowling Pinsetters

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain bowling pinsetters which are installed at military facilities in the United States and which will be offered to the United States Government. The final determination found that based upon the facts presented, the country of origin of the bowling pinsetters is the United States.

DATES: The final determination was issued on February 7, 2003. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8838).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 7, 2003, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain bowling pinsetters offered to the United States Government. The U.S. Customs ruling number is HQ 562583. This final determination was issued at the request of Brunswick Corporation, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that, based upon the facts presented, the assembly in the United States of numerous foreign and U.S. subassemblies and parts to create the pinsetters and the installation of the pinsetters in facilities in the United States result in a substantial transformation of the foreign subassemblies. Accordingly, the country of origin of the bowling pinsetters is the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of (date of publication in the **Federal Register**).

Dated: February 7, 2003.

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

Attachment.

HQ 562583

MAR–05 RR:CR:SM 562583 KSG
February 7, 2003.
Category: Marking

Richard M. Belanger, Esq.,
Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005.

Re: Country of origin of bowling pinsetters; substantial transformation; 19 CFR 177.22; procurement.

Dear Mr. Belanger: This is in response to your letters dated November 18, 2002, and January 17, 2003, on behalf of Brunswick Corporation, requesting a final determination of origin pursuant to 19 CFR 177.22(c) regarding U.S. Government procurement of certain bowling pinsetters assembled in the United States.

Facts

Brunswick Corporation is the importer of the components of the bowling pinsetters and therefore, is a party-in-interest as defined in 19 CFR 177.22(d).

This case involves the GS–X model of bowling pinsetters, which are automated machines designed to return bowling balls, pick up standing bowling pins and clear the deck at bowling facilities. The pinsetters are sold to military installations and other U.S. Government entities. This request involves a contract for installation of the GS–X pinsetters at bowling alleys located inside the United States. Brunswick anticipates that it will enter into contracts in the future for facilities at U.S. military bases in foreign countries as well as in the United States.

The GS–X pinsetter is typically sold in sets of two mechanical subassemblies and one electrical controller assembly plus other parts, although Brunswick may occasionally sell a single mechanical assembly with an attached electrical controller. The electrical assembly is manufactured in the United States by Controls, Inc., an unrelated company.

The mechanical assemblies are comprised of seven subassemblies consisting of thousands of components from numerous countries. The mechanical assemblies consist of three major parts: (1) The central block; (2) the ''six-pack''; and (3) the ball accelerator. The central block is a large steel box that contains four subassemblies: the sweep wagon subassembly; the setting table subassembly; the drive frame sub-assembly; and the distributor subassemblies. Included in the drive frame subassembly are three

motors, including the distributor motor, the sweep motor and the table motor. The distributor subassembly, which resembles a conveyor belt assembly line, takes the pins from the pin elevator subassembly and places them in the setting table subassembly. The setting table subassembly picks up the standing pins from the lane and takes them again from the distributor subassembly before setting them down on the lane. Between the time when the setting table picks up the standing pins and sets them down again, the sweep wagon subassembly sweeps away felled pins. The drive frame subassembly houses three of the motors that are needed to run the central block and six-pack.

The six-pack assembly contains the pin elevator subassembly with two pin elevators and the ball pit subassembly with two ball cushions and two rollers. The pin elevator subassembly receives the pins from the ball pit subassembly and raises them into the distributor subassembly. The ball pit subassembly handles the initial impact of the pins and ball and cycles them through the pinsetter to get ready for the next ball.

The ball accelerator includes the ball accelerator motor. The ball accelerator subassembly returns the ball to the bowler.

In addition to the above-described mechanical subassemblies, the complete pinsetter, as installed, contains the U.S.-origin electrical controller assembly as well as other U.S. parts.

In foreign country X, Brunswick constructs the large steel frame that houses the central block. Numerous other parts from various countries are also shipped to foreign country X for assembly of the seven principal subassemblies of the mechanical assembly. Brunswick then attaches the distributor subassembly to the steel casing of the central block. The six remaining subassemblies and the central block casing are then shipped to a manufacturing facility in Muskegon, Michigan.

I. Processing Performed at Michigan Plant

In the United States (Muskegon, Michigan), Brunswick integrates the sweep wagon and setting table subassemblies, as well as the three motors of the drive frame subassembly, into the central block.

The integration of the sweep wagon mechanical subassembly involves installing it into the central block in a front orientation at a 45 degree diagonal position, with the right end being placed into the right sweep track first. Brunswick then adjusts the rollers to a minimum clearance of five millimeters on each side between the roller screw, taking care to ensure that adequate clearance is maintained during the entire length of travel by manually running the wagon forward and aft. Brunswick then attaches the sweep wagon to the sweep crank arms with nylon bushings, large flat shim washers and retaining rings. This procedure is then repeated on the opposite side. Finally, Brunswick adjusts the clearance to an average of ten millimeters between the gutter adapter and the flat gutter, with slots and screws provided in both adapters. This final adjustment must be made at the midpoint of wagon travel to allow the necessary clearance at extreme front and rear positions.

Brunswick integrates the setting table mechanical subassembly into the central block. This process involves the initial placement of spacers onto the corners of the test stand deck. The assembly team then delivers the setting table to the test stand deck and sets it onto the spacers, ensuring that the spacers are clear of the spotting tong attachment screws that protrude from the underside of the setting table. Brunswick then manually turns the setting table drive pulley on the left side of the drive frame to drop the left and right deck racks to the lowest point. The deck rack teeth are aligned to the drive gear teeth and plumb. Brunswick removes the hex nuts and lock washers from the setting table studs and installs the feet of the deck rack onto studs. Brunswick then rotates the bottom hex nuts until the first interference is detected against the deck rack feet. The top hardware is reinstalled and tightened. Brunswick manually turns the setting table drive pulley in the opposite direction to raise the setting table slightly so that the spacers can be removed. The setting table is re-lowered to the lowest position. Brunswick verifies that a 5 to 15 millimeter gap exists on all points between the setting table frame and the deck of the test stand. If proper clearance is not correct, or if the table frame is not level, appropriate adjustments are made. The top sections are then assembled for the telescoping square drive shafts for each of the setting table pivot shafts, and the spotting tongs with hardware are provided. Finally, Brunswick assembles and routes the setting table function switch and solenoid cable into the panduit channel at the front of the machine.

Brunswick integrates the distributor motor of the drive frame subassembly into the central block. This involves the assembly and placement of the motor pulley to the motor shaft. A 60 Hz sheave must be facing away from the motor assembly. The motor and mount assembly must first be placed into the forward motor location in the left drive frame and then be assembled into the frame with bushing, spacer and hitch pins. Brunswick then assembles the tension spring from the mount to the frame. Brunswick assembles the V-belt to the motor pulley and drive pulley.

The sweep motor of the drive frame subassembly is integrated into the central block. This involves a process identical to the assembly of the distributor motor described above except that the assembly is located in the middle motor location of the drive frame.

The setting table step motor of the drive frame subassembly is integrated into the central block. This involves a process identical to the assembly of the distributor and sweep motors described above except that the assembly is located in the rear motor location of the drive frame.

After assembly of the three subassemblies into the central block, the fully assembled central block is quality tested at the Michigan facility. Each central block undergoes 400 cycles of testing, which can take several hours.

Counsel states that the processing performed at the Michigan facility requires complex and detail-oriented labor and precise calibrations performed by highly skilled employees.

II. Processing Performed at Bowling Facility

At the bowling facility, the ball pit and pin elevator subassemblies are joined to create the six-pack component of the mechanical assembly. The central block, six-pack, and ball accelerator are then assembled to form the mechanical assemblies, after which the U.S.-made electrical controller assembly and other miscellaneous parts are integrated into the mechanical assemblies to form the GS–X pinsetter.

The GS–X pinsetter is installed into the bowling facility. This process takes approximately 20 hours of skilled labor per pinsetter, using tools and large moving equipment specially constructed for that particular installation. The project manager and field foreman manage the quality-assurance procedures and certify that each pinsetter is installed and functioning according to Brunswick specifications, which counsel states surpass those of the American Bowling Congress.

Issue

Whether the bowling pinsetters are substantially transformed in the United States so that they become products of the United States for U.S. Government procurement purposes.

Law and Analysis

Under subpart B of part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B): ''An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.''

See also 19 CFR 177.22(a).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *See Uniroyal Inc.* v. *United States,* 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

Customs ruled in Headquarters Ruling Letter (''HRL'') 561734, dated March 22, 2001, 66 FR 17222, that Sharp multifunctional machines (printer, copier and fax machine) assembled in Japan were a product of Japan for procurement purposes. The machines were comprised of 227 parts (108 parts sourced from Japan, 92 parts from

Thailand, 3 parts from China, and 24 parts from other countries) and eight subassemblies, each of which was also assembled in Japan. Further, the scanner unit (one of the eight subassemblies) which was assembled in Japan was characterized as ''the heart of the machine.'' *See also* HRL 561568, dated March 22, 2001, 66 FR 17222.

In HRL 560433, dated September 19, 1997, Customs held that the assembly in the United Kingdom of audio/video stereo receivers from 16 subassemblies and other components originating from various countries resulted in a substantial transformation. Customs noted in that ruling that numerous skilled workers assembled the stereo receivers from numerous components and hundreds of raw materials. In HRL 734045, dated October 8, 1991, Customs held that foreign subassemblies and other components imported into Hong Kong which were processed and assembled with other Hong Kong components to make laptop and notebook personal computers were substantially transformed as a result of the Hong Kong operations.

In HRL 558919, dated March 20, 1995, Customs held that an extruder subassembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electrical controls and extruder screw) to create a vertical extruder. In HRL 559887, dated October 3, 1996, Customs held that swivel joints and torsion spring balance assemblies from India were substantially transformed when assembled in the U.S. with U.S.-origin components to produce top and bottom loading/unloading arms (petroleum handling equipment). Therefore, the loading arms were considered products of the United States. Customs recently ruled in HRL 562502, dated November 8, 2002, that a Chinese-origin transfer feeder unit and Chinese-origin outer covers were substantially transformed when assembled in Japan with a Japanese-origin laser scanner unit to produce a printer engine. ''When taken together, the manufacture of the laser scanner unit and the final assembly of the printer engine is complex and meaningful.'' Therefore, for procurement purposes, the printer engines were considered to be products of Japan.

In this case, the complex assembly of the central block from three subassemblies, including the incorporation of three motors from the drive frame subassembly into the central block, combined with the subsequent assembly of the central block, six-pack, ball accelerator, and U.S.-origin electrical controller assembly and the installation of the pinsetters in bowling facilities in the United States, when taken together, result in a substantial transformation of the foreign-origin subassemblies involved. The processing in the United States requires precise calibration and involves the assembly of numerous parts and subassemblies and highly skilled labor. The name, character and use of the foreign-origin subassemblies and parts change as a result of the processing and other assembly operations performed in the United States. Therefore, pursuant to 19 U.S.C. 2518(4)(B), and 19 CFR 177.22(a), we find that the country of origin of the bowling pinsetters is the United States.

Holding

Based on the facts presented, the components imported into the United States that are used in the manufacture of the bowling pinsetters involved in this case are substantially transformed in the United States. Accordingly, pursuant to 19 U.S.C. 2518(4)(B), and 19 CFR 177.22(a), the country of origin of the bowling pinsetters is the United States.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations & Rulings.

[FR Doc. 03–3510 Filed 2–12–03; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 68, No. 30

Thursday, February 13, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 169–1169; IL 187–2; FRL–7444–4]

Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois

Correction

In rule document 03–1771 beginning on page 4836 in the issue of Thursday, January 30, 2003, make the following correction:

§ 81.326 [Corrected]

On page 4841, in § 81.326, in the table, in the first column, under the heading ''St. Louis Area'', in the fourth entry, ''St. Louis County'' should read, ''St. Louis''.

[FR Doc. C3–1771 Filed 2–12–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 968]

RIN 1512–AB48

Commerce in Explosives (2000R–9P)

Correction

In proposed rule document 03–1946 beginning on page 4406 in the issue of Wednesday, January 29, 2003, make the following corrections:

§ 55.11 [Corrected]

1. On page 4416, in §55.11, in the third column, in the sixth line from the bottom, after ''perchlorate,'' add ''sulphur''.

§ 55.207 [Corrected]

2. On page 4419, in §55.207, in the third column, in paragraph (c)(8), in the third line, ''6-inches'' should read, ''6¾ inches''.

§ 55.208 [Corrected]

3. On page 4420, in §55.208, in the third column, in paragraph (d)(18), in the seventh line, '' ''-inch '' should read, ''¾-inch''.

[FR Doc. C3–1946 Filed 2–12–03; 8:45 am]

BILLING CODE 1505–01–D

Reader Aids

Federal Register

Vol. 68, No. 30

Thursday, February 13, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5203–5528 3
5529–5784 4
5785–6060 5
6061–6338 6
6339–6602 7
6603–6814 10
6815–7062 11
7063–7300 12
7301–7410 13

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7644 6055
7645 6057
7646 6059
7647 7053

Executive Orders:
13285 5203

Presidential Determinations:
No. 2003-13 of January 29, 2003 5785
No. 2003-14 of January 30, 2003 5787

5 CFR

576 5529
875 5530
890 5470

Proposed Rules:
890 6649

7 CFR

1 39
301 .....5793, 5794, 6603
318 .....5796, 5800
319 6544
330 6341
354 6341
1000 7063
1001 7063
1005 7063
1006 7063
1007 7063
1030 7063
1032 .....7063, 7070
1033 7063
1124 7063
1126 7063
1131 7063
1135 7063
1413 5205

Proposed Rules:
319 6352
360 6653
1466 6655

9 CFR

4 6341
11 6341
12 6341
49 6341
50 6341
51 6341
52 6341
53 6341
54 6341
70 6341
71 6341
72 6341
73 6341
74 6341
75 6341
77 6341
78 6341
79 6341
80 6341
85 6341
89 6341
91 6341
92 6341
93 6341
94 .....5802, 6341
95 6341
96 6341
97 6341
98 6341
99 6341
122 6341
123 6341
124 6341
130 6341
145 6341
147 6341
160 6341
161 6341
162 6341
166 6341

Proposed Rules:
94 6673

11 CFR

110 6346

12 CFR

272 6061
303 7301
1750 7309
1805 5704
1806 5717

Proposed Rules:
3 6363
5 6363
6 6363
7 6363
9 6363
28 6363
34 6363
609 5595
611 5587
612 5587
614 .....5587, 5595
615 5595
617 .....5587, 5595

13 CFR

Proposed Rules:
120 5234
121 5234

14 CFR

23 5538
25 5208
39 .....5541, 5805, 5808, 5810, 5812, 5815, 5818, 5819, 5822, 6347, 6815

71.....6606, 6607
97.....6816, 6818
119.....5782
121.....5782
129.....5782
135.....5782
150.....6608
183.....5782
Proposed Rules:
1.....6802
39 .....5610, 5856, 6376, 6379, 6380, 6382, 6383, 7081, 7084
71.....5613, 6677
91.....6802
121.....6802
125.....5488, 6802
135.....5488, 6802
255.....7325

15 CFR

2016.....5542

16 CFR

1512.....7072

17 CFR

1.....5545
30.....5545
190.....5545
205.....6296
210.....6006
228.....5982
229.....5982
239.....6564
240.....5348, 6006
249 .....5348, 5982, 6006, 6564
270.....5348, 6564
274 .....5348, 6006, 6564
275.....6585
Proposed Rules:
205.....6324
240.....6324
249.....6324
270.....7038
275.....7038

18 CFR

375.....6608

20 CFR

260.....6820
320.....6820
404.....5210
416.....5210

21 CFR

58.....6609
201.....6062
529.....5562
558.....6820
866.....5825
Proposed Rules:
1.....5378, 5428

22 CFR

123.....6609
Proposed Rules:
307.....5857

23 CFR

Proposed Rules:
1225.....6091

24 CFR

234.....6396
Proposed Rules:
902.....6262
3500.....6385

26 CFR

1 .....5346, 6081, 6350

27 CFR

Proposed Rules:
55.....7410

28 CFR

105.....7313
522.....5563

30 CFR

100.....6609
Proposed Rules:
206.....7085, 7086
917.....6838
934.....6842

31 CFR

103.....6613
501.....6820

32 CFR

199.....6617
254.....6082
706 .....5827, 5828, 5829, 5830, 5831

33 CFR

117.....5832, 6621
165 .....5833, 7073, 7075, 7078
Proposed Rules:
117 .....5858, 6100, 7087
165 .....5614, 6844, 7093
179.....7096
181.....7096
183.....7096
385.....5860

36 CFR

242.....7276, 7298
Proposed Rules:
242.....7294

37 CFR

Proposed Rules:
201.....6678

38 CFR

19.....6621
36.....6625
Proposed Rules:
3.....6679, 6998
4.....6998

40 CFR

9.....7176
52 .....5221, 5228, 6627, 6629, 7174, 7321
61.....6082
62.....6630, 6633
63.....6635
81.....7174, 7410
122.....7176
123.....7176
180 .....5835, 5839, 5847
412.....7176
Proposed Rules:
52 .....5246, 5263, 6681, 7327, 7330
62.....6681, 6682
180.....7097

42 CFR

405.....6636
419.....6636
Proposed Rules:
413.....6682

44 CFR

64.....5852
65 .....6644, 6823, 6826
67.....6828, 6830
Proposed Rules:
61.....5264
67.....6847, 6861

46 CFR

356.....5564

47 CFR

32.....6351
52.....7323
53.....6351
54.....6646, 6832
64.....6351, 6352
73 .....5583, 5584, 5854, 5855, 6082
Proposed Rules:
0.....6689
43.....6689
63.....6689
64.....6689
73 .....5616, 5617, 5860, 5861, 5862
90.....6687, 6688

48 CFR

923.....6355
936.....6355
970.....6355
1804.....5230
1827.....5230
1835.....5230
1852.....5230
Proposed Rules:
2.....5774
31.....5774
52.....5778

49 CFR

571.....6359
1570.....6083
1572.....6083
Proposed Rules:
173.....6689
192.....6385
571.....5863, 7100
1180.....6695

50 CFR

100.....7276, 7298
223.....7080
622.....6360
648.....6088
679 .....5585, 6833, 7323
Proposed Rules:
17.....6863
20.....6697
21.....6697
92.....6697
100.....7294
300.....6103
600.....6863
679.....6386, 6865

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 13, 2003

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; published 2-13-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 1-29-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Hot water dip treatment for mangoes; comments due by 2-18-03; published 1-2-03 [FR 02-33049]

Ya pears from China; comments due by 2-18-03; published 12-20-02 [FR 02-32056]

Plant related quarantine; domestic:

Mexican fruit fly; comments due by 2-21-03; published 12-23-02 [FR 02-32178]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System lands; projects and activities; notice, comment, and appeal procedures; comments due by 2-18-03; published 12-18-02 [FR 02-31681]

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meetings:

Listeria risk assessment; comments due by 2-21-03; published 2-6-03 [FR 03-02942]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Support activities:

Technical service provider assistance; comments due by 2-19-03; published 11-21-02 [FR 02-29301]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic tunas, swordfish, and sharks; comments due by 2-17-03; published 1-27-03 [FR 03-01786]

International fisheries regulations:

Pacific halibut—

Catch sharing plan and sport fishing management; comments due by 2-18-03; published 2-6-03 [FR 03-02806]

DEFENSE DEPARTMENT

Acquisition regulations:

Governmentwide commercial purchase card internal controls; comments due by 2-18-03; published 12-20-02 [FR 02-31948]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Iron and steel foundries; comments due by 2-21-03; published 12-23-02 [FR 02-31234]

Lime manufacturing plants; comments due by 2-18-03; published 12-20-02 [FR 02-31233]

Primary magnesium refining facilities; comments due by 2-21-03; published 1-22-03 [FR 03-00089]

Taconite iron ore processing plants; comments due by 2-18-03; published 12-18-02 [FR 02-31231]

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 2-18-03; published 1-16-03 [FR 03-00857]

Maryland; comments due by 2-18-03; published 1-16-03 [FR 03-00854]

Nevada; comments due by 2-21-03; published 1-22-03 [FR 03-01145]

Ohio; comments due by 2-18-03; published 1-16-03 [FR 03-00961]

Oregon; comments due by 2-21-03; published 1-22-03 [FR 03-00852]

Pennsylvania; comments due by 2-18-03; published 1-17-03 [FR 03-00731]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 2-18-03; published 1-16-03 [FR 03-00733]

National priorities list update; comments due by 2-18-03; published 1-16-03 [FR 03-00734]

National priorities list update; comments due by 2-20-03; published 1-21-03 [FR 03-01144]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

International Settlements Policy reform and international settlement rates; comments due by 2-18-03; published 2-10-03 [FR 03-03137]

Radio services, special:

Private land mobile radio services —

Public safety communications in the 800 MHz band, etc.; supplemental comments; comments due by 2-18-03; published 2-10-03 [FR 03-03276]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Grants and cooperative agreements; availability, etc.:

Community Services Block Grants; charitable choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31675]

Temporary Assistance for Needy Families Program:

Charitable Choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31674]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

D-tagatose and dental caries; health claims; comments due by 2-18-03; published 12-2-02 [FR 02-30474]

HEALTH AND HUMAN SERVICES DEPARTMENT

Grants:

Substance Abuse Prevention and Treatment Block Grant and Projects for Assistance in Transition from Homelessness Programs; charitable choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31673]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Alabama; comments due by 2-18-03; published 1-16-03 [FR 03-00975]

Maryland; comments due by 2-18-03; published 1-16-03 [FR 03-00979]

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Inmate discipline respecting violations of telephone and smoking policies; code number changes for agency tracking purposes only; comments due by 2-18-03; published 12-18-02 [FR 02-31661]

LABOR DEPARTMENT

Mine Safety and Health Administration

Mining products; testing, evaluation, and approval:

Mobile battery-powered machines; plug and receptacle-type connectors; alternate locking devices; comments due by 2-21-03; published 1-22-03 [FR 03-01305]

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Account benefits ratio; comments due by 2-18-03; published 12-18-02 [FR 02-31776]

Annuity or lump sum application; Internet filing; comments due by 2-18-03; published 12-18-02 [FR 02-31775]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Issuer repurchases; safe harbor provisions; amendments; comments due by 2-18-03; published 12-18-02 [FR 02-31656]

Sarbanes-Oxley Act of 2002; implementation—

Disclosure requirements; comments due by 2-18-03; published 1-31-03 [FR 03-02018]

Listed company audit committees; standards; comments due by 2-18-03; published 1-17-03 [FR 03-00690]

SOCIAL SECURITY ADMINISTRATION

Administrative regulations:

Federal Tort Claims Act and Military Personnel and Civilian Employees Claims Act; claims; comments due by 2-18-03; published 12-20-02 [FR 02-32051]

Social security benefits and supplemental security income:

Federal old-age, survivors, and disability benefits, and aged, blind, and disabled—

Multiple body system impairments; medical criteria evaluation; comments due by 2-21-03; published 12-23-02 [FR 02-32217]

STATE DEPARTMENT

Visas; immigrant and nonimmigrant documentation:

Uncertified foreign health-care workers; comments due by 2-18-03; published 12-17-02 [FR 02-31603]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 2-18-03; published 1-3-03 [FR 03-00048]

Eurocopter France; comments due by 2-18-03; published 12-18-02 [FR 02-31751]

McDonnell Douglas; comments due by 2-18-03; published 1-3-03 [FR 03-00047]

Raytheon; comments due by 2-18-03; published 1-3-03 [FR 03-00049]

Stemme GmbH & Co. KG; comments due by 2-21-03; published 1-14-03 [FR 03-00673]

Airworthiness standards:

Special conditions—

Pratt & Whitney Canada PT6-67D turbine engine; comments due by 2-18-03; published 1-16-03 [FR 03-01010]

TREASURY DEPARTMENT

Internal Revenue Service

Agency information collection activities:

Proposed collection; comment request; comments due by 2-21-03; published 12-23-02 [FR 02-32154]

Income taxes:

Outbound liquidations to foreign corporations; anti-abuse rule guidance; comments due by 2-18-03; published 11-20-02 [FR 02-29508]

Rents and royalties; advance rentals inclusion in gross income; comments due by 2-18-03; published 12-18-02 [FR 02-31858]

Taxable stock transactions; information reporting requirement; cross-reference; comments due by 2-18-03; published 11-18-02 [FR 02-29200]

TREASURY DEPARTMENT

Practice and procedure:

Practice before Internal Revenue Service; comments due by 2-18-03; published 12-19-02 [FR 02-31989]

VETERANS AFFAIRS DEPARTMENT

Privacy Act; implementation; comments due by 2-18-03; published 12-19-02 [FR 02-31708]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.J. Res. 18/P.L. 108–5

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Feb. 7, 2003; 117 Stat. 9)

Last List February 4, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.