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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16498; Airspace Docket No. 03–ACE–82]

Modification of Class E Airspace; Mount Pleasant, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: A review of controlled airspace for Mount Pleasant, IA indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The review also revealed a discrepancy in the Mount Pleasant, IA Class E airspace area southeast extension. This action enlarges the Class E airspace area to provide adequate protection for diverse departures, corrects the discrepancy in the southeast extension and brings the legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, February 19, 2004. Comments for inclusion in the Rules Docket must be received on or before December 31, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16498/Airspace Docket No. 03–ACE–82, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Mount Pleasant, IA. A review of controlled airspace at Mount Pleasant, IA indicates 700 feet Above Ground Level (AGL) airspace required for diverse departures, as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters, for Mount Pleasant Municipal Airport does not comply with the Order. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The area is enlarged to conform to the criteria in FAA Order 7400.2E. This action also modifies the southeast extension of the Mount Pleasant, IA Class E airspace area by defining it with the 147° bearing from the Mount Pleasant NDB versus the current 144° bearing. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

''Comments to Docket No. FAA–2003–16498/Airspace Docket No. 03–ACE–82.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Mount Pleasant, IA

Mount Pleasant Municipal Airport, IA
(Lat. 40°56′56″N., long. 91°30′40″W.)
Mount Pleasant NDB
(Lat. 40°56′34″N., long. 91°30′34″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Mount Pleasant Municipal Airport; and within 2.6 miles each side of the 147° bearing from the Mount Pleasant NDB extending from the 6.4-miles radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on November 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30014 Filed 12–1–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16500; Airspace Docket No. 03–ACE–84]

Modification of Class E Airspace; Oskaloosa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Oskaloosa, IA. A review of controlled airspace for Oskaloosa Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The review also reveals that the north extension to the Class E airspace area is larger than required to protect existing Instrument Approach Procedures (IAPs) serving Oskaloosa Municipal Airport. The area is modified to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 15, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16500/ Airspace Docket No. 03–ACE–84, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Oskaloosa, IA. An examination of controlled airspace for Oskaloosa Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E. The criteria in FAA Order 7400.2E for an aircraft to reach 1,200 feet AGL is based on a standard climb gradient of 200 feet per miles plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a miles. The examination also reveals that the north extension to the Class E airspace area is larger than required to protect existing IAPs serving Oskaloosa Municipal Airport. This amendment enlarges the radius of the controlled airspace area around Oskaloosa Municipal Airport, decreases the length of the north extension of this airspace area and brings the legal description into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or augments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16500/Airspace Docket No. 03–ACE–84.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E, Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Oskaloosa, IA

Oskaloosa Municipal Airport, IA
(Lat. 41°13′34″N., long 92°29′ 38″W.)
Oskaloosa NDB
(Lat. 41°13′32″N., long 92°29′ 15″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Oskaloosa Municipal Airport; and within 2.6 miles each side of the 018° bearing from the Oskaloosa NDB extending from the 6.4-mile radius to 7 miles north of the NDB, excluding that airspace within the Ottumwa, IA Class E airspace area.

* * * * *

Issued in Kansas City, MO, on November 20, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30016 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16499; Airspace Docket No. 03–ACE–83]

Modification of Class E Airspace; Osceola, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Osceola, IA. A review of controlled airspace for Osceola Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The review also reveals that the north extension to the Class E airspace area is not required to protect existing Instrument Approach Procedures (IAPs) serving Osceola Municipal Airport. The area is modified to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 14, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16499/Airspace Docket No. 03–ACE–83, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Osceola, IA. An examination of controlled airspace of Osceola Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also reveals that the north extension to the Class E airspace area is not required to protect existing IAPs serving Osceola Municipal Airport. This amendment enlarges the radius of the controlled airspace area around Osceola Municipal Airport, deletes the north

extension of this airspace area and brings the legal description into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16499/Airspace Docket No. 03–ACE–83.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated,will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Osceola, IA

Osceola Municipal Airport, IA
(Lat. 41°03′08″N., long. 93°41′23″W.)

That airspace extending upward from 700 feet above the surface with in a 6.4-mile radius of Osceola Municipal Airport.

* * * * *

Issued in Kansas City, MO, on November 20, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30017 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16502; Airspace Docket No. 03–ACE–86]

Modification of Class E Airspace; Waverly, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Waverly, IA. A review of controlled airspace for Waverly Municipal Airport, Waverly, IA, indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area is enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 20, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16502/Airspace Docket No. 03–ACE–86, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division,

Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Waverly, IA. An examination of controlled airspace for Waverly Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment enlarges the radius of the controlled airspace area around Waverly Municipal Airport and brings the legal description into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Comments should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16502/Airspace Docket No. 03–ACE–86.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 WAVERLY, IA

Waverly Municipal Airport, IA
(Lat. 42°44′31″N., long. 92°30′29″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Waverly Municipal Airport, excluding that airspace with the Waterloo, IA Class E airspace area.

* * * * *

Issued in Kansas City, MO, on November 20, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30018 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16501; Airspace Docket No. 03–ACE–85]

Modification of Class E Airspace; Tipton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Tipton, IA. A review of controlled airspace for Mathews Memorial Airport, Tipton, IA, indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace

Matters. The area is enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 16, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 10590–0001. You must identify the docket number FAA–2003–16501/ Airspace Docket No. 03–ACE–85, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Tipton, IA. An examination of controlled airspace for Mathews Memorial Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E. The criteria in FAA Order 7400.2E for an aircraft to research 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment enlarges the radius of the controlled airspace area around Mathews Memorial Airport and brings the legal description into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16501/Airspace Docket No. 03–ACE–85.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Tipton, IA

Tipton, Mathews Memorial Airport, IA
(Lat. 41° 45′ 48″ N., long. 91° 09′ 11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Mathews Memorial Airport.

* * * * *

Issued in Kansas City, MO, on November 20, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30015 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30398; Amdt. No. 3084]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 2, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on November 21, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective December 25, 2003*

North Little Rock, AR, North Little Rock Muni, RNAV (GPS) RWY 5, Orig.
North Little Rock, AR, North Little Rock Muni, GPS RWY 5, Amdt. 1, Cancelled
Searcy, AR, Searcy Muni, LOC RWY 1, Orig.
Daytona Beach, FL, Daytona Beach Intl, LOC BC RWY 25R, Amdt. 15
Daytona Beach, FL, Daytona Beach Intl, ILS RWY 7L, Amdt. 29
Sandersville, GA, Kaolin Field, NDB OR GPS RWY 12, Amdt. 3, Cancelled
Sandersville, GA, Kaolin Field, NDB RWY 12, Orig.
St. Cloud, MN, St. Cloud Regional, ILS OR LOC RWY 31, Amdt. 3
St. Cloud, MN, St. Cloud Regional, VOR/DME RWY 13, Orig.
St. Cloud, MN, St. Cloud Regional, VOR RWY 31, Orig.
St. Cloud, MN, St. Cloud Regional, NDB RWY 31, Amdt. 3
St. Cloud, MN, St. Cloud Regional, VOR/DME RWY 13, Amdt. 8C, Cancelled
St. Cloud, MN, St. Cloud Regional, VOR RWY 31, Amdt. 11, Cancelled
Berlin, NH, Berlin Muni, RNAV (GPS) RWY 18, Orig.
Berlin, NH, Berlin Muni, GPS RWY 18, Orig, Cancelled
Berlin, NH, Berlin Muni, VOR-B, Amdt. 2A
New York, NY, John F. Kennedy Intl, ILS RWY 22L, Amdt. 24
Liberty, NC, Causey, RNAV (GPS) RWY 2, Orig.
Liberty, NC, Causey, RNAV (GPS) RWY 20, Orig.
Liberty, NC, Causey, VOR RWY 2, Amdt. 5
Zanesville, OH, Zanesville Muni, ILS OR LOC/DME RWY 22, Orig.
Ponca City, OK, Ponca City Rgnl, RNAV (GPS) RWY 17, Orig.
Ponca City, OK, Ponca City Rgnl, GPS RWY 17, Orig., Cancelled
Ponca City, OK, Ponca City Rgnl, RNAV (GPS) RWY 35, Orig.
Ponca City, OK, Ponca City Rgnl, GPS RWY 35, Orig-A, Cancelled
Wagoner, OK, Hefner-Easley, RNAV (GPS) RWY 18, Orig.
Wagoner, OK, Hefner-Easley, RNAV (GPS) RWY 36, Orig.
Newport News, VA, Newport News/Williamsburg Intl, NDB RWY 2, Amdt. 5
Newport News, VA, Newport News/Williamsburg Intl, NDB RWY 20, Amdt. 4
Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 2, Orig.
Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 20, Orig.
New Richmond, WI, New Richmond Muni, NDB RWY 14, Amdt. 2
New Richmond, WI, New Richmond Muni, RNAV (GPS) RWY 14, Orig.
New Richmond, WI, New Richmond Muni, RNAV (GPS) RWY 32, Orig.
New Richmond, WI, New Richmond Muni, GPS RWY 32, Orig., Cancelled

** * * Effective January 22, 2004*

Ada, OK, Ada Muni, VOR/DME-A, Orig.-D

** * * Effective February 19, 2004*

Chevak, AK, Chevak, RNAV (GPS) RWY 14, Orig.
Chevak, AK, Chevak, RNAV (GPS) RWY 32, Orig.
Kivalina, AK, Kivalina, RNAV (GPS) RWY 12, Orig.
Kivalina, AK, Kivalina, RNAV (GPS) RWY 30, Orig.
Kotlik, AK, Kotlik, RNAV (GPS) RWY 02, Orig.
Kotlik, AK, Kotlik, RNAV (GPS) RWY 20, Orig.
Fort Worth, TX, Fort Worth Meacham Intl, NDB RWY 16, Amdt. 6
Fort Worth, TX, Fort Worth Meacham Intl, RNAV (GPS) RWY 16, Orig.
Quinton, VA, New Kent County, RNAV (GPS) RWY 10, Orig.
Quinton, VA, New Kent County, RNAV (GPS) RWY 28, Orig.
Quinton, VA, New Kent County, VOR-A, Amdt. 1

[FR Doc. 03–29844 Filed 12–1–03; 8:45 am]
BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC75

NASA Grant and Cooperative Agreement Handbook—Public Acknowledgements

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook to include public acknowledgement of NASA's photographs and illustrations in reports or publications generated by NASA's award of grants or cooperative agreements.

EFFECTIVE DATE: December 2, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, Code HK, (202) 358–0481, e–mail: *paul.d.brundage@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In publications generated from NASA's award of grants and cooperative agreements, principal investigators sometimes fail to acknowledge NASA's photographs and illustrations. This final rule sets forth NASA's desire for acknowledgement in 14 CFR 1260.22. NASA published a proposed rule in the **Federal Register** on August 15, 2003 (68 FR 48837). No comments were received. Therefore, the proposed rule is being adopted as final without change.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because (a) few grants and cooperative agreements under 14 CFR part 1260 are awarded to small businesses, (b) it will only affect the few recipients of awards that make use of NASA photographs and illustrations in their publications, and (c) this final rule has no economic impact on award recipients since it only requests acknowledgment of the source of photographs and illustrations in the recipients' publications.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management (OMB) and Budget under 44 U.S.C. 3501, *et. seq.*

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR Part 1260 is amended as follows:

■ 1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, and 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*).

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 2. Amend the provision at section 1260.22 by revising the date and adding paragraph (a)(3) to read as follows:

§ 1260.22 Technical publications and reports.

Technical Publications and Reports December 2003

(a) * * *

(3) As a courtesy, any release of a NASA photograph or illustration should list NASA first on the credit line followed by the name of the Principal Investigator's Institution. An example follows:

''Photograph <or illustration, figure, etc.> courtesy of NASA <or NASA Center managing the mission or program> and the <Principal Investigator's institution>.''

* * * * *

[End of provision]

[FR Doc. 03–29931 Filed 12–1–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 2002N–0305]

Medical Devices: Classification of the Dental Sonography Device and Jaw Tracking Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the dental sonography device into class I, when it is used to monitor temporomandibular joint sounds, and into class II, when it is used to interpret temporomandibular joint sounds for the diagnosis of temporomandibular joint disorders and associated orofacial pain. FDA is classifying the jaw tracking device into class I, when it is used to monitor mandibular jaw positions relative to the maxilla, and into class II, when it is used to interpret mandibular jaw positions relative to the maxilla, for the diagnosis of temporomandibular joint disorders and associated orofacial pain. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for this device. FDA is taking this action under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA) and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

DATES: This rule is effective January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary S. Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices as a function of the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until FDA does the following: (1) Reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) issues, under section 513(i) of the act, an order finding the device as substantially equivalent to a predicate device that does not require premarket approval. FDA determines whether new devices are substantially equivalent to preamendments devices by means of premarket notification procedures as delineated in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Through premarket notification procedures, a person may, without submission of a premarket approval application (PMA), market a preamendments type device that has been classified into class III until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval. Consistent with the act and the regulations, FDA consulted with the Dental Products Advisory Panel (the Panel), an FDA advisory committee, regarding the classification of the dental sonography device and the jaw tracking device.

II. Regulatory History of the Device

In the **Federal Register** of August 14, 2002 (67 FR 52901), FDA proposed to classify the dental sonography device into class I when it is used to monitor temporomandibular joint sounds, and into class II, when it is used to interpret temporomandibular joint sounds for the diagnosis of temporomandibular joint disorders and associated orofacial pain. FDA also proposed to classify the jaw tracking device into class I, when it is used to monitor mandibular jaw positions relative to the maxilla, and into class II, when it is used to interpret mandibular jaw positions relative to the maxilla, for the diagnosis of temporomandibular joint disorders and associated orofacial pain.

FDA provided an opportunity for interested persons to comment on the proposed regulation and guidance document until November 12, 2002. FDA received one comment from a consumer, however, the comment was irrelevant to the proposed rule because it was referring to a different device. A manufacturer commented that the identification of the class II sonography could be read to place a device in class II even if it does not interpret sounds. The comment said that a device is appropriately in class II if it interprets sounds. The comment further suggested that FDA should define ''interpret'' to mean that the device provides a specific diagnosis and not just meaningful output.

FDA agrees that the identification may not have been clear and has revised § 872.2050(b) by combining the last two sentences to clarify that interpretation is a necessary part of the identification. FDA disagrees that ''interpret'' should mean that a device provides a specific diagnosis. FDA believes that it is necessary that the manufacturer of a class II dental sonography device that

goes beyond a simple display of raw data should provide clinical information and verification that the information provided by these devices has clinical and diagnostic validity, sensitivity, and specificity and, therefore, the special control, in addition to the general controls, is necessary to provide reasonable assurance of safety and effectiveness.

III. Summary of Final Rule

FDA concurs that the dental sonography device and the jaw tracking device, used to monitor temporomandibular joint sounds and mandibular jaw positions relative to the maxilla, respectively, should be classified into class I (general controls). General controls would provide reasonable assurance of safety and effectiveness for these devices for these intended uses. FDA, however, believes that the dental sonography device and the jaw tracking device used to interpret temporomandibular joint sounds and mandibular jaw positions relative to the maxilla, respectively, for the diagnosis of temporomandibular joint disorders and associated orofacial pain should be classified into class II (special controls). Premarket notification for dental sonography and jaw tracking devices with these intended uses should include clinical information to demonstrate performance, as well as labeling instructing the user on proper technique, interpretation of the device outputs, and appropriate warnings and precautions. FDA concurs with the Panel's recommendation that these devices should be subject to sale by or on the order of a licensed practitioner.

FDA disagrees with the Panel that the class I devices should require premarket notification because they meet the reserved criteria of section 510(l) of the act. FDA believes that the intended uses of monitoring sounds emanated from the temporomandibular joint or monitoring mandibular jaw positions relative to the maxilla should be exempt from premarket notification. FDA believes these devices for these intended uses are not of substantial importance in preventing impairment of human health, nor do they present an unreasonable risk of illness or injury.

FDA, however, is classifying into class II, the dental sonography device and the jaw tracking device used to interpret temporomandibular joint sounds and mandibular jaw positions relative to the maxilla, respectively, for the diagnosis of temporomandibular joint disorders and associated orofacial pain. Section 510(m) of the act provides that a class II device may be exempted from the premarket notification requirements, if FDA determines that premarket notification is not necessary to provide reasonable assurance of safety and effectiveness. FDA concludes that premarket notification is necessary.

FDA has identified the following risks to health associated with the class II devices as follows: (1) *Electrical interference*. Electrical interference generated by these devices may affect diagnostic and therapeutic medical devices, such as certain types of cardiac pacemakers; (2) *Improper treatment*. There is no general consensus or established standard of care regarding the interpretation of the output of these devices. Therefore, a misdiagnosis of temporomandibular joint disorders and associated orofacial pain may lead to improper treatment.

IV. Special Controls Guidance Document

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices.'' This guidance document will serve as the special control for the class II dental sonography and jaw tracking devices.

FDA believes that review of performance characteristics described in the special controls guidance and appropriate labeling can ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission before marketing the device. Following the effective date of the final classification rule, any firm submitting a 510(k) premarket notification for these class II devices will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this classification 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.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives. If regulation is necessary, a regulatory agency must plot a course that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. Additionally, as defined by the Executive order the final rule does not constitute a significant regulatory action. As a result, the final rule is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The class I devices are already subject to the general controls provisions of the act. The special controls guidance does not impose any new requirements on manufacturers of class I devices. Manufacturers of the class II dental sonography and jaw tracking devices currently are required to submit premarket notifications. The guidance document reflects existing FDA practice in the review of these premarket notifications. FDA expects that manufacturers of cleared dental sonography and jaw tracking devices will not have to take any additional action in response to this rule. This rule will help expedite the review process for any new manufacturers of these devices. The agency therefore certifies that the final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have

federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that the final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget, according to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 872

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 872.2050 is added to subpart B to read as follows:

§ 872.2050 Dental sonography device.

(a) *Dental sonography device for monitoring*—(1) *Identification.* A dental sonography device for monitoring is an electrically powered device, intended to be used to monitor temporomandibular joint sounds. The device detects and records sounds made by the temporomandibular joint.

(2) *Classification.* Class I. The device is exempt from the premarket notification provisions of subpart E of part 807 of this chapter subject to § 872.9.

(b) *Dental sonography device for interpretation and diagnosis*—(1) *Identification.* A dental sonography device for interpretation and diagnosis is an electrically powered device, intended to interpret temporomandibular joint sounds for the diagnosis of temporomandibular joint disorders and associated orofacial pain. The device detects, records, displays, and stores sounds made by the temporomandibular joint during jaw movement. The device interprets these sounds to generate meaningful output, either directly or by connection to a personal computer. The device may be part of a system of devices, contributing joint sound information to be considered with data from other diagnostic components.

(2) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices.''

■ 3. Section 872.2060 is added to subpart B to read as follows:

§ 872.2060 Jaw tracking device.

(a) *Jaw tracking device for monitoring mandibular jaw positions relative to the maxilla*—(1) *Identification.* A jaw tracking device for monitoring mandibular jaw positions relative to the maxilla is a nonpowered or electrically powered device that measures and records anatomical distances and angles in three dimensional space, to determine the relative position of the mandible with respect to the location and position of the maxilla, while at rest and during jaw movement.

(2) *Classification.* Class I (general controls). The device is exempt from the premarket notification provisions of subpart E of part 807 of this chapter subject to § 872.9.

(b) *Jaw tracking device for interpretation of mandibular jaw positions for the diagnosis*—(1) *Identification.* A jaw tracking device for interpretation of mandibular jaw positions relative to the maxilla for the diagnosis of temporomandibular joint disorders and associated orofacial pain is a nonpowered or electrically powered device that measures and records anatomical distances and angles to determine the relative position of the mandible in three dimensional space, with respect to the location and position of the maxilla, while at rest and during jaw movement. The device records, displays, and stores information about jaw position. The device interprets jaw position to generate meaningful output, either directly or by connection to a personal computer. The device may be a part of a system of devices, contributing jaw position information to be considered with data from other diagnostic components.

(2) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices.''

Dated: October 23, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–29863 Filed 12–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–7; Re Notice No. 965]

RIN: 1513–AA68

Expansion of the Russian River Valley Viticultural Area (2002R–421P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule expands by 767 acres the eastern boundary of the Russian River Valley viticultural area in Sonoma County, California. The Alcohol and Tobacco Tax and Trade Bureau believes the use of viticultural area names as appellations of origin in wine labeling and advertising helps consumers identify the wines they may purchase. It also allows wineries to better designate the specific grape-growing area in which their wine grapes were grown.

EFFECTIVE DATE: This final rule is effective on February 2, 2004.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Specialist, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau (TTB), 6660 Delmonico Drive, #D422, Colorado Springs, CO 80919; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Homeland Security Act Impact on Rule Making

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of wine labeling, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

Background on Viticultural Areas

TTB Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's

identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR part 9, American Viticultural Areas, contains the list of approved viticultural areas for American wines.

Definition

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin.

Requirements

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the proposed viticultural area's specific boundaries, based on features found on United States Geological Survey (USGS)-approved maps; and
- Copies of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

As appellations of origin, viticultural area names have geographic significance and, under the FAA Act, may not be used in a misleading manner on wine labels. Our 27 CFR part 4 label regulations prohibit the use of brand names with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. The FAA Act and our regulations also prohibit the misleading use of a viticultural area name on a wine label in a context other than an appellation of origin. (*See* 27 CFR 4.33(b), 4.39(i), and 4.39(j).

Bottlers who use brand names, including trademarked names, similar to ''Russian River Valley'' must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3). If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label. Different rules apply if a wine in this category has a brand name used prior to July 7, 1986. *See* 27 CFR 4.39(i) for details.

Russian River Valley Expansion Petition

ATF received a petition from Donald L. Carano of the Ferrari-Carano Vineyards and Winery in Healdsburg, California, in August 2002, proposing a 767-acre expansion of the established 96,000-acre Russian River Valley viticultural area (*see* 27 CFR 9.66). On January 8, 2003, ATF published a Notice of Proposed Rulemaking requesting comments on the expansion of the Russian River area. (See Notice No. 965, 68 FR 1020). TTB received six comments, which are described and evaluated in the Notice of Proposed Rulemaking section of this document.

Located approximately 55 miles north of San Francisco, the Russian River Valley expansion area fits into a 90° angle in the original eastern boundary at the village of Fulton, which is just northwest of the city of Santa Rosa in Sonoma County, California. The expansion area has the same climate and other characteristics as the originally established Russian River Valley viticultural area. The added land accounts for less than a one percent increase in the original size of the viticultural area. In the past, some winegrape growers in the expansion area erroneously believed their vineyards to be within the boundaries of the Russian River Valley viticultural area. The newly expanded boundaries include Fulton Road on the west, River Road on the north, U.S. Highway 101 on the east, and two locally known streets, Dennis Lane and Francisco Avenue, on the south. Within these boundaries approximately 365 acres are currently planted to grapes.

Name Evidence

The 767-acre expansion area was commonly considered to be part of the original Russian River Valley viticultural area. A Wine Country Living magazine map of viticultural areas, dated July 2002, shows the expansion area as being within the established Russian River Valley viticultural area's borders. A June 2002, Wine Spectator Online article states that the Vintners Inn hotel, which lies in the expansion area, is within the originally established boundaries. The Russian River Wine Road Web site (1998–2002) locates the Vintners Inn and Siduri Wines inside the Russian River viticultural area, although both are in the expansion area. In August 2002, the Russian River Valley Winegrape Growers Association Web site listed several members who are in the expansion area. Also, road signs indicate that the expanded boundary area is locally associated with the Russian River area.

Boundary Evidence

Historically, according to Mr. John Marcucci, whose family has owned thirty acres in the area for four generations, the land in the expansion area was used for prune orchards and vineyards. He recalls that, prior to 1918, the acreage was planted to Petite Syrah, Zinfandel, and Pinot Noir wine grapes. Mr. Marcucci and Mr. Henry Bisordi, both life long residents of the area, also recollect that years ago prune orchards were more profitable than vineyards, but when the market changed, some orchards were replaced with vineyards. The previous owner of the Vintners Inn land claims that approximately 50 acres were devoted to French Colombard wine grapes and orchards. The orchards were removed about 25 years ago for Chardonnay, Pinot Blanc, and Sauvignon Blanc wine grape plantings. Currently, 48 percent, or almost half of the 767-acre expansion area, is used for viticulture.

Growing Conditions

Treasury Decision ATF–159 of October 21, 1983, 48 FR 48813, established the Russian River Valley as a viticultural area. This Treasury Decision stated:

> The Russian River viticultural area includes those areas through which flow the Russian River or some of its tributaries and where there is a significant climate effect from coastal fogs. The specific growing climate is the principal distinctive characteristic of the Russian River Valley viticultural area. The area designated is a cool growing coastal area because of fog intruding up the Russian River and its tributaries during the early morning hours.

Climate

The term ''Russian River,'' as it applies to viticulture, refers to the cool temperatures and coastal fog that influence portions of the Russian River Valley. The expansion area has heavy fog, as noted on an undated map titled ''Lines of Heaviest and Average Maximum Fog Intrusion for Sonoma County.''

The petition and Treasury Decision ATF–159, which established the Russian River Valley viticultural area, both refer to the Winkler degree-day (accumulated heat units) system used to classify grape-growing climatic regions (see ''General Viticulture,'' Albert J. Winkler, University of California Press, 1975). As noted in Treasury Decision ATF–159, ''The Russian River Valley viticultural area is termed 'coastal cool' with a range of 2000 to 2800 accumulated heat units.''

The 767-acre expansion petition documented a degree-day study of three vineyards from April 2001 through October 2001, which coincides with Winkler's growing season. Two of these vineyards are within the original Russian River Valley viticultural area, while the other is in the newly approved expansion area. This study measured air temperature, wind speed, precipitation, and humidity at the three area vineyards. Documentation is provided in the following table:

Vineyard	Degree-Days (accumulated heat units)
In the *established* viticultural area:	
Vino Farms Vineyard	2,477
Storey Creek Vineyard	2,736
In the *proposed expansion* area:	
LeCarrefour Vineyards	2,636

The results from the three vineyards studied show that all three are within the 2,000 to 2,800 accumulated heat units range found in the Russian River Valley viticultural area, as stated in Treasury Decision ATF–159. We independently confirmed that LeCarrefour Vineyards, at 4350 Barnes Road, Santa Rosa, California, is within the approved expansion.

Elevation

Elevations in the expansion area range from 130 feet to 160 feet, with a gentle rise from southwest to northeast, according to the two USGS topographic maps covering the expansion area. These elevations are similar to those found in the portion of the established Russian River Valley viticultural area immediately adjacent to the expansion area.

Soil

The predominant soils of the expanded Russian River Valley viticultural area are Huichica Loam, Yolo Clay Loam, and Yolo Silt Loam, as depicted on the Sonoma County Soil Survey map (USDA, 1972), sheet 74. These soils are also found within the originally-established Russian River Valley viticultural area in vineyards to the north of the expansion area, as noted on pages 57 and 66 of the maps developed by the USDA's, Forest Service and Soil Conservation Service in May 1972. Treasury Decision ATF–159, which established the Russian River Valley viticultural area, does not identify any predominant soils or indicate unique soils of the viticultural area.

Watershed

Both the original Russian River Valley viticultural area and the expanded area are in the large Russian River Valley watershed, as noted on the (California) Department of Fish and Game Inland Fisheries Division's ''Russian River Watershed'' map of April 1, 1997. This watershed includes the Russian River and the tributaries noted in Treasury Decision ATF–159.

Notice of Proposed Rulemaking

Comments

The Notice of Proposed Rulemaking, Notice No. 965, requested comments from all interested persons concerning the expansion of the Russian River Valley viticultural area by March 10, 2003. TTB received six comments. Two comments supported the petitioned expansion, three opposed the expansion as petitioned, and one stated that this type of Government ruling is not in the public interest. These comments are posted on the TTB Web site under Notice No. 965 at *http://www.ttb.gov/alcohol/rules/index.htm.*

After careful evaluation of each comment, TTB has approved the 767-acre expansion of the Russian River Valley viticultural area in accordance with the August 2002 petition's proposed boundaries.

The first supporting comment, from a winemaker with 18 years of experience, states ''the area between Fulton road and Hwy 101, proposed for inclusion in the RRV [Russian River Valley] in Notice 965 is very true-to-type for the RRV [Russian River Valley].'' The commenter explains that the quality of grapes grown in the expansion area is on par with the nearby vineyards inside the boundaries of the originally established Russian River Valley viticultural area. This commenter notes that in the future he will not hesitate to buy winegrapes from the expansion area and include them in his Russian River Valley-labeled wines.

The second favorable comment requested approval of the proposed expansion and notes that the expansion area ''satisfies all the criteria outlined in Title 27 CFR 4.25a(e)(2) for proposing an American viticultural area (AVA).'' The commenter states that the expansion area satisfies the principal distinctive characteristic of the Russian River Valley viticultural area with its ''significant climatic effect from coastal fogs.''

A comment, neither in favor or opposed to the Russian River Valley viticultural area expansion petition, states that this type of ruling is ''not in the public interest and the government has no business in this.'' The comment continues that such rulings are for commercial purposes, do not directly benefit the public, and argues that the wine industry should be responsible for this action.

The FAA Act requires that alcohol beverage labels provide the consumer with adequate information regarding, among other things, a product's identity. TTB believes the use of viticultural area names as appellations of origin in wine labeling and advertising helps consumers identify the wines they may purchase.

The first opposing comment states, ''If anything, the Russian River Valley AVA should be made smaller to reflect the uniqueness of that area.'' The commenter adds that since the 767-acre

expansion area falls outside the original Russian River Valley viticultural area, the expansion's approval will mislead wine buyers. The commenter concludes that the petitioning winery should not be allowed to purchase land outside the established viticultural area's boundaries and then propose the area's expansion to include its purchased land.

In response, TTB notes that its 27 CFR part 9 regulations state that TTB shall receive and process petitions to establish viticultural areas and that such areas are found with the territorial extent of the entire United States, including the Russian River Valley. There is no regulatory provision to prohibit petitioners, who have purchased property outside the boundaries of an established American viticultural area, from proposing an expansion of the viticultural area's boundary line to include their property. We have also determined that the petition supports the requirements in 4.25a(e)(2) for the expansion of this viticultural area.

Two commenters oppose the Carano petition to expand the Russian River Valley viticultural area. Both argue that the expansion area does not comply with the American Viticultural Area regulations in 27 CFR part 9 because there is ''substantial acreage outside the proposed expanded boundaries that is not significantly different, and in many cases is identical, to land within the proposed area of addition.'' Also, they explain there is no difference in climate, soils, or elevation in the areas immediately beyond the Carano boundary line expansion. One of the commenters separately states the Carano petition is ''incomplete.''

Both comment letters indicate that on January 17, 2003, the Russian River Valley Winegrowers group submitted a petition to expand the Russian River Valley viticultural area boundaries by 30,200 acres. This group's expansion petition includes the subject area of this final rule and, as discussed in the two comments, other areas with similar climate, soil and elevation. Both commenters requested that Carano's August 2002 petition for the 767-acre expansion of the Russian River Valley viticultural area, which is approved by this ruling, be joined with the January 2003 expansion petition of the Russian River Valley Winegrowers group.

In response to the opposition to the Carano petition, TTB notes that the two comments do not disagree with the petitioned 767-acre expansion, but believe that the expansion should be larger. The petitioner provided convincing evidence that the expansion area complies with the 27 CFR part 9 and is similar to the established Russian River Valley area, with the same distinguishing cool, foggy climate. The Russian River Valley Winegrowers' January 2003 petition to expand the Russian River Valley viticultural area by 30,200 acres includes the 767-acre expansion area approved in this rule. Because of the five months between receipt of the 767-acre expansion petition in August 2002 and the winegrowers' expansion petition in January 2003, we will continue to process the January 2003 petition separately.

Therefore, through this final ruling, TTB incorporates the 767-acre expansion area into 27 CFR 9.66, Russian River Valley.

Regulatory Analyses and Notices

Paperwork Reduction Act

This rule imposes no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an agency to conduct a regulatory flexibility analysis on any proposed rule that may have a significant economic impact on a substantial number of small entities. We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the areas. The use of viticultural names as appellations of origin merely allow vintners to better describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from a proprietor's own efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is N.A. Sutton (Oregon), Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

■ For the reasons discussed in the preamble, we amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 2. Amend § 9.66, Russian River Valley viticultural area by removing ''Road'' and adding in its place ''Avenue'' at the end of paragraph (c)(9), by redesignating paragraphs (c)(12) through (c)(24) as (c)(14) through (c)(26), by revising paragraphs (c)(10) and (c)(11), and by adding new paragraphs (c)(12) and (c)(13) to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.66 Russian River Valley.

* * * * *

(c) * * *

(10) Proceed north on Wright Avenue, which becomes Fulton Road, for approximately 3.8 miles to an unnamed unimproved road running to the east in Section 5 of T7W, R8W, which becomes a light duty road locally known as Francisco Avenue, and continue generally east on Francisco Avenue for about 0.6 mile to its intersection with the eastern boundary line of Section 5 in T7W, R8W, at a point where Francisco Avenue makes a 90° turn to the south.

(11) Proceed north along that section line for about 500 feet to a point due west of the intersection of Barnes Road and an unnamed light duty road locally known as Dennis Lane.

(12) Proceed straight east 1.2 miles, following Dennis Lane to its end, and continuing straight east to U.S. Highway 101, passing onto the Santa Rosa map in the process.

(13) Proceed 1.3 miles straight northwest along U.S. Highway 101, passing onto the Sebastopol map, to its intersection with an unnamed medium duty road locally known as River Road west of U.S. Highway 101 and as Mark West Springs Road east of U.S. Highway 101.

* * * * *

Signed: September 3, 2003.

John J. Manfreda,

Acting Administrator.

Approved: September 24, 2003.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 03–29906 Filed 12–1–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–181]

RIN 1625–AA00

Safety Zone; Bogue Sound, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Atlantic Intracoastal Waterway (AICW) in the vicinity of Marine Corps Base Camp Lejeune, NC. Naval gunfire will be conducted crossing the AICW from offshore in the vicinity of N–1/BT3 impact area and impacting areas in Camp Lejeune. This safety zone is needed to ensure the safety of persons and vessels operating on the AICW in this area during the specified periods. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative.

DATES: This rule is effective from 8 a.m. on December 4, to 6 p.m. on December 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–181 and are available for inspection or copying at Coast Guard Marine Safety Office Wilmington, 721 Medical Center Drive, Wilmington, NC 28401 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington, telephone number (910) 772–2207.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public and required to ensure the safety of persons and vessels operating on the AICW in this area at the times specified.

Background and Purpose

Naval gunfire will be conducted crossing the AICW and impacting areas in Camp Lejeune from 8 a.m. to 12 p.m. and 2 p.m. to 6 p.m. on December 4, 5, 10 & 11, 2003. The Safety Zone is in effect to ensure the safety of persons and vessels operating on the AICW in this area.

Discussion of Rule

The safety zone will cover the AICW extending from Bogue Sound-New River Daybeacon 58 (LLNR 39210) southeast to Bogue Sound-New River Light 64 (LLNR 39230). This safety zone will be in effect to ensure the safety of persons and vessels operating on the AICW in this area. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative. A Coast Guard or U.S. Navy vessel will patrol each end of the Safety Zone to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule only affects a small portion, less than two miles, of the AICW in North Carolina for a limited time. The regulation is tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the AICW from 8 a.m. to 12 p.m. and 2 p.m. to 6 p.m. on December 4, 5, 10 & 11, 2003. The Coast Guard expects a minimal economic impact on a substantial number of small entities due to this rule because little commercial traffic transits this area of the AICW.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small Entities requesting guidance or exemption from this rule may contact LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington at (910) 772–2207.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 8 a.m. on December 4, to 6 p.m. on December 11, 2003, in § 165.514, temporarily suspend paragraph (c)(2) and add a new paragraph (c)(3).

§ 165.514 Safety Zone: Atlantic Intracoastal Waterway and connecting waters, vicinity of Marine Corps Base Camp Lejeune, North Carolina.

* * * * *

(c) * * *

(3) The Safety Zone in paragraph (a) of this section will be enforced from 8 a.m. to 12 p.m. and 2 p.m. to 6 p.m. each day on December 4, 5, 10 & 11, 2003.

* * * * *

Dated: November 21, 2003.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 03–29926 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–15–P

LEGAL SERVICES CORPORATION

45 CFR Part 1604

Outside Practice of Law

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation amends its regulation relating to the outside practice of law by full-time legal services attorneys. The rule is substantively restructured and revised to clarify the scope of the restrictions on outside practice. The final rule also amends several definitions and allows for the separate treatment of court appointments.

DATES: This final rule is effective February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., 3rd Floor, Washington, DC 20007–3522; (202) 295–1624 (phone); (202) 337–6519 (fax); *mcondray@lsc.gov* (email).

SUPPLEMENTARY INFORMATION: On January 17, 1995, the Legal Services Corporation (LSC or the Corporation) published for public comment proposed revisions to 45 CFR part 1604, LSC's regulation on the outside practice of law. 60 FR 3367. Although LSC received public comment on the proposed revisions, no final action was ever taken on the rule. Many of the issues outstanding in 1995 remain important today and LSC has been interested in adopting final revisions to Part 1604 for some time. Because it had been more than seven years since the publication of the 1995 Notice of Proposed Rulemaking (NPRM), LSC reissued the NPRM for comment rather than issuing a final rule. The NPRM, published on September 11, 2002 (67 FR 57550), specifically invited comment on the impact of the restriction on claiming and accepting attorneys' fees, other restrictions stemming from the 1996 appropriations act, program integrity requirements, and timekeeping requirements on the proposals contained therein and other issues related to the regulation of the outside practice of law by LSC recipient attorneys which may have developed since the publication of the original NPRM in 1995.

LSC received five comments on the NPRM. After reviewing the comments, LSC drafted a Final Rule for the consideration of the Board of Directors and its Operations and Regulations Committee. Upon the recommendation of the Operations and Regulations

Committee, the Board of Directors adopted this Final Rule at its meeting of November 22, 2003.

Section-by-Section Analysis

Section 1604.1 Purpose

The NPRM, as a whole, reflected a proposed change in approach from emphasizing the limitations on recipients' full-time attorneys regarding the outside practice of law to focusing on the situations in which outside practice may be approved and on recipients' rights and responsibilities in regulating the outside practice of law by their full-time attorneys. LSC proposed to revise the language of this section to reflect this proposed change in approach. Specifically, LSC proposed to amend the existing section 1604.1 to authorize a recipient to adopt written policies to permit its program attorneys to engage in pro bono legal assistance and to comply with their obligations as members of the Bar and officers of the court where those demands do not interfere with the attorneys' overriding responsibility to serve the program's clients. LSC further proposed to clarify that this part should not be construed to permit recipients to unduly restrict legal services attorneys from engaging in those activities. The use of the word ''unduly'' was intended to acknowledge that there may be some restrictions imposed by the LSC Act, LSC appropriations or other legislation and/or LSC regulations, or by recipients that are necessary to comply with applicable law or accomplish the overriding goals of the LSC Act.

Two of the comments LSC received supported the proposed changes as written. One commenter from the field appeared not to oppose the specific language proposed, but stated a firm belief that outside practice should generally not be permitted. The Office of Inspector General opposed the proposed changes, believing that the focus of the rule should remain on the statutory prohibition on the outside practice of law. In particular, the OIG argued that the last sentence of the proposed section implied that LSC's policy favors permitting the outside practice of law and should, therefore, be deleted as inconsistent with the Act.

Weighing the comments, LSC believes that the general change in approach reflected in the proposed language remains appropriate, but agrees with the OIG that the regulation should not imply that LSC favors the outside practice of law. While one comment from the field noted that encouraging their employees to engage in pro bono activities was helpful in attracting pro bono practice among the private bar, another program was of the opinion that their program attorneys and program resources were already strained, and that encouraging program attorneys to engage in additional legal work outside the office was not in the program's or clients' best interest. LSC respects both of these approaches and believes that the regulation should set forth the parameters in which the outside practice of law is permissible under the LSC Act and leave it to the discretion of programs to determine how the outside practice of law by their full-time attorneys comports with their needs regarding providing service to their clients.

Accordingly, LSC is revising the purpose section to state that it is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys and to make clear that recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Section 1604.2 Definitions

Section 1604.2(a) ''Full-time Attorney''

LSC proposed to delete the definition of ''attorney,'' because it is inconsistent with the definition of ''attorney'' in Part 1600 of the Corporation's regulations, Definitions. Instead, LSC proposed to substitute a definition which incorporates the definition of ''attorney'' in Part 1600, such that ''full-time attorney'' would be defined as an attorney who is a full-time employee of a recipient.

LSC received no objections to this definition, although the OIG stated that the preamble should make clear that LSC intends that the term ''full-time'' should be defined by the program for the purpose of the outside practice of law as the program defines ''full-time'' generally; that is as the term is used for other purposes, such as employee benefits. LSC agrees. LSC believes that the statement in the NPRM ''LSC did not proposed a separate definition for the term ''full-time,'' preferring to leave the decision as to what constitutes ''full-time'' to the recipient's own personnel and outside practice policies and to any appropriate statutory definitions found elsewhere'' was intended to convey that meaning. However, to avoid any confusion, LSC believes it is appropriate to clarify that LSC does indeed intend that whatever definition of ''full-time'' the program applies for the purpose of its outside practice of law policies be the same as it uses for other purposes, such as employee benefits. LSC, accordingly, adopts the definition as proposed.

Section 1604.2(b) ''Outside Practice of Law''

LSC proposed to amend this definition to explain what outside practice is, rather than what it is not. The regulation is intended, and currently applies only, to the outside practice of law by recipients' employees and not to other outside activities by recipients' employees that do not constitute the outside practice of law. LSC further proposed to substitute the words ''receiving that'' for ''entitled to receive'' to make clear that an attorney could represent a client in an outside practice case who is eligible for representation from the recipient even if the client is also receiving legal assistance from the recipient, as long as the recipient is representing the client on a different matter.

In the NPRM, LSC noted that the proposed definition was Judge Advocate General (JAG) Corps attorneys. Although LSC chose not to include language on this issue in the proposed rule, the NPRM noted LSC's intent to continue the policy established in prior General Counsel opinions, which have consistently found that an attorney is not engaged in the outside practice of law while serving as a JAG Corps reserve officer and solicited comments as to whether the rule should include language expressly stating this policy.

LSC received two comments supporting including a specific reference to JAG Corps attorneys in the rule and one comment which stated that the commenter had no objection to such a reference. None of the commenters had any other objections to the proposed changes. LSC believes that adding a reference to JAG Corps practice and the other proposed amendments will clarify the rule and aid in the comprehension and usability of the regulation. Accordingly, LSC is adopting the definition as proposed, except for the addition of language which specifies that the outside practice of law does not include the performance of duties as a JAG Corps attorney in the United States armed forces reserves.

Section 1604.2(c) ''Court Appointment''

LSC proposed to add a definition for the term ''court appointment.'' The proposed definition, ''an appointment

in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice,'' is based on the language relating to court appointments currently found in sections 1604.4 and 1604.5 of the regulation, rather than the following language in § 1006(d)(6) of the Act:

Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

The proposed definition on appointments is broader than the statutory one, which applies only to uncompensated appointments; but LSC believes it is appropriate because it is more protective of program resources.

Two of the field commenters supported the definition as proposed. The OIG suggested that the phrase ''under a statute or court rule or practice'' should be changed to ''statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.'' The OIG noted that the language suggested follows the statutory language more closely and make it clear that it refers to statutes, rules or practices of general applicability and applies to administrative agencies in addition to courts. LSC believes that the change suggested by the OIG is appropriate without changing the intent of the original language proposed in the NPRM. Accordingly, LSC is adopting a revised definition of court appointment as an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

Section 1604.3 General Policy

LSC proposed to expand and amend this section to require recipients to adopt written policies relating to the outside practice of law, rather than permitting programs to determine on an ad hoc basis, whether outside practice is to be permitted in a particular instance (as is the case under the existing rule). LSC intended that such policies would give the recipient's executive director substantial discretion in making outside practice of law determinations to ensure that recipients can adopt policies that balance the demands of the profession, the attorney's desire to do outside work, and the needs of the community served by the program. To this end, LSC proposed that the required policies would be permitted to permit the outside practice of law by full-time attorneys only to the extent permitted by Part 1604, but would be permitted to contain additional limitations not imposed by Part 1604.

LSC received one comment supporting this section as proposed and two comments recommending conflicting changes. One commenter recommended deleting the language expressly authorizing programs to adopt more stringent limitations out of a concern that such language would imply that LSC was encouraging programs to adopt such limitations. The other commenter, however, opposed the proposed revision as implying that LSC was encouraging the outside practice of law.

LSC does not believe that paragraphs (a) and (b), as proposed, imply a policy preference on the part of LSC either in favor of or against the outside practice of law. LSC recognizes that there are demands of the profession occasionally imposed upon all attorneys and that some attorneys desire to do outside work, while also noting that recipient programs have scant resources and that the needs of the community served by programs require a significant commitment of time and effort by full-time program attorneys. LSC believes that paragraphs (a) and (b) represent an acknowledgement and balancing of these concerns. Indeed, LSC believes that the provisions in the LSC Act concerning the outside practice of law, which provide the basis for this regulation, recognize and dictate such a balance. However, LSC does believe that the language as proposed can be improved by adding an explicit reference to the LSC Act to ensure that the statutory basis for the parameters of permissible and impermissible outside practice of law are clearly understood.

The restrictions of this part, as currently applicable and as proposed, apply only to full-time attorneys. Although LSC did not propose to address the outside practice of law by part-time attorneys, the NPRM expressly proposed to provide that recipients' policies may include restrictions on outside practice by part-time attorneys.

One commenter from the field specifically urged LSC to eliminate the reference to part-time employees from the rule as unnecessary and, again, implying that LSC was encouraging programs to adopt more stringent policies. The OIG, on the other hand, recommended that part-time attorneys be specifically covered by this Part because of the increased incidence of part-time employment and the implications on program integrity requirements (45 CFR Part 1610). One other commenter supported proposed paragraph (c) as written.

While LSC disagrees that the proposed paragraph (c) implied a policy preference for stricter outside practice of law policies, LSC does agree that the rule should not reference part-time attorneys. The statutory mandate applies only to full-time attorneys; LSC, therefore, believes that the regulation should address itself only to full-time attorneys. Recipients would have the discretion to include part-time employees in its policies even without such express language in the regulation. LSC disagrees with the OIG that program integrity concerns require including part-time attorneys in the ambit of 1604. Part-time attorneys are not limited by the LSC Act or applicable appropriations laws in what they can do on their own time and with their own resources. As such, LSC does not consider it appropriate to require regulation of the outside activities of these attorneys. To the extent that there could be program integrity concerns, LSC believes that the program integrity and timekeeping rules provide all the protection necessary to ensure that the programs remain in compliance with the program integrity requirements.

Accordingly, LSC is adopting paragraphs (a) and (b) as written, with the addition of explicit reference to the LSC Act, but declines to adopt proposed paragraph (c).

Section 1604.4 Permissible Outside Practice

LSC proposed to combine and revise the provisions currently in sections 1604.4, Compensated Outside Practice, and 1604.5, Uncompensated Outside Practice, into one section retitled Permissible Outside Practice. Except as noted below, all of the comments generally supported this section as proposed and LSC adopts it as proposed, with some modifications.

Under the current structure of the regulation, the general rule on the outside practice of law is stated in the negative; that is, the outside practice of law is prohibited except as provided. LSC proposed, instead, to state the rule in the affirmative, providing guidance on the terms under which the outside practice of law may be approved. LSC is retaining this structure, but modifying the language proposed to refer to a recipient's policies to underscore the requirement that recipient will have to adopt policies relating to the outside practice of law and that the regulation provides guidance on what the policies must require and may permit.

The revision also refers to a full-time attorney's responsibilities to clients, rather than simply ''full-time responsibilities.'' LSC intends an executive director (or that person's designee) to make a case-by-case determination as to whether involvement in a specific case or matter would be consistent with a full-time attorney's responsibilities to the program's clients. A full-time attorney's responsibilities to program clients should be determined by reference to the program's definition of ''full-time'' (such as used for the determination of employee benefits), not by reference to a specific attorney's working habits. Thus, an attorney in the habit of working substantial amounts of overtime on program activities should not be penalized for deciding to allot some of that attorney's own time to an outside practice case rather than to program activities. In addition, an attorney should be permitted to take reasonable amounts of leave to engage in permitted outside practice.

LSC also includes language intended to address a concern that, if a program attorney handled outside practice cases that were controversial or dealt with areas prohibited to the recipient (*e.g.*, abortion litigation), the employing recipient would be seen as handling the cases and viewed as using outside practice as a way to get around applicable restrictions. The language, which is similar to language in the regulation on prohibited political activities, would require the attorney to make it clear that this was not a program case, and to do whatever was necessary to ensure that it not be perceived as such. In practical terms, the restriction might require the attorney to use a home address or post office box for correspondence, or a home telephone number or direct dial number that would not go through the recipient's switchboard or voice mail greeting, or other similar processes to ensure that the recipient was not identified as the sponsor of the representation. The restriction on identification would not apply to court appointments or to cases which are undertaken to fulfill a mandatory pro bono obligation, which are treated separately in the regulation.

Paragraph (c) sets forth the specific situations under which recipients' policies may permit the outside practice of law: a newly employed attorney closing cases from a previous law practice; when the attorney is acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; when the attorney is acting on behalf of a religious, community, or charitable group; or when the attorney is participating in a mandatory pro bono program or a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

With respect to newly employed attorneys, paragraph (c)(1) is intended to make explicit what has always been implicit under the current Part 1604, *i.e.*, that work for a client from a previous practice should not be done on program time.

The revised rule will expressly permit an attorney to represent another member of the recipient's staff without having to prove that the individual is a close friend. LSC is also adding language to make it clear that the attorney may represent him or herself. LSC received one comment urging LSC to require recipients' policies to permit an attorney to represent him or herself. LSC sees no justification for treating this situation different than other potential outside practice situations in terms of the program's discretion to permit or restrict such outside practice. LSC can imagine a situation in which a recipient's director would have no problem permitting a full-time employee to represent him or herself. At the same time, LSC can imagine a situation in which the recipient's executive director is concerned that the attorney's activities representing him or herself could be so time consuming as to interfere with the attorney's responsibilities to the programs clients. In such a situation, the program needs the discretion to disallow that outside practice. Accordingly, LSC declines to require recipients' policies to permit an attorney to represent him or herself.

LSC is amending the current provision permitting representation of religious, community or charitable groups, to permit the representation of an individual client who has been referred to the attorney by such a group through a formal *pro bono* or referral program that does regular referrals. For example, under the revised rule it would permissible for an attorney to represent a client who has been referred by the ACLU, NAACP or Catholic Charities. Prior General Counsel opinions have permitted outside practice both on behalf of organizations as well as on behalf of individuals referred by those organizations and LSC believes that it is appropriate to incorporate these interpretations into the rule.

LSC received one comment specifically addressing this provision. Although the commenter did not object to the proposed revision, the commenter noted that they did not view this category as essential and requested that the preamble make clear that program policies could restrict such practice. As with all of the provisions in this section, recipients' written policies are permitted to allow for the approval of outside practice through a referral program, but need not do so. This is a matter committed to the discretion of the program.

LSC proposed to add a paragraph, (c)(5), to make it clear that legal services attorneys should be permitted to act in the same way as other attorneys with respect to *pro bono* work that is undertaken to meet professional obligations, whether the obligation is aspirational, as under state rules that are modeled on Rule 6.1 of the American Bar Association's (''ABA'') Model Rules of Professional Conduct, or mandatory, as is now the case in a few local jurisdictions across the country. LSC received one comment from a program noting that they did not view this category as essential and requesting that the preamble make clear that program policies could restrict such practice. The OIG suggested that this section apply only to ''mandatory'' *pro bono* and that the phrase ''and practices'' should be deleted as too vague.

LSC believes that the reference to other than mandatory pro bono would be redundant in light of paragraphs (3) and (4) which already address voluntary *pro bono* activities. Moreover, LSC believes that a separate paragraph referencing mandatory pro bono is not required as mandatory pro bono is covered under section 1604.7, Court Appointments. Accordingly, LSC is not adopting proposed paragraph (5). As with all of the provisions in this section, recipients' written policies are permitted to allow for the approval of outside practice as set forth herein, but need not do so, and where permitting it, may address circumstances and limitations thereon. This is a matter committed to the discretion of the program.

Section 1604.5 Compensation

The 1995 NPRM contained a new proposed provision on compensation, providing, among other things, that a recipient would be allowed to permit an attorney to accept attorneys' fees for certain cases, as long as the fees would be remitted to the recipient. While this proposed provision was clearly permissible at the time it was proposed, LSC has determined that it is no longer consistent with the current statutory and regulatory restrictions on the claiming, collection and retention of attorney's fees. Accordingly, LSC is not

adopting proposed paragraphs (b) and (c).

LSC is, instead, adopting language stating that except as provided in paragraph (b) of this section and section 1604.7(a) (relating to compensation provided to an attorney pursuant to court appointment and remitted to the recipient), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law. The revised paragraph (b) would require that recipients' written policies which permit a full-time attorney who meets the criteria set forth in § 1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section. Although the statute prohibits all compensated outside practice, the exception in proposed paragraph (a) for work on cases held over from a previous private practice is justified under the general principle that neither LSC nor the recipient can interfere with an attorney's professional responsibilities to a client. Since the representation was undertaken before the lawyer became a legal services attorney, fairness dictates that the attorney should be permitted to take fees for completion of the work. This exception is carried over from the current rule.

Section 1604.6 Use of Recipient Resources

LSC proposed to add a new section to the rule governing the use of recipient resources in the course of permitted outside practice activities. Specifically, LSC proposed to permit recipients' written policies to permit a recipient to allow its attorneys to use only a *de minimis* amount of program resources, including time, in cases when newly employed attorneys are closing old cases, and, for other permitted outside practice situations, to allow its attorneys to use a limited amount of program resources, including time. As with other aspects of this rule, LSC proposed to authorize recipients to adopt written policies more restrictive so as to permit the recipient to determine whether its attorneys could use recipient resources for a specific case to the extent allowed by this rule. These proposals were based on longstanding LSC policy and were intended to codify the accepted practice.

The NPRM solicited comments on the appropriateness of using recipient resources for any outside practice, and whether or not the distinction between ''*de minimis*'' and ''limited'' use of resources makes sense and is workable. In particular, LSC invited comment on the impact of the 1996 restrictions, LSC's program integrity rules at 45 CFR part 1610 and LSC's timekeeping rules at 45 CFR part 1635 on the proposals set forth therein.

Four of the five comments LSC received address this issue. Two of the comments from the field supported the NPRM as proposed. These comments noted that the proposed language prohibiting the use of recipient resources (LSC and non-LSC) for activities for which the use of such funds is prohibited would ensure that no there were no violations of the program integrity standards and was consistent with the requirements of the timekeeping rules. One field commenter stated their opposition to any use of recipient resources for outside practice activities, given the scarcity of program resources available for program purposes. It was unclear from the comment, however, whether this commenter believed that LSC should prohibit the use of all program resources, or if it would be sufficient to permit programs the authority to prohibit the use of program resources. In contrast, the OIG argues that the rule should only permit recipients' written policies to permit the *de minimis* use of recipient in all circumstances. Any other use, the OIG contends risks running afoul not only of the appropriations act restrictions, but also the allowable costs requirements of part 1630. The OIG argues that outside practice activities should be subject to requirements of 1635 and other limitations applicable to any other personal activities.

LSC agrees that use of recipient resources to support restricted activities is prohibited by law. LSC also agrees, however, with the field recipients that the specific limitation on the use of resources for prohibited activities that was included in the proposed rule would prevent recipients from adopting written policies which would permit prohibited uses in connection with outside practice of law activities. LSC has amended the proposed language slightly to make this point even more explicit. With respect to non-restricted activities, LSC acknowledges that if a program permitted a significant enough amount of their LSC funded resources to be used in connection with outside practice activities, the program could run into a 1630 disallowed costs problem. However, LSC notes that the standards proposed reflect the longstanding practice and LSC has not, in fact, found this to present significant 1630 problems. Accordingly, LSC adopts section 1604.6 as proposed except as noted above.

Under the *de minimis* standard, an attorney could make a brief phone call or use the fax machine during working hours, but would have to take leave for court appearances. Under the ''limited'' standard, in addition to whatever an attorney could do under the *de minimis* standard, the attorney could, for example, make a brief court appearance during normal working hours without taking leave. An attorney could also be permitted to use a program computer or typewriter to prepare pleadings or other documents, within reason. However, if the attorney participated in a long trial or extended negotiation, he or she would normally be required to take leave to do so. If a recipient has a procedure to identify copying, postage and similar costs, and the attorney reimbursed the recipient, the use of those resources would also be permissible under either standard. This position is consistent with the longstanding LSC policy.

Section 1604.7 Court Appointments

This proposed section would treat court appointments and mandatory pro bono representation separately from outside practice, because there are substantially different considerations for court appointments and mandatory *pro bono* than there are for *pro bono* or other outside cases that an attorney undertakes on a strictly voluntary basis.

Proposed paragraph (a)(1) simply restated a general rule that applies to court appointments as well as to outside practice under the current part 1604 regarding the permissibility of a full-time attorney accepting a court appointment to provide representation. Two of the comments supported the language as proposed. The OIG, however, suggested that the language of this paragraph be revised to read ''Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters'' to bring this provision into harmony with 45 CFR part 1613.4(a), relating to appointments in criminal proceedings. LSC considers the OIG's suggestion to be well taken and not inconsistent with the intent of the proposed language. Accordingly, LSC is revising paragraph (a)(1) in this final rule.

LSC received no objections to proposed paragraphs (a)(2) or (3) and adopts them as proposed. Paragraph (a)(2) is based on section 1006(d)(6) of the LSC Act. It is intended to protect recipients from efforts that have been made by some judges to appoint legal services attorneys to handle court appointments in lieu of private attorneys, and/or to refuse to provide

compensation for appointed cases handled by legal services attorneys, when private attorneys appointed to similar cases would have been paid. Paragraph (a)(3) is also a requirement carried over from the current Part 1604. LSC notes that, in the case of court appointments, recipients are permitted to retain attorneys' fees made to a recipient or employee of a recipient notwithstanding the general attorneys' fees ban because such fees are excluded from the definition of attorneys' fees in 45 CFR section 1642.2(b)(1).

LSC proposed to add a new paragraph (d) providing that, if an attorney is mandated to engage in pro bono representation by applicable state or local court rules or practices or by rules of professional responsibility, such representation shall be treated in the same manner as court appointments for the purposes of paragraphs (a)(1), (a)(3), (b) and (c) of this section. While LSC recognizes that the ABA Model Rules do not currently mandate pro bono services for any attorney, LSC also recognizes that mandatory pro bono has been considered in a number of states and is a reality in certain local jurisdictions. It is the intent of LSC that legal services attorneys be permitted to undertake outside representation to fulfill any mandatory professional obligations to provide pro bono assistance to which they are now or may be subject in the future. Two comments concurred in paragraph (d) as proposed, while the OIG recommends making it clear that attorneys may not receive compensation for mandatory pro bono activities and adding a requirement that mandatory pro bono activities must be in cases or matters that are not prohibited because of the use of LSC resources permitted by the rule. LSC believes that the rule as proposed would not permit an attorney performing mandatory pro bono service to receive compensation, but has no objection to making this point clearer in this preamble or the regulatory text. In addition, LSC agrees with the OIG regarding limitation on mandatory pro bono activities to cases or matters not otherwise prohibited and clarifies the rule on this point.

Finally, this section allows a full-time attorney to use program resources to undertake representation required by court appointment or mandatory pro bono, and allows the attorney to identify the recipient as his or her employer when engaged in such representation. LSC received no objections to these provisions (paragraphs (b) and (c)) and adopts them as proposed.

LSC received one other comment on this section, suggesting that the reference in this section to the program's executive director should include the executive director's designee. LSC agrees that this language is consistent both with its usage elsewhere in this rule and with other rules under consideration for adoption by LSC.

List of Subjects in 45 CFR Part 1604

Legal services.

■ For the reasons set forth in the preamble, LSC revises 45 CFR part 1604 to read as follows:

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.

1604.1 Purpose.
1604.2 Definitions.
1604.3 General policy.
1604.4 Permissible outside practice.
1604.5 Compensation.
1604.6 Use of recipient resources.
1604.7 Court appointments.

Authority: 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

§ 1604.1 Purpose.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

§ 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

§ 1604.3 General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the LSC Act, this part and applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

§ 1604.4 Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

§ 1604.5 Compensation.

(a) Except as provided in paragraph (b) of this section and § 1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in § 1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney

to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7 Court appointments.

(a) A recipient's written policies may permit a full-time attorney to accept a court appointment if the director of the recipient or the director's designee determines that:

(1) Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters;

(2) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient's written policies may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A recipient's written policies may permit a full-time attorney to identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of the recipient's clients, the recipient's written policies shall treat such legal assistance in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section, provided that the policies may only permit mandatory pro bono activities that are not otherwise prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

Victor M. Fortuno,

Vice President for Legal Affairs and General Counsel.

[FR Doc. 03–29874 Filed 12–1–03; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3640, MM Docket No. 00–233, RM–9996]

Digital Television Broadcast Service; Fort Walton Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Television Fit-For-Life, Inc., substitutes DTV channel 50 for DTV channel 25 at Fort Walton Beach. *See* 65 FR 75221, December 1, 2000. DTV channel 50 can be allotted to Fort Walton Beach, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 30–24–12 N. and 86–59–34 W. with a power of 1000, HAAT of 221 meters and with a DTV service population of 567 thousand. With this action, this proceeding is terminated.

DATES: Effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–233, adopted November 13, 2003, and released November 19, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel 25 and adding DTV channel 50 at Fort Walton Beach.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30011 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3651; MB Docket No. 03–161; RM–10708]

Radio Broadcasting Services; Tallapoosa, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 255A at Tallapoosa, Georgia, in response to a petition filed by SSR Communications, Inc. *See* 68 FR 43703 (July 24, 2003). Channel 255A can be allotted to Tallapoosa, Georgia, with a site restriction 10.3 kilometers (6.4 miles) south of the community at coordinates 33–39–20 and 85–15–27. With this action, this proceeding is terminated. A filing window for channel 255A at Tallapoosa will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–161, November 14, 2003, and released November 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, 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 *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Tallapoosa, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30010 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 111803B]

Fisheries of the Exclusive Economic Zone off Alaska; Recision and Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Reallocation.

SUMMARY: NMFS is rescinding a previous action reallocating Pacific cod and is reallocating the projected unused amount of Pacific cod from vessels using trawl and jig gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2003 total allowable catch (TAC) of Pacific cod to be harvested in accordance with regulations at 50 CFR part 679.

DATES: Effective November 26, 2003, until 2400 hours, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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.

On October 3, 2003, NMFS reallocated the projected unused amount of Pacific cod from vessels using trawl, jig, and pot gear to vessels using hook-and-line gear in the BSAI (68 FR 59748, October 3, 2003), reducing the amount available to pot gear by 500 metric tons. As of November 6, 2003, NMFS has determined that vessels using pot gear will be able to harvest the total amount originally apportioned to them by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003), and the amount available to pot gear pursuant to § 679.20(a)(7)(i)(C)(2). NMFS also reallocated 200 mt to catcher vessels using hook-and-line gear in the BSAI. Effort by catcher vessels using hook-and-line gear has not materialized, nor is it expected to by the end of the fishing year. Therefore, NMFS is rescinding the previous action and reallocating the projected unused amount of Pacific cod as follows.

The 2003 BSAI Pacific cod TAC was established by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) as 191,938 metric tons. Pursuant to § 679.20(a)(7)(i)(A), 3,893 mt was allocated to vessels using jig gear, 97,388 mt to vessels using hook-and-line or pot gear directed fishing allowance, and 90,211 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 18.3 percent to vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)).

As of November 6, 2003, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 11,500 mt and trawl catcher vessels will not be able to harvest 6,000 mt of Pacific cod allocated to those vessels under 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii), NMFS apportions 17,500 mt of Pacific cod from trawl gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

The Regional Administrator has determined that vessels using jig gear will not harvest 3,600 mt of their Pacific cod allocation by the end of the year. Therefore, in accordance with § 679.20(a)(7)(ii), NMFS is reallocating the unused amount of 3,600 mt of Pacific cod allocated to vessels using jig gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

In accordance with § 679.20(a)(7)(i)(C)(2), the combined reallocation of unused Pacific cod from jig gear and trawl gear, 21,100 mt is apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of the reallocation.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) are revised as follows: 293 mt to vessels using jig gear, 97,956 mt to catcher processor vessels using hook-and-line gear, 18,877 mt to vessels using pot gear, 33,605 mt to trawl catcher/processors, and 39,105 mt to trawl catcher vessels.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), 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 implementation of these measures in a timely fashion in order to allow full utilization of the Pacific cod TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA 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 taken under 50 CFR 679.20 and is exempt from OMB review under Executive Order 12866.

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

Dated: November 25, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–29911 Filed 11–26–03; 11:18 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 231
Tuesday, December 2, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Docket Number FV03–900–1 PR]

Proposed Rule To Exempt Organic Producers and Marketers From Assessments for Market Promotion Activities Under Marketing Order Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt any person producing and marketing solely 100 percent organic products from paying assessments for market promotion, including paid advertising, activities to marketing order programs administered by the Agricultural Marketing Service (AMS). AMS has identified 28 marketing order programs for which assessment exemptions may be established. The authority for this proposal is section 10607 of the Farm Security and Rural Investment Act (2002 Farm Bill). The 2002 Farm Bill also covers 16 national research and promotion programs. The research and promotion programs will be addressed separately at a later date.

DATES: Comments must be received by January 2, 2004. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by February 2, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection in the Office of the Docket Clerk at the Marketing Order Administration Branch, AMS, USDA, Room 2525-South; 1400 Independence Avenue, SW., Washington, DC 20250–0237 during regular business hours. A copy of this proposed rule may be found at *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: George Kelhart or Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0237, Room 2525-South; Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *George.Kelhart@usda.gov*.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is being issued by the Department of Agriculture (USDA) in conformance with Executive Order 12866.

Executive Order 12988

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

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674)(Act), under which the 28 marketing order programs are established, provides that administrative proceedings must be exhausted before parties may file suit in court. Under the Act, any person subject to an order may file a petition with the Secretary of Agriculture stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

The authority for this proposed rule is specified in section 10607 of the Farm Security and Rural Investment Act (Pub. L. 107–171; 2002 Farm Bill). The 2002 Farm Bill was enacted May 13, 2002. Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act; 7 U.S.C. 7401) was amended by the 2002 Farm Bill. This amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). The amendment further requires the Secretary of Agriculture to amend any market research and promotion regulations to reflect this exemption.

USDA is proposing amendments to general regulations affecting 28 marketing order programs established under the Act for which it has oversight. These amendments would establish provisions for organic producers and marketers meeting the specified criteria to be exempt from paying assessments for market promotion, including paid advertising, activities.

The FAIR Act amendment covers 28 marketing order programs established under the Act (Texas citrus—7 CFR part 906; Florida avocados—7 CFR part 915; California nectarines—7 CFR part 916; California peaches and pears—7 CFR part 917; Washington apricots—7 CFR part 922; Washington sweet cherries—7 CFR part 923; Washington/Oregon fresh prunes—7 CFR part 924; Southeastern California grapes—7 CFR part 925; Oregon/Washington winter pears—7 CFR part 927; cranberries grown in States of Massachusetts, *et al.*—7 CFR part 929; tart cherries grown in States of Michigan, *et al.*—7 CFR part 930; Oregon/Washington Bartlett pears—7

CFR part 931; California olives—7 CFR part 932; Oregon/California potatoes—7 CFR part 947; Colorado potatoes—7 CFR part 948; Georgia Vidalia onions—7 CFR part 955; Washington/Oregon Walla Walla onions—7 CFR part 956; Idaho-Eastern Oregon onions—7 CFR part 958; Texas onions—7 CFR part 959; Florida tomatoes—7 CFR part 966; Texas melons—7 CFR part 979; California almonds—7 CFR part 981; Oregon-Washington hazelnuts—7 CFR part 982; California walnuts—7 CFR part 984; Far West spearmint oil—7 CFR part 985; California dates—7 CFR part 987; California raisins—7 CFR part 989; and California dried prunes—7 CFR part 993).

These marketing order programs allow for promotion activities designed to assist, improve, or promote the marketing, distribution, or consumption of the commodity covered under the marketing order program. Some of these programs also authorize market promotion in the form of paid advertising. Promotion, including paid advertising, activities are paid for by assessments levied on handlers regulated under the various marketing orders.

Under this proposal, a new subpart would be added in 7 CFR part 900 General Regulations to specify the criteria for identifying persons eligible to obtain an assessment exemption for market promotion, including paid advertising; procedures for persons to apply for an exemption; procedures for calculating the assessment exemption; and other procedural details for the applicable marketing orders.

Prior to or during the assessment period, the person would submit an application for exemption to the applicable committee or board. The application would be reviewed by the committee or board to determine whether the applicant is eligible for an assessment exemption. If the application is disapproved, the marketing order committee or board will notify the handler of the reason(s) for disapproval. The Secretary may review any decisions made by the committees or boards at his/her discretion.

The marketing order's committee or board would compute the assessment rate for any person approved for an organic exemption. The exempt rate would be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures for the same assessment period, as approved by the Secretary, and applying that percentage to the assessment rate applicable to all persons for the assessment period. Within 30 days following the applicable assessment period, the committee or board would re-compute the assessment rate for persons exempt under the section, based on the actual expenditures incurred during the assessment period. The exempt person would pay an additional assessment or be reimbursed or credited by the committee or board for the amount overpaid.

Who Is Eligible for Exemption?

To be eligible for an exemption, the person must be subject to an assessment under a designated marketing order program. All of the marketing order programs assess handlers; *i.e.*, persons that handle the regulated commodity.

The FAIR Act amendment specifies that to be exempt from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must produce and market solely 100 percent organic products and must not produce any non-organic or conventional products. For purposes of this proposed rule, ''produce'' means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber, and alter that product by means of feeding, slaughtering, or processing. Under this proposed rule, handlers, and processors and producers acting as handlers may be eligible for exemption if they meet the definition of ''produce'' as outlined in this proposed rule. This proposed rule provides for assessment exemptions for those regulated under marketing orders for domestic commodities. Thus, importers subject only to section 8e import regulations would not pay marketing order assessments and would not be eligible for an assessment exemption. Additionally, to be exempt, such persons must possess certification from a USDA-accredited certifying agent that the farm or handling operation meets the requirements of 100 percent organic as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Examples

- A grower who produces and markets (handles) 100 percent certified organic, is certified as an organic handling operation, and pays the marketing order assessments, is eligible for an exemption for the portion of the assessments used for marketing promotion.
- A handler receives 100 percent of the commodity as certified organic and is certified as an organic handling operation. The handler alters (*e.g.*, shells, slices, processes, or in some other way alters) the commodity and pays marketing order assessments. The handler is eligible for an exemption for the portion of the assessments used for marketing promotion.
- A grower who produces and markets (handles) both certified organic and conventional commodities is not eligible for the exemption because that person is not producing and marketing solely 100 percent certified organic commodities.
- A handler receives 100 percent of a commodity that is organic, and the handler is certified as an organic handling operation. The handler sorts, packages, markets, and pays assessments on the commodity. The handler is not eligible for the exemption because the handler did not alter (*e.g.*, shell, slice, process, or in some other way alter) the commodity.

The FAIR Act amendment also covers 16 national research and promotion programs. The research and promotion programs will be addressed separately at a later date. The 16 programs cover blueberries, beef, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

As previously mentioned, assessments under the 28 marketing order programs are paid by handlers regulated under the various marketing orders. There are approximately 850 handlers regulated under the 28 marketing orders. USDA does not have precise numbers, but believes there may be approximately 84 persons who produce and market solely 100 percent organic products that might be exempt from paying assessments for market promotion, including paid advertising, under the 28 marketing order programs administered by AMS. Thus, the

estimated number of prospective applicants eligible for the assessment exemption may only represent approximately 9.9 percent of the total handler population.

Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Although the exact size of the potential applicants is not known, USDA believes that the majority of persons who might qualify for an exemption may be classified as small entities.

Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) was amended on May 13, 2002 (7 U.S.C 7401). The amendment provides that notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, shall be exempt from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). The amendment further requires the Secretary of Agriculture to amend any research and promotion regulations to reflect this exemption.

USDA is proposing amendments to the general regulations affecting 28 marketing order programs established under the Act for which it has oversight. These amendments would establish provisions for organic producers and marketers meeting the specified criteria to be exempt from paying assessments for market promotion, including paid advertising.

The 28 marketing order programs allow for promotion activities designed to assist, improve, promote, the marketing, distribution, or consumption of the commodity covered under the marketing order. Some of the orders also include authority for paid advertising activities. Market promotion, including paid advertising, activities are paid for by assessments levied on handlers regulated under the various marketing orders.

Under this proposal, a new subpart would be added in 7 CFR Part 900 General Regulations to specify criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising; procedures for applying for an exemption; procedures for calculating the assessment exemption; and other procedural details for the applicable marketing orders.

Regarding the impact of this proposed rule on affected entities, this rule would impose minimal additional costs incurred in filing the exemption application and in maintaining records needed to verify the applicant's exemption status during applicable assessment period. Such applicants will be required to submit an application and receive approval from the applicable committee or board to obtain the assessment exemption. USDA estimates that each applicant will submit one application annually. The annual burden for all of the marketing order industries is estimated to total about 42 hours.

The cost burden associated with the information collection would be $420 for all applicants, or $5.00 per applicant. The total cost has been estimated by multiplying the burden hours associated with the exemption application by $10.00 per hour, a sum deemed reasonable should the applicants be compensated for their time.

Since this action potentially exempts from assessments agricultural producers and marketers, AMS believes that this rule would have a beneficial economic effect on exempted entities by reducing their assessment payments. During the 2001–2002 marketing season, assessments for the 28 marketing orders totaled $44,400,000. Of that amount, about $29,900,000 (or 65 percent) was made available for marketing promotion, including paid advertising, activities. USDA does not have precise information, but believes that about 1 percent on average of the total assessments are for certified organic commodities. Thus, assessments on organic commodities could total about $440,000. Of that amount, about $299,000 for marketing promotion, including paid advertising, might be exempt under this proposed rule if all of the approximate 84 handlers of the regulated commodities were eligible for the assessment exemption as specified in the proposed rule.

Based on our estimate that there might be a total of 84 handlers exempt from assessments for marketing promotion activities conducted under the various marketing orders, the assessments for eligible persons would be reduced by an average of almost $3,600 ($299,000 divided by 84) on an annual basis.

There is some variation among the 28 marketing orders on the percent of assessments used for marketing promotion, including paid advertising. Thus, the actual reduction in assessments would vary among the various orders. In fact, the amounts allocated for marketing promotion as a percentage of the total marketing order budgets range from less than 5 percent to almost 60 percent.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the reporting and recordkeeping provisions that would be generated by this proposed rule will be submitted to the Office of Management and Budget (OMB) under OMB No. 0581–NEW. As explained later, USDA plans to request emergency approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

There are no viable alternatives to proposing these organic assessment exemption procedures. The FAIR Act requires USDA to take this action to lessen the assessment costs for persons who produce and market solely 100 percent organic products. In drafting the exemption procedures, every effort has been made to minimize the burden on the persons impacted, and to simplify the process. The anticipated assessment reductions for eligible persons are expected to greatly outweigh the additional costs related to the reporting required.

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

A 30-day comment period is provided for interested persons to submit written comments on the criteria for identifying persons eligible to obtain an assessment exemption, and the procedural details for obtaining an assessment exemption under the various marketing orders. Thirty days is deemed appropriate because this action was mandated by Congress under the 2002 Farm Bill and is intended to provide relief to producers and marketers of solely 100 percent organic products. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received within 60 days after the date of publication of this proposal in the **Federal Register**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice also announces

that AMS is seeking emergency approval for a new information collection request enabling organic producers and marketers to apply for exemptions from paying market promotion assessments under the following 28 Federal marketing orders: 7 CFR parts 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, 931, 932, 947, 948, 955, 956, 958, 959, 966, 979, 981, 982, 984, 985, 987, 989, and 993. The emergency request is necessary because insufficient time is available to follow normal clearance procedures.

Title: Organic Producer and Marketer Market Promotion Assessment Exemption under 28 Federal Marketing Orders.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Act, orders may authorize production and marketing research, including paid advertising, as mentioned earlier. Production and marketing research and development, including paid advertising, activities to promote the various commodities are paid for with assessments levied on handlers regulated under the 28 Federal marketing orders.

On May 13, 2002, section 501 of the FAIR Act was amended (7 U.S.C. 7401) to exempt any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in Section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

To be exempt from paying assessments for marketing promotion, including paid advertising expenses, under the specified marketing orders, the certified organic producer and marketer would submit an application, ''Certified Organic Producer and Marketer Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders'' to the marketing order committee or board. The application would need to be submitted to the committee or board prior to or during the applicable assessment period, and annually thereafter, as long as the applicant continues to be eligible for the exemption. This application would include the applicant's name, name and address of the company, telephone and fax numbers, a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. The burdens associated with obtaining the certifications under the Organic Foods Production Act of 1990 have already been approved by OMB under OMB Control No. 0581–0181.

If the applicant complies with these requirements and is eligible for a market promotion assessment exemption, the committee or board would approve the exemption and notify the applicant within 30 days of receiving the applicant's application. The Secretary may review any decisions made by the committees or boards at his/her discretion.

The respective marketing orders (*e.g.*, 7 CFR 932.61 and 7 CFR 981.70) also provide that handlers maintain, and make available, all records necessary to demonstrate compliance with order requirements for two years. The burdens on handlers for such recordkeeping requirements are included in the information collection requests previously approved by OMB for the respective marketing orders under the following OMB Control Numbers: OMB No. 0581–0178 for marketing order Nos. 947, 948, 955, 956, 958, 959, 966, 979, 982, 984, 987, 989, and 993; OMB No. 0581–0189 for marketing order Nos. 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, and 931; OMB No. 0581–0142 for marketing order No. 932; OMB No. 0581–0071 for marketing order No. 981; and OMB No. 0581–0065 for marketing order No. 985.

The information collection would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee and Board employees. Authorized Committee and Board employees will be the primary users of the information, and AMS will be the secondary user.

The request for approval of the new information collection under the 28 Federal marketing orders is as follows:

Form FV–649, Certified Organic Producer and Marketer Application for Exemption From Marketing Promotion Assessments Paid Under Federal Marketing Orders

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Eligible Certified Organic Producers and Marketers.

Estimated Number of Respondents: 84.

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 42 hours.

Comments: Comments are invited on: (1) 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) 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) 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 of other forms of information technology.

A sixty-day period is provided to comment on the information collection burden. Comments should reference OMB No. 0581–NEW and be sent to moab.docketclerk@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

List of Subjects in 7 CFR Part 900

Administrative practices and procedures, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 900 is proposed to be amended to read as follows:

PART 900—GENERAL REGULATIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 7 U.S.C. 610 and 7 U.S.C. 7401.

2. Add a new subpart heading ''Assessment Exemptions'' after § 900.601, and add a new § 900.700 to read as follows:

§ 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising, and procedures for applying for an exemption for 7 CFR parts 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, 931, 932, 947, 948, 955, 956, 958, 959, 966, 979, 981, 982, 984, 985, 987, 989, and 993. For the purposes of this section, the term ''assessment period'' means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term ''marketing promotion expenditures'' mean expenses incurred under the various marketing order for marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity.

(b) Any handler that produces and markets solely 100 percent organic products produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and the regulations issued under that Act, is subject to assessments under a part or parts specified in paragraph (a) of this section, and does not produce or market any conventional or non-organic products shall be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising. For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing. Any handler so exempted shall be obligated to pay the portion of the assessment for other authorized activities under such part or parts.

(c) To be exempt from paying assessments for these purposes under a part or parts, the handler shall submit an application to the committee or board established under the applicable part or parts prior to or during the assessment period. This application shall include the handler's name and address, the name and address of the company, telephone and fax numbers, a copy of the organic farm or organic handling operation certificate(s) provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502) for the purposes specified in paragraph (b) of this section, and the handler's certification that the handler meets all of the applicable requirements for an assessment exemption as provided in this section. The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter as long as the handler continues to be eligible for the exemption. If the handler complies with these requirements and is eligible for an assessment exemption, the committee or board will approve the exemption and notify the handler within 30 days of receiving the handler's application. If the application is disapproved, the committee or board will notify the handler of the reason(s) for disapproval. The Secretary may review any decisions made by the committees or boards at his/her discretion.

(d) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The Secretary shall review the assessment rate for eligible persons and, if appropriate, approve the assessment rate.

(e) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the rate applicable to exempt handlers.

(f) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board immediately and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

Dated: November 25, 2003.

A.J. Yates,

Administrator,

Agricultural Marketing Service.

[FR Doc. 03–29958 Filed 12–1–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation (Formerly Hamilton Standard Division) Model 568F Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain serial numbered (SN) propeller blades installed in Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) 568F propellers. This proposed AD would require replacement of propeller blades, part numbers (P/N's) R815505–3 and R815505–4 that have a serial number (SN) of FR1699 to FR20021010, with serviceable blades. This proposed AD is prompted by reports of these composite propeller blades found at inspection, with random areas of missing adhesive under the compression wrap, which exposed the steel tulip part of the blade. We are proposing this AD to prevent propeller blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

DATES: We must receive any comments on this proposed AD by February 2, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–48–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Hamilton Sundstrand, A United Technologies Company, Publications Manager, Mail Stop 2AM–EE50, One Hamilton Road, Windsor Locks, CT 06096.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–48–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

The manufacturer has recently notified us that while investigating corrosion indications on some blade tulip counterweight areas of 568F composite propeller blades, random areas of missing adhesive under the compression wrap were discovered, exposing the steel tulip part of the blade. This missing adhesive is determined to be the result of a manufacturing operation designed to remove resin flashing from this area of the blade interface, during original manufacture. The manufacturer has implemented a corrective action in the manufacturing process for new blades, beginning with blade SN 20021011, and higher. Upon further investigation, the manufacturer has identified two serial number groups of blades that are suspect for missing adhesive. They are 568F propeller blades, P/Ns R815505–3 and R815505–4, SNs FR1699 through FR2625 inclusive (877 blades), and SNs FR20010610 through FR20021010 inclusive (713 blades).

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require replacement of propeller blades, P/Ns R815505–3 and R815505–4, that have a SN of FR1699 to FR20021010, with serviceable blades. A calendar-based schedule has been established for the removal of blades based on a safety evaluation of the blade population. The schedule takes into consideration the age of the blade, availability of spare blades and the repair capabilities necessary to restore removed blades to a serviceable condition. Since corrosion is an age-related process, the oldest blades are to be replaced first. In addition, the specialized tooling necessary to remove and replace the composite material on the blade during repair is only available at one repair facility. The calendar-based schedule provides airplane owners and operators with compliance dates to accommodate scheduling for blade removal within the safety evaluation.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

We estimate that 24 Hamilton Sundstrand Corporation 568F propellers with suspect blades installed on airplanes of U.S. registry, would be affected by this proposed AD. We also estimate that it would take approximately 8 work hours per airplane to remove and replace suspect blades, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total labor cost of the proposed AD to U.S. operators to be $6,240.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–48–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Hamilton Sundstrand Corporation (formerly Hamilton Standard Division): Docket No. 2003–NE–48–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 2, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) 568F propellers with propeller blades, part numbers (P/Ns) R815505–3 and R815505–4, serial numbers (SNs) FR1699 through FR2625 inclusive (877 blades), and SNs FR20010610 through FR20021010 inclusive (713 blades), installed. These composite propeller blades are installed on, but not limited to, Aerospatiale ATR42–400, ATR42–500, ATR72–212, and ATR72–500 airplanes.

Unsafe Condition

(d) This AD is prompted by reports of propeller blades found at inspection, with random areas of missing adhesive under the compression wrap, which exposed the steel tulip part of the blade. We are issuing this AD to prevent propeller blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Removal From Service of Affected Propeller Blades

(f) Remove propeller blades, P/Ns R815505–3 and R815505–4 from service as follows:

(1) Blades listed by SN in the following Table 1 of this AD must be removed no later than the date listed in Table 1 of this AD. See Table 2 of this AD for blade SNs that are excluded from the compliance times specified in Table 1 of this AD.

(2) Remove the blades that are listed by SN in Table 2 of this AD no later than December 31, 2007.

(3) In some instances an ''RT'' reference immediately follows the numeric portion of the serial number on the blade. For purposes of this AD, the ''RT'' reference has been omitted when specifying affected serial numbers.

TABLE 1.—PROPELLER BLADE REMOVAL SCHEDULE

For propeller blades SNs:	Remove propeller blades from service for rework, no later than:
FR1699 through FR1765	December 31, 2003.
FR1766 through FR1776	March 31, 2004.
FR1777 through FR1855	June 30, 2004.
FR1856 through FR1956	September 30, 2004.
FR1957 through FR2132	December 31, 2004.
FR2133 through FR2230	March 31, 2005.
FR2231 through FR2315	June 30, 2005.
FR2316 through FR2390	September 30, 2005.
FR2391 through FR2433	December 31, 2005.
FR2434 through FR2553	March 31, 2006.
FR2554 through FR2625	June 30, 2006.
FR20010610 through FR20010729	June 30, 2006.
FR20010730 through FR20011018	September 30, 2006.
FR20011019 through FR20011218	December 31, 2006.
FR20011219 through FR20020511	March 31, 2007.
FR20020512 through FR20020757	June 30, 2007.
FR20020758 through FR20020842	September 30, 2007.
FR20020843 through FR20021010	December 31, 2007.

TABLE 2.—BLADE SNS EXCLUDED FROM TABLE 1

FR1720	FR1887	FR1962	FR2163
FR1740	FR1888	FR1963	FR2164
FR1742	FR1889	FR2013	FR2165
FR1752	FR1892	FR2022	FR2166
FR1777	FR1893	FR2032	FR2167
FR1791	FR1927	FR2037	FR2168
FR1796	FR1928	FR2038	FR2173
FR1841	FR1929	FR2039	FR2177
FR1843	FR1930	FR2047	FR2179
FR1858	FR1931	FR2058	FR2180
FR1860	FR1932	FR2059	FR2183
FR1865	FR1933	FR2060	FR2204
FR1869	FR1934	FR2063	FR2205
FR1871	FR1935	FR2064	FR2206
FR1872	FR1936	FR2067	FR2207
FR1873	FR1937	FR2068	FR2208
FR1874	FR1938	FR2099	FR2233
FR1875	FR1942	FR2108	FR2234
FR1877	FR1943	FR2134	FR2467
FR1878	FR1957	FR2135	FR20010626
FR1879	FR1960	FR2136	FR20010936
FR1880	FR1961	FR2137	FR20011218

Installation of Propeller Blades That Have a SN Listed in Table 1 or Table 2 of This AD

(g) After the effective date of this AD, do not install any blade that has P/N R815505–3 or R815505–4 and SN listed in Table 1 or Table 2 of this AD, and that has exceeded the date for replacement.

Alternative Methods of Compliance

(h) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance

for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Hamilton Sundstrand Service Bulletin No. 568F–61–A45, Revision 1, dated October 7, 2003, provides information to rework and remark the affected blades for return to service.

Issued in Burlington, Massachusetts, on November 24, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–29904 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 7 and 25

[Notice No. 23; Re: Notice Nos. 4 and 10]

RIN 1513–AA11

Flavored Malt Beverages and Related Proposals; Posting of Comments Received on the TTB Internet Web Site

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking; modification to conditions for posting of comments on the TTB Internet Web site.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau announces that all comments submitted in response to Notice No. 4, Flavored Malt Beverages and Related Proposals, published in the **Federal Register** on March 24, 2003, will be posted on our Internet Web site with the commenter's street address, telephone number, and e-mail address included, unless the commenter requests within the next 3 weeks that such information be removed from the posted comment.

DATES: If you commented on Notice No. 4 published in the **Federal Register** on March 24, 2003 (68 FR 14292), you have until December 23, 2003 to request removal of any street address, telephone number, or e-mail address from the posted comment.

ADDRESSES: You may contact us at the following addresses to request the removal of any street address, telephone number, or e-mail address from your comment on Notice No. 4. Please include information to identify your original comment and reference ''Notice No. 4—I.D. Removal'' in the subject line of your request.

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221;
- 202–927–8525 (facsimile); or
- *nprm@ttb.gov* (e-mail).

You may view copies of this notice, Notices No. 4 and 10, and any comments received concerning Notice No. 4 by appointment at our Reference Library, 1350 G Street NW., Washington, DC 20005; phone 202–927–8210. Copies of this notice and Notices No. 4 and 10 are currently posted on our Internet Web site at *http://www.ttb.gov*. We will post copies of the comments received in response to Notice No. 4 on our Web site as soon as practicable.

See the ''Submitting Requests for Removal of Address Information'' section of this notice for specific instructions and requirements for submitting your request to remove identifying addresses, telephone numbers, and e-mail addresses from the posted version of your comment.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, P.O. Box 5056, Beverly Farms, MA 01915; telephone 978–921–1840.

SUPPLEMENTARY INFORMATION:

Notice No. 4 and Internet Posting of Comments Received

On March 24, 2003, the Alcohol and Tobacco Tax and Trade Bureau published Notice No. 4, a notice of proposed rulemaking entitled ''Flavored Malt Beverages and Related Proposals'' (*see* 68 FR 14292). We later extended the comment period for Notice No. 4 until October 21, 2003 (see Notice No. 10, 68 FR 32698, June 2, 2003).

In Notice No. 4 we advised the public that comments made in response to the notice and the names of commenters were not confidential, and were subject to public disclosure in our reference library and in the preamble of any final rulemaking on flavored malt beverages. Notice No. 4 added that we would post copies of the comments received on the TTB Internet Web site at *http://www.ttb.gov*. Notice No. 4 also included the following statement:

> All comments posted on our Web site will show the name of the commenter but will not show street addresses, telephone numbers, or e-mail addresses.

Notice No. 4 noted that ''in all cases'' the full comments would be available in our reference library. We used similar language in all of our notices of proposed rulemaking published before October 1, 2003.

In response to Notice No. 4, we have received approximately 14,700 comments. Of that total, we received about 9,900 e-mail comments and about 4,800 comment letters by mail or facsimile transmission. In contrast, other TTB notices of proposed rulemaking issued during 2003 generated an average of less than 20 comments each. The unusually large number of comments received on Notice No. 4 has made it difficult to remove all street addresses, telephone numbers, and e-mail addresses from the comments for posting on our Internet Web site in a timely manner.

Therefore, to ensure that the public has Internet access to the thousands of comments received on Notice No. 4 at the earliest practicable time, we will post comments received on that notice on our Web site in full, including any street addresses, telephone numbers, or e-mail addresses contained in the comments.

However, since commenters may have responded to Notice No. 4 with the understanding that their street addresses, telephone numbers, and e-mail addresses would not be posted on the TTB Web site, we will remove any such information from a posted comment if the original, individual commenter contacts us on or before December 23, 2003. As noted earlier, the full comment, including any street addresses, telephone numbers, or e-mail addresses within the comment is subject to public disclosure and will remain available for public viewing in our reference library.

Submitting Requests for Removal of Address Information

We will only accept requests to remove street addresses, telephone numbers, and e-mail addresses from the posted version of a comment on Notice No. 4 from the original, individual commenter. We will not accept such requests from an organization or company on behalf of a group of individual commenters.

In your request to remove such information from the posted version of your comment on Notice No. 4, please include information that will allow us to identify your original comment. For example, your request should include your name, address, date of your original comment, and the name of any letterhead your original comment was written on. In all cases, please reference ''Notice No. 4—I.D. Removal'' in the subject line of your request.

You may submit your request to remove any street address, telephone number, and e-mail address from your original comment on Notice No. 4 by one of these methods:

• *By mail:* You may send your written request to TTB at the address listed in the **ADDRESSES** section above.

• *By facsimile:* You may submit your request by facsimile transmission to 202–927–8525. Your faxed request must—

(1) Be on 8½ by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be five or less pages long in order to ensure access to our fax equipment. We will not accept faxes that exceed five pages.

• *By e-mail:* You may e-mail your request to *nprm@ttb.gov*. Comments transmitted by electronic-mail must—

(1) Contain your e-mail address;

(2) Be legible when printed on 8½ x 11-inch size paper.

Please note: Do not submit additional comments on Notice No. 4. The comment period for Notice No. 4 closed on October 21, 2003.

Drafting Information

Michael D. Hoover of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 25

Beer, Claims, Electronic fund transfers, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Approved: November 21, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–29905 Filed 12–1–03; 8:45 am]

BILLING CODE 4810–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3552; MB Docket No. 03–231, RM–10818]

Radio Broadcasting Services; Centre Hall, Huntingdon, Mt. Union, and South Williamsport, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Megahertz Licenses, LLC, licensee of Station WXMJ(FM), Mount Union, Pennsylvania, and of Station WWLY(FM), Huntingdon, Pennsylvania. Petitioner proposes to delete Channel 292A at Huntingdon, Pennsylvania, to allot Channel 292A at Mount Union, Pennsylvania, and to modify the license of Station WWLY(FM) accordingly. Petitioner also requests the substitution of Channel 258B1 for Channel 258A and the reallotment of that channel from Mount Union to Centre Hall, Pennsylvania, and the modification of the license of Station WXMJ(FM) accordingly. In order to accomplish these allotment changes, Petitioner further proposes to change the transmitter site for Station WZXR(FM), South Williamsport, Pennsylvania, operating on Channel 257A. The transmitter site for Channel 257A at South Williamsport can be changed, in compliance with the Commission's minimum distance separation requirements, to 41–14–06 NL and 76–51–02 WL. Those reference coordinates reflect a site restriction of 12.5 km (7.8 miles) east of South Williamsport. That change in reference coordinates for Channel 257A at South Williamsport permits the allotment changes proposed at Mount Union and Centre Hall. Channel 258B1 can be allotted to Centre Hall in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 km (8.7 miles) southwest of Centre Hall. The coordinates for Channel 258B1 at Centre Hall are 40–46–39 North Latitude and 77–49–26 West Longitude. Channel 292A can be allotted to Mount Union in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.5 km (9.0 miles) south of Mount Union. The coordinates for Channel 292A at Mount Union are 40–15–18 North Latitude and 77–51–41 West Longitude. See Supplementary Information *infra*.

DATES: Comments must be filed on or before January 5, 2004, and reply comments on or before January 20, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Allen G. Moskowitz, Kay Scholer LLP, 901 Fifteenth Street, NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–231, adopted November 12, 2003 and released November 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Centre Hall, Channel 258B1, by removing Channel 292A at Huntingdon, and by removing Channel 258A and adding Channel 292A at Mount Union.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–29860 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3648; MB Docket No. 03–238; RM–10820]

Radio Broadcasting Services; Lancaster and Pickerington, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition for rulemaking filed on behalf of Franklin Communications Inc., licensee of Station WJZA(FM), Lancaster, Ohio, requesting the reallotment of Channel 278A from Lancaster, Ohio, to Pickerington, Ohio, as the community's first local transmission service, and the modification of the license for Station WJZA(FM) to reflect the changes. Channel 278A can be reallotted at Pickerington at a site 8.8 kilometers (5.4 miles) northeast of the community at coordinates 39–56–39 NL and 82–41–14 WL.

DATES: Comments must be filed on or before January 15, 2004, and reply comments on or before January 30, 2004.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–238, adopted November 14, 2003, and released November 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 278A at Lancaster and adding Pickerington, Channel 278A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–29861 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 111903A]

RIN 0648–AR73

Fisheries of the Exclusive Economic Zone Off Alaska; Skates Management in the Groundfish Fisheries of the Gulf of Alaska

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 63 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). If approved, Amendment 63 would move skates from the ''other species'' list to the ''target species'' list in the FMP. By listing skates as a target species, a directed fishery for skates in the Gulf of Alaska (GOA) may be managed to reduce the potential for overfishing skates. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws. Comments from the public are welcome.

DATES: Comments on Amendment 63 must be submitted by February 2, 2004.

ADDRESSES: Comments on the FMP amendment should be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 420 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Copies of Amendment 63 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the amendment may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

The Council unanimously adopted Amendment 63 in October 2003. If approved by NMFS, this amendment would move skates from the ''other species'' list to the ''target species'' list, allowing the management of skates as a target species. NMFS trawl survey and catch information show that of the 14 skate species occurring in the Gulf of Alaska, the majority of the catch is made up of big and longnose skate species. The big skates and longnose skates would be listed under the skates category in the target species list to allow for management of these individual species.

Skates currently are managed as part of the other species complex with sharks, sculpins, octopus, and squid. The total allowable catch limit (TAC) for this complex is five percent of the aggregate of all TACs for target groundfish species or species groups of the GOA. Target species TACs are established for an individual species or species group, and NMFS manages the directed fishery for these species to avoid exceeding the specified TACs.

TACs usually are set at or below the acceptable biological catch (ABC) limits, which are below the overfishing levels (OFLs) for each target species or species group. The other species complex does not have an OFL or ABC limit due to the lack of stock assessment information for most of the species in the complex.

In 2003, a directed fishery for skates rapidly developed in the GOA. The 2003 skates harvest was 3,042 metric tons (mt) compared to 782 mt of skates harvested in 2002. Because skates are managed within the other species complex, the full TAC for the other species complex is available for a directed fishery for skates.

To reduce the potential for overfishing, the Council recommended that skates be managed as a target species. As a target species, OFL, ABC, and TAC amounts for skates would be established by annual harvest specifications, allowing for more effective management of skates based on the best available scientific information. The development of OFL, ABC, and TAC amounts for the 2004 harvest specifications for skates would be based on scientific survey and harvest information from 2003 and prior years. Managing a directed fishery for skates so that OFL, ABC, and TAC amounts are not exceeded would reduce the potential for overfishing and would meet the conservation objectives of the Magnuson-Stevens Act.

Public comments are being solicited on proposed Amendment 63 through the end of the comment period stated (see DATES). A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment at a later date. Public comments on the proposed rule must be received by the end of the comment period on the amendment in order to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received not just postmarked or otherwise transmitted by close of business on the last day of the comment period.

Dated: November 25, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–29940 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 231

Tuesday, December 2, 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

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act systems of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising three Privacy Act (PA) systems of records, is deleting one system of records, and proposes to create a new system of records entitled ''Current Research Information System,'' USDA/CSREES–4, maintained by the Cooperative State Research, Education, and Extension Service (CSREES).

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on January 12, 2004 unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Valerie N. Herberger, FOIA/PA Coordinator, ARS, USDA, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640; Facsimile (301) 504–1648; Electronic mail *vherberger@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the PA, 5 U.S.C. 552a, USDA hereby takes the following action:

I. Three systems of records maintained by CSREES are being revised for the following reasons:

1. USDA/CSREES–1, ''Current Research Information System.'' The purposes of this revision to the system of records are to (1) change the designation from USDA/CSRS–1 to USDA/CSREES–1; (2) reflect organizational changes; (3) identify changes to system location, categories of individuals covered by the system, purpose, record storage, retrievability, safeguards, notification procedures, and record access procedures; (4) delete three routine uses no longer necessary or compatible with the purpose for which information was collected; and (5) add a new routine use.

2. USDA/CSREES–2, ''International Programs Recruitment Roster.'' The purposes of this revision to the system of records are to (1) change the designation from USDA/ES–1 to USDA/CSREES–2; (2) reflect organizational changes; (3) identify changes to system name and location, categories of records in the system, addresses for system manager and notification procedures, retention and disposal, and delete one routine use that is not a required routine use.

3. USDA/CSREES–3, ''State Cooperative Extension Service Employees.'' The purposes of this revision to the system of records are to (1) change the designation from USDA/ES–3 to USDA/CSREES–3; (2) reflect organizational changes; (3) identify changes to system location, categories of records in the system, safeguards, system manager address, and storage; and (4) add three routine uses.

II. One System of Records is being added as follows:

1. USDA/CSREES–4, ''CSREES Grants System.'' The purpose of this new system of records is to enable program offices to reference reviewers and maintain appropriate files and supporting material in processing, evaluating, and managing applications for grants or other support, including completing awards and distributing funds.

III. One System of Records is being deleted as follows:

1. USDA/ES–2, ''Cooperative Extension Personnel Records System.'' This system is being deleted because these records are no longer relevant and necessary to accomplish a purpose of the Agency and the records are no longer maintained by USDA.

A Privacy Act Systems Report relating to the proposed changes and new system required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; the Chairwoman, Committee on Governmental Affairs, United States Senate; and the Chairman, Committee on Government Reform and Oversight, U.S. House of Representatives.

Signed at Washington, DC, on November 20, 2003.

Ann M. Veneman,

Secretary of Agriculture.

Privacy Act System ''Current Research Information System,'' USDA/CSREES–1 Report

The purpose of this system of records is to document the research activities of the USDA/State agricultural research system for various reporting purposes as well as to provide ready access to research information.

The revisions to the system of records are to change the designation from USDA/CSRS–1 to USDA/CSREES–1; reflect organizational changes; identify changes to system location, categories of individuals covered by the system, purpose, record storage, retrievability, safeguards, notification procedures, and record access procedures; delete three routine uses no longer necessary or compatible with the purpose for which information was collected, and add a new routine use.

The authorities for maintaining this system of records are 7 U.S.C. 361 a–i; 7 U.S.C. 3222; 7 U.S.C. 450; 7 U.S.C. 7621; 7 U.S.C. 7626; 7 U.S.C. 3152; 7 U.S.C. 3241; 7 U.S.C. 5811; and 7 U.S.C. 343.

Use of this system, as established, should not result in infringement of any individual's right to privacy.

Access to technical records are maintained on the CRIS Web site (*http://cris.csrees.usda.gov*) and available to anyone. Financial records will be in a safeguarded environment with access only by authorized personnel.

The system provides for one new routine use release, as follows:

Routine use 1 permits disclosure of the technical records in this system to the general public in order to inform them of agricultural related research, plan future research activities, avoid costly duplication of research, and establish valuable contacts within the research community.

The revised system of records will not be exempt from any provisions of the Privacy Act.

USDA/CSREES–1

SYSTEM NAME:

Current Research Information System (CRIS), USDA/CSREES–1.

SYSTEM LOCATION:

USDA, CSREES/ISTM/CRIS, Waterfront Centre, 800 9th Street, SW, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Scientists listed on research projects entered into the CRIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of research projects of USDA agencies and CSREES grant recipients, and research projects of those State institutions receiving CSREES administered funds in support of research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 361 a–i; 7 U.S.C. 3222; 7 U.S.C. 450; 7 U.S.C. 7621; 7 U.S.C. 7626; 7 U.S.C. 3152; 7 U.S.C. 3241; 7 U.S.C. 5811; and 7 U.S.C. 343.

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

Technical records in this system may be disclosed to: (1) The general public in order to inform them of agricultural related research, plan future research activities, avoid costly duplication of research, and establish valuable contacts within the research community. Technical and financial records in this system may be disclosed to: (2) research scientists and Administrators of all governmental agencies and affiliated institutions in connection with information retrieval requests in special subject areas; (3) the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records; (4) an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (5) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; (6) a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

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

STORAGE:

Technical records are maintained on the CRIS Web site (*http://cris.csrees.usda.gov*). Financial records are maintained on computer tapes and on other electronic media at the CRIS offices, the National Archives, and at the USDA National Computer Center, Kansas City.

RETRIEVABILITY:

Records can be retrieved by name or project leader or co-investigator or any other data field.

SAFEGUARDS:

Access to the technical records in this system is available, via the Web site, to anyone. The financial records will be in a safeguarded environment with access only by authorized personnel.

RETENTION AND DISPOSAL:

Financial and classification records are maintained indefinitely by CRIS and the National Archives. Project information is maintained for two years following termination of the project.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, ISTM, USDA–CSREES, Stop 2270, 1400 Independence Avenue, SW, Washington, DC 20250–2270. The address for express mail or overnight courier service is: Deputy Administrator, ISTM, USDA–CSREES, Waterfront Centre, 800 9th Street, SW, Washington, DC 20024.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the System Manager or can access the CRIS Web site.

RECORD ACCESS PROCEDURES:

Any individual may gain access to a record in the system that pertains to such individual by submitting a written request to the System Manager or by accessing the CRIS Web site.

CONTESTING RECORD PROCEDURES:

Any individual may contest a record in the system that pertains to such individual by submitting written information to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from USDA research agencies and other institutions receiving CSREES administered funds for research.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Privacy Act System ''International Programs Recruitment Roster,'' USDA/CSREES–2 Report

The purpose of this system of records is to have access to information on university personnel at cooperating institutions who have expressed an interest in participating in international activities carried out through CSREES. The computerized roster will allow CSREES, International Programs to quickly identify qualified candidates for overseas assignments and/or to utilize them as resources for International Programs office to search records according to skills and experience in order to meet staffing needs for foreign technical assistance activities. The revisions to the system of records are to change the designation from USDA/ES–1 to USDA/CSREES–2; reflect organizational changes; identify changes to system name and location, categories of records in the system, address for system manager and notification procedures, retention and disposal, and delete one routine use which is not a required routine use.

The authorities for maintaining this system of records are sections 296 and 297 of the Foreign Assistance Act of 1961, Pub. L. 87–195, 75 Stat. 424; and section 1458 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, 7 U.S.C. 301 *et seq.*

Use of the system, as established, should not result in infringement of any individual's right to privacy. While the information in this system will be made available to international organizations, Department of Justice, Federal, State, and local agencies, and Members of Congress as necessary, all individuals about whom information in this system

is maintained will voluntarily submit the information for the expressed interest in participating in international activities carried out through CSREES.

On-line access to International Programs Recruitment Roster data is controlled by password protection. Information stored in file folders will be stored in locked file cabinets. Access to these records will be limited to authorized personnel.

The revised system of records will not be exempt from any provisions of the Privacy Act.

USDA/CSREES–2

SYSTEM NAME:

International Programs Recruitment Roster, USDA/CSREES–2.

SYSTEM LOCATION:

Cooperative State Research, Education, and Extension Service (CSREES), International Programs, USDA, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cooperating university personnel interested in overseas assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal data identifying the individual, such as name, address, university, telephone number, and e-mail address; summary background information categorized under headings, such as subject matter experience, commodity experience, functional experience, clientele experience, ecosystems experience, production systems experience, scope of experience, international experience, education and language proficiency; preferred length of assignment (short-, mid- or long-term); and personal resume.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 296 and 297 of the Foreign Assistance Act of 1961, Pub. L. 87–195, 75 Stat. 424, as added by section 312 of the International Development and Food Assistance Act of 1975, Pub. L. 94–161, 89 Stat. 849; and section 1458 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, 7 U.S.C. 301 et seq., as amended by section 1436 of the Agriculture and Food Act of 1981, Pub. L. 97–98, 95 Stat. 1213.

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

Records in this system may be disclosed to: (1) To international organizations seeking university personnel for placement in overseas projects and assignments; (2) the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records; (3) an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (4) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (5) a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

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

STORAGE:

International Programs Recruitment Roster records are stored on a shared office computer drive and in file folders.

RETRIEVABILITY:

Records can be accessed on the computer by individual name, university affiliation, preferred length of duty or keywords and phrases under any of the experience categories. Resumes will be filed by name in alphabetical order in file folders.

SAFEGUARDS:

On-line access to International Programs Recruitment Roster data is controlled by password protection. Information stored in file folders will be stored in locked file cabinets. Access to these records will be limited to authorized personnel.

RETENTION AND DISPOSAL:

Applicant information will remain on the system for a period of 3 years. At the end of each year the applicant will have the option to remain on the system for the following year, and make any needed changes in his/her file, or be dropped from the roster. At anytime during the year, the applicant may request that his/her files be removed from the system. Data for disposal is deleted from the computer memory.

SYSTEM MANAGER(S) AND ADDRESS:

Director, International Programs, USDA–CSREES–SERD, Stop 2203, 1400 Independence Avenue, SW., Washington, DC 20250–2203. The address for express mail or overnight courier service is: Director, International Programs, USDA–CSREES–SERD, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the System Manager. A request for information regarding an individual should include the individual's full name and address. Before any information about an individual is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may gain access to a record in the system that pertains to such individual by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Records in this system come from documents submitted by the individual directly for the purpose of inclusion in the International Programs Recruitment Roster.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Privacy Act System ''State Cooperative Extension Service Employees,'' USDA/CSREES–3 Report

The purpose of this system of records is to generate the annual Salary Analyses Report that is used as a management tool for salary and pay

purposes, as well as for historical purposes. Cooperative Extension Service (CES) employee records are permanently maintained in the CES Personnel Information System database of CSREES. This database contains personnel information dated since 1922 and is maintained by the Agricultural Research Service, Human Resources Division.

The purposes of this revision to the system of records are to change the designation from USDA/ES–3 to USDA/CSREES–3; reflect organizational changes; identify changes to system location, categories of records in the system, safeguards, system manager address, and storage; and add three routine uses.

The authorities for maintaining this system of records are 7 U.S.C. 341, *et seq.*

Use of this system, as established, should not result in infringement of any individual's right to privacy. While the information in this system will be made available to MSB–HRD staff, Department of Justice, Federal, State and local agencies, and Members of Congress as necessary, all individuals about whom information in this system is maintained will voluntarily submit the information for the purpose of generating the annual Salary Analyses Report.

Authorization must be obtained from the Administrator, CSREES, or the Chief Metropolitan Services Branch (MSB), Human Resources Division (HRD), Agricultural Research Service, before information is released. All printed matter is kept in locked rooms.

The system provides for three new routine use releases, as follows:

Routine use 1 permits disclosure to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee, or the United States Government is a party to a litigation or has an interest in such litigation and it is determined that the records are both relevant and necessary to the litigation.

Routine use 2 permits disclosure to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued when information available indicates a violation or potential violation of law.

Routine use 3 permits disclosure in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings.

The revised system of records will not be exempt from any provisions of the Privacy Act.

USDA/CSREES–3

SYSTEM NAME:

State Cooperative Extension Service Employees, USDA–CSREES–3.

SYSTEM LOCATION:

USDA–ARS–HRD–MSB, CES Team, Portals Building, 1280 Maryland Avenue, SW, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All professional employees of the State Cooperative Extension Service from 1968 to present.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and payroll information on professional Cooperative Extension Service employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 341, *et seq.*

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

Records in this system may be disclosed to: (1) The Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records; (2) an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (3) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (4) a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

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

STORAGE:

Records are maintained in an electronic database at the USDA-ARS-HRD-MSB, Portals Building, 1280 Maryland Avenue, SW, Washington, DC 20024.

RETRIEVABILITY:

Records can be retrieved by social security number or other unique State identifying number.

SAFEGUARDS:

Authorization must be obtained from the Administrator, CSREES, or the Chief, MSB–HRD, ARS, before information is released. All printed matter is kept in locked rooms.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel and Data Information Specialist, USDA–ARS–HRD–MSB, CES Team, Portals Building, 1280 Maryland Avenue, SW, Washington, DC 20024.

NOTIFICATION PROCEDURES:

Any individual may gain access to a record in the system that pertains to such individual by submitting a written request to the System Manager.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system that pertains to such individual by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may contest a record in the system that pertains to such individual by submitting written information to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the employee with additional data provided by the employee's personnel office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Privacy Act System ''CSREES Grants System,'' USDA/CSREES–4 Report

The purpose of this new system of records is to enable program offices to reference reviewers and maintain appropriate files and supporting material in processing, evaluating, and managing applications for grants or other support, including completing awards and distributing funds. CSREES employees may access the system to make decisions regarding proposals and to perform any other authorized internal duties.

The authority for maintaining this system of records is the National Agricultural Research, Extension, and Teaching Policy Act of 1977; 7 U.S.C. 3318.

Use of this system, as established, should not result in infringement of any individual's right to privacy. While the information in this system will be made available to Federal, State, and local agencies, individuals assisting CSREES staff, Department of Justice, and Members of Congress as necessary, all individuals about whom information in this system is maintained will voluntarily submit the information for the purpose of submitting proposals to CSREES and for evaluating applicants and their proposals.

The records are maintained on system file servers and paper files. All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures.

The system provides for seven types of routine use releases, as follows:

Routine use 1 permits disclosure to federal agencies needing names of potential reviewers or specialists in particular fields.

Routine use 2 permits disclosure to individuals assisting CSREES staff, either through grant or contract, in the performance of their duties.

Routine use 3 permits disclosure to federal agencies as part of the Presidential Management Initiative, E-Grants.

Routine use 4 permits disclosure to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee, or the United States Government is a party to a litigation or has an interest in such litigation and it is determined that the records are both relevant and necessary to the litigation.

Routine use 5 permits disclosure to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued when information available indicates a violation or potential violation of law.

Routine use 6 permits disclosure in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings.

Routine use 7 permits disclosure to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

This new system of records will not be exempt from any provisions of the Privacy Act.

USDA/CSREES–4

SYSTEM NAME:

CSREES Grants Systems, USDA–CSREES–4.

SYSTEM LOCATION:

Records are maintained in Program, Grants, and Funds Management offices and in a computerized system at the Cooperative State, Research, Education, and Extension Service (CSREES), Waterfront Centre, 800 9th Street, SW, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals that have submitted proposals to CSREES, either individually or through an academic or other institution, and peer reviewers that evaluate CSREES applicants and their proposals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of the project director, the authorized organizational representative, potential proposal reviewers, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material such as, committee or panel discussion summaries and other agency records containing or reflecting comments on the proposal or the applicants from peer reviewers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), 7 U.S.C. 3318.

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

Records in this system may be disclosed to (1) federal agencies needing names of potential reviewers or specialists in particular fields; (2) individuals assisting CSREES staff, either through grant or contract, in the performance of their duties; (3) federal agencies as part of the Presidential Management Initiative, E-Grants; (4) the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records; (5) an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (6) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (7) a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

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

STORAGE:

Records are maintained on system file servers and paper files in the program offices at CSREES, Waterfront Centre, 800 9th Street, SW, Washington, DC 20024.

RETRIEVABILITY:

Records can be retrieved by name, project leader, co-investigator, and any

other data field such as institution or title.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those employees with a need-to-know in order to perform their duties will be able to access the information.

RETENTION AND DISPOSAL:

The Data File is cumulative and is maintained indefinitely, and documents are disposed according to agency file plan and disposition schedule. Non-funded proposals are maintained onsite for 1 year and then disposed after 3 years. Funded proposals are maintained onsite for 1 year after completion of the award, and then transferred to the National Archive and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Information Systems and Technology Management (ISTM), USDA–CSREES, Stop 2216, 1400 Independence Avenue, SW, Washington, DC 20250–2216. The address for express mail or overnight courier service is: Deputy Administrator, ISTM, USDA–CSREES, Waterfront Centre, 800 9th Street, SW, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the System Manager.

RECORD ACCESS PROCEDURE:

Any individual may gain access to a record in the system that pertains to such individual by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may contest a record in the system that pertains to such individual by submitting written information to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individuals submitting the proposals and from peer reviewers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Privacy Act System ''Cooperative Extension Personnel Records System,'' USDA/ES–2

The purpose of this notice is to delete this system of records because the records are no longer relevant and necessary to accomplish a purpose of the Agency and the records are no longer maintained by USDA.

[FR Doc. 03–29990 Filed 12–1–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, Montana, Snow Talon Fire Salvage; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) for the Snow Talon Fire Salvage. The Snow Talon Fire Salvage EIS will disclose the environmental effects of a salvage harvest of trees burned in the Snow Talon Fire on the Lincoln Ranger District of the Helena National Forest. The 2003 Snow Talon Fire burned 37,706 acres in the Copper Creek, Landers Fork, and Falls Creek drainages, approximately 10 miles northeast of Lincoln, Montana. The proposed action includes commercial harvest of approximately 20 to 25 million board feet of trees over 2700 acres in the wildfire area, roadwork to meet Best Management Practices (BMP) standards, and rehabilitation of 105 acres of jammer trails. Harvest is not proposed within Inventoried Roadless Areas (IRAs), Riparian Habitat Conservation Areas (RHCAs), or Research Natural Areas (RNAs). An EIS will be prepared displaying alternatives and the anticipated effects of the above activities to the resources and human uses of the analysis area.

DATES: Comments concerning the scope of the analysis must be postmarked by January 15, 2004. The draft EIS is expected March 2004 and the final EIS is expected June 2004.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: For further information, to be placed on the project mailing list, or to provide comment addressing this proposed action, please e-mail, call, or mail correspondence to Dan Seifert—Snow Talon Fire Salvage Interdisciplinary Team Leader, Lincoln Ranger District, 1569 Highway 200, Lincoln, MT 59639; phone number is (406) 362–4265; e-mail address is *dseifert@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Background Information

During August and September of 2003, the Snow Talon Fire burned 37,706 acres, with 34,362 of these acres on National Forest Lands. Approximately 26,500 acres burned with high severity (as defined in the *USFS Burned Area Emergency Response Handbook FSH 2509.13, Amendment No. 2509.13–95–7*).

Purpose and Need for Action

The purpose of this project is to salvage timber in response to the Snow Talon Fire. The immediate need is to recover the value of the burned commercial timber products before they decay and have no commercial viability (*Helena National Forest Land and Resource Plan [Forest Plan]* II–1, Goal #11 and Goal #16). The proposed commercial timber salvage harvest would provide economic opportunities for rural communities and is consistent with Forest Plan goals to provide a sustained timber yield that is responsive to local industry and national needs (*Forest Plan* Forest-Wide Goal #11). Management Area direction for the majority of the proposed for harvest areas designates goals emphasizing cost-effective timber production while protecting the soil productivity (*Forest Plan* Management Areas T–1, T–3, T–4). While some of the actions proposed will help restore resources affected by the fire, the intent of including these actions with this salvage harvest project is to mitigate for the effects of salvage activities. Jammer trail reclamation is included in the proposed action to mitigate for the overall effects of salvage activities to soils. It is not the intent of this project to fully address all the effects of the Snow Talon Fire. Currently, a restoration team is addressing long-term restoration needs through a variety of other projects.

Proposed Action

The Helena National Forest proposes to harvest 20 to 25 million board feet of commercial timber over approximately 2700 acres. The following yarding methods, by percentage of proposed harvest acreage, would be utilized: 55% helicopter, 20% skyline, 25% tractor. To facilitate harvest, approximately ½ mile of temporary roads and 30 helicopter landing areas are proposed and would be rehabilitated following harvest. Two temporary bridges would also be needed, and would be removed following harvest and rehabilitation activities. Only dead or dying trees would be removed; however, a few green trees may have to be cut to meet safety requirements in helicopter

landing areas and skyline corridors. To minimize impacts to burned soils, the proposed action specifies that all tractor and skyline logging would occur under winter conditions (either 4 inches of frozen soil and/or 6 inches of packed snow). Reclamation of 105 acres of jammer trails originally constructed for logging in the 1960s is included in the proposed action to mitigate for harvest activities by improving soil quality. BMPs that promote long-term water quality, maintain existing road systems, and minimize erosion are also proposed. BMP activities would include, but not be limited to, improving road drainage features, installing and replacing ditch-relief culverts, gravelling portions of the road system, re-vegetation, and other practices to minimize erosion. The proposed action does not include timber harvest or temporary road construction in IRAs, RNAs, or RHCAs.

Responsible Official

Thomas J. Clifford, Forest Supervisor—2880 Skyway Drive, Helena, MT 59602.

Nature of Decision To Be Made

The decision framework refers to the scope of the decision that will be issued at the conclusion of this analysis by the responsible official. The responsible official's decision will be based on information disclosed in the environmental document, information contained in the Project Analysis File, comments submitted during the scoping of the proposed action and the comment period, comment responses, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

The responsible official may decide whether or not to

- Select the proposed action,
- Select an alternative to the proposed action, or
- Select portions from the developed range of alternatives and combine them in a logical package.

In selecting one of the above options, the terms and conditions of the selection will be fully displayed and understood. Within the parameters of this decision space, it will also be determined if a *Helena Land and Resource Management Plan* amendment would be necessary. The responsible official will take into consideration relationships of alternatives to the identified significant issues.

Scoping Process

Proposed Action scoping period—Scoping begins the day this notice is published in the **Federal Register** and ends January 15, 2004. A scoping document will be mailed to Federal, State, and local agencies, tribal governements, and other individuals or organizations who may be interested in or affected by the proposed project. The scoping document will also be posted on the Helena National Forest Web site on the Internet at *http://www.fs.fed.us/r1/helena/*. A public open-house scoping meeting is tentatively scheduled from 4:30 to 6:30 p.m., December 17, 2003 in Lincoln, Montana. Draft Environmental Impact Statement release, 45-day comment period and public meetings—begins in March 2004.

Final Environmental Impact Statement and Record of Decision—June 2004.

Preliminary Issues

The Snow Talon Interdisciplinary Team has identified the following preliminary issues to be addressed in the EIS:

- Copper Creek is the most heavily used yearlong recreational areas on the Lincoln Ranger District, both for non-commercial and permitted commercial recreational activities. Public safety concerns may necessitate delays and/or temporary closures of portions of the Copper Creek drainage to public use when proposed activities are occurring.
- The analysis area provides habitat for the grizzly bear and lynx, which are both species listed as threatened under the Endangered Species Act. The analysis area is within the Northern Continental Divide Ecosystem grizzly bear recovery area.
- Copper Creek provides critical spawning habitat for upper Blackfoot River fluvial bull trout, a species listed as threatened under the Endangered Species Act.
- Other animal and plant species listed as sensitive by the U.S. Forest Service and the State of Montana are known to be present in the Copper Creek area.

Possible Alternatives

Alternatives being considered at this time are this proposed action and the no action alternative (not to conduct a salvage harvest).

Permits or Licenses Required

In order to proceed, the proposed action may require the following permits:

- State of Montana Floodplain Development Permit.
- Short-Term Exemption from Montana's Surface Water Quality Standard (3A Authorization).
- State of Montana Stream Protection Act 124 Permit.
- Federal Clean Water Act Section 404 Permit.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the EIS. Scoping comments addressing this proposed action are due to the Forest Service by January 15, 2004. Concerns or issues should display points of dispute or debate relevant to the proposed action. Identifying significant issues is key in the process of developing alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft EIS will be prepared for comment. The 45-day comment period on the draft EIS will begin in March 2004 from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that 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 proposed action participate by the close of the 45-day DEIS comment period so that substantive comments and objections are made available at a time when the Forest Service can meaningfully consider and respond to them 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 statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 Code of Federal Regulations (CFR) 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: November 25, 2003.

Thomas J. Clifford,

Forest Supervisor.

[FR Doc. 03–29909 Filed 12–1–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 9, 2004, at the U.S. Forest Service Office, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 9, 2004, beginning at 10 a.m. and ending at 11 a.m.

ADDRESSES: The meeting will be held at the U.S. Forest Service Office, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee via conference call. Items to be covered on the agenda include: (1) Recommendations for Southern Nevada Public Lands Management Act Funding Proposals and (2) public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: November 24, 2003.

Rex Norman,

Acting Forest Supervisor.

[FR Doc. 03–29869 Filed 12–1–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on December 5, in Quincy, California, and another in Blairsden, CA on January 16. The purpose of the December 5 meeting is to review Forest Supervisor decisions related to Cycle 3 approved projects, elect a Chair for 2004, and to plan the Cycle 4 funding process under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The purpose of the January 16 meeting is to review presentations by previously funded project proponents and to discuss an on-going monitoring effort for funded projects.

DATES AND ADDRESSES: The December 5 meeting will take place from 9 a.m.–3 p.m., in the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California. The January 16 meeting will take place from 9 a.m.–2 p.m., at the Graeagle Firehall, 7620 Highway 89, Blairsden, CA.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by E–MAIL *eataylor@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items for the December 5 meeting include: (1) Report on the CA RAC meeting; (2) 2004 Chair election; (3) Forest Supervisor feedback on Cycle 3 approved projects; (4) Update on forest and fuels initiatives; (5) Discuss stewardship contracting legislation; (6) Update from the Plumas County FireSafe Council; and, (7) Future meeting schedule/logistics/agenda. Agenda items for the January 16 meeting include: (1) Review presentations from previously funded project proponents; (2) Continue discussion on monitoring and stewardship contracting; and, (3) Future meeting schedule/logistics/agenda. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair. Other RAC information may be obtained at *http://wwww.fs.fed.us/pay2states*.

Dated: November 20, 2003.

David C. Stone,

Ecosystem Staff Officer.

[FR Doc. 03–29868 Filed 12–1–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Michigan

AGENCY: Natural Resources Conservation Service (NRCS) in Michigan, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in NRCS–Michigan FOTG, Section IV for review and comment.

SUMMARY: It is the intention of NRCS in Michigan to issue revised conservation practice standards in Section IV of the FOTG. The revised standards include:

Surface Drainage, Main or Lateral (608)
Dike (356)
Aquaculture Ponds (397)
Irrigation Storage Reservoir (436)
Irrigation System, Surface and Subsurface (443)
Land Smoothing (466)
Obstruction Removal (500)
Surface Drainage, Field Ditch (607)
Clearing and Snagging (326)
Agrichemical Containment Facility (702)

DATES: Comments will be received on or before January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kevin Wickey, Assistant State Conservationist-Technology, Natural Resources Conservation Service, 3001 Coolidge Road, Suite 250, East Lansing, MI 48823. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *Kevin.Wickey@mi.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Kevin Wickey (517) 324–5279.

SUPPLEMENTARY INFORMATION: Section 393 of the Federal Agriculture Improvement and Reform Act of 1996

states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Michigan will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Michigan regarding disposition of those comments and a final determination of change will be made.

Dated: November 18, 2003.

Ronald C. Williams,

State Conservationist, East Lansing, Michigan.

[FR Doc. 03–30000 Filed 12–1–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1305]

Expansion of Foreign-Trade Zone 29, Louisville, Kentucky, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, submitted an application to the Board for authority to include two new sites at the Henderson County Riverport Authority facilities (Site 7) in Henderson, Kentucky and at the Owensboro Riverport Authority facilities (Site 8) in Owensboro, Kentucky, within the Evansville/Owensboro Customs port of entry (FTZ Docket 18–2003; filed 4/4/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 18196, 4/15/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 29 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 20th day of November 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–29857 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2003]

Wacker Chemical Corporation—Application for Subzone Status; Extension of Comment Period

The comment period for the application for subzone status at the Wacker Chemical Corporation in Adrian, Michigan, submitted by the Greater Detroit Foreign-Trade Zone, Inc. (68 FR 38009, 6/26/03), is being extended again, to December 12, 2003 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until December 29, 2003. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: November 21, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–29856 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1307]

Approval for Expansion of Subzone 92D, Chevron Products Company (Oil Refinery), Pascagoula, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Mississippi Coast Foreign-Trade Zone, Inc., grantee of FTZ 92, has requested authority on behalf of Chevron Products Company (Chevron), to expand the scope of authority under zone procedures within the Chevron refinery in Pascagoula, Mississippi (FTZ Docket 15–2003, filed 3/11/2003);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 13255, 3/19/03);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 92D, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—petrochemical feedstocks (examiners report, Appendix ''C'');

—products for export;

—and, products eligible for entry under HTSUS # 9808.00.30 and # 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 20th day of November 2003.

James J. Jochum,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–29858 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1308]

Grant of Authority for Subzone Status Bayer Cropscience LP (Agricultural Chemical Products); St. Louis, Missouri Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the St. Louis County Port Authority, grantee of Foreign-Trade Zone 102, has made application to the Board for authority to establish special-purpose subzone status at the agricultural chemical products facilities of Bayer Cropscience LP, located in the St. Louis, Missouri area (FTZ Docket 21–2003, filed 4/29/2003);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 23953, 5/6/2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the agricultural chemical products facilities of Bayer Cropscience LP, located in the St. Louis, Missouri area, (Subzone 102D), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 20th day of November 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–29859 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of December 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings	
Argentina: Honey, A–357–812	12/1/02–11/30/03
Brazil:	
Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602	12/1/02–11/30/03
Silicomanganese, A–351–824	12/1/02–11/30/03
Chile: Certain Preserved Mushrooms, A–337–804	12/1/02–11/30/03
India:	
Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	12/1/02–11/30/03
Stainless Steel Wire Rod, A–533–808	12/1/02–11/30/03
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products, A–560–812	12/1/02–11/30/03
Japan:	
Drafting Machines and Parts Thereof, A–588–811	12/1/02–11/30/03
Polychloroprene Rubber, A–588–046	12/1/02–11/30/03
P.C. Steel Wire Strand, A–588–068	12/1/02–11/30/03
Welded Large Diameter Line Pipe, A–588–857	12/1/02–11/30/03
Republic of Korea: Welded ASTM A–312 Stainless Steel Pipe, A–580–810	12/1/02–11/30/03
Taiwan:	
Carbon Steel Butt-Weld Pipe Fittings, A–583–605	12/1/02–11/30/03
Porcelain-On-Steel Cooking Ware, A–583–508	12/1/02–11/30/03
Welded ASTM A–312 Stainless Steel Pipe, A–583–815	12/1/02–11/30/03
The People's Republic of China:	
Cased Pencils, A–570–827	12/1/02–11/30/03
Honey, A–570–863	12/1/02–11/30/03
Porcelain-on-Steel Cooking Ware, A–570–506	12/1/02–11/30/03
Silicomanganese, A–570–828	12/1/02–11/30/03
Countervailing Duty Proceedings	
Argentina: Honey, C–357–813	1/1/03–12/31/03
India: Certain Hot-Rolled Carbon Steel Flat Products, C–533–821	1/1/02–12/31/02
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products, C–560–813	1/1/02–12/31/02

	Period
South Africa: Certain Hot-Rolled Carbon Steel Flat Products, C–791–810	1/1/02–12/31/02
Thailand: Certain Hot-Rolled Cabon Steel Flat Products, C–549–818	1/1/02–12/31/02
Suspension Agreements	
Mexico: Fresh Tomatoes, A–201–820	12/1/02–11/30/03

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See* also the Import Administration Web site at *www.ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 2003. If the Department does not receive, by the last day of December 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 25, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–30002 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–846]

Brake Rotors from the People's Republic of China: Initiation of Tenth New Shipper Antidumping Duty Review

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

SUMMARY: The Department of Commerce received two requests in October 2003 to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''). In accordance with 19 CFR 351.214(d), we are initiating a new shipper review for one of the two companies that requested such a review: Shenyang Yinghao Machinery Co., Ltd., a producer and exporter of brake rotors from the PRC.

EFFECTIVE DATE: December 2, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1766 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

In October 2003, the Department received timely requests from: (1) Shenyang Yinghao Machinery Co., Ltd. (''Shenyang Yinghao''); and (2) Longkou Jinzheng Machinery Co. (''Longkou Jinzheng''), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the PRC, which has an October semi-annual anniversary month.

Shenyang Yinghao identified itself as the exporter and producer of the subject merchandise for which it requested a new shipper review. As required by 19 CFR 351.214(b)(2)(i), and (iii)(A), Shenyang Yinghao certified that it did not export certain preserved mushrooms to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which did export certain preserved mushrooms during the POI. Shenyang Yinghao further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv)(A), Shenyang Yinghao provided the date of the first sale to an unaffiliated customer in the United States. Shenyang Yinghao submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, and the volume and date of entry of that shipment.

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 (''the Act''), as amended, and 19 CFR 351.214(b), and based on our analysis of the information and documentation provided with Shenyang Yinghao's new shipper review request, as well as our analysis of proprietary import data from U.S. Customs and Border Protection (''Customs''), we find that Shenyang Yinghao has met the requirements under which the Department can initiate a new shipper review (for more details, *see* New Shipper Initiation

Checklist for Shenyang Yinghao). Therefore, we are initiating a new shipper review for Shenyang Yinghao.

While Longkou Jinzheng identified itself as both an exporter and producer of brake rotors from the PRC in its new shipper review request, the certifications it provided in conjunction with its request under 19 CFR 357.214(b)(2) did not comport with this claim. Specifically, while Longkou Jinzheng did provide the certification required by 19 CFR 351.214(b)(2)(i) and 351.214(b)(2)(iii)(A) and (B), it also provided a similar certification for a company named Longkou City Zhengzhuang Foundry Plant. Longkou Jinzheng, however, failed to identify the role of this company with respect to the transaction for which Longkou Jinzheng requested the new shipper review, thereby confusing the identity of the exporter and producer relevant to this new shipper review request. In addition, Longkou Jinzheng also provided a third certification that appeared to reflect the requirement for a non-producing exporter under 19 CFR 351.214(b)(2)(ii)(B) and 351.214(b)(2)(iii)(A) and (B), further confusing the identity of the producer. As a result, we were unable to determine the appropriate exporter/producer combination subject to this new shipper review request.

Consequently, based on our analysis of the information and documentation provided with Longkou Jinzheng's new shipper review request, we find that Longkou Jinzheng did not properly identify the exporter and producer of the subject merchandise and therefore does not meet the requirements under which the Department can initiate a new shipper review. Thus, we are not initiating a new shipper review for Longkou Jinzheng (for more details, *see* New Shipper Initiation Checklist for Longkou Jinzheng).

In cases involving non-market economies (''NMEs''), it is the Department's normal practice to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities (*see Natural Bristle Paintbrushes and Brush Heads from the PRC*, 68 FR 57875 (October 7, 2003), *see also Honey from the PRC*, 68 FR 47537 (August 11, 2003)). Accordingly, we will issue a questionnaire to Shenyang Yinghao (including a complete separate rates section), allowing approximately 37 days for response.[1] If the response from the respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If the respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded. *See* 19 CFR 351.214(f)(2).

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review, initiated in the month following the semi-annual anniversary month, will be the six-month period immediately proceeding the semi-annual anniversary month. Therefore, the POR for this new shipper review is:

Antidumping Duty New Shipper Review Proceeding	Period to be Reviewed
PRC: Brake Rotors, A-570–846:.	
Shenyang Yinghao Machinery Co., Ltd.	4/01/03 - 09/30/03

We will instruct Customs to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed company. This action is in accordance with section 751(a)(2)(B)(iii) of the Act, as amended, and 19 CFR 351.214(e). Because Shenyang Yinghao has certified that it both produces and exports the subject merchandise, the sale of which was the basis for its new shipper review request, we will apply the bonding privilege only to entries of subject merchandise for which it is both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act (19 USC 1675(a)) and 19 CFR 351.214(d).

Dated: November 25, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–30001 Filed 12–01–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] While Shenyang Yinghao has preliminarily responded to Section A of the Department's NME questionnaire (separate rates section) in Exhibit 3 of its October 31, 2003 initiation request, we will nonetheless issue Shenyang Yinghao a complete NME questionnaire subsequent to this initiation.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for application.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Recreational Fishing member and alternate, and Public At-Large alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; views regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by December 20, 2003.

ADDRESSES: Application kits may be obtained on line at *http://channelislands.noaa.gov,* or from

Rebecca Young at 115 Harbor Way, Suite 150, Santa Barbara, CA 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Rebecca Young at (805) 966–7107, or *Rebecca.young@noaa.gov,* or visit the CINMS Web site at *http://channelislands.noaa.gov.*

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. Section 1431 *et seq.*

Dated: November 25, 2003.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Jamison S. Hawkins,

Deputy Assistant Administrator for Management, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–29912 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110503A]

Vessel Monitoring Systems; Approved Mobile Transmitting Units for Use in the Fisheries Off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Correction

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

ACTION: Correction to notification of approval of Vessel Monitoring System units (VMS).

SUMMARY: This document corrects the **Federal Register** citation in the type-approval notice which was published on November 17, 2003.

DATES: Effective December 2, 2003.

SUPPLEMENTARY INFORMATION:

Background

The notification of approval VMS units was published in the **Federal Register** on November 17, 2003 (68 FR 64860). The notice contained an incorrect Code of Federal Regulations citation.

Correction

In FR Doc. 03–28663, in the issue of Monday, November 17, 2003 (68 FR 64860), make the following correction:

1. On page 64863, in the first column, under the heading C. INMARSAT-C Communications Providers, the second paragraph is corrected to read as follows:

''The final rule implementing the VMS was published in the **Federal Register** on November 4, 2003 (68 FR 62374). This rule will not be effective until January 1, 2004. Pursuant to 50 CFR 660.359(d(2), OLE will provide an installation and activation checklist which the vessel owner must follow''.

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

Dated: November 25, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–29941 Filed 12–1–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of Two Currently Approved Information Collections; Comment Request; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Notice; correction.

SUMMARY: The Corporation for National and Community Service published a document in the **Federal Register** of November 21, 2003, concerning a request for public comments on two information collection activities. The document contained an incorrect telephone number.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–5000, ext. 256.

Correction

In the **Federal Register** of November 21, 2003, in 68 FR 65681, on page 65682, in the first column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–5000, ext. 526.

Dated: November 25, 2003.

William L. Hudson, Jr.,

Law Office Manager.

[FR Doc. 03–29862 Filed 12–1–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license for the U.S. Patent Application listed below to ICET, Inc. with its principal place of business at 916 Pleasant Street, Unit 12, Norwood, Massachusetts 02062.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

DATES: File written objections by December 17, 2003.

SUPPLEMENTARY INFORMATION: The exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The exclusive licenses may be

granted, unless within fifteen (15) days from the date of this published notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The following Patent Application Number, Title and File date are provided:

Patent Application: 09/886,613.

Title: ''Material Compositions for Microbial and Chemical Protection.''

Filed: June 21, 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–29979 Filed 12–1–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Reversible Garment

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,647,551 B2 entitled ''Reversible Garment'' issued November 18, 2003. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–29978 Filed 12–1–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the U.S. Army Consolidated Commands

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 25, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Consolidated Commands are:

1. MG Raymond D. Barrett Jr., Deputy Chief of Staff for Operations and Training, U.S. Army Training and Doctrine Command.
2. Mr. Michael F. Bauman, Director, U.S. Army Training and Doctrine Command Analysis Center.
3. Mr. Laurence H. Burger, Director, Space and Missile Defense Battle Laboratory, U.S. Army Space and Missile Defense Command.
4. Mr. William H. Campbell, III, Director of Operations and Support, OASA (Financial Management and Comptroller).
5. Mr. William J. Cooper, Special Assistant for Transportation Engineering, Military Traffic Management Command.
6. LTG Joseph M. Cosumano, Jr., Commanding General, U.S. Army Space and Missile Defense Command.
7. Dr. Charles N. Davidson, Director, U.S. Army Nuclear and Chemical Agency.
8. Ms. Jeannie A. Davis, Assistant Deputy Chief of Staff for Personnel and Installation Management (Civilian Personnel).
9. Dr. Henry C. Dubin, Chief Scientist, U.S. Army Space and Missile Defense Command.
10. MG Ann Dunwoody, Commander, Military Traffic Management Command.
11. Mr. Thomas J. Edwards, Deputy to the Commander, U.S. Army Combined Arms Support Command.
12. Mr. Jess F. Granone, Director, Space and Missile Defense Technical Center, U.S. Army Space and Missile Defense Command.
13. Mr. Robert J. Jefferis, Assistant Deputy Chief of Staff for Resource Management, U.S. Army Training and Doctrine Command.
14. Ms. Vicky Jefferis, Deputy Chief of Staff for Resource Management, Headquarters, Forces Command.
15. LTG Anthony R. Jones, DCG/Chief of Staff, U.S. Army Training and Doctrine Command.
16. MG Terry E. Juskowiak, Commander, U.S. Army Combined Arms Support Command.
17. Ms. Jeanne Karstens, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army, Europe.
18. Mr. J. Stephen Koons, Assistant Deputy Chief of Staff for Logistics, Headquarters, Forces Command.
19. Mr. Darell G. Lance, Chief of Staff, U.S. Intelligence and Security Command.
20. Dr. Michael J. Lavan, Director, Advanced Technology Directorate, U.S. Army Space and Missile Defense Command.
21. BG Robert P. Lennox, Deputy Commanding General, U.S. Army Space Command/Deputy Commanding General for Operations, U.S. Army Space and Missile Defense Command.
22. Mr. William R. Lucas, Jr., Deputy to the Commander, Military Traffic Management Command.
23. Mr. Mark J. Lumer, Principal Assistant Responsible for Contracting/ Contracting & Acquisition Office, U.S. Army Space and Missile Defense Command.
24. Mr. Ronald G. Magee, Director of Operations, U.S. Army Training and Doctrine Command Analysis Center.
25. Mr. Maxie L. McFarland, Deputy Chief of Staff for Intelligence, U.S. Army Training and Doctrine Command.
26. Mr. Thomas V. Meeks, Technical Advisor-Sustaining Base/Quality of Life Affairs.
27. Mr. John C. Metzler, Jr., Director of Cemetery Operations, Arlington National Cemetery, Military District of Washington.
28. MG Robert W. Mixon, Jr., Deputy Chief of Staff for Developments, U.S. Army Training and Doctrine Command.
29. Mr. Robert L. Moore, Deputy Director, Logistics and Security Assistance, Headquarters, U.S. European Command.
30. BG Roger A. Nadeau, Program Executive Officer, Combat Support/ Combat Service Support.
31. Mr. Jerry V. Proctor, Deputy for Futures, U.S. Army Intelligence Center and Fort Huachuca.
32. Mr. William C. Reeves, Jr., Director, Integration/Interoperability for Missile Defense/Director, IIMD RDA, U.S. Army Space and Missile Defense Command.
33. Mr. Allan M. Resnick, Assistant Deputy Chief of Staff for Combat Developments, U.S. Army Training and Doctrine Command.

34. Mr. Rodney Robertson, Director, Sensors Directorate, U.S. Army Space and Missile Defense Command.
35. BG Mark Scheid, Deputy Commanding General/Director of Operations, Military Traffic Management Command.
36. Mr. Robert E. Seger, Assistant Deputy Chief of Staff for Training Policy, Plans and Programs, U.S. Army Training and Doctrine Command.
37. Ms. Donna K. Vargas, Director of Operations, U.S. Army Training and Doctrine Command Analysis Center.
38. MG David P. Wherley, Jr., Commander, DC National Guard.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–29980 Filed 12–1–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for Chief of Staff of the Army

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army, Chief of Staff of the Army, are:

1. Mr. Joseph R. Billman, Director of Program Development, Office of the Deputy Chief of Staff, G–4, Office of the Chief of Staff of the Army.
2. Dr. Jeffrey J. Clarke, Chief Historian, U.S. Army Center of Military History.
3. Ms. Kathryn A. Condon, Assistant Deputy Chief of Staff, G–3, Homeland Security, Training and Simulation, Office of the Deputy Chief of Staff, G–3.
4. MG William Santo Crupe, Commander, 143rd Transportation Command, Orlando, Florida, Office of the Chief, Army Reserve.
5. Mr. Thomas Dillon, Director, Counterintelligence, Foreign Disclosure, and Security, Office of the Deputy Chief of Staff, G–2.
6. Mr. James Gunlicks, Deputy Director of Training, Office of the Deputy Chief of Staff, G–3.
7. Ms. Lois O. Hickey, Director for Army Personnel Transformation, Office of the Deputy Chief of Staff, G–1.
8. Mr. Robert N. Kittel, Special Assistant to The Judge Advocate General for Regulatory Law and Intellectual Property, U.S. Army Legal Services Agency.
9. MG Thomas J. Matthews, Vice Commander for Joint Warfighting Center (IMA) and Vice Director of Training, U.S. Joint Forces Command, Office of the Chief, Army Reserve.
10. Mr. John B. Nerger, Director, Facilities, Housing and Environment, Office of the Assistant Chief of Staff for Installation Management.
11. Mr. Eric A. Orsini, Special Assistant to the Deputy Chief of Staff, G–4, Office of the Deputy Chief of Staff, G–4.
12. Mr. Harold C. Pasini, Jr., Technical Director, U.S. Army Operational Test Command.
13. Mr. Dean E. Pfoltzer, Deputy Director, Program Analysis and Evaluation, Office of the Deputy Chief of Staff, G–8.
14. Mr. Brian M. Simmons, Deputy to the Commander and Technical Director, U.S. Army Developmental Test Command.
15. Dr. Zita M. Simutis, Director, Army Research Institute and Chief Psychologist, U.S. Army Research Institute.
16. Mr. Lewis S. Steenrod, Director of Modernization, Office of the Deputy Chief of Staff, G–8.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–29981 Filed 12–1–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U. S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,352,760: Polymerization of Oligomeric Multiple Aromatic Ether-Containing Phthalonitriles, Navy Case No. 73,258// U.S. Patent No. 5,464,926: Synthesis and Polymerization of Oligomeric Multiple Aromatic Ether-Containing Phthalonitrile, Navy Case No. 76,155// U.S. Patent No. 5,965,268: Carbon-Based Composites Derived from Phthalonitrile Resins, Navy Case No. 78,474//Navy Case No. 83,013: Synthesis of Novel Oligomeric Hydroxy Arylethers, Conversion to Oligomeric Arylether Containing Phthalonitrile and Polymerization Thereof.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: November 25, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–29893 Filed 12–1–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the U.S. Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Invention Disclosure Navy Case Number 95,919 entitled ''Integrated Maritime Portable Acoustic Scoring and Simulator Control and Improvements.''

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: November 20, 2003.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–29908 Filed 12–1–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Tuesday, January 6, 2004, from 8:30 a.m. to 5 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone: (703) 696–4120.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meeting will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: November 25, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–29897 Filed 12–1–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 25, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: PEQIS Survey on Dual Enrollment Programs and Courses for High School Students.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 10,518.

Burden Hours: 7,889.

Abstract: The Postsecondary Education Quick Information System (PEQIS) is for surveys that are quick turnaround, short and policy relevant. The surveys go to colleges, universities and other postsecondary institutions. This survey will go to 1,600 institutions to determine whether they offer dual enrollment for high school students in which these students can earn college credit while they are still enrolled in high school. Among the issues to be addressed are whether students are allowed to enroll in individual classes or whether institutions offer dual enrollment programs, where the classes are offered and who teaches them.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2419. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–29918 Filed 12–1–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office

of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 2, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 25, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 5,400.

Abstract: The information contained in the Consolidated Annual Performance Report for Vocational Technical Education is needed to monitor State performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998. The respondents include eligible agencies in 54 states and insular areas. This revision clarifies instructions and definitions and eliminates the collection of some data elements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2420. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–29919 Filed 12–1–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Funding Announcement No. DE–PS26–04NT42023–0 entitled, ''Development of Technologies and Capabilities for Developing Coal Energy Resources.''

The Department of Energy (DOE), National Energy Technology Laboratory (NETL), is conducting this funding opportunity announcement to competitively seek cost-shared applications for research and development of technologies enabling development of energy resources needed to ensure the availability of affordable energy for the Nation's future. Through this funding opportunity announcement, DOE/NETL seeks applications for energy research and development related activities that promote the efficient and sound production and use of fossil fuel (coal). Related information on the Fossil Energy Areas of Interest can be found on the NETL Web site (*http://www.netl.doe.gov*) under ''Technologies.''

DATES: The funding opportunity announcement will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about November 21, 2003. Applicants can obtain access to the funding opportunity announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*. The deadline for submission of applications will be February 24, 2004, not later than 8 p.m. Eastern Time.

ADDRESSES: Questions and comments regarding the content of the announcement should be submitted through the ''Submit Question'' feature of IIPS at h*ttp://e-center.doe.gov*. Locate the announcement on IIPS and then click on the ''Submit Question'' button at the top. Enter required information. DOE will try to respond to a question within 3 days, unless a similar question and answer have already been posted on the website. You will receive an electronic notification that your question has been answered.

Responses to questions may be viewed through the ''View Questions'' feature. If no questions have been answered, a statement to that effect will appear. You should periodically check ''View Questions'' for new questions and answers.

Questions regarding how to submit questions or view responses can be e-mailed to the IIPS Help Desk at *helpdesk@pr.doe.gov* or by calling 1–800–683–0751.

FOR FURTHER INFORMATION CONTACT: Debra A. Duncan, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-

mail Address: *duncan@netl.doe.gov*, Telephone Number: 412–386–5700.

SUPPLEMENTARY INFORMATION: Through this funding opportunity announcement, NETL expects to support applications in the Coal and Environmental Systems Program. Coal and Environmental Systems Program has the following five separate (*i.e.*, stand alone) Program Areas of Interest:

Area of Interest 1—Environmental and Water Resources

Subtopic 1A Increased Utilization of the By-Products from Coal Gasification

Area of Interest 2—Carbon Sequestration

Subtopic 2A Direct Capture Technologies
Subtopic 2B Indirect Capture Technologies
Subtopic 2C Technologies for Mitigating Non-CO_2 Greenhouse Gas Emissions
Subtopic 2D Monitoring, Verification and Risk Assessment for Carbon Sequestration Options

Area of Interest 3—Power Systems Advanced Research

Subtopic 3A Advanced Sensors and Controls
Subtopic 3B Advanced Materials

Area of Interest 4—Coal Fuels and Hydrogen

Subtopic 4A Coal Derived Hydrogen

Area of Interest 5—Gasification

Subtopic 5A Advanced Gasification Systems

Applicants must select and submit to only one Subtopic in a Program Area of Interest for each application submitted. Multiple applications are welcome, however, each application must have its own unique content and title on the subject line. Identical applications under more than one Subtopic will be rejected.

Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. The funding opportunity announcement will only be made available in IIPS, no hard (paper) copies of the funding opportunity announcement and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the funding opportunity announcement package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the funding opportunity announcement. The actual funding opportunity announcement document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 20, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–29985 Filed 12–1–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–17–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

November 24, 2003.

Take notice that on November 14, 2003, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP04–17–000, a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain facilities and to continue to operate certain other facilities in Webster Parish in the State of Louisiana, under CEGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7(C) of the Natural Gas Act, all as more fully described in the request.

The request is on file with the Commission and is available for public inspection at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

CEGT proposes to abandon, by sale and transfer, certain above-ground facilities that are currently a part of various CEGT delivery point facilities in the State of Louisiana as described more fully in the request. CEGT further proposes to sell and transfer these facilities to CenterPoint Energy Arkla (Arkla), a distribution division of CenterPoint Energy, Incorporated, at the estimated net book value of $123,345.98. CEGT states that no services would be abandoned as a result of the proposed sale and transfer. The request states that Arkla would own and operate these facilities as part of its distribution system.

CEGT avers that a review of its certificates, initiated in conjunction with the proposed abandonment, has raised the possibility that certain of CEGT's facilities may require certificate authorization. CEGT, therefore, also seeks Commission authorization for the continued operation of certain existing facilities known as Line FM–47 and the Sibley-Dubberly town border meter station in Webster Parish, Louisiana.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA. 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.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

Comment Date: January 8, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00417 Filed 12–01–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–64–000]

Indicated Shippers, Complainant, v. Trunkline Gas Company, Respondent; Notice of Complaint Requesting Fast-Track Processing

November 24, 2003.

Take notice that on November 21, 2003, pursuant Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2003), the Indicated Shippers filed a Complaint Requesting Fast Track Processing against Trunkline Gas Company (Trunkline). The Indicated Shippers allege that Trunkline has failed to comply with Section 4 of the Natural Gas Act as well as the Commission's regulations, 18 CFR 154.1(b), 18 CFR 154.204, 18 CFR 284.7(c), by posting quality limitations through a long-term Critical Notice in lieu of proposing changes to its tariff through a filing with the Commission.

The Indicated Shippers request that the Commission order Trunkline to cease and desist from its current practice of posting long-term OFOs to impose quality specifications.

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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, 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.

Comment Date: December 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00418 Filed 12–01–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–65–000]

Indicated Shippers, Complainant, v. ANR Pipeline Company, Respondent; Notice of Complaint Requesting Fast-Track Processing

November 24, 2003.

Take notice that on November 21, 2003, pursuant Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2003), the Indicated Shippers filed a Complaint Requesting Fast Track Processing against ANR Pipeline Company (ANR). The Indicated Shippers allege that ANR has failed to comply with Section 4 of the Natural Gas Act as well as the Commission's regulations, 18 CFR 154.1(b), 18 CFR 154.204 and 18 CFR 284.7(c), by posting quality limitations through a long-term Operational Flow Order in lieu of proposing changes to its tariff through a filing with the Commission.

The Indicated Shippers request that the Commission order ANR to cease and desist from its current practice of posting long-term OFOs to impose quality specifications.

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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, 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.

Comment Date: December 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00419 Filed 12–01–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC04–4–000, et al.]

Trunkline Gas Company, LLC, et al.; Electric Rate and Corporate Filings

November 20, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Trunkline Gas Company, LLC

[Docket No. AC04–4–000]

Take notice that on November 18, 2003, Trunkline Gas Company, LLC, submitted a compliance filing, pursuant to the accounting and reporting requirements set forth by the Commission in Order 631, journal entries and supporting information for any adjustments made that affect net income as a result of implementing the accounting rules contained in Order 631.

Comment Date: December 9, 2003.

2. Sea Robin Pipeline Company

[Docket No. AC04–5–000]

Take notice that on November 18, 2003, Sea Robin Pipeline Company, submitted a compliance filing, pursuant to the accounting and reporting requirements set forth by the Commission in Order 631, journal entries and supporting information for any adjustments made that affect net income as a result of implementing the accounting rules contained in Order 631.

Comment Date: December 9, 2003.

3. Atlantic City Electric Company and Atlantic Generation, LLC

[Docket No. EC04–12–000]

Take notice that, on November 14, 2003, Atlantic City Electric Company (ACE) and Conectiv Atlantic Generation, LLC (CAG) (collectively, the Applicants), tendered for filing a change to their October 31, 2003 filing in the above-captioned proceeding stating that, depending upon the outcome of analysis being conducted by their tax consultants, the price of the transfer will be at either book or appraised value.

Applicants state that copies of the filing were served on the Delaware Public Service Commission, the Maryland Public Service Commission, the New Jersey Board of Public Utilities, the Virginia State Corporation Commission, the District of Columbia Public Service Commission and the Securities and Exchange Commission.

Comment Date: November 28, 2003.

4. KeySpan Corporation, KeySpan Generation, LLC, KeySpan-Port Jefferson Energy Center, LLC, KeySpan-Glenwood Energy Center, LLC, and KeySpan Energy Development Corporation

[Docket No. EC04–24–000]

Take notice that on November 17, 2003, pursuant to Section 203 of the Federal Power Act, KeySpan Corporation, KeySpan Generation, LLC, KeySpan-Glenwood Energy Center, LLC, KeySpan-Port Jefferson Energy Center, LLC, and KeySpan Energy Development Corporation (collectively, Applicants) filed a joint application for approval of a corporate reorganization. Applicants state that the proposed reorganization will not change the ultimate ownership of the facilities.

A copy of the application has been served on the New York Public Service Commission. The Applicants have requested waivers of the Commission's regulations so that the filing may become effective at the earliest possible date, but no later than as of the date the New York Public Service Commission approves the corporate reorganization.

Comment Date: December 8, 2003.

5. Pacific Gas and Electric Company

[Docket No. EL04–19–000]

Take notice that on November 10, 2003, Pacific Gas and Electric Company (PG&E) submitted for filing a Petition for Declaratory Order requesting that the Commission extend the terms of its Order Granting in Part Petition For Declaratory Order issued March 29, 2000.

Comment Date: December 1, 2003.

6. New York State Electric & Gas Corporation

[Docket No. ER03–587–005]

Take notice that on November 14, 2003, New York State Electric & Gas Corporation (NYSEG) submitted for filing First Revised Rate Schedule FERC No. 32 a Borderline Agreement between NYSEG and Central Hudson Gas & Electric Corporation in compliance with the Commission's April 28, 2003 Order in Docket No. ER03–587–000.

Comment Date: December 5, 2003.

7. California Independent System Operator Corporation

[Docket Nos. ER03–1221–002]

Take notice that on November 17, 2003, the California Independent System Operator Corporation (ISO) submitted a filing to comply with the Order issued in Docket No. ER03–1221–000 on October 17, 2003, 105 FERC ¶ 61,074.

The ISO states that the compliance filing has been served all on parties to this proceeding.

Comment Date: December 8, 2003.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER03–1373–001]

Take notice that on November 14, 2003, Orange and Rockland Utilities, Inc. (Orange and Rockland), amended its September 23, 2003 filing in Docket No. ER03–1373–000 in order to file a Notice of Cancellation form that due to inadvertent administrative error had been omitted from Orange and Rockland's initial filing.

Orange and Rockland states that a copy of this filing has been served by mail upon the New York Power Authority and the Public Power Association of New Jersey.

Comment Date: December 5, 2003.

9. Worthington Generation L.L.C.

[Docket No. ER04–45–001]

Take notice that on November 14, 2003, Worthington Generation L.L.C. submitted for filing an amendment to their Notice of Cancellation filed on October 15, 2003.

Comment Date: December 5, 2003.

10. Southern California Edison Company

[Docket No. ER04–184–000]

Take notice that on November 14, 2003, Southern California Edison Company (SCE) tendered for filing an amended Interconnection Facilities Agreement (Amended IFA) between Pastoria Energy Facility, LLC (Pastoria) and SCE. SCE states that the Amended IFA specifies the terms and conditions pursuant to which SCE will interconnect Pastoria's 750 MW of generation to the California Independent System Operator Controlled Grid pursuant to SCE's Transmission Owner Tariff, FERC Electric Tariff, Second Revised Original Volume No. 6. SCE further states that the Amended IFA will replace, in its entirety, the Interconnection Facilities Agreement between SCE and Pastoria accepted as Service Agreement No. 12 under SCE's Transmission Owner Tariff in Docket No. ER01–3114–000, as amended in Docket No. ER02–2554–000. SCE requests that the Amended IFA become effective one day after filing.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Pastoria.

Comment Date: December 5, 2003.

11. American Transmission Company LLC

[Docket No. ER04–192–000]

Take notice that on November 14, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Power Ventures Group, LLC. ATCLLC requests an effective date of October 15, 2002.

Comment Date: December 5, 2003.

12. Commonwealth Edison Company

[Docket No. ER04–193–000]

Take notice that on November 14, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) amendments to Interconnection Agreements entered into between ComEd and Midwest Generation, LLC (Midwest). ComEd requests an effective date of August 12, 2003 and accordingly seeks waiver of the Commission's notice requirements.

ComEd states that copies of the filing were served on Midwest and the Illinois Commerce Commission.

Comment Date: December 5, 2003.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–194–000]

Take notice that on November 14, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's regulations, 18 CFR 35.13 (2002), submitted for filing revisions to Exhibit B (Interconnection Points) of the Network Integration Transmission Service Agreement under the Midwest ISO's Open Access Transmission Tariff, FERC Electric

Tariff, Second Revised Volume No.1, between the City of Hart and the Midwest ISO.

Midwest ISO states that a copy of this filing has been served on all parties.

Comment Date: December 5, 2003.

14. Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, Gen West, LLC, Las Vegas Cogeneration II, LLC, Reliant Energy Bighorn, LLC, and Nevada Power Company

[Docket Nos. TX03–1–003, ER02–1741–003, and ER02–1742–003]

Take notice that on November 10, 2003, Nevada Power Company and on November 12, 2003, Mirant Las Vegas, LLC; Reliant Energy Bighorn, LLC; Duke Energy Moapa, LLC; GenWest; Diamond Generating Corp.; and the Los Angeles Department of Water and Power, in its capacity as operating agent for the McCullough Substation filed informational responses to the Commission's September 12, 2003 Order in this proceeding. *Mirant Las Vegas, et al.*, 104 FERC ¶ 61,275 (2003).

Comment Date: December 8, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linda L. Mitry,

Acting Secretary.

[FR Doc. E3–00415 Filed 12–01–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL94–16–003, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Filings

November 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wisconsin Electric Power Company

[Docket No. EL94–16–003]

Take notice that on November 12, 2003 as amended on November 13, 2003, Wisconsin Electric Power Company (WEPCO) submitted a compliance filing pursuant to the Commission's Order issued October 1, 2003, (105 FERC ¶ 61,002). WEPCO states that the purpose of the amended filing was to correct a minor error in the calculation of the refund to Oconto Power & Light Cooperative reflected in an earlier compliance filing dated November 12, 2003. The amended filing constitutes a complete and corrected filing in compliance with the October 1, 2003 Order.

Comment Date: December 3, 2003.

2. California Independent System Operator Corporation

[Docket No. EL04–24–000]

Take notice that on November 14, 2003, the California Independent System Operator Corporation (California ISO) filed a Petition for Review of Arbitrator's Award, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207. The petition states that the California ISO is requesting review of the Final Order and Award issued on October 23, 2003, in American Arbitration Association Case No. 71 198 00711 00.

The California ISO states that this filing has been served upon all parties to the arbitration, the Public Utilities Commission of the State of California and the California Electricity Oversight Board. The petition is being served via email to the arbitrator.

Comment Date: December 5, 2003.

3. Bangor Hydro-Electric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, on Behalf of Its Affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, Canal Electric Company, New England Power Company, Northeast Utilities Service Company, on Behalf of Its Operating Company Affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, Holyoke Water Power Company, The United Illuminating Company, Vermont Electric Power Company, Central Vermont Public Service Corporation, and Green Mountain Power Corporation

[Docket No. ER04–157–001]

Take notice that on November 18, 2003, Bangor-Hydro Electric Company, Central Maine Power Company, Boston Edison Company, Cambridge Electric Light Company, Canal Electric Company, Commonwealth Electric Company, New England Power Company, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, Holyoke Water Power Company, The United Illuminating Company, Vermont Electric Power Company, Green Mountain Power Corporation, and Central Vermont Public Service Corporation (collectively, the ''New England Transmission Owners'') filed an amendment to their November 4, 2003 filing in this proceeding.

New England Transmission Owners state that the November 4, 2003 filing concerns a request by them for approval of a return on common equity component of the regional and local transmission rates under the Regional Transmission Organization for New England (RTO–NE) open access transmission tariff.

The New England Transmission Owners state that they are serving a copy of the filing on the Governors and utility regulatory commissions of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. A copy of the filing is being served electronically on Participants in New England Power Pool (NEPOOL), and in addition, the filing has been electronically posted on the RTO–NE website (*http://www.rto-ne.com/*) under the heading ''Legal Filings,'' and those New England transmission customers (including customers under the local

tariffs of the New England Transmission Owners) that are not Participants in NEPOOL have been provided notice of such posting. The New England Transmission Owners state that they will provide a hard copy of the amendment filing to any interested party upon request.

Comment Date: December 9, 2003.

4. Consolidated Edison Company of New York, Inc.

[Docket Nos. ER04–191–000 and ER02–1820–000]

Take notice that on November 12, 2003, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an amendment to it Open Access Transmission Tariff (OATT) which is a retail transmission service agreement entitled ''Economic Development Operating Agreement and Retail Transmission Service Agreement'' designated as Attachment N to the OATT.

Con Edison states that the proposed amendment would allow the County of Westchester Public Service Agency (COWPUSA) to receive retail delivery service of up to 10 mw of power through Con Edison's transmission and distribution facilities. COWPUSA will purchase the power from the New York Power Authority (NYPA) for resale to its customers.

Con Edison advises that the proposed service agreement with COWPUSA is intended to supersede an amendment to the 1987 Agreement submitted in a May 14, 2002 filing in Docket No. ER02–1820–000. Accordingly, Con Edison requests that it be permitted, pursuant to the Commission's regulations at 18 CFR 35.15, to cancel the May 14, 2002 filing in Docket No. ER02–1820.

Con Edison states that a copy of this filing has been served on COWPUSA, NYPA, and the New York Public Service Commission.

Comment Date: December 3, 2003.

5. New England Power Pool

[Docket Nos. ER04–195–000]

Take notice that on November 17, 2003, the New England Power Pool (NEPOOL) Participants Committee submitted an informational filing to notify the Commission that as of November 15, 2003, NEPOOL, ISO New England Inc. and NRG Power Marketing Inc. (NRG Power), acting on behalf of itself and several affiliates, entered into a Restated Weekly Billing Agreement.

The NEPOOL Participants Committee states that copies of these materials were served on the governors and electric utility regulatory agencies for the six New England states. In addition, all NEPOOL Participants Committee members have been furnished with an electronic copy of this filing.

Comment Date: December 8, 2003.

6. Avista Corporation

[Docket No. ER04–196–000]

Take notice that on November 17, 2003, Avista Corporation (Avista), tendered for filing with the Federal Energy Regulatory Commission an executed Long Term Service Agreement, Rate Schedule No. 304, under Avista(s FERC Electric Tariff First Revised Volume No. 9, with NorthWestern Energy, Puget Sound Energy, Inc., Portland General Electric Company, PacifiCorp, and PPL Montana, LLC, whereby Avista will provide the energy to operate pumps at the Nichols Pumping Station for the Colstrip Project. Avista states that included with this filing are Certificates of Concurrence for each party to the Agreement in the event a Party elects to make exchanges. Avista requests waiver of the prior notice requirement and requests that Rate Schedule No. 304 be accepted for filing effective November 1, 2003.

Comment Date: December 8, 2003.

7. Avista Corporation

[Docket No. ER04–196–000]

Take notice that on November 17, 2003, Avista Corporation (Avista), tendered for filing with the Federal Energy Regulatory Commission an executed Long Term Service Agreement, Rate Schedule No. 304, under Avista(s FERC Electric Tariff First Revised Volume No. 9, with NorthWestern Energy, Puget Sound Energy, Inc., Portland General Electric Company, PacifiCorp, and PPL Montana, LLC, whereby Avista will provide the energy to operate pumps at the Nichols Pumping Station for the Colstrip Project. Avista states that included with this filing are Certificates of Concurrence for each party to the Agreement in the event a Party elects to make exchanges. Avista requests waiver of the prior notice requirement and requests that Rate Schedule No. 304 be accepted for filing effective November 1, 2003.

Comment Date: December 8, 2003.

8. Forest Energy Partners, LLC

[Docket No. ER04–197–000]

Take notice that on November 17, 2003, Forest Energy Partners, LLC (Forest) petitioned the Commission for an order: (1) Accepting Forest's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: December 8, 2003.

9. Ameren Services Company

[Docket No. ER04–198–000]

Take notice that on November 18, 2003, Ameren Services Company (ASC) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between ASC and Central Illinois Light Company, d/b/a AmerenCILCO (Customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the Customer pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: December 9, 2003.

10. Portland General Electric Company

[Docket No. ER04–199–000]

Take notice that on November 17, 2003, Portland General Electric Company (Portland) filed with the Federal Energy Regulatory Commission a proposed revision to Portland's market-based rate tariff, imposing a cost-based cap that will apply to new sales transactions entered into and delivered by Portland during the specified twelve-month period. Portland requests that the Commission make the amended tariff sheets effective as of the day following the date the Offer of Settlement and the Agreement and Stipulation (collectively, the ''Settlement''), filed by Portland and the other signing parties in Docket No. EL02–114, are approved by the Commission. Portland states that in the event that the Commission does not approve the Settlement or that it does not become effective pursuant to its terms, this amendment will also not become effective and will be null and void.

Comment Date: December 8, 2003.

11. American Electric Power Service Corporation

[Docket No. ER04–200–000]

Take notice that on November 18, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR Section 35.15, a Notice of Termination of an executed Interconnection and Operation Agreement between Kentucky Power Company and Kentucky Mountain Power, LLC. designated as Service Agreement No. 312 under American Electric Power Operating Companies' Open Access Transmission Tariff. AEP requests an effective date of January 16, 2004.

AEPSC states that a copy of the filing was served upon Kentucky Mountain Power, L.L.C. and the Kentucky Public Service Commission.

Comment Date: December 9, 2003.

12. Southwest Power Pool, Inc.

[Docket Nos. ER04–202–000]

Take notice that on November 18, 2003, Southwest Power Pool, Inc. (SPP) tendered for filing a Notice of Cancellation of Service Agreement No. 890 between SPP and Kansas Municipal Energy Agency.

SPP states that it has served a copy of this filing to Kansas Municipal Energy Agency.

Comment Date: December 9, 2003.

13. Kentucky Utilities Company

[Docket No. ER04–203–000]

Take notice that on November 18, 2003, Kentucky Utilities Company (KU) pursuant to section 205 of the Federal Power Act, 16 U.S.C. 24 (2000) and § 35.11 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.11 (2003), filed an Amendment to the Contract for Electric Service by and between Kentucky Utilities Company and the City of Providence; KU requested waiver of the Commission's regulations to permit it to establish an effective date of November 18, 2003 for the Amendment.

Comment Date: December 9, 2003.

14. Xcel Energy Inc. and NRG Energy, Inc. and Its Public Utility Subsidiaries

[Docket No. ES03–59–002]

Take notice that on November 18, 2003, NRG Energy, Inc. (NRG) filed with the Federal Energy Regulatory Commission (Commission) an amendment to the Section 204 authority granted to NRG in this proceeding. The filing requests that the Commission authorize NRG to issue up to $2.715 billion in debt as part of its proposed refinancing package, which would represent an increase of $500 million over the $2.215 billion the Commission approved in its October 22, 2003 Letter Order. *See* NRG Energy, Inc., 105 FERC ¶ 62,037 (2003).

Comment Date: December 9, 2003.

15. Inland Power & Light Company

[Docket No. ES04–5–000]

Take notice that on November 14, 2003, the Inland Power & Light Company (Inland) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to: (1) Issue long-term debt in an amount not to exceed $20 million; and (2) enter into a $10 million unsecured line-of-credit. Inland states that borrowings would be pursuant to agreements with the National Rural Cooperative Financing Corporation.

Inland also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: December 11, 2003.

16. Kandiyohi Power Cooperative

[Docket No. ES04–6–000]

Take notice that on November 14, 2003, the Kandiyohi Power Cooperative (Kandiyohi) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to make long-term borrowings in an amount up to $2.5 million with the National Rural Cooperative Finance Corporation.

Kandiyohi also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: December 5, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linda L. Mitry,

Acting Secretary.

[FR Doc. E3–00416 Filed 12–01–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2005 Resource Pool, Pick-Sloan Missouri Basin Program—Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final procedures.

SUMMARY: The Western Area Power Administration (Western), Upper Great Plains Customer Service Region, a Federal power marketing agency of the Department of Energy (DOE), hereby announces its Post-2005 Resource Pool Allocation Procedures. The Energy Planning and Management Program (Program) provides for project-specific resource pools and power allocations from these pools to new preference customers and/or other appropriate purposes as determined by Western. Western, under the Program, is finalizing procedures to administer a Federal power resource pool increment of up to 1 percent (approximately 20 megawatts) of the long-term marketable resource of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) that will become available January 1, 2006. Western proposed procedures in the **Federal Register** on March 4, 2003, and responses to public comments received pertaining to the proposed procedures are included in this notice. Western will publish a notice of proposed allocations in the **Federal Register** after the effective date of this notice.

DATES: The Post-2005 Resource Pool Allocation Procedures will become effective January 2, 2004.

ADDRESSES: Information regarding the Post-2005 Resource Pool Allocation Procedures, including comments, letters, and other supporting documents made or kept by Western for the purpose of developing the final procedures, are available for public inspection and copying at the Upper Great Plains Customer Service Region, Western Area Power Administration, located at 2900 4th Avenue North, P.O. Box 35800, Billings, MT 59107–5800. Public comments are available for viewing at *http://www.wapa.gov/ugp/contracts/post2005/comments.htm.*

SUPPLEMENTARY INFORMATION: On October 20, 1995, Western published the Final Program Rule (Final Rule) that became effective on November 20, 1995. As described in 10 CFR 905, subpart C of the Final Rule provides for project-specific resource pools and power allocations from these pools to eligible new customers and/or for other

appropriate purposes as determined by Western. Under the Final Rule, resource pool increments shall be established by pro rata withdrawals, on 2 years' notice, from then-existing customers. Specifically, 10 CFR 905.32 (b) provides:

> At two 5-year intervals after the effective date of the extension to existing customers, Western shall create a project-specific resource pool increment of up to * * * 1 percent of the long-term marketable resource under contract at the time. The size of the additional resource pool increment shall be determined by Western based on consideration of the actual fair-share needs of eligible new customers and other appropriate purposes.

Western held public information and comment forums on April 8–10, 2003, to accept oral and written comments on the proposed procedures and call for applications. The formal comment period ended June 2, 2003. The Post-2005 Resource Pool Allocation Procedures in this **Federal Register** notice explain in detail how Western intends to implement Subpart C-Power Marketing Initiative of the Energy Planning and Management Program Final Rule in the P–SMBP—ED.

Response to Comments Regarding Post-2005 Resource Pool Allocation Procedures

I. Comments and Responses

Comment: Western received many comments supporting the general eligibility and allocation criteria, indicating that Western properly scoped the best use of the resource pool, and that allocations should be made to new preference entities and new Native American tribes.

Response: Western appreciates the response with respect to the proposed general eligibility and allocation criteria, proposed use of the resource pool, and intent to make allocations available to new preference entities and new Native American tribes.

Comment: Western received many comments that it should not allocate power for other appropriate purposes. Western also received a comment that any renewable resource program should be supported by Western's customers and that Western should not mandate a specific program for other appropriate purposes. One comment was specifically against allocating power to support renewable energy resources. Western received a comment that the preference entities purchasing Pick-Sloan power are in the best position to determine the best use of Pick-Sloan power in combination with their supplemental power supplier. Western received one comment that the consumer-owned electric utilities are best able to determine the needs and economics of developing renewable energy resources.

Response: Western believes renewable resources can best be supported by allowing existing customers to retain the power that may be available after allocating to new customers. This will allow all preference entities across the marketing area to leverage this power and use existing allocations to support renewable resources. Several customers are already demonstrating support of renewable resources through their investments in various wind projects across the P–SMBP—ED.

Comment: Western received many comments that all new customers should be subject to the same contractual provisions as existing Western customers. Specifically, all contracts should contain the provision which prohibits the resale of Federal power. Western also received comments that all new customers should be subject to future withdrawal provisions in the same manner as existing customers.

Response: Western agrees with this comment. All contracts with new customers will contain Western's existing general contract principles and will be subject to future resource pool withdrawals.

Comment: Western received many comments suggesting that power allocations should not be used for developing ''cash registers'' to generate profits, which may or may not flow back to retail customers in the region.

Response: Western agrees with this comment. It is contrary to Western's policy and undermines Reclamation Law to allow a customer to resell power at a profit to third parties.

Comment: Western received many comments that the same procedures should be followed that were used in the Post-2000 Resource Pool for new Native American tribes.

Response: Western agrees with this comment. Western intends to follow the framework of Post-2000 Resource Pool procedures for new Native American tribes as further clarified in this **Federal Register** notice.

Comment: Western received many comments that the resource pool should not be used for existing beneficiaries, directly or indirectly. Western also received many comments that all Federal power benefits should be considered when determining new allocations.

Response: The Proposed Post-2005 Allocation Procedures published in the **Federal Register** at 68 FR 10233 provide, in part, that ''Qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP—ED firm power allocation.'' Western agrees with this comment that all Federal benefits received by an entity in the Upper Great Plains Region (UGPR) should be considered when making new allocations. The intent of the new resource pool was to allocate to new customers who are not currently receiving the benefit of Federal power unless otherwise provided for in the general eligibility criteria listed below. In the past, other regions of Western have allowed preference entities to receive power from more than one project when marketing areas overlap. Given the new customer load that exists in portions of the UGPR service territory, and consistent with the intent of the Program, the UGPR is not willing to establish this practice. An existing customer will not be eligible to receive power from a resource pool unless Western provides otherwise on a project-specific basis. In these final procedures, Western will change the general eligibility criteria to state: ''Qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP—ED allocation or other firm Federal power commitment. Qualified Native American applicants, who did not receive an allocation from the Post-2000 Resource Pool, are not subject to this requirement.''

Comment: Western received comment that allocations should be used for end users. Western also received one comment suggesting that full requirements should be offered to new preference entities, if available.

Response: Western plans to make allocations from the up to 1 percent resource pool to qualified applicants based upon the Post-1985 Marketing Plan Criteria and the Program Criteria, which do not allow for Western to allocate to customers for full requirements.

Comment: Western received comments that anything unallocated should go back to the existing customers following the contract provisions on a pro rata share.

Response: Western agrees with this comment. If power is reserved for new customers but not allocated, or resources are offered but not placed under contract, this power will be offered on a pro rata basis to customers that contributed to the resource pool by applying the extension formula in the contract. In these final procedures, Western will clarify the general allocation criteria to state: ''The resource pool will be dissolved subsequent to the closing date of the last

qualified applicant to execute their respective firm power contract. Firm power not under contract will be used in accordance with the Program.''

Comment: Western received a comment that did not support the up to 1 percent withdrawal.

Response: Western will withdraw up to 1 percent as determined in Subpart C, Power Marketing Initiative, 10 CFR 905.32(e)(1).

Comment: Western received a comment supporting increasing allocations awarded to the Lower Brule Sioux and Flandreau Santee Sioux tribes in the Post-2000 Resource Pool Allocation Process due to omissions in applications for power.

Response: If Western were to entertain requests for increases or adjustments to allocations, all customers would need to be afforded the opportunity to submit new applications. It is likely Western would receive significant modification requests. These would be extremely difficult to substantiate and likely not be supportable with the limited amount of power available from this resource pool. Therefore, Western will not support additional allocations for the Lower Brule Sioux and Flandreau Santee Sioux tribes.

Comment: Western received one comment that existing statutory obligations were not followed and that Western violated its trust responsibilities and refused to consider securing additional power for the Lower Brule Sioux and Flandreau Santee Sioux tribes.

Response: Under its statutory obligations, Western will allocate power to new customers that meet preference status. Western has discretion as defined by Reclamation Law to determine the eligibility of Indian tribes and other entities entitled to preference in allocating Federal power.

Comment: Western received one comment that suggests Western has no intention to follow criteria established in the sale of Federal hydropower.

Response: Within its statutory guidelines, Western has wide discretion as to whom and on what terms it will contract for the sale of Federal power. Power must be sold to preference entities in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. Western will market this resource pool consistent with Reclamation Law and the procedures outlined in this **Federal Register** notice.

Comment: Western received one comment that suggested it is unlawful to adjust allocation guidelines for discrimination purposes. The statement ''Native American tribes are not subject to this requirement'' is discriminatory.

Response: Western will make Federal power available to preference entities that are public bodies and nonprofit entities entitled to priority in the purchase of Federal power under Reclamation Law. The Program changed Western's policy such that the Program allowed Western to allocate to Native American tribes. Western's change in policy is in keeping with the spirit of DOE's Indian policy and recognizes the special and unique relationship between the United States and the tribal governments.

Comment: Western received a comment that to maximize the political benefits they would like to see as many new retail customers as possible.

Response: It is not Western's intent to try to gain political benefits with this resource pool. It is Western's policy to promote widespread use of its hydropower resources. Western will market hydroelectric power on a wholesale basis to preference entities who qualify under the Post-2005 Resource Pool Allocation Process.

Final Post-2005 Resource Pool Allocation Procedures

I. Amount of Pool Resources

Western will allocate up to 1 percent (approximately 20 megawatts) of the P–SMBP—ED long-term firm hydroelectric resource available as of January 1, 2006, as firm power to eligible new preference customers. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western electric service contract.

II. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. All qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. All qualified applicants must be located within the currently established P–SMBP—ED marketing area.

C. All qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP—ED allocation or other firm Federal power commitment. Qualified Native American applicants, who did not receive an allocation from the Post-2000 Resource Pool, are not subject to this requirement.

D. Qualified utility and non-utility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that desire to purchase power from Western for resale to consumers, including cooperatives, municipalities, public utility districts, and public power districts must have met utility status by January 1, 2003. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Qualified Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercising its discretion under Reclamation Law.

B. An allottee will have the right to purchase such firm power only upon executing an electric service contract between Western and the allottee, and satisfying all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing P–SMBP—ED marketing area. The marketing area of the P–SMBP—ED is Montana east of the Continental Divide, all of North Dakota and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and then northwesterly to the northern boundary of the state at the 96½° meridian.

D. Allocations made to Native American tribes will be based on the actual load experienced in calendar year 2002. Western has the right to use estimated load values for calendar year 2002 should actual load data not be available. Western will adjust inconsistent estimates during the allocation process.

E. Allocations made to qualified utility and non-utility applicants will be based on actual loads in calendar year 2002. Western will apply the Post-1985 Marketing Plan and the Program criteria to these loads. Western will carry forward key principles and criteria established in the Post-2000 Resource Pool, except as modified here.

F. Energy provided with firm power will be based upon the customer's monthly system load pattern.

G. Any electric service contract offered to a new customer will be executed by the customer within 6 months of a contract offer by Western, unless otherwise agreed to in writing by Western.

H. The resource pool will be dissolved subsequent to the closing date of the last qualified applicant to execute their respective firm power contract. Firm power not under contract will be used in accordance with the Program.

I. The minimum allocation will be 100 kilowatts (kW).

J. The maximum allocation for qualified utility and non-utility applicants will be 5,000 kW.

K. Contract rates of delivery will be subject to adjustment in the future as provided for in the Program.

L. If unanticipated obstacles arise to delivering hydropower benefits to Native American tribes, Western retains the right to provide the economic benefits of its resources directly to these tribes.

IV. General Contract Principles

Western will apply the following general contract principles to all applicants receiving an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. Western will reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project pumping requirements, by giving a minimum of 5 years' written notice in advance of such action.

B. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments will only take place after a public process by Western.

C. Each allottee is ultimately responsible for obtaining its own third-party delivery arrangements, if necessary. Western may assist allottees in obtaining third-party transmission arrangements for delivering firm power allocated under these procedures to new customers.

D. Contracts entered into under the Post-2005 Resource Pool Allocation Procedures provide for Western to furnish firm electric service effective from January 1, 2006, through December 31, 2020.

E. Contracts entered into as a result of these procedures will incorporate Western's standard provisions for power sales contracts, integrated resource planning and the general power contract provisions.

F. Contracts entered into will include provisions for a reduction of up to 1 percent of the current contracted rate of delivery effective January 1, 2011, in accordance with the Program.

V. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined this action does not require a regulatory flexibility analysis since it is a rulemaking about rates or services for public property.

VI. Small Business Regulatory Enforcement Fairness Act

Western determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

VII. Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; so, this notice requires no clearance by the Office of Management and Budget.

Dated: November 17, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–29986 Filed 12–1–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Operational Alternative for Post-2004 Operations

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed decision.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration within the Department of Energy (DOE), markets Federal power from the Central Valley and Washoe projects through the Sierra Nevada Region (SNR). Western published its Notice of Intent announcing the operational alternatives it was considering for post-2004 operations in the **Federal Register** on June 24, 2003. Western held public meetings in July 2003 and accepted comments through August 8, 2003. Western reviewed the comments and assessed the feasibility of implementing each alternative to reach its proposed decision. Western's proposed decision is to implement a contract-based sub-control area. Western will approach the California Independent System Operator (ISO) and the Sacramento Municipal Utility District (SMUD) to collect data and initiate discussions to develop a contract.

DATES: To ensure they are considered, written comments from entities interested in commenting on this Notice of Proposed Decision must be received no later than 4 p.m., January 2, 2004. Western will accept written comments received via regular mail through the U.S. Postal Service if they are postmarked at least 3 days before such date. Entities are encouraged to hand deliver, use certified mail, or e-mail to deliver comments.

ADDRESSES: Written comments should be sent to Tom Carter, Power Operations Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, or by e-mail to *tcarter@wapa.gov*.

SUPPLEMENTARY INFORMATION:

Authorities

The selection of an alternative for post-2004 operations is made under the authorities contained in the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

Public Process

Western published its Notice of Intent to consider certain post-2004 operational alternatives in the **Federal Register** (68 FR 37484) on June 24, 2003. The notice described each alternative and the factors Western would use in making a decision on which alternative to select. On July 9, 2003, Western held a Public Information Forum where each alternative was described, and the evaluation factors that would be used by Western when making its proposed decision were presented. Navigant

Consulting, Inc., (Navigant) presented results from its comparative economic benefits study performed on behalf of the Bureau of Reclamation (Reclamation) and Western. Following the presentations, Western and Navigant staff answered questions from the attendees. A summary of the questions and answers at the July 9, 2003, Public Information Forum are at *http://www.wapa.gov/sn/initiatives/post2004/opScenarios/July9P1responses.pdf*. Western received additional questions after July 9, 2003, and posted responses at *http://www.wapa.gov/sn/initiatives/post2004/opScenarios/pifq-as1.pdf*.

Western held a Public Comment Forum in Folsom, California, on July 30, 2003, during which representatives from 12 entities commented on the proposed alternatives and decision-making factors. As individual stakeholders asked more detailed questions about Navigant's comparative economic benefit analysis, responses were prepared and posted to Western's external Web site throughout the comment period, which closed on August 8, 2003. Western received written comments from twenty-six (26) different entities. Western posted the comment letters at *http://www.wapa.gov/sn/initiatives/post2004/opScenarios/Comments08–08–03/* on August 13, 2003.

Throughout the public comment period, Western received and considered comments from existing power and transmission customers, joint powers agencies, water districts, irrigation districts, the ISO, the California Electricity Oversight Board, the ISO's Market Surveillance Committee, an investor-owned utility, and an independent consumer group. The comments provided the unique perspective of each entity on the various alternatives, provided suggestions concerning the selection of an alternative, commented on the decision-making factors proposed by Western, and raised issues and concerns about implementing an operational alternative.

Decision-Making Criteria

The criteria used by Western to reach its proposed decision are described in the June 24, 2003, **Federal Register** notice and were described in further detail at the July 9, 2003, Public Information Forum. The five criteria are flexibility, certainty, durability, operating transparency, and cost-effectiveness.

Flexibility preserves the ability of SNR to join a Federal Energy Regulatory Commission (Commission) approved and certified Regional Transmission Organization (RTO) in the future and to adapt to ongoing changes in the electric utility industry. At the July 9, 2003, Public Information Forum, Western stated that whatever alternative was chosen, Western must retain its ability to be able to adapt its operations to future changes in the electric utility industry to minimize business uncertainty and impacts to Western's customers.

Certainty assures cost-of-service rates remain stable and predictable. Western further defined certainty at the July 9, 2003, Public Information Forum as having stable rates and charges so Western and its customers will be able to continue engaging in long-term business planning and to undertake prudent long-term commitments under a reasonable risk management planning horizon.

Durability assures operating protocols are well established and subject to minimal changes over time. Western stated at the July 9, 2003, Public Information Forum that this definition also included business processes and observed that major changes in business processes can significantly impair the efficiency and the ability of individual organizations to respond effectively because of the need for increased staffing and resources.

Operating transparency minimizes operating impacts to third parties. Western defined this factor as the ability for Western to change the operation of the Federal system with minimal impacts to third parties.

Cost-effectiveness minimizes cost shifts and considers the relative cost and benefits to SNR's customers. Western stated at the July 9, 2003, Public Information Forum that cost effectiveness included the concept of ensuring that the overall cost of operation of the system and that the delivery of Federal power is kept as low as possible consistent with sound business principles.

Public Comments

Several comments indicated support for Western using the above criteria. Some comments also provided information concerning the relative weighting of the criteria that Western should use. The Transmission Agency of Northern California (TANC) commented that, given the relative instability of the electric utility industry, it is important for Western not to use costs as the only criteria for evaluating each post-2004 operational alternative. Comments from other public agencies such as the Calaveras Public Power Agency, the Modesto Irrigation District (MID), the SMUD, the Silicon Valley Power (SVP), the Trinity Public Utilities District (TPUD), and the City of Redding, indicate a preference for selecting an alternative that is the most flexible, durable, and cost-effective. The Lawrence Livermore National Laboratory (LLNL) commented that Western should further define the above criteria and provide interested parties with the relative weighting Western would use in selecting the operational alternative.

The ISO commented:

> Western initially stated that the decision to form its own control area would be cost based. Now that the real impact of the costs of the various Market Plan options is being understood more clearly, the criteria for this decision seems to have changed. It wasn't until the June 24, 2003, **Federal Register** notice that the public learned for the first time that the factors that it [SNR] will use in its decision-making process are now flexibility, certainty, durability, operating transparency and cost-effectiveness.

The ISO and several other commentors also indicated concerns with grid reliability and complexity of operations and expressed a desire to include reliability as an additional evaluation category. Western did not receive any other suggested additions or changes to its proposed evaluation criteria.

Western's Response

The decision-making factors outline the business reasons Western must consider as it analyzes impacts associated with implementing each specific alternative. These business reasons include the ability to respond to industry changes, having a voice in its own future, providing customers with as stable an environment as possible as industry wide changes occur, and providing customers with products and services at the lowest possible rates consistent with sound business principles. Consequently, when making a decision on its future operations, it is not wise for Western to rely on a single factor. Thus, Western developed additional factors to allow it to continue meeting its statutory requirements and address its long-term strategic goals and objectives.

Western considered the request to include reliability as an additional evaluation category. Western decided not to include reliability as a separate evaluation category because, under existing Western Electricity Coordinating Council (WECC) and North American Electric Reliability Council (NERC) operating guidelines, Western must demonstrate negative impacts will either not occur or will be mitigated before a selected alternative is

implemented. Because implementing an alternative must not decrease reliability under WECC/NERC operating guidelines, adopting this evaluation factor as an additional factor in this process is redundant.

Western assumes the ISO reference to Western's initial position that the decision on a post-2004 operational alternative would be based only on cost was the result of a meeting between Western and the ISO in December 2002. At the meeting, Western indicated that any decision related to its future operational configuration would have to be supported by a business case. Western did not intend by its comments that its decision on a post-2004 operational configuration would be based solely on cost.

In addition to the December 2002 meeting, Western participated with the ISO in a joint meeting with the Pacific Gas and Electric Company (PG&E), the Southern California Edison Company, and the San Diego Gas and Electric Company in February 2003. On April 8, 2003, Western met with the ISO to discuss the ISO's Metered Subsystem (MSS) proposal. At the time of these meetings, Western had not yet fully developed all of the evaluation factors it intended to use in its decision-making process.

An oral request by a representative from the LLNL to further define the criteria and to identify the weighting Western would use in making a decision was received at the July 9, 2003, Public Information Forum and considered. Western provided its definition of each criterion at the Public Information Forum and requested written comments on the definitions and the relative importance of each factor. Western did not receive any written comments on any specific modifications to the definitions and their relative importance.

Throughout the comment period, Western did not receive any adverse comments to its proposed evaluation criteria, although it received several requests to consider reliability as a separate factor. Western received many written comments supporting the criteria. Western concludes that the evaluation criteria and their respective definitions are appropriate. Therefore, the evaluation criteria are now final. This decision is based on Western's evaluation of the comments and the fact that Western did not receive a single written comment recommending any changes to the definitions of the existing factors.

The ISO and a number of other commentors expressed concerns that forming a new control area in northern California could compromise the reliable operation of the electric power grid. Specifically, these commentors expressed reservations that under a control area option, this option could increase the complexity of operations and potentially affect reliability. Western views these two concerns as implementation issues, rather than evaluation issues associated with forming a control area, and would be ordinarily resolved as part of the WECC and NERC certification process for formation of a new control area.

Implementing the Post-2004 Power Marketing Plan

For Western to implement its post-2004 Power Marketing Plan, significant investment in new business infrastructure and systems is necessary. This new investment in business infrastructure and systems is independent of Western's selection of a post-2004 operational alternative. Since 1967, Western has operated as a separate, but integrated, subsystem of the PG&E system under the terms and conditions of Contract 14–06–200–2948A (Contract 2948A). PG&E has indicated it is unwilling to continue the terms of that contract. Western, in formulating the new marketing plan for the post-2004 period, based on PG&E's positions, assumed that Contract 2948A would expire and services such as firming energy and ancillary services previously provided by PG&E would have to be either self-provided or purchased in the market. Under Contract 2948A, PG&E provides these services and bills Western monthly. With the increased complexity of the markets and the need to schedule, account for, and settle transactions with the ISO on a 10-minute to hourly basis, Western needs to acquire replacement business systems to provide the same level of technical support for the post-2004 period now provided by PG&E.

One of the biggest changes that Western will face in implementing its post-2004 Marketing Plan is that Western and its customers will be exposed directly to real-time changes in the market. Previously, under Contract 2948A, Western and its customers settled with PG&E on a monthly after-the-fact basis. This change represents a significant departure from Western's current business practices and will require a substantial increase in work effort to implement Western's post-2004 marketing program.

Western recognized its need for new business systems and infrastructure during the development of its new marketing plan. Western embarked upon an effort to identify the requirements to procure and install new business systems that would provide the needed tools for doing business in the business environment under the new marketing plan. The new systems needed to support the new marketing plan, regardless of which operational configuration is selected, include the Scheduling system, the Power Billing system, the Load Forecasting system, the Generation Optimization system, the Enterprise Architecture Integration system, the Meter Data Repository system, and the Settlements system.

The Scheduling system software supports two functional areas, the merchant function and the reliability function, because Western has chosen to follow the spirit and intent of the FERC Order Nos. 888 and 889, which require separation of the merchant function from the reliability function. The merchant function portion of the scheduling system enables the merchant to schedule transactions in the day-ahead markets to deliver Federal power to Project Use loads and Preference Power customers, including the necessary transmission reservations required by Western's energy deliveries and Western's transmission customers.

The reliability function portion of the system provides for real-time implementation of the day-ahead schedules and any real-time modifications to schedules required to balance the control area, sub-control area, MSS, or to accommodate schedule changes by Western's customers, including changes to transmission schedules. This new system is needed to accommodate hourly scheduling and accounting required under the new restructured energy markets, rather than the monthly scheduling and accounting previously required under the terms of Contract 2948A.

The Power Billing system allows Western to gather and process meter data and information from the Scheduling system, bill customers, and generate reports within administratively and contractually required time frames. The Power Billing system used by Western under Contract 2948A requires extensive modifications to accommodate hourly market settlements under current utility settlement standards. This major upgrade will allow Western to accurately bill and account for any of the alternatives under consideration.

The Load Forecasting system will enable Western's merchant function to forecast the load of customers who have requested portfolio management services under the Full Load Service option in the new marketing plan. As the portfolio manager for these

customers, Western will need the ability to accurately forecast load requirements to optimize power purchases and minimize costs. Under Contract 2948A, since Western was not the load serving entity for these customers, it had no responsibility to meet customer loads other than to reduce load whenever energy deliveries to its customers exceeded Contract 2948A's maximum simultaneous demand level.

The Generation Optimization system is another new system that will enable Western and Reclamation to maximize the value of the hydropower generation from each Central Valley Project (CVP) power plant. Using the required daily water releases and hourly energy price forecasts, the Generation Optimization system will develop a water release schedule, which still allows Reclamation to meet its daily water delivery obligations, while simultaneously maximizing the value of the hydropower generation. When Contract 2948A expires, PG&E will no longer integrate CVP's hydropower generation with its own resource portfolio. Consequently, Western will need to have the optimization capability to maximize the value of the hydropower generated from the project's facilities.

The Enterprise Architecture Integration (EAI) is a software integration system and serves as the communications backbone for the different software packages. EAI allows data sharing and coordinates/integrates the interaction between other software programs to develop reports and analytical studies that support day-to-day business operations.

The Meter Data Repository system will allow Western to collect metered quantities from its delivery and interconnection points. Collecting this data will allow Western to analyze system performance and support its day-to-day operations. The information stored in the data repository will be used by the maintenance, operations, and power billing functions to conduct day-to-day operations to ensure that Western's transmission facilities continue to operate reliably and in conformance with all applicable NERC and WECC operating criteria. In addition, the metered data quantities will be used in Western's power rates function to support cost-of-service determinations.

The Settlements system will allow Western to keep track of its transactions with the ISO for each commodity purchased or sold in the ISO markets. Western's existing system is inadequate for post-2004 operations since significant amounts of data need to be entered manually, and the current application is not easily integrated with other business applications/systems. A replacement system capable of automatically integrating data from other business information systems is required.

Western requires each identified system to meet the statutory obligations associated with implementing its post-2004 Marketing Plan regardless of which operational alternative it selects. Because of the projected cost of the identified systems and resultant budget impact, Western worked with its customers during calendar year 2001 to secure additional funds to implement its new marketing plan. Customers recognized this need and provided more than $19 million to develop and implement these new business systems in fiscal years 2002–2004.

Comparative Economic Benefits Study

Navigant prepared a comparative economic analysis of each post-2004 operational alternative under consideration as part of this public process on behalf of Reclamation and Western. Navigant's initial comparative analysis showed that, of the three alternatives, the comparative net benefits of Western operating as either an MSS in the ISO control area or as a new control area were similar. Navigant's analysis indicated the Participating Transmission Owner (PTO) Alternative was the least cost-effective option.

During the public comment period, the ISO and other commentors questioned some of the underlying assumptions used in the Navigant study. The ISO submitted a separate economic analysis showing the PTO and MSS options were the least-cost options. Navigant reviewed the assumptions used in the ISO's studies and the comments received on its study assumptions. As a result, a number of assumptions in Navigant's initial economic comparative benefits study were changed. The revised study indicates from an overall comparative economic standpoint, the PTO option continues to remain the least cost-effective of the three alternatives being considered.

The revised comparative benefits study incorporated the following recommended changes to the assumptions: (1) Changing the treatment for self-provided ancillary services to correct a misinterpretation of the ISO Tariff, (2) changing the operating reserve requirement under the Federal control area option to be the greater of 5 percent or the largest single contingency, (3) increasing Western expenses to escalate these costs at the rate of inflation, (4) changing the assumption to include all transmission revenues on the 94-mile section of the Pacific AC Intertie (PACI) line between Malin and Round Mountain substations, (5) changing the assumptions regarding reliability services charges to eliminate charges for direct-connected customer loads, and (6) changing the congestion charges applied to Western loads to reduce net congestion charges to 80 percent of the total charges.

The comparative economic benefit analysis estimated the comparative costs Western would incur under each proposed post-2004 operating alternative over a 15-year analysis period. The nominal values identified in the Navigant comparative economic benefit study were discounted at a Federal discount rate of 5.6250 percent to determine annualized benefits and costs. The annualized results of the study are summarized below:

ANNUALIZED COSTS ASSOCIATED WITH IMPLEMENTING AND OPERATING EACH POST-2004 ALTERNATIVE

[In millions of dollars]

	Participating transmission owner option	Metered sub-system option	Federal control area option A	FCA option B	FCA option C	FCA option D
Total Benefits	88.1	76.7	81.6	81.6	81.6	81.6
Total Costs	98.8	85.6	91.1	90.5	90.4	63.1
Net Benefits	(10.7)	(8.9)	(9.5)	(8.9)	(8.8)	18.5
Net Benefits Normalized to PTO Option	0.0	1.8	1.2	1.8	1.9	29.2

The benefit calculation included estimates for sales of ancillary services, payments for transmission access charges, and transmission capacity sales. The cost components included estimates for the following ISO charges: ISO grid management charges, ISO transmission services, purchases of ancillary services from the ISO markets, transmission congestion charges, reliability services charges, energy imbalance/deviation charges, unaccounted for energy charges, neutrality charges, and grid operation charges. The study also includes Western's estimates of the capitalized infrastructure investment costs, annual operating expenses, and estimated transmission revenue requirements. The comparative economic analysis normalized the net benefits under each alternative against the cost of implementing the PTO option. Under this cost normalization approach, avoided costs associated with implementing each post-2004 operating scenario show avoided annual costs of approximately $1.8 million for the MSS option and a range of $1.2 million to $29.2 million in avoided annual costs for the control area option. The cost avoidance range for the control area formation options result from decreasing ISO charges levied as more CVP customers join the new control area. The control area option analyzed four alternative scenarios. Scenario A assumed formation of a control area which included only the direct-connected Reclamation Project Use loads. Scenario B assumed formation of a control area which included Scenario A and three direct-connected Preference customers (Cities of Redding, Roseville, and Shasta Lake). Scenario C assumed all elements from Scenario B and added the following three other direct-connected customers: the Turlock Irrigation District (TID), the MID, and the SMUD. Scenario D assumed the inclusion of all other Preference Power customers. The avoided costs increase across the scenarios as the fixed costs of forming and operating the proposed control area are spread over a larger base, and the amount of charges that control area participants are responsible for paying to the ISO decrease.

Excluding baseline operation and maintenance expenses, which would be the same under all post-2004 operational alternatives, an estimate of annual operating expenses associated with each alternative was developed. The table below summarizes Western's estimated cost for each post-2004 operational alternative.

POST-2004 OPERATIONAL ALTERNATIVES COST SUMMARY ESTIMATED ANNUAL EXPENSES

[In millions of dollars]

	Participating transmission owner option	Metered sub-system option	Federal control area options (A–D)
Annual Operating Expenses	10.1	16.2	17.5
Annualized Capital Expenses:			
Information Technology	2.8	2.8	3.2
Other Infrastructure	0.2	0.2	0.3
Substation Costs	0.0	0.7	2.8
Subtotal	3.0	3.7	6.0
Other One-Time Expenses:			
Western Metering	0.0	0.0	1.0
Reclamation Metering	1.3	1.3	0.9
Subtotal	1.3	1.3	1.9

As discussed previously under the section entitled ''Implementing the post-2004 Power Marketing Plan,'' much of the Information Technology infrastructure is required to implement the post-2004 Power Marketing Plan. The only differences relate to capital investments required to support specific functionality in software, metering equipment, and substations. Operating expenses are significantly lower under the PTO option because there is no need to incur additional expenses in the maintenance and operations functions. Specifically, the MSS and control area options require two additional 24-hour desks (Transmission Scheduling and Security and Automatic Generation Control) and additional expenses associated with maintaining facilities at Cottonwood (MSS Alternative) or Cottonwood and Round Mountain substations (Control Area Alternative) in the event Western is unable to successfully negotiate a contract-based path to the Pacific Northwest.

Although Western may ultimately need part of both Cottonwood and Round Mountain substations to implement the MSS Alternative, Western decided to take a more conservative cost approach for the initial comparative cost studies. If Western decides to implement the MSS Alternative in the future, Western may consider including Round Mountain Substation as a northern boundary point. Finally, the MSS and control area options require additional staff to handle settlements with the ISO. The Navigant study only analyzed the costs that Western would incur as a transmission provider under each post-2004 operations alternative and, consequently, did not estimate the costs that individual customers would incur under each operating scenario.

Under the MSS and the control area formation options, Western assumed that to perfect its existing rights under Contract 14–06–200–2947A (Contract 2947A) it would be required to either acquire or invest in constructing alternative facilities at, or in the vicinity of, Cottonwood and Round Mountain substations. This would assure a contiguous path between Western's transmission system and the Pacific Northwest.

Executing a PTO agreement would result in blending the relatively low costs of Federal transmission facilities with the higher statewide costs of California's three investor-owned utilities. This would result in an increase in costs to Western's Preference Power customers and Reclamation's Project Use loads without a corresponding increase in benefits.

Description of Alternatives

The No Action Alternative

Under the No Action Alternative, Western would not undertake any actions before January 1, 2005, to establish a successor operational configuration or to develop and establish permanent new business arrangements with the ISO or PG&E, based on PG&E's position that it will not extend the terms of Contract 2948A. Under Reclamation law, Western is responsible for marketing and transmitting Federal power, but because it would not have a long-term business arrangement in place with the ISO or PG&E, Western would not be able to guarantee delivery of Federal power to Project Use loads from delivery points in the ISO control area.

Deliveries on the California-Oregon Intertie (COI) lines could also be affected negatively as successor interconnection and/or transmission arrangements would not be in place. Western recognized the problems associated with this alternative before publishing its June 24, 2003, **Federal Register** notice. With no successor interconnection and/or transmission arrangements in place, under the No Action Alternative, the parties may have no other alternative but to seek the clarification and resolution of their respective interests through litigation. The June 24, 2003, notice stated:

> Since a basis for transactions or business relationships necessary to carry out deliveries of power to customers does not exist, substantial business uncertainty would result. One or more of the parties could pursue litigation to determine the respective positions of Western and its individual customers, Reclamation, CAISO, and PG&E. This alternative creates business uncertainty and operational impediments which would result from not having successor agreements in place with PG&E and the CAISO.

Operating Scenario To Evaluate the No Action Alternative

Under the No Action Alternative, Western would be a contiguous electrical system with most of Reclamation's generation and Reclamation's single largest Project Use load (Tracy Pumping Plant), as well as some Preference customer loads directly connected to the Federal transmission system. Reclamation's off-system generation at San Luis and New Melones would continue to operate under terms of existing contracts with PG&E that do not expire until 2016 and 2028, respectively. Western's northern boundary for its transmission system would be uncertain because of the lack of successor transmission arrangements to Contract 2947A at Round Mountain and Cottonwood substations.

Since Western would not undertake actions to implement a post-2004 successor operational alternative, it would continue to reside within the ISO control area. Under the No Action Alternative, Western would not have long-term business arrangements that would allow it to deliver Federal power to Project Use loads, First Preference, and Preference Power customer loads not directly connected to Western's transmission system. Western would execute short-term (non-firm) transmission arrangements with the ISO, typically one day at a time, and would be subject to curtailments whenever congestion or other operational constraints arise.

Without long-term business arrangements, the ISO would not be obligated to provide services to Western. The converse is also true for Western. In the absence of long-term arrangements, Reclamation would not execute a Participating Generator Agreement (PGA) with the ISO. Revenues associated with generation or ancillary services excess to the needs of direct-connected Project Use loads and Preference Power customers and sold to the ISO for its needs would not be available to Western. Western would exist within the ISO control area without specific boundaries, and without the ability to collect revenues associated with services provided to the ISO, or to deliver power on a sustained basis to meet Western's statutory and contractual obligations to off-system Project Use loads, First Preference customers, and Preference Power customers, respectively.

Evaluation of the Flexibility Criteria Under the No Action Alternative

The No Action Alternative would give Western very little certainty in conducting its day-to-day business operations. Without long-term business arrangements, Western would have to rely on short-term arrangements with the ISO and others after January 1, 2005, to continue to do its business. Although these short-term arrangements do not commit Western to a long-term relationship and allow Western to modify its operations, the arrangements are inherently unstable and create significant business uncertainty. Thus, the No Action Alternative does not meet the flexibility criteria.

Evaluation of the Certainty Criteria Under the No Action Alternative

The No Action Alternative does not assure a stable business environment for Western or its customers. With no long-term business arrangements, Western would have no basis for requiring the ISO or PG&E to deliver power to Western's off-system Project Use loads or Preference Power customers served using the ISO-controlled grid. On January 1, 2005, Western would not have negotiated long-term mutually beneficial business arrangements with the ISO or PG&E and, consequently, would have to undertake short-term and potentially unstable business arrangements to deliver Federal power to Project Use and Preference Power loads not interconnected to the Federal transmission system. There would be no long-term rate certainty and, in the event rates increase faster than Western's ability to undertake changes through its formal rate-setting process, Western would face the potential of significantly reducing its power deliveries to avoid any potential violations of the Federal Anti-Deficiency Act. The underlying uncertainty would also inhibit long-term business planning and, as a result, Western concludes that the No Action Alternative does not meet the certainty criteria.

Evaluation of the Durability Criteria Under the No Action Alternative

Under the No Action Alternative, Western would not have any operational protocols or business processes in place as of January 1, 2005. Effective this date, Western would put interim business procedures in place to continue operating in the ISO control area. Because short-term arrangements are by their nature unstable, given the unique nature of the CVP hydropower system, unsettled rights on the COI, and the lack of a northern boundary for Western's transmission system, Western concludes that the No Action Alternative does not meet the durability criteria.

Evaluation of the Operating Transparency Criteria Under the No Action Alternative

Under the No Action Alternative, as of January 1, 2005, Western would have no long-term business arrangement with the ISO for operation of Western's transmission system within the ISO control area. Since Western would not have a long-term business arrangement with the ISO, every transaction would be accomplished on an interim, short-term basis. Under this scenario, Western would not be able to guarantee delivery of Federal power to Project Use loads and meet its contractual commitments to First Preference and Preference Power customers to deliver energy to delivery points on the ISO-controlled grid since

it could buy transmission on only a non-firm basis.

In addition to the uncertainty associated with Western's business relationship with the ISO, other uncertainties include the lack of successor transmission arrangements to Contract 2947A for continued transmission access to the PACI line, lack of successor operational arrangements (Coordinated Operations Agreement) for the coordinated operations of the three-line COI, and potential new business arrangements on the California-Oregon Transmission Project (COTP). As a result of these business uncertainties under the No Action Alternative, Western cannot guarantee that its operations will not negatively impact the operations of third parties and, consequently, Western concludes that this alternative does not meet the operating transparency criteria.

Evaluation of the Cost-Effectiveness Criteria Under the No Action Alternative

Under the No Action Alternative, since Western will not have long-term successor business arrangements with the ISO or others, the cost of conducting its day-to-day business activities is highly uncertain. In addition, since no business relationship exists with the ISO, Western may not be able to realize the benefits of providing products for use in the ISO's markets. For instance, because of the lack of a long-term business arrangement such as a PGA, revenues associated with excess generation and ancillary services provided to, and which may be used by the ISO, may not be fully realized by Western. The ISO may furnish products and services to Western and its customers without a contractual relationship that would allow the ISO to bill Western for the use of such products and services.

Other business arrangements including the acknowledgment of Western's rights to transmission capacity on the PACI, potential new business arrangements on the COTP, successor arrangements for the coordinated operations of the COI, as well as receiving credits associated with self-provision of ancillary services remain uncertain under the No Action Alternative. Without a vehicle to bill or to be paid for services, the economics of Western's operations associated with this alternative are unknown. Because of the uncertainty associated with the cost structure that Western would experience under the No Action Alternative, this alternative does not meet the cost-effectiveness criteria.

Summary Analysis of the No Action Alternative

The No Action Alternative outlined during this public process is unlike other no action alternatives usually associated with a proposed project or policy. In a normal no action alternative, the status quo is preserved and proposed project/policy alternatives are compared with the status quo. In this case, the status quo does not represent the no action alternative as existing contracts with PG&E terminate while Western is simultaneously implementing a new marketing plan. PG&E has explicitly stated that it is not interested in extending or renewing these contracts. With the status quo not available as an option, Western must move toward establishing a new business identity and/or business operating arrangement that will allow it to continue doing its day-to-day business. Taking no action prior to January 1, 2005, will require Western to put in place some type of arrangement to operate within the ISO control area as soon as possible after January 1, 2005.

The No Action Alternative will place Western in a highly undesirable business posture. Without long-term business arrangements in place, Federal power resources cannot be delivered reliably and cost-effectively to Project Use, First Preference Power, and Preference Power delivery points located on the ISO-controlled grid and not directly connected to the Federal transmission system. Lack of any permanent business arrangements would not allow Western to participate in the ISO markets and allow excess generation and ancillary services to be sold and the revenues used to accelerate repayment on the Federal investment. The No Action Alternative impacts Western's ability to meet its statutory obligations to provide energy to Project Use loads on the ISO-controlled grid and meet its contractual obligations to deliver Federal power to First Preference and Preference Power customers who use the ISO-controlled grid. Western has determined that it is not prudent to implement the No Action Alternative.

Western's analysis of the five evaluation factors is summarized in the table below:

NO ACTION ALTERNATIVE EVALUATION SUMMARY

Evaluation factors	Meets	Almost meets	Does not meet
Flexibility			XX
Certainty			XX
Durability			XX
Operating Transparency			XX
Cost-Effectiveness			XX

The Participating Transmission Owner Alternative

Western would execute a Transmission Control Agreement (TCA) with the ISO under the PTO Alternative. Executing a TCA would transfer operational control over Western's transmission system to the ISO. Reclamation would execute a PGA with the ISO. Executing a PGA would allow the ISO to control Reclamation's generation and allow Western to fully participate in the ISO markets by receiving revenues associated with any excess generation.

The CVP was authorized primarily as an irrigation project. Therefore, Project Use energy requirements have first priority for the hydropower generated from the facilities. Hydropower generation in excess of Project Use energy requirements is available to be sold to CVP Preference Power customers. This legislative requirement would need to be appropriately accommodated in any future agreement executed between Reclamation, Western, and the ISO. The specific terms and conditions relating to ISO operational jurisdiction over Federally owned generation and transmission facilities would also need to be carefully evaluated to assure that as a result of implementing this alternative, the authorized project purposes of the CVP are not impaired.

If the appropriate arrangements were worked out with the ISO, at a minimum, Western would need to retain responsibility and operational control over switching operations and the maintenance and replacement of its transmission facilities. Similarly, Reclamation would also, at a minimum, need to retain responsibility and operational control over its hydropower facilities/operations and the maintenance and replacement of its generating facilities. Under existing authorizations, the responsibility and operational control over the water and power operations of the CVP cannot be impaired.

The ISO would become responsible for scheduling the use of the CVP transmission system and Western's

Malin-Round Mountain transmission line. Western currently is the operating agent for COTP. Depending on the arrangements that would ultimately be made for this line, the ISO may also assume operational control of this transmission line. Under its current COTP agreements with TANC, Western would retain responsibility for furnishing technical services associated with the long-term maintenance and replacement of these facilities. The ISO would assume scheduling responsibility for the entire three-line COI system south of the Oregon border and would continue in its role as the single path operator.

Operating Scenario To Evaluate the PTO Alternative

Under the PTO Alternative, Western would not have a physically discrete and defined transmission system. From an operational perspective, Western's transmission system would be integrated with the ISO control area. Western would schedule energy deliveries for Project Use loads, First Preference customers, and other Preference Power customers with the ISO under generation schedules developed by Reclamation and Western. Western would act as the Scheduling Coordinator (SC) for these deliveries and pass through ISO charges associated with generation, including imbalance energy charges, reserve charges, and other charges required to meet the ISO's costs of operating the control area. Western's customers, including those that are directly connected to the Federal transmission system and those served through PG&E facilities, would be billed all of the appropriate ISO charges associated with those energy deliveries. Western would identify its transmission revenue requirements which would be collected by the ISO.

From an operational perspective, Western would need a 24-hour Merchant Desk to purchase energy required to support Project Use energy requirements, as well as to meet the supplemental energy needs of Western's Variable and Full Load Service customers under its post-2004 Marketing Plan. Western would provide SC services for Variable or Full Load Service customers requesting this service, as well as for Reclamation's generation facilities. Under its current operating procedures, the ISO requires each SC to maintain a 24-hour Merchant Desk in order to maintain SC certification status.

Western would also have to maintain a 24-hour Switching Desk to perform switching for outages of system elements (such as transmission lines and breakers) for maintenance, repair, or replacement, or to assist the ISO in restoring the system following a disturbance. Since the ISO would schedule the use of Western's transmission system, Western would not have to maintain a 24-hour Transmission Scheduling Desk. Western would also not have to maintain a 24-hour Automatic Generation Control (AGC) Desk because Reclamation's generation would be dispatched by the ISO under a PGA. As a third party to this transaction, Western could face increased risk and uncertainty as it implements its new marketing plan since it would not necessarily have direct real-time knowledge about the operation and generation status of Reclamation's hydropower facilities.

From an organizational perspective, Western would still need to retain its power accounting, billing, and settlements functions to monitor and credit/bill for products and services purchased and sold under to its marketing plan, as well as to reconcile ISO billings. Staff would be required to verify the accuracy and integrity of the accounting records and issue invoices to Western's customers and the ISO as appropriate. The ISO now has more than 100 separate charge types. Depending on the nature and complexity of the future financial settlements, this function may require additional staffing above current levels.

Evaluation of the Flexibility Criteria Under the PTO Alternative

Implementing the PTO Alternative would subject Reclamation and Western to the terms of the ISO Tariff for the term of the PGA and the TCA, respectively. Western and Reclamation would conform their business practices to those required under the ISO Tariff. If a new RTO is established and the ISO chooses to join, any changes that the ISO would need to make to its existing operating and business protocols would also have to be made by Reclamation and Western. Western and Reclamation would have to either comply with any changes required within the time frames established by the ISO or choose to terminate the TCA and PGA, respectively. Because of the present 2-year notice requirement, the effective date of the termination is not immediate. In the interim, as a PTO, Western and Reclamation would need to conform their business practices to the extent not precluded by Federal law.

If the ISO is certified by the Commission as an RTO, any changes that the ISO would need to make as a result of its new role would presumably be incorporated in its tariff. Reclamation and Western could choose to either undertake the necessary changes in their respective business processes or choose to terminate the PGA and TCA, respectively. Because of the notice requirement, the effective date of the termination would not be immediate. In the interim, as a PTO, Western and Reclamation would need to conform their business practices to the extent not precluded by Federal law.

The electric utility industry is in a state of ongoing change. New policies, procedures, and practices are being adopted to reform and restructure the energy markets. NERC and WECC are coordinating industry wide changes to existing operating standards and protocols to ensure the continued reliable operation of the electric power grid. As industry wide consensus is achieved, under the PTO Alternative, the ISO would presumably modify its tariff as needed.

The flexibility to join whatever RTO that Western chooses is of concern to some of the commentors. For instance, the TID commented ''A [Federal Control Area] FCA allows for choice concerning which Regional Transmission Organization (RTO) Western [Sierra Nevada Region] SNR joins. Other alternatives require that Western joins the RTO that the CAISO desires.''

The TID continued:

> TID believes that the customers of Western should be able to choose what business environment they prefer to operate within. Customer choice was the linchpin in many arguments advocating competitive markets and California's electric industry restructuring. A Western FCA will give customers a choice between operating under the volatile CAISO market structure and a cost based, relatively predictable model. Under a Western FCA, customers will have the choice of participating and being a part of the CAISO if they choose. If Western chooses any of the options that make it subordinate to the CAISO or the CAISO Tariff, Western will have made the choice for many Western customers.

Under Contract 2948A, transmission and ancillary services are provided by the ISO to PG&E on behalf of Western. Western's off-system customers receive transmission service from the ISO and through Western under Contract 2948A. Direct-connected customers receive transmission service and ancillary services from Western and the ISO through PG&E, respectively, under Contract 2948A. When Contract 2948A terminates on January 1, 2005, under this alternative, these services would be provided by the ISO to all of Western's customers unless the customer can self-provide some of these services. In essence, all of Western's customers will be, by default, subject to the charges

associated with the ISO Tariff. The TID appears to equate the lack of choice with a lack of flexibility to choose when they enter or leave the ISO environment.

Western believes that choosing the PTO Alternative would give it the short-term flexibility needed to adapt to NERC and WECC policy changes. The long-term flexibility of joining whatever RTO Western chooses is minimally constrained by the current 2-year TCA termination notice. Western, therefore, concludes that the PTO option meets the flexibility criteria.

Evaluation of the Certainty Criteria Under the PTO Alternative

Under the PTO Alternative, Western would be subject to all of the ISO charges associated with being the SC for Reclamation to schedule Base Resource and Custom Product to its customers. The SC for each customer would be subject to all of the ISO charges associated with scheduling and delivering power to the customer's delivery point and the associated ancillary services. Many of the ISO charges, such as imbalance energy and reserves, fluctuate on a daily basis with spot market price variations. Although a portion of this risk may be minimized through forward purchases, this alternative does not provide Western with the ability to load follow. Unanticipated energy imbalance charges may still arise as a result of normal project operations. Transmission and delivery-related charges as well as overhead charges of the ISO may change less frequently, but based on historical trends, these costs are expected to change more frequently than Western's.

The ISO is in the midst of implementing new operating guidance for its Market Redesign (MD02). The proposed new initiative would implement the concept of locational marginal pricing to deal with transmission congestion. If MD02 is implemented in its current format, during periods of congestion, the ISO would redispatch all generation based on economic factors. Under this alternative, during periods of congestion, affected CVP Preference Power customers and Project Use loads could end up paying a different price than the actual cost-of-service rates associated with Federal hydropower resources. These rates may not be consistent with Reclamation law and policy, and Western may need to consider mitigation strategies.

Several of Western's customers are concerned with the predictability and stability of any alternative selected by Western. The TID summarized its view of certainty by stating that under the PTO option, the cost of power from generation to load will be set by a market that cannot be forecast with any certainty. The TID also commented that the Western rate process is open and generally results in a fair allocation of costs based on cost causation principles. The TID contrasts the Western process with the ISO stakeholder process as follows:

> This can be contrasted to the CAISO method of allocating costs, which does not accept meaningful direction from stakeholders representing consumers. Rather, the CAISO seems willing only to socialize costs in order to make it seem that the costs of CAISO services are less prohibitive.

The TID also states that transmission allocation based on firm physical transmission rights adds certainty to long-term and short-term planning. TANC commented:

> Firm physical transmission rights are a prerequisite to a stable forward energy market. With known physical rights there is no need for unpredictable congestion management schemes, multiple markets, and there is no fictitious congestion. Without firm physical transmission rights it is commercially imprudent to contract in the forward markets. The CAISO provides transmission for a maximum period of one day, and those who are willing to pay the most get to use the transmission grid.

The City of Palo Alto stated:

> The City values long-term transmission contracts for establishing firm transmission rights and obligations of load serving entities. Western has always utilized this approach to deliver Western energy to its customers. This provides cost and operational certainty that the CAISO Tariff, and market cost based approach to service, does not provide.

The TPUD commented:

> The Cal ISO prepares rate amendments on an average of one every three to four weeks. By contrast, Western ratemaking occurs an average of once every three to four years. The Cal ISO has some 250 different rates. Even with a Federal control area it is doubtful that Western will have a tenth as many.

The Arvin-Edison Water Storage District stated:

> Despite the best of intentions and a talented staff, the California Independent System Operator (CAISO) is mired in unwieldy governance that results in perpetual tariff revisions and market redesigns. Each revision results in added costs and complexity that bog the CAISO with some of the highest overhead expenses, and hence the highest grid management costs of any current ISO or RTO in the nation.

Reclamation stated:

> Costs of CVP operation have not changed significantly except due to escalation or increased maintenance as the facilities have aged. This situation would change significantly should the CVP become a part of the CAISO. As the largest CVP load, Reclamation does not want the CVP beneficiaries to be exposed to CAISO operational costs beyond what the historical CVP cost of operations have been.

The ISO commented:

> The ISO's transmission rates are based on Commission approved cost-of-service basis and on an open and non-discriminatory basis to all market participants * * * the only volatility Western would experience is through buying and selling in the ISO's Ancillary Services and Real-Time Imbalance Energy markets. However, this volatility is present regardless of whether or not Western becomes a control area, and the degree of volatility is based on Western's need to procure additional resources. If Western has sufficient resources, the volatility of these markets would not impact Western and its customers.

Under the PTO Alternative, although Western may retain its ability to purchase power in the forward markets to reduce energy imbalance charges during real-time operations, since Western would not be able to load follow, it would not have the ability to respond to significant changes during real-time operations. Consequently, to the extent that Western is short resources, Western would be subject to any volatility in the ISO's ancillary services and real-time energy imbalance markets.

Western must set its rates at the lowest possible level consistent with sound business practices, but must cover all of its costs, including amounts to repay the project investment over the prescribed repayment period. In the past, Western's costs have been stable with rate adjustments made on an average of once every 3 years. Western's rates are set in an open public process designed to assure that customer concerns are accommodated through an appropriate rate design and cost allocation methodology.

The rate certainty associated with each of the operational alternatives is important in the post-2004 time period. Rate changes could occur more frequently if Western chose an operational alternative where it is subject to more frequent changes in cost. Under the PTO option, Western would be subject to changes in ISO costs that are not within Western's ability to control. For example, between 1999–2002, the ISO revenue requirement for grid management charges increased from $158.7 million to an estimated $239.2 million, an increase of more than 50 percent. Western's customers have expressed an intense interest in assuring that the post-2004 operational alternative selected is responsive to cost containment principles so that to the

maximum extent practicable, the rates for products and services are stable and business certainty is maintained.

The commentors quoted previously also equated certainty with having physical long-term transmission rights. These physical rights are unavailable from the ISO under the PTO Alternative. As pointed out by TANC, transmission service is only available on a day-to-day basis and is allocated to those willing to pay the highest price. There is no business certainty associated with a forward purchase that requires transmission to get power to load if, day-to-day, the price of transmission varies significantly. A forward purchase of energy believed to be economical under one set of assumed transmission costs can rapidly become uneconomical if the cost of transmission increases significantly over a short period of time. Under the PTO Alternative, customers would be subject to these variable changes in transmission service costs because the use of Western's transmission system would be governed by the ISO and would be subject to all of the ISO charges. To the extent existing right holders may be eligible to receive congestion revenues, they may be able to mitigate some of this price uncertainty but not to the same extent provided by physical transmission rights.

Under the PTO Alternative, Western would also be responsible for paying ISO overhead charge increases as the SC for Base Resource and Custom Product schedules. If Western does not incur significant energy imbalance or ancillary service charges from the ISO, Western's costs may not escalate as rapidly and be as variable as the ISO's in the recent past. However, Western's customers could experience additional costs associated with the transmission and delivery of their energy due to market-based charges for congestion and ancillary services. Although prices are relatively stable now, Western and its customers may still be subject to uncontrollable market-based risk, as well as the uncertainties associated with the implementation of MD02. Western concludes that this alternative does not meet the certainty criteria.

Evaluation of the Durability Criteria Under the PTO Alternative

In general, operating and business protocols and practices are established and defined by the agreements which create the relationship. These agreements establish obligations and responsibilities of the parties and allocate the burdens and benefits of each business relationship. Under the PTO option, the basis for Western's relationship with the ISO is the ISO Tariff. Because the ISO is a tariff-based organization, after a PTO executes a TCA, the operating terms, conditions, rates, and other pertinent aspects governing a PTO's business arrangements with the ISO can change with the filing of new ISO Tariff amendments. In the event Western and the ISO cannot agree upon potential changes to its existing agreement(s), the ISO can submit its proposed changes to the Commission for resolution.

Many commentors expressed reservations about the durability of any arrangement with the ISO because it uses a tariff-based approach. Many of the comments equated stable, long-term business relationships occurring through contract- and not tariff-based relationships.

For instance, the TANC stated:

> We believe in the durability of long-term contracts for establishing rights and obligations of load serving entities. Western has always utilized this approach to doing business. The CAISO has historically attempted to alter the rights and obligations of existing contracts. The CAISO utilizes tariffs that can and have been frequently changed. The CAISO files amendments too frequently to consider the CAISO Tariff durable or predictable.

Others including the MID, the TID, and the SVP cite the 55 amendments that the ISO filed at the Commission in the last 5 years as evidence that a relationship with the ISO is not durable.

The ISO commented:

> The ISO's operating protocols have remained substantially the same since the ISO start-up date in 1998. The only changes in operating protocols are based on the need to comply with changing operational criteria from the NERC and WECC. However, every control area, including the Western Control Area, would have to make similar changes over time. Admittedly, the ISO has necessarily changed the protocols associated with markets, market implementation, and market rules a number of times over the past 6 years. Given that the ISO was the first of its kind in the United States, an evolutionary process has been necessary when it comes to markets. Thus Western's concern with durability with respect to operating protocols has been met, but market durability is still evolving and will continue to evolve for a number of years to come. Western cannot disguise its concern regarding ''operating protocol durability'' as an off-hand reference to the energy crisis and changing market rules. Moreover, the ISO's ongoing market modifications are designed to promote stability based on experience, best practices, and coordination of operations to the benefit of all California consumers and market participants.

Fifty-seven ISO Tariff amendments have been filed since the ISO became operational in 1998. Western notes that the ISO has filed four tariff amendments since this public process began on June 24, 2003. Although it is important to distinguish between procedural and substantive changes to the ISO Tariff, the underlying ability of the ISO to undertake changes to its business and operating protocols and procedures creates business uncertainty and risk.

Based on the affected term or condition, these changes could materially affect the relationship between the benefits and burdens that each party would receive and impart from being a PTO. Stakeholders continue to have ongoing concerns related to the frequency and number of ISO Tariff amendments. Although many of these changes would parallel changes that other control area operators must implement in response to ongoing industry changes, because of their frequency and the number of substantive changes made, Western concludes that the PTO Alternative almost meets the durability criteria.

Evaluation of the Operating Transparency Criteria Under the PTO Alternative

As a PTO, Western's transmission system would be scheduled and dispatched by the ISO as a part of the ISO-controlled grid. Assuming that the operational jurisdictional issues identified earlier in the description of the PTO Alternative are satisfactorily resolved, Western and Reclamation would operate its system under the operating protocols and procedures established by the ISO. Because the ISO is a NERC- and WECC-certified control area, the ISO would, in the ordinary course of its business, coordinate changes to its system operations with bordering control areas or provide appropriate mitigation measures to minimize the impacts of such changes to neighboring control areas. With respect to impacts to third parties, the PTO Alternative meets the requirements of the operating transparency criteria.

Cost-Effectiveness Criteria Under the PTO Alternative

Navigant prepared a comparative economic analysis of each post-2004 operational alternative under consideration on behalf of Reclamation and Western. Navigant's comparative analysis showed that, of the three alternatives, the comparative net benefits of Western operating as either an MSS in the ISO control area or as a new control area were similar. Navigant's analysis indicated that the PTO option was the least cost-effective.

During the public comment period, the ISO and other commentors

questioned some of the underlying assumptions used in the Navigant study. The ISO submitted a separate economic analysis showing that both the PTO and MSS options were the least cost options. Navigant reviewed the assumptions used in its initial comparative economic benefits study. A number of the suggested changes were accepted and incorporated into a revised comparative economic benefits study. The revised study continues to indicate that from an overall comparative economic standpoint, the PTO option continues to remain the least cost-effective of the three alternatives.

During the public process, some views expressed on the comparative economic benefit studies performed by Navigant and the importance of the cost-effectiveness criteria included:

The TANC commented:

> * * * given the rapid escalation of the CAISO costs, numerous inaccuracies of CAISO settlements, and extreme complexity and variability of CAISO market design, assumption-based cost forecasts in the CAISO environment are difficult to estimate and cannot be the most important evaluation criteria for Western and its Customers.

The TPUD stated:

> The Navigant study and the forthcoming Cal ISO study, which will no doubt repudiate most, if not all, of Navigant's work, are a waste of time, money and effort. A prediction of how many tariff amendments the Cal ISO will file over the next twenty years would be more certain than anyone's prediction of the Cal ISO costs just two years from now.

The TID commented:

> Western should not be persuaded to forego the FCA [Federal Control Area] option because some indicate that it *may* not be the low cost option. If, as the CAISO, and perhaps others, purport, participating in the CAISO is the most cost effective approach, then over time, Western customers will migrate to the CAISO market. The CAISO has a mission of being the preferred transmission provider. If they meet the goal, Western customers will find ways to participate and join the CAISO.

The ISO and a number of other commentors were concerned that Western has the information it needs to make a fully informed decision, and that the decision recognize and incorporate the needs of all the parties, and not just a small subset of users. Although Western is aware of the issue of impacts to statewide ratepayers, under Reclamation law, Western's legal obligations are to Project Use and Preference Power customers. Western views the Navigant study as a screening study to determine the comparative differences between the alternatives and to determine which alternatives, if any, were significantly more or less cost-effective than the others. The study looked at the cost of delivering power to Federal Base Resource and Custom Product customers to the customers' delivery point(s). Western believes that the study used reasonable assumptions and cost data based on information available at the time. Western analyzed the comments and determined that since the PTO Alternative is the most expensive from the comparative economic benefits perspective, the PTO Alternative almost meets the cost-effectiveness criteria.

Under the terms and conditions of Contract 2948A, PG&E agreed to provide transmission service to Federal Project Use and Preference Power customers instead of the Federal Government constructing its own transmission system. Although this contract contains an expiration date, since PG&E's actions precluded the Federal Government from constructing its own facilities, Western asserts that PG&E is responsible for assuring the delivery of Federal power at rates consistent with its embedded cost of service. Therefore, any cost increases for transmission service beyond those already established under the terms and conditions of Contract 2948A constitute a cost shift to Reclamation's Project Use loads and Western's Preference Power customers. Since PG&E is presently paying these costs, costs to statewide ratepayers would not increase if the current arrangements continue.

Summary Analysis of the PTO Alternative

The PTO Alternative integrates the Federal generation and transmission system with the ISO-controlled grid. Under this alternative, Western's customers would be subject to all of the ISO charges associated with transmission and delivery of Federal power at their delivery points. For off-system Project Use loads and Preference customers, the resulting increase in ISO transmission and related charges would result in a cost shift from the transmission service now provided by PG&E under Contract 2948A. These customers are currently provided transmission service by PG&E for Federal power at embedded cost rates. Western's off-system Project Use and Preference customers would be subject to all of the ISO charges associated with transmission and delivery of Federal power to them. These charges represent a significant increase in costs to off-system Project Use loads and Western's Preference customers. These costs are now being paid to the ISO by PG&E under terms of Contract 2948A but will be charged to off-system Project Use loads and Preference customers after January 1, 2005. Unless successor arrangements can be successfully negotiated with PG&E, and/or other cost allocation arrangements undertaken, these cost shifts are unavoidable not only under the PTO, but also for the MSS, sub-control area, and control area alternatives. Western will consider alternatives to minimize these cost shifts to its customers as part of its formal rate process.

For Project Use loads and Preference customers directly connected to the Federal transmission system, the cost-of-service rates would increase substantially, as transmission access charges would increase from cost-of-service rates associated with Federal transmission facilities to include the cost of statewide transmission. This would result in a significant cost shift to these users without a corresponding increase in service or benefits.

As the SC for Reclamation's generation and for customers who have contracted for this service, Western's overall cost to deliver Federal power to the ISO grid may not significantly increase if it is able to operate to minimize the need to purchase significant amounts of imbalance energy and/or ancillary services under the PTO Alternative. From an infrastructure standpoint, the PTO Alternative will still require development and implementation of all of the systems described previously in the section entitled, ''Implementing the Post-2004 Power Marketing Plan,'' except for the reliability support function portion of the Scheduling system. Implementing the PTO Alternative would eliminate the need for a scheduling system to support the reliability function. However, additional programming would be required to assure that data would be appropriately collected and shared between Western's Power Marketing and Power Operations functions and the ISO.

From a staffing standpoint, Western would have to maintain a 24-hour Merchant Desk and a 24-hour Transmission Switching Desk, requiring an estimated 15 positions. The Transmission Switching Desk already exists. Western intends to hire the Merchant Desk positions from within the organization to the maximum extent possible to minimize the need for new staff and to continue transforming its organization to meet the needs of its new Marketing Plan. In addition, Western may need to add staff to the Settlements function to reconcile ISO charges and issue bills to customers for SC services provided to some of the customers as charged by the ISO to

Western. Under the PTO alternative, the intent is to use existing staff to the maximum extent possible.

This table summarizes the relative ratings of each evaluation criteria for the PTO Alternative:

PTO ALTERNATIVE EVALUATION SUMMARY

Evaluation factors	Meets	Almost meets	Does not meet
Flexibility	XX		
Certainty			XX
Durability		XX	
Operating Transparency	XX		
Cost-Effectiveness		XX	

The Metered Subsystem Alternative

The ISO defines an MSS as the system of a transmission owner bounded by ISO-certified revenue quality meters at each interface point and generating units internal to that metered system. Upon execution of an MSS agreement or an MSS aggregator agreement with the ISO, the agreement would establish Western's transmission system boundaries and identify which direct and non-direct connected entities would be included within Western's MSS. Western would remain responsible for operating, maintaining, and replacing the CVP transmission facilities. Reclamation would not be required to execute a PGA with the ISO. Reclamation would remain responsible for switching, maintaining, and replacing the CVP's generating facilities.

Under this alternative, Western could operate as a sub-control area within the ISO control area and would be responsible for scheduling the use of the CVP transmission system and Western's Malin-Round Mountain transmission line. Assuming that Western remained as the COTP operating agent, this line would also be under the operational control of Western, with Western continuing to be responsible for maintenance and replacement of these facilities. Western would have the scheduling responsibility for use of the CVP transmission system, the COTP, and the Malin-Round Mountain transmission line. The ISO would remain as the single path operator for the entire COI.

Operating Scenario To Evaluate the MSS Alternative

Under the MSS Alternative, Western would have a physically defined contiguous system that includes those customers wishing to participate. Although the ISO allows off-system loads to be aggregated together and incorporated into an aggregated MSS, because of possible resource constraints associated with following the loads of individual participants, Western would need to retain operational flexibility over the ultimate size of the MSS and the timing of when new participants would be added. Initially, Western would limit the size of the MSS to First Preference, Project Use loads, and direct-connected Preference Power customers wishing to participate. Other Preference Power customers may be added, as Western gains operational experience. The aggregated MSS would be similar in concept to dynamic scheduling from one control area to another. Western's system would be integrated within the ISO control area, but Western would manage the net power flows through the interconnection points with the ISO. Western would be responsible for scheduling energy deliveries to Project Use load, First Preference customers, and other Preference customers within the MSS. For customers not participating in the MSS, Western would schedule deliveries with the ISO under generation schedules developed by Reclamation and Western.

Western could self-provide imbalance energy and ancillary services to the MSS and could participate fully within the ISO markets if excess generation or reserves were available. Under the MSS Alternative, Western would operate the contiguous Federal system as a sub-control area within the ISO control area. Off-system customers that are participants in Western's MSS would be included, from an accounting standpoint, as if they were inside that sub-control area, in a similar fashion to Western dynamically scheduling to off-system participants. Under the MSS Alternative, the aggregated MSS net scheduled interchange with the ISO would be followed on a 10-minute basis (or possibly 5-minute basis) by Western. The imbalance energy provided by the ISO would be determined as the deviation from net scheduled interchange of the aggregated MSS participants, integrated over a 10-minute period (or 5-minute period). This is different from dynamic scheduling in that Western would follow deviations from net scheduled interchange on a 4-second basis.

Western would pay all the ISO charges associated with the aggregated net flows into the MSS. Off-system Project Use loads and Preference customers participating in the MSS would also be charged for use of the ISO grid. Western's customers directly connected to Western would not be subject to charges for use of the ISO grid to deliver Federal power. However, off-system Project Use loads and Preference customers would incur all of the ISO transmission and related charges associated with the net energy deliveries to the MSS. Western would market transmission service to its customers in a similar fashion as is done today.

From an operational perspective, Western would have a 24-hour Merchant Desk to purchase energy required for Western's Variable Resource and Full Load Service customers and would be the SC for those customers. The 24-hour staffing of the Merchant Desk is required by the ISO for Western to maintain SC status. Western would also have to maintain a 24-hour Switching Desk to perform switching for outages of system elements (such as transmission lines and breakers) for maintenance, repair, or replacement, or to assist the ISO in restoring the system following a disturbance. Since Western would be scheduling the use of its transmission system and those elements of the COI it owns or is responsible for under contract, Western would maintain a 24-hour Transmission Scheduling Desk. Western would also maintain a 24-hour AGC Desk to self-provide ancillary services and to minimize imbalance energy purchases.

From an organizational perspective, Western would continue to need a power accounting, billing, and settlements function to account for services purchased and sold, reconcile billings from the ISO and others to the accounting records, and issue invoices to Western's customers and the ISO. Western would also perform the accounting and settlements function for the MSS, as aggregated, to reconcile the services purchased and delivered to individual MSS members. This could require the addition of settlements staff above current levels.

Evaluation of the Flexibility Criteria Under the MSS Alternative

Implementing the MSS Alternative, like the PTO Alternative, would subject Western to the terms and conditions of the ISO Tariff. Notwithstanding a contractual agreement, Western would need to conform its business practices every time the ISO Tariff is revised. If a new RTO is established and the ISO chooses to join, any changes that the ISO would need to make to its existing operating and business protocols would also need to be made by Reclamation and Western. Western would either comply with any changes required within the time frame required by the ISO or choose to terminate the MSS

agreement. Because of the 6-month notice requirement, the effective date of the termination is not immediate. In the interim, as an MSS, Western and Reclamation would need to conform their business practices to the extent not precluded by Federal law.

If the ISO is certified by the Commission as an RTO, any changes that the ISO would need to make as a result of its new role would presumably be incorporated in its tariff. Western could choose to either undertake the necessary changes in its business processes or choose to terminate the MSS agreement. As with the PTO Alternative, because of a specific notice requirement (several existing MSS agreements have a 6-month termination notice requirement) the effective date of the termination is not immediate. In the interim, as an MSS, Western and Reclamation would need to conform their business practices to the extent not precluded by Federal law.

Since Reclamation is not required to sign a PGA under the MSS agreement, to the extent that Reclamation chooses not to be party to Western's MSS agreement, potential concerns may arise from liability that Western could incur from the lack of a contractual relationship between the ISO and Reclamation. For example, as the control area operator, the ISO could direct that certain generators undertake specific actions. To the extent that such actions are inconsistent with the project authorization for the CVP, or other Federal law or regulation, Western would need to negotiate exceptions to take care of Federal legal and jurisdictional issues. The specific terms and conditions relating to the ISO's operational jurisdiction over Federally-owned generation and transmission facilities would need to be carefully evaluated to assure that, as the result of implementing this alternative, the authorized project purposes of the CVP would not be impaired.

Because the MSS Alternative specifically requires Western to define its physical boundaries, it provides future flexibility to move its system intact to another control area or an RTO. While Western is under an MSS arrangement, any operating changes necessitated by NERC and WECC would presumably be translated into ISO Tariff revisions or operational protocol changes.

Since Western would have its boundaries formed under the MSS Alternative, Western believes that this alternative provides for short-term and long-term flexibility, restricted only by the termination provisions of the MSS agreement. However, the MSS Alternative could create business uncertainty and unforeseen impacts for off-system Western customers should Western decide it would need to terminate its MSS agreement. Since the MSS participant continues to retain its ability to provide a notice to terminate the MSS agreement at its discretion, Western concludes that this option meets the flexibility criteria.

Evaluation of the Certainty Criteria Under the MSS Alternative

The MSS Alternative provides participants the ability to avoid some ISO charges because the ISO will base its charges on net flows into the MSS, not gross flows as under the PTO option. The ISO indicated charges for power deliveries to off-system customers would be based on ''cost causation'' principles that would recover the cost for providing the product or service. Western interpreted this statement to mean that individual customers would be charged for power deliveries based on their use of the ISO grid. Some commentors have raised questions related to the meaning of ''cost causation.'' For instance, the TPUD commented:

> During the July 30 hearing, the Cal ISO's use of the term ''cost causation'' was illustrative of their mind set. This term should not be confused with ''cost based'' as it seemed the Cal ISO wanted to imply. Cost based charges are based on the cost to provide a service. ''Cost causation'' is an attempt to appropriately divvy up whatever charges a particular provider can get away with under whatever the ''Market'' rules are at the time.

The TID commented on the cost basis for rates under a Federal control area and said:

> Under an alternative CAISO approach, the cost of transmission from generation to load will be set by a market that cannot be forecast with any certainty. Although there may be ways to partially hedge the uncertainty, there are costs associated with the hedges and hedges are not perfect.

The ISO is in the midst of implementing new operating guidance for its MD02 initiative. The proposed new initiative would implement the concept of locational marginal pricing as a means to deal with congestion of transmission pathways. If MD02 is implemented in its current format during periods of congestion, the ISO would re-dispatch all generation based on economic factors. Under this alternative, affected CVP Preference Power customers and the Project Use loads could end up paying a different price than the actual cost-of-service rates associated with Federal hydropower resources. These rates may not be consistent with Reclamation law and policy and Western may need to consider mitigation strategies. Unlike the PTO Alternative, where all CVP Preference Power customers are potentially impacted, under this alternative, those Preference Power customers and Project Use loads, which are contained within Western's interconnected generation and transmission system (known as the bubble), may be able to mitigate some of these impacts.

Under the MSS Alternative, Western and its customers would avoid certain ISO charges. Although Western views the MSS Alternative as providing some relief from ISO charges, to the extent that some of these charges continue to be market-based and subject to changes from tariff amendments, the MSS Alternative continues to present business risk and uncertainty. Notwithstanding a contractual agreement, Western would need to conform its business practices every time the ISO Tariff is revised. Although the MSS Alternative provides some relief from costs, to the extent that the charges are subject to potential ISO Tariff revisions and the differential MD02 impacts between the direct and non-direct connected Preference Power and Project Use loads, Western determined that this alternative almost meets the certainty criteria.

Evaluation of the Durability Criteria Under the MSS Alternative

In general, operating business protocols and practices are established and defined by the agreements which create the relationship. These agreements establish obligations and responsibilities of the parties and allocate the burdens and benefits of each business relationship. In a contractual relationship, these practices and procedures are established for the duration of the agreement and normally allow the parties to modify parts of the agreement over time to properly account for any significant changes in the benefits and burdens that may be experienced by either party.

Under the MSS option, although the relationship between Western and the ISO will be based upon an agreement entered into between the parties, because the ISO's business operating protocols and procedures are tariff based, and not contract-based, the terms, conditions, rates, and other pertinent aspects of interacting with the ISO can be changed through new ISO Tariff amendments. Notwithstanding a contractual agreement, Western would need to conform its business practices every time the ISO Tariff is revised. In

the event Western and the ISO cannot agree upon potential changes to its existing agreement(s), the ISO can submit its proposed changes to the Commission for resolution.

Many of the commentors in this public process expressed concerns with the long-term durability of any arrangement with the ISO because the agreement would be tariff-based. Many of the comments equated stable, long-term business relationships as occurring through contract-based and not tariff-based relationships.

For instance, the TANC stated:

> We believe in the durability of long-term contracts for establishing rights and obligations of load serving entities. Western has always utilized this approach to doing business. The CAISO has historically attempted to alter the rights and obligations of existing contracts. The CAISO utilizes tariffs that can and have been frequently changed. The CAISO files amendments too frequently to consider the CAISO Tariff durable or predictable.

Others such as the MID, the TID, and the SVP cite the 55 amendments filed by the ISO at the Commission in the last 5 years as evidence that a relationship with the ISO is not durable.

The ISO commented:

> The ISO's operating protocols have remained substantially the same since the ISO start-up date in 1998. The only changes in operating protocols are based on the need to comply with changing operational criteria from the NERC and WECC. However, every control area, including the Western Control Area, would have to make similar changes over time. Admittedly, the ISO has necessarily changed the protocols associated with markets, market implementation and market rules a number of times over the past 6 years. Given that the ISO was the first of its kind in the United States, an evolutionary process has been necessary when it comes to markets. Thus Western's concern with durability with respect to operating protocols has been met, but market durability is still evolving and will continue to evolve for a number of years to come. Western cannot disguise its concern regarding ''operating protocol durability'' as an off-hand reference to the energy crisis and changing market rules. Moreover, the ISO's ongoing market modifications are designed to promote stability based on experience, best practices, and coordination of operations to the benefit of all California consumers and market participants.

From a durability standpoint, the MSS Alternative is only as durable as the ISO Tariff is over time. Fifty-seven ISO Tariff amendments have been filed since the ISO became operational in 1998. Western notes the ISO has filed four tariff amendments since this public process began on June 24, 2003. Notwithstanding a contractual agreement, Western would need to conform its business practices every time the ISO Tariff is revised. Although it is important to distinguish between procedural and substantive changes to the ISO Tariff, the underlying ability of the ISO to undertake changes to its business and operating protocols and procedures creates business uncertainty and risk.

Based on the affected term or condition, these changes can materially affect the relationship between the benefits and burdens that each party would receive and impart as a result of being an MSS. Stakeholders continue to have ongoing concerns related to the frequency and number of amendments to the ISO Tariff. Although many of these changes would parallel changes that other control area operators must implement in response to ongoing industry changes, because of their frequency and the number of substantive changes, Western concludes that the PTO Alternative almost meets the durability criteria.

Evaluation of the Operating Transparency Criteria Under the MSS Alternative

Under the MSS Alternative, Western would operate its system as a sub-control area within the ISO control area. Western would dispatch the internal generation of Reclamation, as needed, to satisfy the needs of the sub-control area and to maintain the net scheduled interchange with the ISO. Western would schedule the use of its transmission system to meet its statutory obligations to Project Use loads and contractual obligations to its customers as well as to meet the needs of the sub-control area and MSS participants in aggregate. Operation of the Federal system would not be a concern to the ISO as long as Western maintains its scheduled flows with the ISO.

Scheduling the use of Western's ownership in the Malin-Round Mountain transmission line and the COTP would remain Western's responsibility and would be performed under NERC and WECC protocols and operating procedures developed by the Bonneville Power Administration (BPA), the ISO, Western, and others. Under the MSS Alternative, and unless otherwise desired, the ISO would continue to remain the single path operator for the COI south of the California-Oregon Border (COB).

Because operation of the Federal system would have to meet the terms of the MSS agreement and operating procedures for the COI developed under NERC and WECC operating criteria, Western would not be able to change the operation of the Federal system unilaterally. Western acknowledges that changes in the operation of the Federal system would have to be structured to assure that unintended impacts to third parties do not occur. Because of these considerations, Western concludes that the MSS Alternative meets the operational transparency criteria.

Evaluation of the Cost-Effectiveness Criteria Under the MSS Alternative

Navigant prepared a revised comparative economic benefit analysis for each post-2004 operational alternative considered on behalf of Reclamation and Western incorporating comments received from the ISO and others related to the underlying assumptions used in the study. The revised study shows that, comparatively, the cost of the MSS and control area alternatives remain similar and that the PTO option continues to be the least cost-effective of the three post-2004 alternatives being considered.

Commentors during the public process expressed their views about the comparative economic study performed by Navigant and the importance of the cost effectiveness criteria.

The TANC commented:

> * * * given the rapid escalation of the CAISO costs, numerous inaccuracies of CAISO settlements, and extreme complexity and variability of CAISO market design, assumption-based cost forecasts in the CAISO environment are difficult to estimate and cannot be the most important evaluation criteria for Western and its Customers.

The TPUD stated:

> The Navigant study and the forthcoming Cal ISO study, which will no doubt repudiate most, if not all, of Navigant's work, are a waste of time, money and effort. A prediction of how many tariff amendments the Cal ISO will file over the next twenty years would be more certain than anyone's prediction of the Cal ISO costs just two years from now.

The TID commented:

> Western should not be persuaded to forego the FCA [Federal Control Area] option because some indicate that it *may* not be the low cost option. If, as the CAISO, and perhaps others, purport, participating in the CAISO is the most cost effective approach, then over time, Western customers will migrate to the CAISO market. The CAISO has a mission of being the preferred transmission provider. If they meet the goal, Western customers will find ways to participate and join the CAISO.

A number of Western's customers were especially concerned about increases in their internal costs associated with meeting the billing and settlements requirements associated with participating in the ISO markets. Increased complexity and the need for

additional investment in software and other associated equipment and infrastructure, as well as additional staff to handle ISO business requirements, are all concerns.

Western views the Navigant study as what it was intended to be; a screening study to determine if any one of the alternatives were more or less cost-effective than the other alternatives. The revised comparative economic studies containing updated assumptions, referenced above, continue to indicate that the MSS and Control Area alternatives are comparable. Western, therefore, concludes that the MSS Alternative meets the cost-effectiveness criteria.

Under the terms and conditions of Contract 2948A, PG&E agreed to provide transmission service to Federal Project Use loads and Preference customers instead of the Federal Government constructing its own transmission system. Although this contract expires, since PG&E's actions precluded the Federal Government from constructing its own facilities, Western asserts that PG&E is responsible for assuring the delivery of Federal power at rates consistent with its embedded cost of service. Any cost increases for transmission service beyond those already established under the terms and conditions of Contract 2948A constitute a cost-shift to Reclamation's Project Use loads and Western's Preference customers. Since PG&E is now paying those costs, costs to statewide ratepayers would not increase if the current arrangement continues.

Summary Analysis of the MSS Alternative

The MSS Alternative includes operation of the Federal system as a sub-control area within the ISO control area and provides, through accounting mechanisms with the ISO, for Western to follow the loads of Western's MSS participants. Through the ''net'' settlements treatment of the MSS by the ISO, some of the ISO charges for imbalance energy and reserves could be avoided by MSS participants. However, off-system Project Use loads and Preference customers would still be subject to transmission and related charges by the ISO. With the expiration of Contract 2948A, the expenses previously paid by PG&E would be shifted to off-system customers. These customers would see a significant increase in their costs for transmission service.

Western's off-system Project Use loads and Preference customers would be subject to all of the ISO charges associated with transmission and delivery of Federal power to them. These charges represent a significant increase in costs to Western's off-system customers. Under Contract 2948A, PG&E has an obligation to serve the combined PG&E/Western load under the terms and conditions of the contract. These costs are now being paid to the ISO by PG&E under terms of Contract 2948A but will be charged to Western's off-system customers after January 1, 2005. The ''net'' settlement treatment, if these Project Use loads and Preference customers are MSS participants, may reduce the total cost impact but some cost shifting will occur. Unless successor arrangements can be successfully negotiated with PG&E, and/or other cost allocation arrangements undertaken, these cost shifts are unavoidable under the PTO, MSS, sub-control area, and control area alternatives. As part of its formal rate process, Western is considering alternatives to minimize these cost shifts to its customers.

From an infrastructure standpoint, the MSS Alternative will still require the development and implementation of all of the systems described previously in the section entitled, ''Implementing the post-2004 Power Marketing Plan.'' In addition to these systems, Western will have to upgrade its Supervisory Control and Data Acquisition (SCADA) system to include an AGC module. From a staffing standpoint, Western would have to maintain a 24-hour Merchant Desk and a 24-hour Transmission Switching Desk, requiring an estimated 15 positions. The Transmission Switching Desk already exists. Western intends to hire the Merchant Desk positions from within the organization to the maximum extent possible to minimize the need for new staff and to continue transforming its organization to meet the needs of its new Marketing Plan. Western would have to maintain a 24-hour AGC desk and a 24-hour Transmission Scheduling and Security Desk requiring another estimated 14 positions. Because of the existing staffing levels, Western anticipates that it will need to hire only eight new positions to staff these three desks (AGC, Transmission Scheduling, and Transmission Security) above what is required for the PTO Alternative. Western may also need to add additional staff to the Settlements function to account for and reconcile ISO and Western charges and issue bills to MSS participants for services provided in following load and providing reserves for MSS participants. Western estimates it will need an additional two positions to accommodate these activities.

This table summarizes the relative ratings of each evaluation criteria for the MSS Alternative:

MSS ALTERNATIVE EVALUATION SUMMARY

Evaluation factors	Meets	Almost meets	Does not meet
Flexibility	XX		
Certainty		XX	
Durability		XX	
Operating Transparency	XX		
Cost-Effectiveness	XX		

The Control Area Alternative

Under this alternative, Western would initiate the control area certification process by submitting an application to NERC and WECC. This process requires up to 6 months to complete and requires Western to document its ability to operate its system reliably under all applicable NERC and WECC policies and guidelines. In addition, Western must demonstrate its operations will not affect neighboring control areas. In the event impacts to neighboring control areas are identified, Western must identify and implement sufficient remedial measures to mitigate such impacts.

Once an application is submitted, a review team is selected from the WECC membership. The review process includes interviews and/or questionnaires of neighboring control areas. This process is designed to identify issues that may arise from Western forming a control area. Any issues that are identified during the review process must be resolved to the satisfaction of WECC before a new control area is certified. When the review team is satisfied that Western can operate its system reliably within applicable NERC and WECC criteria, the review team will recommend to the NERC and WECC Boards of Directors that certification status be approved. Western would receive certification to operate as a control area only when the review team's recommendation is approved by the NERC and WECC Boards of Directors.

Under this alternative, Western would continue to be responsible for operating, maintaining, and replacing the CVP transmission facilities. Reclamation would remain responsible for switching, maintaining, and replacing the CVP generating facilities. Under this alternative, Western would operate as a control area and establish control area boundaries with the ISO, the BPA, and

SMUD. Western would schedule the use of the CVP transmission system and Western's Malin-Round Mountain transmission line. If Western continues in its roles as the operating agent for COTP, this line would also be included within the Western control area and Western would assume responsibility for its operational control. As long as it continues as COTP's operating agent, Western would continue to provide services to maintain and replace these facilities. Western would schedule use of the CVP transmission system, the COTP, and the Malin-Round Mountain transmission line. The ISO would remain as the single path operator for the entire COI.

Operating Scenario To Evaluate the Control Area Alternative

Under the Control Area Alternative, Western would establish a physically defined contiguous system. As a control area operator, Western would manage the net power flows through its interconnection points with the ISO, BPA, and SMUD under NERC and WECC criteria and guidelines. Western would schedule energy deliveries to Project Use load, First Preference customers, and other customers, match its generation and load, provide reserves, and provide frequency support for the WECC interconnection under NERC and WECC criteria and generation schedules developed by Reclamation and Western.

Western would self-provide imbalance energy and ancillary services and could participate in the ISO markets whenever excess generation or reserves are available. Although off-system customers would not be included in the initial control area formation phase, Western contemplates discussing the possibility of dynamically scheduling to off-system customers with the ISO after sufficient experience is gained as a control area operator and the ability of Reclamation's generation to follow loads dynamically is ascertained.

Western's customers directly connected to Western's system would not be subject to use of the ISO grid for deliveries of Federal power. However, off-system Project Use loads and Preference customers would incur all of the ISO transmission and related charges associated with the deliveries of Federal power. Western would market transmission service to its customers on an open access and non-discriminatory basis.

From an operational perspective, Western would have a 24-hour Merchant Desk to purchase energy required for Western's Variable Resource and Full Load Service customers and would act as the SC for Reclamation's generation and Project Use loads, as well as for interested customers. The 24-hour staffing of the Merchant Desk is required by the ISO for Western to maintain its SC status, as well as to implement its post-2004 Marketing Plan. Western would also maintain a 24-hour Switching Desk to perform switching for outages of system elements (such as transmission lines and breakers) for maintenance, repair, or replacement, or to assist the interconnected systems in restoring the system following a disturbance. Since Western would schedule the use of its transmission system and those elements of the COI it owns or is responsible for under contract, Western would have to maintain a 24-hour Transmission Scheduling Desk. To regulate the control area, Western would maintain a 24-hour AGC Desk.

From an organizational perspective, Western would continue to need a power accounting, billing, and settlements function to account for services purchased and sold, reconcile billings from the ISO and others to the accounting records, and issue invoices to Western's customers and the ISO. Current staffing levels in the settlements function would need to increase by an additional two positions to support the additional workload for the Control Area Alternative.

Evaluation of the Flexibility Criteria Under the Control Area Alternative

Under the Control Area Alternative, Western would be required to physically establish its boundaries and become a stand-alone unit within the WECC interconnection. In forming a control area, Western would need to have operational agreements with neighboring control areas to assure it would operate its system in concert with neighboring systems. These arrangements typically include metering and communication agreements, emergency operations procedures, normal operating procedures, data exchange arrangements, and power accounting procedures. These arrangements comply with NERC and WECC standards.

As NERC and WECC industry wide standards change, Western would have to change its procedures and structure its inter-control area agreements to accommodate such industry wide changes. Therefore, short-term flexibility would be provided for within the construct of the inter-control area agreements.

When, and if, Western chooses to join an RTO, it could do so as a stand-alone entity, without the need to terminate any agreement. The operating agreements between Western and the neighboring control areas would not change, because from a physical standpoint, nothing changes if Western joins an RTO. Operational protocols may change, but the physical operation of the system must continue. Changes in operational protocols would still have to comply with the applicable NERC and WECC reliability standards.

Because of the absence of the need to terminate any agreement, and the intended construct of the inter-control area agreements with neighboring control areas, Western concludes the Control Area Alternative meets the flexibility criteria.

Evaluation of the Certainty Criteria Under the Control Area Alternative

Under the Control Area Alternative, neither Western nor the direct-connected customers would be subject to ISO charges except for those services purchased from the ISO. Western, however, would charge the direct-connected customers for capacity, energy, transmission, and ancillary services with rates determined through a public process. Western's off-system Project Use loads and Preference customers would be subject to ISO charges for transmission and delivery of Federal power and ancillary services. Under this alternative, Western intends to implement dynamic scheduling after it has sufficient experience operating as a control area. Consequently, non-direct connected customers may be able to avoid some of the imbalance energy and reserve charges of the ISO shortly after the control area is established and operational.

Costs associated with the Control Area Alternative are expected to be fairly predictable and include charges for labor and equipment to operate, maintain, and replace the CVP transmission facilities of Western and the costs allocated to hydropower generation facilities owned and operated by Reclamation. These costs have historically been included in CVP power rates established by Western. CVP rates are cost based and established at the lowest possible rates consistent with sound business principles. Additional costs associated with operating a control area are purchased power costs necessary to balance the control area during the fall and winter months when insufficient generation is available to meet Project Use and First Preference loads. Power purchased for these purposes is expected to be purchased in the forward markets as blocks, rather than purchased on the spot market, to reduce price volatility

and ensure stable rates. With the ongoing development of generation optimization tools, Western expects the timing and quantity of purchased power amounts can be predicted with reasonable certainty after Contract 2948A expires.

Using the forward purchase approach, the Control Area Alternative should limit Western's exposure to the spot market. Because the preponderance of Western's costs are within Western's control, CVP rates should remain reasonably stable over time, and rate adjustments should not be needed more often than that which has historically occurred, approximately every 3 years. As a control area, Western would be required to meet WECC and NERC operating criteria. To the extent Western is not able to fully comply with such criteria, it will be subject to financial penalties for non-compliance. Western has considered this risk in its decision-making process.

The ISO is in the midst of implementing new operating guidance for its MD02 initiative. This new initiative would implement the concept of locational marginal pricing to deal with transmission congestion. If MD02 is implemented in its current format during congestion periods, the ISO would re-dispatch all generation based on economic factors. Under this alternative, CVP Preference customers and Project Use loads that remain in the ISO control area could end up paying a different price than the cost-of-service rates associated with Federal hydropower resources. These rates may not be consistent with Reclamation law and policy and Western may need to consider mitigation strategies. Western concludes that for control area participants, the Control Area Alternative meets the certainty criteria.

In addition to implementing a new control area, Western is also considering the possibility of assessing charges on the PACI associated with the cost of off-system deliveries to its customers served via the ISO-controlled grid. The intent of Congress, when it authorized the construction of the PACI, was to assure that Federal Preference customers would receive power as if Federal facilities had been constructed. Although this cost would in effect result in rate pancaking users of the PACI, Western believes these costs are relatively minor and assures that the intent of Congress continues to be met. These costs are outside the scope of this process and will be discussed as part of the rate process for implementation of the post-2004 Marketing Plan and the post-2004 Operational Alternative, which is scheduled to start February 2004.

Evaluation of the Durability Criteria Under the Control Area Alternative

Under the Control Area Alternative, Western would be subject to industry wide changes in operating protocols and business practices coordinated by NERC and WECC. These changes generally result from policy or standards changes made through industry consensus and approved by the NERC and WECC Boards of Directors and, historically, have not occurred with great frequency.

Changes in Western's business practices are generally determined by changes in Federal or industry wide policies and may be made through a public process designed to assure that the impacts of these changes are fully understood by the agency prior to implementing them. Western contemplates executing contracts with intra-control area participants. These contracts would recognize physical rights and should assure reasonable predictability and allow the participants to manage their risks and make the appropriate long-term business decisions. Because the operating protocols and business practices under the Control Area Alternative are controlled by industry consensus or Western's own actions, Western concludes that the Control Area Alternative meets the durability criteria.

Evaluation of the Operating Transparency Criteria Under the Control Area Alternative

To become a certified control area, Western would have to operate under NERC and WECC operating criteria and guidelines. These criteria and guidelines require that the operation of Western's system cannot impact other control areas. If Western were to change the operation of the Federal system, as a control area, it would have to assure such changes would not impact third parties or its operation would not violate NERC and WECC requirements and consequently be subject to financial penalties under the WECC Reliability Management System agreement. Because of the requirements within NERC and WECC criteria and guidelines to assure no impacts on third parties occur as a result of Western's control area operations, Western concludes that the Control Area Alternative meets the operating transparency criteria.

Evaluation of the Cost-Effectiveness Criteria Under the Control Area Alternative

Western is considering the possibility of assessing charges on the PACI associated with the cost of off-system deliveries to its Project Use loads and Preference customers served via the ISO-controlled grid. The intent of Congress, when it authorized the construction of the PACI, was to assure that Federal Project Use loads and Preference customers would receive power as if Federal facilities had been constructed. Although this cost would in effect result in rate pancaking for PACI users, Western believes these costs are relatively minor and assures the intent of Congress continues to be met. These costs are outside the scope of this process and will be discussed as part of the rate process for implementation of the post-2004 Marketing Plan and the post-2004 Operational Alternative, which is scheduled to start February 2004.

Navigant prepared a revised comparative economic benefit analysis for each post-2004 operational alternative, which incorporated comments received from the ISO and others related to the underlying assumptions used in the study. The revised study shows that, comparatively, the relative cost of the MSS and Control Area alternatives remain similar. The PTO option continues to be the least desirable from a cost standpoint of the three post-2004 alternatives under consideration.

Western reviewed the comments on the Navigant study referenced above provided by the ISO and others and made a number of changes to the study which are described in the section entitled ''Comparative Economic Benefits Study.'' The revised study continues to indicate that the MSS and Control Area alternatives are comparable.

During the public process, commentors offered some views relative to the economic studies performed by Navigant and the importance of the cost effectiveness criteria.

The TANC commented:

> * * * given the rapid escalation of the CAISO costs, numerous inaccuracies of CAISO settlements, and extreme complexity and variability of CAISO market design, assumption-based cost forecasts in the CAISO environment are difficult to estimate and cannot be the most important evaluation criteria for Western and its customers.

The TPUD stated:

> The Navigant study and the forthcoming Cal ISO study, which will no doubt repudiate most, if not all, of Navigant's work, are a waste of time, money and effort. A prediction of how many tariff amendments the Cal ISO will file over the next twenty years would be more certain than anyone's prediction of the Cal ISO costs just two years from now.

The TID commented:

Western should not be persuaded to forego the FCA [Federal Control Area] option because some indicate that it *may* not be the low cost option. If, as the CAISO, and perhaps others, purport, participating in the CAISO is the most cost effective approach, then over time, Western customers will migrate to the CAISO market. The CAISO has a mission of being the preferred transmission provider. If they meet the goal, Western customers will find ways to participate and join the CAISO.

The ISO and a number of other commentors expressed concern that Western has the information it needs to make a fully informed decision, and that the decision recognize and incorporate the needs of all the parties, and not just a small subset. Western views the Navigant study as a screening study to determine the comparative differences between the alternatives and to determine which alternatives, if any, are clearly better or worse than the others. The study looked at the cost of delivering Federal Base Resource to Variable Resource customers, and Federal Base Resource and Custom Product power for Full Load Service customers to the customers' delivery point(s). Western believes that the study used reasonable assumptions and cost data based on information available at the time. As a comparative benefit study, the results were never intended to be used to identify and allocate cost repayment responsibilities. Western is undertaking a separate rate process to support the post-2004 operations alternative. The rate process is the appropriate forum to discuss cost allocation and financial repayment obligations. Western has analyzed the comments and determined that the Control Area Alternative meets the cost-effectiveness criteria.

Under the terms and conditions of Contract 2948A, PG&E agreed to provide transmission service to Federal Project Use and Preference customers instead of the Federal Government constructing its own transmission system. Although this contract expires, since PG&E's actions precluded the Federal Government from constructing its own facilities, Western asserts that PG&E is responsible for assuring the delivery of Federal power at rates consistent with its embedded cost of service. Therefore, any cost increases for transmission service beyond those already established under the terms and conditions of Contract 2948A constitute a cost-shift to Project Use loads and Preference customers. Since PG&E is now paying those costs, costs to statewide ratepayers would not increase if the current arrangements continue.

Summary Analysis of the Control Area Alternative

Implementing the Control Area Alternative would allow the Federal transmission system to be operated as a NERC and WECC certified control area. Customers directly connected to Western's system would avoid ISO charges for transmission and related services but would incur similar charges from Western. Off-system Project Use loads and Preference customers would, however, incur ISO transmission and related charges. This would represent a cost shift from the transmission service presently provided to off-system Project Use loads and Preference customers under Contract 2948A. As discussed under the PTO option, these customers are currently provided such transmission service by PG&E for Federal power at embedded cost rates. Off-system Project Use loads and Preference customers would be subject to all of the ISO charges associated with transmission and delivery of Federal power to them. These charges represent a significant increase in costs to off-system Project Use loads and Preference customers. These costs are now being paid to the ISO by PG&E currently under terms of Contract 2948A but will be charged to Western's off-system customers after January 1, 2005. Unless successor arrangements can be successfully negotiated with PG&E, and/or other cost allocation arrangements undertaken, these cost shifts are unavoidable under the PTO, MSS, sub-control area, and control area alternatives. As part of its formal rate process, Western is considering alternatives to minimize these cost shifts to Project Use loads and Preference customers.

From an infrastructure standpoint, the Control Area Alternative would still require the development and implementation of all of the systems described earlier in the section entitled, ''Implementing the post-2004 Power Marketing Plan.'' In addition to these systems, Western would have to upgrade its SCADA system to include an AGC module. From a staffing standpoint, Western would have to maintain a 24-hour Merchant Desk and a 24-hour Transmission Switching Desk. This requires an estimated 15 positions. The Transmission Switching Desk already exists. Western intends to hire the Merchant Desk positions from within the organization to the maximum extent possible to minimize the need for new staff and to continue transforming its organization to meet the needs of its new Marketing Plan. Western would have to maintain a 24-hour AGC desk and a 24-hour Transmission Scheduling and Security Desk requiring another estimated 14 positions. Because of existing staffing levels, Western anticipates that it will need to hire only eight new positions to staff these three desks (AGC, Transmission Switching, and Transmission Security) above what is required for the PTO Alternative. Staffing within the settlements function to account for, reconcile ISO and Western charges, and issue bills to customers is expected to increase by two additional positions.

The comparative economics of the Control Area Alternative are described above in the analysis of the PTO Alternative and will not be repeated here. That discussion showed that the Control Area Alternative is comparable to the MSS Alternative.

The relative ratings for the Control Area are summarized:

CONTROL AREA ALTERNATIVE EVALUATION SUMMARY

Evaluation factors	Meets	Almost meets	Does not meet
Flexibility	XX		
Certainty	XX		
Durability	XX		
Operating Transparency	XX		
Cost-Effectiveness	XX		

Other Operational Alternatives

A number of commentors recommended Western consider the possibility of integrating its operations within an already established WECC certified control area such as SMUD. Commentors suggested that such an alternative would be similar in concept to the ISO's MSS template, except the arrangement would be contract-based, and not tariff-based. Western discussed the possibility of a contract-based sub-control area with SMUD. SMUD indicated an interest in pursuing additional discussions. As part of Western's proposed decision, Western will continue discussions with SMUD on forming a contract-based sub-control area. Reclamation, as well as the City of Palo Alto, suggested that Western consider approaching the ISO to ask about the possibility of getting a contract-based sub-control area agreement.

Sufficient detailed information is not now available to make a fully informed judgment to determine how the evaluation criteria would apply to this specific alternative and the relative benefits and burdens associated with its

implementation. Western intends to approach the ISO and SMUD to initiate discussions and collect additional data to determine the feasibility of this alternative. If either alternative is feasible, Western will then initiate the appropriate steps to implement it. As part of an initial overall review, the following general statements can be made.

From a flexibility viewpoint, the analysis of a contract-based sub-control area would be similar to the analysis for the MSS Alternative. Flexibility would be limited to the termination provisions of the agreement putting this alternative in place. Therefore, this alternative would probably satisfy the flexibility criteria.

From a certainty viewpoint, the rates and charges for products and services purchased from either control area operator are assumed to be contract- and cost-based, rather than market- and tariff-based. Therefore, rates should be generally stable and predictable. From that perspective, this alternative would probably meet the certainty criteria.

Since this alternative is contingent upon executing a contract-based agreement, and not dependent on changes to a tariff, the terms and conditions should be relatively stable and participants should be able to engage and commit to long-range planning activities. This alternative would probably meet the durability criteria.

The operating transparency of an arrangement with either control area under this alternative should be seamless. As a contract-based sub-control area, Western would operate its facilities within a host control area. The host control area must conform its operations to the reliability standards outlined by NERC and WECC. Consequently, any changes in operational protocols and procedures would have to minimize and/or mitigate any impacts and be accomplished in close coordination with neighboring control area operators. This alternative would probably meet the operating transparency criteria.

Insufficient information is available to make a preliminary determination as to the relative cost-effectiveness of this alternative. However, since the SMUD control area operates on a cost-based orientation, we assume that, at a minimum, it probably meets the cost-effectiveness criteria.

A number of commentors suggested that Western consider a contract-based MSS arrangement with the ISO. The ISO currently operates under a tariff-based system. However, consistent with Western's proposed decision, Western intends to initiate discussions with the ISO to investigate the feasibility of pursuing this type of an agreement.

Comparison of the Operational Alternatives

Implementing each alternative under consideration would result in a different operational configuration and would result in a different relationship with the ISO. Each alternative also subjects Western to different staffing levels because of the needs for different functions associated with that alternative.

The No Action Alternative may create a situation where Western is unable to perform under its power contracts and places Western in a position of scrambling to put arrangements in place to operate the Federal system within the ISO control area. Western may also not be able to assure project repayment under this alternative. Western would essentially be a price and service taker without the ability to negotiate favorable terms and conditions because of the impermanent nature of the operational agreements. Western has determined that this is not a preferable alternative.

The PTO Alternative would result in Western's system being integrated with the ISO control area and all of Western's customers being subject to all of the ISO charges for scheduling and delivery of Federal power to their delivery points. Western's transmission revenue requirement would be met, and its staffing levels under this alternative would be the lowest of any of the alternatives. Western's rates would have to be set to cover all of the ISO charges associated with Western's role as the SC for Reclamation generation.

The MSS Alternative would allow Western to operate within the ISO control area as a sub-control area and would provide accounting mechanisms for Western to include all customers desiring to participate in the MSS to be included in the MSS. Western's customers may avoid some ISO ancillary service charges depending on the ability of the CVP generation to follow the combined load of Western's MSS participants. The direct-connected Project Use loads and Preference customers would also be able to avoid some transmission and related charges, but the off-system Project Use loads and Preference customers would not avoid transmission and other ISO charges. The charges for the MSS Alternative may be lower than under the PTO Alternative because of the ''net'' settlements feature of the MSS.

The Control Area Alternative would allow Western to function as an interconnected control area with BPA, the ISO, and SMUD under NERC and WECC criteria and guidelines. Direct-connected customers would avoid all ISO charges associated with delivery of Federal power, but the off-system Project Use loads and Preference customers would not avoid these charges.

From an infrastructure viewpoint, all of the systems necessary to support the post-2004 Marketing Plan are needed and are independent of the alternative chosen. The MSS, control area, or sub-control area alternatives all require the addition of an AGC module to Western's SCADA system. The MSS, control area, and sub-control area options also require the creation of two new 24-hour desks (AGC and the Transmission Scheduling and Security Desks) as well as the addition of two staff positions in the settlements function. These positions would not be required under the PTO option.

During the public comment period, Western received numerous comments from customers and interested stakeholders indicating their respective preferences for, or against, a specific post-2004 operational alternative. A common thread of the comments received from Western's customers encouraged Western to choose an alternative that did not place Western's relationship with the ISO under the ISO Tariff. Reasons cited were the frequency of changes to the ISO Tariff and the costs associated with possible litigation over proposed ISO Tariff modifications.

The PTO option subjects Project Use loads and Preference customers to all ISO charges. While this option requires the least amount of Federal investment in infrastructure and staffing, it subjects all of the Project Use loads and Preference customers to all ISO charges. This substantially increases cost-of-service rates because the relatively low cost of Federal transmission facilities would be blended with higher statewide transmission facility costs under this alternative. This option also raises concerns related to the operation and control over Federal facilities. Specifically, Reclamation and Western would have to assure the operation of CVP water and hydropower facilities would be consistent with the project's statutory authorizations. Based on these factors, Western is removing the PTO option from further consideration.

The MSS option presents some favorable characteristics for Project Use loads, Preference customers, and Western. The ability to provide some ancillary services to Project Use loads and Preference customers that participate in the MSS, subject to the availability of CVP generation, and the

ability to pay ISO charges based on the ''net'' settlements feature appear desirable. Western is concerned with the frequent number of amendments to the ISO Tariff. Numerous commentors raised concerns about the number of ISO Tariff amendments during the public comment period. If Western were able to develop a contractual agreement with the ISO which does not specifically reference the ISO Tariff, and if the contractual agreement contained terms and conditions which would not change during the life of the contract, Western would be interested in pursuing such an arrangement. Such an arrangement would recognize the unique legislated purposes and characteristics of the CVP and would maintain an appropriate balance and separation between a State-controlled and Federal entity. A contract-based MSS option structured under these principles, if offered by the ISO, will be considered. The impact of the ISO's MD02 activities will need to be addressed also. If the ISO cannot accommodate such principles, the MSS option will not be considered further.

The control area option meets all of the decision-making criteria outlined by Western. However, operation as a sub-control area within the SMUD control area also appears to meet these criteria. The direct-connected customers would avoid ISO charges for delivery of Federal power and would pay Western or the host control area for ancillary services associated with such delivery. There are two different approaches for sub-control area operations that could provide benefits for Western and the host control area. The first is called integrated operations and would allow Western to operate within the host control area and provide its share of regulation and reserves associated with the combined load of Western and the host control area. Accounting mechanisms would be put in place to account for services rendered. Essentially, this would resemble integrated operation with the host control area. The second arrangement is called segregated operations and would allow Western to provide reserves and regulation associated with its direct-connected customers and firm exports and regulate hourly to a net scheduled interchange quantity with the host control area. This operation resembles interconnected control area operation, but Western would not be accountable to the WECC and NERC.

The SMUD has expressed interest in establishing a sub-control area under a contractual agreement that would contain terms and conditions established for the duration of the contract. Because of the seasonal nature of the CVP generation resource, a contractual approach to either integrated or segregated operation may contain benefits for Project Use loads, Preference customers, and Western. Western will pursue this further with SMUD.

Other Issues Raised During the Public Process

The ISO and a number of other commentors raised the following three additional issues during the public process. The commentors were specifically concerned about the alternative for a new control area and raised the following three issues: (1) Adverse implications to grid reliability and operations, (2) increased complexity of operating the COI, and (3) inconsistency of Western's proposal with existing Federal policy and proposed direction.

Commentors were concerned that the creation of a new control area was inconsistent with existing Federal policy, which would result in additional complexity and could cause the electrical transmission grid to be operated less reliably. Since the proposed decision does not contemplate formation of a new control area at this time, these issues need not be addressed as part of this **Federal Register** notice.

Western's position is that in the event the control area alternative is ever selected, as part of the WECC/NERC control area certification process, many of the operating issues (grid reliability and increased complexity of operations) raised by the commentors would be identified, analyzed, and mitigated, if appropriate, as part of the control area certification process. These issues would normally be handled as a matter of meeting specific technical performance criteria rather than policy.

Conclusion

Western's Proposed Action

Based upon the analysis done with respect to the decision-making factors outlined by Western in the June 24, 2003, **Federal Register** notice and further explained at the July 9, 2003, Public Information Forum, Western proposes to proceed with its effort to establish a contract-based sub-control area within either the ISO or SMUD control area. Western is not proposing to form a new control area at this time. The complexity and uncertainty of implementing a new marketing plan as well as creating a new control area has caused Western to conclude it is not prudent to try accomplishing both tasks simultaneously. To reduce business risk and uncertainty while establishing a new post-2004 operational configuration upon the termination of existing contracts, Western is proposing to operate its Federal transmission facilities within an existing control area. Western will initiate discussions with the ISO and SMUD to implement a contract-based sub-control area. This option is practical and preserves Western's ability to respond flexibly to ongoing changes in the electric utility industry.

Other Considerations

Consistency With Federal Law

Western will evaluate how Federal law will affect each alternative. Western is governed by numerous Federal laws such as the Federal Reclamation Law. The Federal Reclamation Law requires Federal power be sold to Preference customers. Western implements such sales through a Federal marketing plan under the Administrative Procedure Act. The sale of Federal power must not impair the primary purposes of the CVP. The marketing plans have the full force and effect of law. The alternatives must be consistent with Western's obligations under Federal law including Western's Marketing Plan. For instance, if Western were to become a PTO, it is conceivable that situations could arise where Western would be unable to deliver Federal Preference Power to Federal customers even where adequate Federal transmission capability was available to serve the Federal customer. While the ISO Tariff provides a waiver for Federal entities, if a provision of the Tariff conflicts with Federal law, Western must still work out the specific details on a case-by-case basis whenever such conflicts arise.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving services applicable to public property.

Environmental Compliance

Under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321. *et seq.*), Council on Environmental Quality NEPA implementing regulations (40

CFR 1500–1508), and DOE NEPA implementing regulations (10 CFR 1021), Western completed an environmental impact statement (EIS) on its Energy Planning and Management Program. The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995).

Western also completed the 2004 Power Marketing Program EIS (2004 EIS), and the Record of Decision was published in the **Federal Register** (62 FR 22934, April 28, 1997). The Marketing Plan falls within the range of alternatives considered in the 2004 EIS. This NEPA review identified and analyzed environmental effects related to the Marketing Plan. Available reservoir storage and water releases controlled by Reclamation influences marketable CVP and Washoe project electrical capacity and energy. Reclamation completed a programmatic Environmental Impact Statement (PEIS) under the CVP Improvement Act of 1992 (Pub. L. 102–575, Title 34) on October 1999. Actions based on the PEIS may result in modifications to CVP facilities and operations that would affect the timing and quantity of electric power generated by the CVP. Such changes may affect electric power products and services marketed by SNR. The Marketing Plan has the flexibility to accommodate these changes. Western was a cooperating agency in Reclamation's PEIS process.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. No clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to services and involves matters of procedure.

Dated: November 21, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–29984 Filed 12–1–03; 8:45 am]

BILLING CODE 6450–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force; Meeting

AGENCY: Council on Environmental Quality.

ACTION: Notice of public meeting.

SUMMARY: The Council on Environmental Quality (CEQ) established a National Environmental Policy Act (NEPA) Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; federal and intergovernmental collaboration; programmatic analyses and subsequent tiered documents; and adaptive management and monitoring. In addition, the NEPA Task Force reviewed other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and other implementation practices that would benefit federal agencies.

''The Task Force Report to the Council on Environmental Quality—Modernizing NEPA Implementation'' was published and presented to CEQ on September 24, 2003. The Report contains recommendations designed to improve federal agency decision making by modernizing the NEPA process. To further the work of the NEPA Task Force, CEQ is holding a series of regional public roundtables to raise public awareness of the NEPA Task Force draft recommendations and discuss the recommendations and their implementation. The Southern Regional Roundtable will be held on December 11 and 12 at the historic Cadre Building, 149 Monroe Ave, Memphis, Tennessee. Information about the location is at *http://www.cadrebuilding.com/*. The Memphis Roundtable is co-hosted by the Southern Environmental Law Center, Duke Environmental Leadership Program at Duke University's Nicholas School of the Environment and Earth Sciences, and The Environmental Policy Information Center at Jacksonville State University. Representatives from important constituent groups that have worked on NEPA issues have been invited to participate in a discussion of the recommendations. Announcements of future roundtables will be published on the NEPA Task Force web site and in the **Federal Register**.

DATES: The southern regional public roundtable will be held on December 11 and 12. The December 11 session will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 3:30 p.m. following the roundtable discussion. That session will end in the evening after the publics' views have been presented. The session on December 12 will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 11 a.m. following the roundtable discussion.

ADDRESSES: Interested parties can review the Task Force report via the CEQ Web site at *http://www.whitehouse.gov/ceq/* or the NEPA Task Force Web site at *http://www.ceq.eh.doe.gov/nft/*. If you would like a printed copy, please mail a request to The NEPA Task Force, 722 Jackson Place, NW., Washington, DC 20585, or contact Bill Perhach at (202) 395–0826 to request a copy.

Dated: September 25, 2003.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 03–29873 Filed 12–1–03; 8:45 am]

BILLING CODE 3125–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—new: The Equal Employment Opportunity Commission's ''Freedom to Compete'' Award.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), the Commission announces its intent to submit to the Office of Management and Budget (OMB) a request to approve a new information collection as described below.

DATES: Written comments on this notice must be submitted on or before February 2, 2004.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202)

663–4114 (this is not a toll-free number). Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY) (these are not toll-free telephone numbers). Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Lisa Fisher, Acting Director, Office of Communications and Legislative Affairs, 1801 L Street, NW., Washington, DC 20507, (202) 663–4056 (voice). This notice is available in the following formats: Large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act, title I of the Americans with Disabilities Act, and the Pregnancy Employment Discrimination Act. Pursuant to its authority under those statutes, EEOC launched the ''Freedom to Compete'' (FTC) initiative, a national outreach, education and coalition-building strategy designed to complement the agency's enforcement and litigation efforts by identifying EEO practices and programs worthy of emulation. The Commission has built and seeks to further build partnerships and strategic alliances with various stakeholders that can directly and indirectly ensure equal opportunity in the nation's workplaces. One component of this initiative is the Equal Employment Opportunity Commission's ''Freedom to Compete'' Award. The Award is designed to recognize employers, organizations and entities whose extraordinary efforts embody the EEOC's mission of ensuring individuals the freedom to compete in the workplace on a level playing field regardless of race, color, gender, age, national origin, religion or disability. The Award will be presented to entities that have demonstrated exemplary efforts in promoting free and unfettered access to opportunities in the workplace. The Award will be based on nominations received from the public.

This notice concerns the nomination form which constitutes a collection of information under the Paperwork Reduction Act.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment on its proposed nomination form to enable it to:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The remainder of this **SUPPLEMENTARY INFORMATION** section provides the public with information it will need to comment on the EEOC proposal. It contains an overview of the information collection and the proposed nomination form.

Overview of This Information Collection

Collection Title: Nomination for the Equal Employment Opportunity Commission's ''Freedom to Compete'' Award.

OMB Number: None.

Description of Affected Public: Individuals or households; Businesses or other for profit, Not-for-profit institutions; State or local governments.

Number of Responses: 100.

Estimated Reporting Time Per Respondent: 10 hours.

Total Burden Hours: 1,000 hours.

Federal Cost: None

Form—Nomination Form for the U.S. Equal Employment Opportunity Commission's ''Freedom To Compete'' Award.

The Equal Employment Opportunity Commission's ''Freedom to Compete'' Award is designed to recognize organizations and individuals whose extraordinary efforts embody the EEOC's mission of ensuring individuals the freedom to compete in the workplace on a level playing field and to go as far as their talent and abilities will allow regardless of race, color, gender, age, national origin, religion or disability. Award winners will be given the Commission's ''Freedom to Compete'' Award, which will be presented by the Chair of the Commission at an annual ceremony in Washington, DC. All nominees will be required to disclose any charges and litigation involving the statutes enforced by the Commission. Receipt of the ''Freedom to Compete'' Award does not constitute a waiver by the Commission nor will it be considered with respect to any future charges and investigations against nominees or award recipients.

Background: In 2002, under the leadership of Chair Cari M. Dominguez, EEOC launched the ''Freedom to Compete'' (FTC) initiative, a national outreach, education and coalition-building strategy designed to complement the agency's enforcement and litigation efforts by identifying EEO practices and programs worthy of emulation. The Commission has built and seeks to further build partnerships and strategic alliances with various stakeholders that can directly and indirectly influence positive change in the nation's workplaces. The Award will be presented to individuals and organizations that have demonstrated exemplary efforts in promoting free and unfettered access to opportunities in the workplace. The Award will be called the ''Freedom to Compete'' Award.

Eligibility Criteria: The following criteria apply to the Freedom to Compete Award Nominees:

A. The nominees must be public or private employers, corporations, associations, organizations, or others whose activities exemplify the goals of the Chair's ''Freedom to Compete'' initiative. Nominees may self-nominate or be nominated by others.

B. Nominees must have implemented a program or practice that has successfully removed barriers that hinder free and fair workplace competition and increased access, inclusion, and/or promotional opportunities for qualified workers. The program or practice must involve one or more of the following components: innovative leadership, outreach, education, recruitment, training/development, promotion, retention, and/or mentoring.

C. Nominees must report any unresolved violations of state of Federal law, or any pending Federal or state enforcement actions, any corrective actions or consent decrees that have resulted from litigation under the laws enforced by the Equal Employment Opportunity Commission.

D. Recipients of this Award agree to participate in programs, meetings, and/or other collaborative efforts with the Commission for the purpose of publicizing the award-winning program/effort, and agree to share information to assist other entities seeking to replicate the program/effort. Recipients agree to take part in Commission efforts to promote the ''Freedom to Compete'' Award and the principles of free and fair workplace competition that underlie the award.

Nomination Submission Requirements

This is an essay format (1,000 words or less) application. Programs/activities must have been in place for at least one year and have measurable and demonstrable results.

Essays should include the following:

- A profile of your organization—its mission, size, number of employees, nature of work, and, if a business, a description of its products/services, assets and annual revenues.
- A description of what led you to implement the program/practice.
- How you went about developing the program/practice. Describe who was involved, how it evolved, whether any major obstacles were encountered and how they were overcome, and how long the program/practice has been in place.
- A description of the program/practice. Explain the structure of the program/practice, how it is managed and measured, and who is accountable for results.
- Describe the level of executive involvement in, and commitment to, the program/practice during both development and implementation.
- A description of the tangible results. Explain what makes your program/practice effective, and how it has positively affected the lives of your workers. Address how the program/practice has helped to bring about free and fair competition in your workplace.
- A description of the joint activities your organization and the EEOC could undertake to share the program/effort with other entities and to promote the principles of free and fair workplace competition in partnership. Explain why others would find your program valuable.

Timing and Acceptable Methods of Submission of Nominations: Nomination packages must be submitted to ____, 1801 L Street, NW., Washington, DC 20507 by ___, 2003. Any application received or postmarked after___ will not be considered. All applications will be acknowledged

The Administrative Review Process: Nominations will be evaluated by EEOC staff, with final award determinations made by the EEOC Chair.

Location: The awards ceremony will generally be held during the month of ____at a location to be determined by the EEOC Chair.

Paperwork Reduction Act Notice (Public Law 104–13)

Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB number___(Expiration Date: ___). The obligation to respond to this information collection is voluntary; however, only nomination that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information collection is estimated to be 10 hours per response; including time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Equal Employment Opportunity Commission, Office of the Chair, 1801 L Street, NW., Washington, DC 20507. Please reference to OMB Number ___. We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Equal Employment Opportunity Commission's Freedom to Compete Award. Your comments will be very useful to the Commission in making improvements in our solicitation for nominations for this award in subsequent years.

Dated: November 21, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–29879 Filed 12–1–03; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by February 2, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at (202) 418–0214 or via the internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0599.

Title: Implementation of Section 3(n) and 332 of the Communications Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and state, local, or tribal government.

Number of Respondents: 45.

Estimated Time Per Response: 1.66 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 75 hours.

Annual Cost Burden: N/A.

Needs and Uses: The information collected will create regulatory symmetry among similar mobile

services. The symmetrical regulatory structure will promote competition in the mobile services marketplace and will serve the interests of consumers while also benefiting the national economy.

OMB Control No.: 3060–0757.

Title: FCC Auctions Customer Survey.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities.

Number of Respondents: 2,000.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Annual Cost Burden: N/A.

Needs and Uses: The information will be used by the Commission to evaluate the competitive bidding methodologies and other operational processes used to date and to improve these techniques for use in future auctions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30004 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 2, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0093.

Title: Application for Renewal of Radio Station License for Multipoint Distribution Service.

Form No: FCC Form 405.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,494.

Estimated Time Per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,612 hours.

Total Annual Cost: $1,048,000.

Needs and Uses: FCC Form 405 is now being used by Multipoint Distribution Service (MDS) to apply for renewal of radio station licenses at the FCC. As a result of the Schedule S rulemaking, earth stations will file the new FCC Form 312–R in lieu of the FCC Form 405 to request renewals of their licenses. The FCC Form 312–R contains all of the data elements of the currently approved FCC Form 405. However, the name was changed to identify that the form is filed by earth station licenses for license renewals only. Additionally, the FCC Form 312–R is filed on the International Bureau Filing System (IBFS). The FCC Form 405 is available on the electronic Broadcast Licensing System (BLS) utilized by licensees and/or by the Wireless Telecommunications Bureau staff.

OMB Control No.: 3060–0292.

Title: Part 69—Access Charges.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,458 respondents; 5,832 responses.

Estimated Time Per Response: .75–5 hours.

Frequency of Response: On occasion, monthly, annual, semi-annual, and biennial reporting requirements and third party disclosure requirement.

Total Annual Burden: 27,702 hours.

Total Annual Cost: N/A.

Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies. Local telephone companies and states are required to submit information to the Commission and/or the National Exchange Carrier Association (NECA). The information is used to compute changes in tariffs for access service (or origination and termination) and to computer revenue pool distributions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30005 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 2, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0270.

Title: Section 90.443, Content of Station Records.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 57,410.

Estimated Time Per Response: .083 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 4,765 hours.

Total Annual Cost: N/A.

Needs and Uses: This rule section requires antenna structure owners to: (1) Register the antenna structure with the Commission; (2) maintain the painting and lighting of the structure; (3) notify the Commission of changes in height, coordinates, ownership, painting, or lighting of the structure; and (4) notify the Commission upon dismantling of the structure. Section 90.433 of the Commission's rules, sets forth the recordkeeping requirement which is to be maintained by station licensees. These records will reflect whether or not maintenance of the licensee's equipment has been performed, and in instances of tower light checks and failures, if any, will indicate to the Commission that corrective action has been taken. The maintenance records may be used by the licensee or Commission field personnel to note any recurring equipment problems or conditions that may lead to degraded equipment performance and/or interference generation. Tower lighting records required are to ensure that the licensee is aware of the tower light condition and proper operation, in order to prevent and/or to correct any hazards to air navigation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30006 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–3723]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 26, 2003, the Commission released a public notice announcing the January 13, 2004 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Tuesday, January 13, 2004, 9 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: November 26, 2003.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, January 13, 2004, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Tuesday, January 13, 2004, 9 a.m.*

1. Announcements and Recent News.
2. Approval of Minutes of Prior Meeting.
3. Report from NBANC.
4. Report of NAPM, LLC.
5. Report of the North American Numbering Plan Administrator (NANPA).
6. Report of National Thousands Block Pooling Administrator.
7. Status of Industry Numbering Committee (INC) activities.
8. Reports from Issues Management Groups (IMGs).
9. Report of Local Number Portability Administration (LNPA) Working Group.

—Wireless Number Portability Operations (WNPO) Subcommittee

10. Report of Numbering Oversight Working Group (NOWG).
11. Report of Cost Recovery Working Group.
12. Special Presentations.
13. Update List of NANC Accomplishments.
14. Summary of Action Items.
15. Public Comments and Participation (5 minutes per speaker).
16. Other Business.

Adjourn no later than 5 p.m.

Next Meeting: Tuesday, March 16, 2004.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–29920 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2639]

Petitions for Reconsideration of Action in Rulemaking Proceeding

November 25, 2003.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this

Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893. Oppositions to these petitions must be filed by December 17, 2003. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the Table of Allotments FM Broadcast Stations (Crisfield, Maryland, Belle Haven, Nassawadox, Exmore, and Poquoson, Virginia) (MM Docket No. 02–76, RM–10405, RM–10499)

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30009 Filed 12–1–03; 8:45 am]

BILLING CODE 6712–01–M

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 December 15, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Connie Sue Hoff, Curtis Robert Sheely, and Brian Dean Wolff, all of Adams, Minnesota; to acquire additional voting shares of Adams Bancshares, Inc., Adams, Minnesota; and thereby indirectly acquire additional voting shares of Farmers State Bank of Adams, Adams, Minnesota.

Board of Governors of the Federal Reserve System, November 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–29890 Filed 12–1–03; 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 December 26, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Sterling BancGroup, Inc., Lantana, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Sterling Bank, Lantana, Florida.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Valley Financial Group, Ltd., Saginaw, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of 1st State Bank, Saginaw, Michigan.

Board of Governors of the Federal Reserve System, November 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–29889 Filed 12–1–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, December 8, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, November 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30130 Filed 11–28–03; 2:12 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On March 31, 2003, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Paccar, Inc., in connection with its sale of Kenworth and Peterbilt truck dealerships. The Commission now grants the petition and determines that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of Paccar dealerships.

EFFECTIVE DATE: December 2, 2003.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Room 238, Federal Trade Commission, Washington, D.C. 20580; (202) 326–3135.

SUPPLEMENTARY INFORMATION:

Before the Federal Trade Commission, Order Granting Exemption

In the Matter of a Petition for Exemption from the Trade Regulation Rule Entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' filed by Paccar, Inc.

On March 31, 2003, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Paccar, Inc. (''Paccar'' or ''Petitioner''). Paccar manufactures heavy-duty and medium-duty trucks, parts, and accessories, which it distributes through a network of 131 dealers operating under the name ''Kenworth'' or ''Peterbilt.'' The dealers also offer and perform warranty repair and bodywork; sell, rent, or lease used vehicles; and offer financing and insurance in connection with truck sales. Most of these dealers have been in business for 10 years or more; one-third have been Paccar dealers for more than 20 years. The petition sought an exemption, pursuant to Section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (''Franchise Rule'').

In accordance with Section 18(g), the Commission conducted an exemption proceeding under Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending May 30, 2003. No comments were received. After reviewing the petition, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is ''necessary to prevent the unfair or deceptive act or practice to which the rule relates.'' If not, an exemption is warranted.

The pre-sale disclosures required by the Franchise Rule are designed to prevent deceptive acts or practices. The Rule requires franchisors to provide investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus protect themselves from the deception.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor has a relative lack of business experience and sophistication;

(2) The investor has inadequate time to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance exists in which the prospective franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The petition demonstrates that potential Paccar dealers are and will continue to be a select group of sophisticated and experienced businesspeople; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. In particular, we note that the purchase of a Paccar dealership costs in excess of $2 million. As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of potential risks and benefits.

The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the offer of Paccar dealerships and found no evidence or likelihood of a significant patter or practice of abuse. If any such evidence exists, it has not yet been brought to the Commission's attention in this proceeding.

Thus, both the record in this proceeding, and all prior experience to date with other Franchise Rule exemptions, support the conclusion that Petitioner's sale of Paccar dealerships accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the sale of the dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's sale of Paccar dealerships is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of dealerships by Paccar, Inc. This opinion is based on the information submitted and representations made in Paccar, Inc.'s petition. The grant of the petition applies only to the extent that actual company practices conform to the practices described in the petition.

Issued: November 10, 2003.

It is so ordered.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–29922 Filed 12–1–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On March 31, 2003, the commission published a notice in the **Federal Register** soliciting comments on a petition filed by Rolls-Royce Corp., in connection with its sale of engine maintenance centers. The Commission now grants the petition and determines that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of Rolls-Royce engine maintenance centers.

EFFECTIVE DATE: December 2, 2003.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Room 238, Federal Trade Commission, Washington, DC 20580; (202) 326–3135.

SUPPLEMENTARY INFORMATION:

Before the Federal Trade Commission Order Granting Exemption

In the Matter of a Petition for Exemption from the Trade Regulation Rule Entitled ''Disclosure Requirements and Prohibitions Concerning

Franchising and Business Opportunity Ventures'' filed by Rolls-Royce Corp.

On March 31, 2003, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Rolls-Royce Corp. (''Rolls-Royce'' or ''Petitioner''). Rolls-Royce sells maintenance center franchises to service its turboprop, turbofan, and industrial gas turbine engines. The petition sought an exemption, pursuant to Section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (''Franchise Rule'').

In accordance with Section 18(g), the Commission conducted an exemption proceeding under Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending May 30, 2003. No comments were received. After reviewing the petition, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is ''necessary to prevent the unfair or deceptive act or practice to which the rule relates.'' If not, an exemption is warranted.

The pre-sale disclosures required by the Franchise Rule are designed to prevent deceptive acts or practices. The Rule requires franchisors to provide investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus protect themselves from deception.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor has a relative lack of business experience and sophistication;

(2) The investor has inadequate time to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance exists in which the prospective franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The petition demonstrates that potential maintenance center franchisees are and will continue to be a select group of highly sophisticated and experienced businesspeople; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing.

In particular, we note that the purchase of a Rolls-Royce maintenance center is among the most costly of franchise offerings. On average, the maintenance centers have approximately $10 million in assets, excluding land and buildings. As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits.

The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the offer of Rolls-Royce maintenance centers and found no evidence or likelihood of a significant pattern or practice of abuse. If any such evidence exists, it has not yet been brought to the Commission's attention in this proceeding.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions support the conclusion that Petitioner's sale of Rolls-Royce maintenance centers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the sale of the maintenance centers, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's sale of maintenance center franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of maintenance centers by Rolls-Royce Corp. This opinion is based on the information submitted and representations made in Rolls-Royce's petition. The grant of the petition applies only to the extent that actual company practices conform to the practices described in the petition.

Issued: November 10, 2003.

It is so ordered.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–29923 Filed 12–01–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants wee made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans num	Et req status	Party name
06–OCT–03	20030983	G	Lehman Brothers Holdings Inc.
		G	Brad K. Heppner.
		G	Capital Analytics, LP.
		G	Crossroads Corporate Advisers, LP.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans num	Et req status	Party name
		G	Crossroads Corporate Investors II, LP.
		G	Crossroads Investment Company, LP.
		G	e-Valuate, LP.
		G	The Main Office Management Company, LP.
		G	Crossroads Investment Advisers, LP.
		G	Crossroads Cornerstone Partners, LP.
		G	Crossroads Corporate Investors, LP.
		G	Security Assurance Advisers, LP.
	20031004	G	Companhia Siderurgica Nacional.
		G	Tilcia Rodriguez de Vergara.
		G	Tangua Incorporated.
	20031007	G	Companhia Siderurgica Nacional.
		G	Eduardo Valdes Aleman.
		G	Tangua Incorporated.
	20031014	G	TA IX L.P.
		G	Dr. Howard Schilit.
		G	Center for Financial Research & Analysis, Inc.
08–OCT–03	20030963	G	Warburg Pincus Private Equity VIII, L.P.
		G	Proxim Corporation.
		G	Proxim Corporation.
	20030999	G	The Procter & Gamble Company.
		G	W.L. Gore & Associates, Inc.
		G	W.L. Gore & Associates, Inc.
	20031010	G	eCollege.com.
		G	Leeds Equity Partners III, LP.
		G	DataMark Inc.
10–OCT–03	20031003	G	Mr. Raul Alarcon, Jr.
		G	International Church of the Foursquare Gospel.
		G	KSFG–FM Station.
	20031018	G	Essent Healthcare, Inc.
		G	CHRISTUS Health.
		G	CHRISTUS St. Joseph's Health System.
		G	PTCOP, Inc.
14–OCT–03	20030680	G	Dean Foods Company.
		G	Vestar Capital Partners IV, L.P.
		G	M-Foods Dairy, LLC.
		G	M-Foods Dairy, TXCT, LLC.
	20030966	Y	Scientific Games Corporation.
		Y	International Game Technology.
		Y	IGT Online Entertainment Systems, Inc.
15–OCT–03	20030997	G	Nelson A. Carbonell, Jr.
		G	Cysive, Inc.
		G	Cysive, Inc.
	20031013	G	William I. Koch.
		G	Walter Industries, Inc.
		G	Applied Industrial Material Corporation.
	20040012	G	FTI Consulting, Inc.
		G	Lawrence J. Ellison.
		G	Lexecon, Inc.
		G	ERG Acquisition Corp.
		G	CE Acquisition Corp.
	20040013	G	FTI Consulting, Inc.
		G	Micahel R. Milken.
		G	Lexecon, Inc.
		G	CE Acquisition Corp.
		G	ERG Acquisition Corp.
16–OCT–03	20030618	G	GenCorp Inc.
		G	Norman E. Alexander.
		G	Atlantic Research Corporation.
	20040014	G	Silicon Laboratories Inc.
		G	Cygnal Integrated Products, Inc.
		G	Cygnal Integrated Products, Inc.
20–OCT–03	20030982	G	DLJ Merchant Banking Partners II, L.P.
		G	The Lehigh Press, Inc.
		G	The Lehigh Press, Inc.
	20040004	G	HSBC Holding plc.
		G	Roxanne Quimby.
		G	Burt's Bees, Inc.
21–OCT–03	20040005	G	LBO France Gestion SAS.
		G	Speciality Materials Investors.
		G	Materis Participations.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans num	Et req status	Party name
	20040029	G	AT&T Wireless Services, Inc.
		G	AT&T Wireless Services, Inc.
		G	Pittsburgh Cellular Telephone Company.
	20040033	G	SBC Communications Inc.
		G	Allen Salmasi.
		G	Nextwave Personal Communications Services.
23–OCT–03	20040027	G	Stage Stores, Inc.
		G	Kelso Investment Associates V, L.P.
		G	PHC Retain Holding Company.
	20040042	G	Marubeni Corporation.
		G	Exelon Corporation.
		G	Sithe International Inc.
24–OCT–03	20040008	G	Morganthaler Partners VII, L.P.
		G	Robert Burch.
		G	Jonathan Manufacturing Corp.
	20040019	G	Carl C. Icahn.
		G	Philip Services Corp.
		G	Philip Services Corp.
	20040030	G	UBS AG.
		G	ABN AMRO Holding N.V.
		G	ABN AMRO Inc.
	20040034	G	TT Electronics PLC.
		G	Robert R. Dyson.
		G	Optek Technology, Inc.
	20040036	G	George A. Steiner Trust.
		G	Michael R. Kelly.
		G	National Service Industries, Inc.
	20040036	G	George A. Steiner Trust.
		G	Michael R. Kelly.
		G	National Service Industries, Inc.
	20040038	G	APAX Europe V–A L.P.
		G	IFCO Systems N.V.
		G	IFCO Systems N.V.
27–OCT–03	20031017	G	TBC Corporation.
		G	Sears, Roebuck and Co.
		G	NTW Incorporated.
	20040032	G	Aggregate Industries plc.
		G	Floyd A. Meldrum.
		G	Southern Nevada Paving Company, Inc.
	20040040	G	SBC Communications, Inc.
		G	AT&T Wireless Services, Inc.
		G	Pinnacle Cellular Limited Partnership.
		G	Worcester Telephone Company.
28–OCT–03	20040037	G	FTI Consulting, Inc.
		G	KPMG, LLP.
		G	KPMG, LLP.
	20040051	G	Thomas H. Lee Equity Fund V, L.P.
		G	Vestar Capital Partners IV, L.P.
		G	M-Foods Holdings, Inc.
29–OCT–03	20040035	G	Armor Holdings, Inc.
		G	Simula, Inc.
		G	Simula, Inc.
	20040047	G	Carl C. Icahn.
		G	Eastman Kodak Company.
		G	Eastman Kodak Company.
30–OCT–03	20040065	G	K2 Inc.
		G	Brass Eagle Inc.
		G	Brass Eagle Inc.
31–OCT–03	20040002	G	MeadWestvaco Corporation.
		G	Sunrise Capital Partners, L.P.
		G	Day Runner, Inc.
		G	Day Runner, Inc.
		G	Day Runner Direct, Inc.
		G	Day Runner Hong Kong Limited.
	20040003	G	MeadWestvaco Corporation.
		G	Day Holdings, LLC.
		G	Day Runner, Inc.
		G	Day Runner Direct, Inc.
		G	Day Runner Hong Kong Limited.
	20040052	G	NetScreen Technologies, Inc.
		G	Neoteris, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans num	Et req status	Party name
	20040063	G	Neoteris, Inc.
		G	Bookham Technology plc.
		G	New Focus, Inc.
		G	New Focus, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. 03–29924 Filed 12–1–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 031 0001]

Memorial Hermann Health Network Providers; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 24, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Alan Loughnan or Barbara Anthony, FTC Northeast Regional Office, One Bowling Green, Suite 318, New York, NY 10004. (212) 607–2809.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 25, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/11/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Memorial Hermann Health Network Providers (''Respondent'' or ''MHHNP''). The agreement settles charges that Respondent violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by facilitating and implementing agreements among MHHNP members on price and other competitively significant terms; refusing to deal with payors except on collectively agreed-upon terms; and negotiating uniform fees and other competitively significant terms in payor contracts and refusing to submit to members payor offers that do not conform to Respondent's standards for contracts.

The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final. The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true. The allegations in the Commission's proposed complaint are summarized below.

The Complaint

Respondent MHHNP is a nonprofit corporation that contracts with third-party payors for the provision of medical services on behalf of its approximately 3,000 participating physicians. MHHNP is organized and operated to further the pecuniary interests of those physicians, who are licensed to practice medicine in the State of Texas and who are engaged in the business of providing medical services to patients in the Houston metropolitan area (hereinafter ''Houston area'').

Physicians often contract with third-party payors, such as insurance companies and preferred provider organizations. The contracts typically

establish the price and other terms under which the physicians will render services to the payors' subscribers. Contracting physicians often agree to accept lower-than-customary compensation from these third-party payors to gain access to additional patients through the payor. Thus, these contracts may reduce payor costs, and may result in lower medical care costs to the payor's subscribers.

Absent agreements among competing physicians, each competing physician decides for him or herself whether, and on what price and other terms, the physician will contract with third-party payors to provide medical services to the payors' subscribers. To be competitively marketable in the Houston area, a payor must include in its physician network a large number of primary care physicians (PCPs) and specialists who practice in the Houston area. Many of the PCPs and specialists who practice in the Houston area are members of MHHNP. Accordingly, many payors concluded that they could not establish a viable physician network in areas in which MHHNP physicians are concentrated without including a large number of MHHNP physicians in that network.

Sometimes a network of competing physicians uses an agent to convey to payors information, obtained from each of its participating physicians individually, about fees and other significant contract terms that the physicians are willing to accept. In other instances, the agent may convey all payor contract offers to network physicians, with each physician then unilaterally deciding whether to accept or reject each offer. These ''messenger model'' arrangements, which are described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice (*see http://www.ftc.gov/reports/hlth3s.htm*), can facilitate contracting between physicians and payors and minimize the costs of providing medical care, without fostering agreements among competing physicians on fees and other competitively sensitive terms. The messenger may not, consistent with the competitive model, negotiate fees and other competitively significant terms on behalf of the participating physicians, nor facilitate the physicians' coordinated responses to contract offers, for example, by electing not to convey a payor's offer to the physicians based on the messenger's opinion of the acceptability or appropriateness of the offer.

Rather than acting simply as a ''messenger,'' MHHNP engaged in collective negotiations on its members behalf with third party payors. MHHNP's improper collective negotiations included actively bargaining with third-party payors by proposing and counter-proposing fee schedules (among other terms), gathering fee information from its members and using that information to negotiate prices, refusing to messenger proposals it deemed unacceptable on price and other terms, and, to maintain its bargaining power, on occasion discouraging its participating physicians from entering into unilateral agreements with third-party payors. For example, MHHNP periodically polled its physician members, asking each to disclose the minimum fee that he or she would accept in return for providing medical services pursuant to future MHHNP-payor agreements. MHHNP would then calculate minimum acceptable fees for use in payor negotiations, based in part on the information received from physician members concerning their future pricing intentions, and would often begin discussions regarding a possible contract for physician services by informing the payor of these minimum fees, and stating that it would not enter into or otherwise forward to its physician members any payor offer that did not satisfy those fee minimums.

In the course of its collective price negotiations with payors, MHHNP in fact often did not convey to its physician members payor offers that provided for fees that did not satisfy MHHNP's Board of Directors. MHHNP instead demanded, and often received, more favorable fee and other contract terms—terms that third-party payors would not have offered to MHHNP's participating physicians had those physicians engaged in unilateral, rather than collective, negotiations with the payors. Only after the third-party payor acceded to fee and other contract terms acceptable to MHHNP, would MHHNP convey the payor's proposed contract to MHHNP's participating physicians for their consideration. For example, in one instance MHHNP refused a payor's request to messenger an offer MHHNP's Board deemed unacceptable. Instead, MHHNP notified its members that it had rejected the offer because it was below the minimum acceptable fee level previously set pursuant to physician member surveys, and then ''polled'' its members to determine whether or not they agreed with the Board's decision to reject the offer. A majority of physician members voted to agree with the Board's decision, and MHHNP then again rejected the payor's offer and explicitly refused to forward the offer to any of its physician members. Subsequently, the payor increased its proposed fees to the MHHNP fee minimums, and MHHNP then entered into a contract with the payor and messengered the agreement to its physician members, affording them the option to participate (or not) in the payor's offer.

Since the end of 2000, MHHNP and its members have entered only into fee-for-service agreements with payors, pursuant to which MHHNP and its members did not undertake financial risk-sharing. Further, MHHNP members have not integrated their practices to create significant potential efficiencies. MHHNP's joint negotiation of fees and other competitively significant terms has not been, and is not, reasonably related to any efficiency-enhancing integration. Instead, MHHNP's acts and practices have restrained trade unreasonably and hindered competition in the provision of physician services in the Houston area in the following ways, among others: price and other forms of competition among MHHNP's members were unreasonably restrained; prices for physician services were increased; and health plans, employers, and individual consumers were deprived of the benefits of competition among physicians. Thus, MHHNP's conduct has harmed patients and other purchasers of medical services by restricting choice of providers and increasing the price of medical services.

The Proposed Consent Order

The proposed consent order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint while allowing Respondent and its members to engage in legitimate joint conduct.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements among physicians: (1) To negotiate on behalf of any physician with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term upon which any physicians deal, or are willing to deal, with any payor; and (4) not to deal individually with any payor or through any arrangement other than MHHNP.

Paragraph II.B prohibits Respondent from exchanging or facilitating the transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal.

Paragraph II.C prohibits Respondent from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits Respondent

from encouraging, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C. Paragraph II contains a proviso that allows Respondent to engage in conduct that is reasonably necessary to the formation or operation of a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement,'' or that solely involves physicians in the same medical group practice.

Paragraph III requires MHHNP, for a period of three years after the order becomes final, to notify the Commission at least 60 days prior to entering into any arrangement under which MHHNP will act as a messenger or agent on behalf of physicians with payors regarding contracts. This provision will allow the Commission to review any future MHHNP policy or practice that MHHNP plans to implement with payors before such a policy or practice is implemented with respect to any particular payor.

Paragraphs IV.A and IV. B require MHHNP to distribute the complaint and order to its members, payors with which it previously contracted, and specified others. Paragraph IV.C requires MHHNP to terminate, without penalty, any payor contracts that it had entered into during the collusive period, at any such payor's request. This provision is intended to eliminate the effects of Respondent's joint price setting. Paragraph IV.C also contains a proviso to preserve payor contract provisions defining post-termination obligations relating to continuity of care during a previously begun course of treatment.

The remaining provisions of the proposed order impose complaint and order distribution, reporting, and other compliance-related provisions. For example, Paragraph IV. D requires MHHNP to distribute copies of the Complaint and Order to incoming MHHNP members, payors that contract with MHHNP for the provision of physician services, and incoming MHHNP officers, directors, and employees. Further, Paragraph V requires MHHNP to file periodic reports with the Commission detailing how MHHNP has complied with the Order. Paragraph VII authorizes Commission staff to obtain access to Respondent's records and officers, directors, and employees for the purpose of determining or securing compliance with the Order. The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–29921 Filed 12–1–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Sheila Blackwell, University of Maryland, Baltimore: Based on the report of an investigation conducted by the University of Maryland, Baltimore (UMB Report), the respondent's admission of responsibility, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Sheila Blackwell, former contractual employee, Department of Pediatrics at UMB, engaged in scientific misconduct in research supported by National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grant 2 R01 MH54983, entitled ''Effectiveness of Standard versus Embellished HIV Prevention.''

Specifically, PHS found that Ms. Blackwell engaged in scientific misconduct by fabricating interview records for the Focus on Teens HIV Risk Prevention Program for nine interviews that had not been performed over the period of May through July 2001.

Ms. Blackwell has entered into a Voluntary Exclusion Agreement (Agreement) in which she has voluntarily agreed for a period of three (3) years, beginning on October 30, 2003:

(1) To exclude herself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That her participation in any PHS-supported research will be conditioned on an appropriate plan of supervision of her duties (Supervision Plan) as follows:

(i) Any institution that submits an application for PHS support for a research project in which Ms. Blackwell's participation is proposed or anticipated must concurrently submit a Supervision Plan to the funding agency for approval; and (ii) any institution using Ms. Blackwell in any capacity in PHS-supported research must submit a Supervision Plan to the funding agency for approval. The Supervision Plan must be designed to ensure the scientific integrity of her research contribution. A copy of the Supervision Plan must also be submitted to ORI by the institution. Ms. Blackwell agreed that she will not participate in any PHS-supported research until the Supervision Plan has been submitted to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–29867 Filed 12–1–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Khalilah Creek, University of Maryland, Baltimore: Based on the report of an investigation conducted by the University of Maryland, Baltimore (UMB Report), the respondent's admission of responsibility, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Khalilah Creek, former contractual employee, Department of Pediatrics at UMB, engaged in scientific misconduct in research supported by National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grant 2 R01 MH54983, entitled ''Effectiveness of Standard versus Embellished HIV Prevention.''

Specifically, PHS found that Ms. Creek engaged in scientific misconduct by fabricating interview records for the Focus on Teens HIV Risk Prevention Program for eight interviews that had not been performed over the periods of July and December 2000 and January, February, and May through August 2001.

Ms. Creek has entered into a Voluntary Exclusion Agreement (Agreement) in which she has

voluntarily agreed for a period of three (3) years, beginning on October 30, 2003:

(1) To exclude herself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That her participation in any PHS-supported research will be conditioned on an appropriate plan of supervision of her duties (Supervision Plan) as follows: (i) Any institution that submits an application for PHS support for a research project in which Ms. Creek's participation is proposed or anticipated must concurrently submit a Supervision Plan to the funding agency for approval; and (ii) any institution using Ms. Creek in any capacity in PHS-supported research must submit a Supervision Plan to the funding agency for approval. The Supervision Plan must be designed to ensure the scientific integrity of her research contribution. A copy of the Supervision Plan must also be submitted to ORI by the institution. Ms. Creek agreed that she will not participate in any PHS-supported research until the Supervision Plan has been submitted to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–29866 Filed 12–1–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Lajuane Woodard, University of Maryland, Baltimore: Based on the report of an investigation conducted by the University of Maryland, Baltimore (UMB Report), the respondent's admission of responsibility, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Lajuane Woodard, former contractual employee, Department of Pediatrics at UMB, engaged in scientific misconduct in research supported by National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grant 2 R01 MH54983, entitled ''Effectiveness of Standard versus Embellished HIV Prevention.''

Specifically, PHS found that Ms. Woodard engaged in scientific misconduct by fabricating interview records for the Focus on Teens HIV Risk Prevention Program for one interview claimed to have been performed in June 2001.

Ms. Woodard has entered into a Voluntary Exclusion Agreement (Agreement) in which she has voluntarily agreed for a period of three (3) years, beginning on October 30, 2003:

(1) To exclude herself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That her participation in any PHS-supported research will be conditioned on an appropriate plan of supervision of her duties (Supervision Plan) as follows:

(i) Any institution that submits an application for PHS support for a research project in which Ms. Woodard's participation is proposed or anticipated must concurrently submit a Supervision Plan to the funding agency for approval; and

(ii) Any institution using Ms. Woodard in any capacity in PHS-supported research must submit a Supervision Plan to the funding agency for approval. The Supervision Plan must be designed to ensure the scientific integrity of her research contribution. A copy of the Supervision Plan must also be submitted to ORI by the institution. Ms. Woodard agreed that she will not participate in any PHS-supported research until the Supervision Plan has been submitted to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–29865 Filed 12–1–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Youth Violence Prevention Through Community-Level Change

Announcement Type: New.

Funding Opportunity Number: 04054.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates

Letter of Intent Deadline: January 2, 2004.

Application Deadline: February 17, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 391(a) of the Public Health Service Act, [42 U.S.C. section 280b(a), as amended].

Purpose: The purpose of the program is to announce the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for the evaluation of community-level interventions to reduce youth violence.

This program addresses the ''Healthy People 2010'' focus area Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives: Youth violence has been linked to a variety of factors, including individual, family, community, and societal characteristics. While much research has been conducted on interventions with individuals and families, less often have interventions focused on variables at the broader community level.

There are a number of characteristics of communities that increase the probability of violence. Rates of violence are high in areas that have large concentrations of poor and unemployed people, crowded housing, residential instability, family disruption, illegal drug distribution and sales, diminished private economic activity, and limited positive opportunities for youths and adults (Reiss & Roth, 1993; Sampson & Lauritsen, 1994). Rates of violence are also high in neighborhoods where there is low community participation, disorganization, and a lack of cohesion. People living in these types of communities tend to be socially isolated and exhibit lower levels of attachment to the community—factors that also

limit their ability to supervise and control adolescent peer groups, especially gangs (Sampson & Lauritsen, 1994).

Research funded under this announcement is expected to address this important gap in the prevention literature (*i.e.,* the implementation and evaluation of interventions that are designed to modify the above types of community characteristics). The ultimate aim of such an approach is to assess whether interventions designed to change community structures and social processes can reduce rates of youth violence in communities.

At a minimum, competitive applicants will provide theoretical rationale and empirical evidence in support of the specific intervention proposed, and will conduct a rigorous evaluation of the intervention.

Activities

Awardee activities for this program are as follows:

- Develop and finalize the research design and methodology, data collection measures, and analyses, and disseminate study results through publications and presentations.
- Develop a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.
- Obtain approval of the study protocol by the recipient's local IRB.
- Collect data on the costs associated with implementing and evaluating the intervention.
- Conduct one reverse site visit to meet with CDC staff in Atlanta on an annual basis.
- Complete all required reports as specified under ''Reporting Requirements''.
- Provide a protocol/manual documenting the intervention and the manner in which it was implemented, including any information on activities occurring prior to the start of the intervention, such as stakeholder meetings, collaboration building, or focus groups.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide scientific and programmatic consultation. CDC will collaborate with project staff on decision-analyses, programmatic issues, and dissemination of the study results in publications and presentations.
- Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is finished.
- CDC staff will monitor and review scientific and operational accomplishments of the project through conference calls, site visits, and review of technical reports.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: 1,000,000.

Approximate Number of Awards: Two.

Approximate Average Award: 500,000.

Floor of Award Range: $250,000.

Ceiling of Award Range: $500,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching: Matching funds are not required for this program.

III.3. Other Eligibility Requirements: If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. The following are applicant requirements:

- A principal investigator who has documented prior training and experience in conducting efficacy and effectiveness trials.
- A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
- Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing violence prevention research in peer-reviewed journals.
- Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.
- The overall match between the applicant's proposed research objectives and the program priorities as described under the heading, ''Funding Priority''.
- The requested funding amount is within the award range of $250,000–$500,000.
- Principal investigators (PI's) are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per PI will be funded under this announcement.

4. Individuals Eligible To Become Principal Investigators

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package: To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Single spaced.
- Printed only on one side of page.
- Written in English, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application (See Attachment 1 of this announcement for guidance on how to complete Form 398 for this Program Announcement). The Program Announcement Title and number must appear in the application. For further assistance with the PHS 398 application form, contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You must include a research plan with your application. The research plan should be no more than 25 pages (8.5″ x 11″ in size), single-spaced, printed on one side only, with one-inch margins on all sides, and unreduced 12-point font. Your application will be evaluated on the criteria listed under Section V. ''Application Review Information'', so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (ARs), in laying out your research plan. Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information:

1. *Abstract:* It is especially important to include an abstract that reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

2. *Program Goals and Objectives:* Describe the goals and objectives the proposal is designed to achieve in the short and long term. Specific research questions and hypotheses should also be included.

3. *Program Participants:* Describe the demographic and geographic characteristics of the community and/or neighborhood targeted by the intervention. This section should include incidence, prevalence, morbidity, and/or mortality rates associated with youth violence within that community. In addition, the proposal should provide evidence that the recipient (or collaborating partner) has access to the target community, and that the participation by the target community in the intervention will be adequate.

4. *Intervention:* Describe the proposed strategies or components of the intervention and the plan for implementing the intervention. Proposals should explicate the theoretical and empirical justification for the potential effectiveness of the intervention for reducing youth violence in the target community. This should include discussion of the modifiable risk and protective factors that will be influenced by the intervention of interest. The proposal should describe the location or setting in which the intervention component(s) will occur, and describe the relevance of this setting to the strategy and desired outcomes.

5. *Evaluation Design:* Describe the proposed design, methods and analysis plan for assessing the effectiveness of the intervention. The specific type of evaluation method chosen should reflect the nature of the intervention, feasibility, and ethical considerations. Potential threats to the validity of the study should be described along with how such threats will be recognized and addressed. The status of all necessary measurement instruments should be described. If any materials are not extant, the methods and time frame for measure development, pilot testing, and validation should be given. For data collected from archival records (*e.g.*, hospital records, police records, etc.) the proposal should discuss issues of accessibility, reliability, and validity of those data.

6. *Project Management:* Provide evidence of the expertise, capacity, and community support necessary to successfully implement the intervention to reduce community indicators of youth violence. Proposals should also provide evidence of expertise and capacity to evaluate the impact of the intervention. Each existing or proposed position for the project should be described by job title, function, general duties, level of effort and allocation of time. Management operation principles, structure, and organization should also be noted.

7. *Collaborative Efforts:* List and describe the current and proposed collaborations with government, health, or youth agencies, community- or faith-based organizations, minority organizations, and other researchers. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

8. *Data sharing and release:* Describe plans for the sharing and release of data (See AR–25 for additional information).

9. *Project Budget:* Provide a detailed budget for each activity undertaken, with accompanying justification of all

operating expenses that is consistent with the stated objectives and planned activities of the project.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

IV.3. Submission Dates and Times

LOI Deadline Date: January 2, 2004.

Application Deadline Date: February 17, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

4. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

5. *Funding Restrictions:* Restrictions, which must be taken into account while writing your budget, are as follows:

Funding Priority

Priority will be given to the evaluation of primary prevention interventions and programs that focus on the social and economic environment (relationships among people and settings) and/or the physical environment (tangible surroundings or resources available to youth or the community at large), over those that focus on criminal justice responses (*e.g.*, community policing, arrest strategies). These include:

- Strategies to increase social integration and cohesion by increasing community participation as well as formal and informal social support.
- Strategies to improve the physical and social characteristics of neighborhoods through environmental design changes (*e.g.*, Crime Prevention Through Environmental Design).
- Strategies to improve financial, housing, and/or employment issues in impoverished areas.
- Efforts to deconcentrate areas with high rates of poverty and violence.
- Strategies to increase formal and/or informal supervision of youth (such as providing structured or unstructured activities to youth during non-school hours, or encouraging adults to monitor youths' activities in their neighborhood).
- Strategies to reduce community density and availability of alcohol and drugs.
- Strategies to modify social norms about violence or other related issues and values.

Funding Preferences

Funding preference will be given to proposals that:

- Propose more stringent and rigorous evaluation designs, including: experimental and quasi-experimental designs with appropriate baseline/pre-intervention data, post-intervention data, and at least one follow-up data collection point; data from at least one comparison or control community; and data collected from multiple sources.
- Measure outcomes and impacts at the neighborhood or community level and focus on risk and protective factors specific to that level of intervention. Examples could include: police records of neighborhood or community arrests for violent crimes, violent school incidents (aggregated to the school or system level), hospital or Emergency Room data aggregated by neighborhood or community, or intake rates for juvenile detention facilities.
- Propose a conceptual model or theory of change for how the intervention will produce the intended reductions in youth violence, and measure proposed mediators and moderators of program outcomes.
- Describe plans for ensuring that the intervention is implemented as it was designed (*i.e.*, intervention fidelity) and that the target community received or had access to the intervention (*i.e.*, program exposure).
- Propose data analytic plans that are appropriate to the intervention, research design and hypotheses, data collection measures, and project period, and that anticipate and evaluate the effect of threats to the internal and external validity of the specified research design.
- Target traditionally underserved communities.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement.

If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Robin Forbes, CDC, NCIPC, 4770 Buford Hwy, NE, Mailstop K–62, Atlanta, GA 30341, Telephone: 770–488–4037, Fax: 770–488–1662, E-mail: *CIPERT@cdc.gov.*

Application Submission Address: Submit the original and five copies of your application by mail or express delivery service to: Technical Information Management—PA# 04054, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control

and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, scientifically rigorous, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score: Intervention: Is the potential effectiveness of the proposed intervention within the target community theoretically justified and supported with epidemiologic, methodological, and behavioral research? How feasible is the implementation of the intervention as proposed? Can the intervention reasonably be predicted to produce the expected reductions in youth violence? Is the setting of implementation appropriate?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of woman, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

INCLUSION OF CHILDREN AS PARTICIPANTS IN RESEARCH INVOLVING HUMAN SUBJECTS: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process: Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff for completeness and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Initial Review Group (IRG) convened by NCIPC, to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator or program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

1. The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above. Applications will be assigned a priority score based on the National Institutes of Health (NIH) scoring system of 100–500 points.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The secondary review committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and

to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the IRG, recommendations by the secondary review committee, ACIPC, consultation with NCIPC senior staff, and the availability of funds.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

VI. Award Administration Information

VI.1. Award Notices: Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

2. *Administrative and National Policy Requirements:* 45 CFR part 74 and part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Starting with the December 1, 2003 receipt date, all NCIPC funded investigators seeking more than $250,000 in total costs in a single year are expected to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing/release, including the timeliness and name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing/release may also be appropriate in other sections of the application (*e.g.* background and significance, human subjects requirements, etc.). The content of the data sharing/release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing/release plan will not count towards the application page limit and will not factor into the determination scientific merit or priority scores. Investigators should seek guidance from their institutions, on issues related to institutional policies, local IRB rules, as well as local, state and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or visiting the NCIPC Internet Web site at: *http://www.cdc.gov/ncipc/osp/sharing_policy.htm.*

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting: You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research program technical assistance, contact: Jennifer Wyatt, Behavioral Scientist, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, MS K–60, Atlanta, Georgia 30341, Telephone: 770–488–4058, E-mail: *ANU1@cdc.gov.*

For questions about peer review, contact: Gwendolyn Cattledge, Scientific Review Administrator, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, MS K–02, Atlanta, Georgia 30341, Telephone: 770–488–1430, E-mail: *gxc8@cdc.gov.*

For budget assistance, contact:

Nancy Pillar, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2721, E-mail: *nfp6@cdc.gov.*

Dated: November 25, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–29895 Filed 12–1–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0253]

Determination of Regulatory Review Period for Purposes of Patent Extension; LEXAPRO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined

the regulatory review period for LEXAPRO 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 Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

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 LEXAPRO (escitalopram oxalate). LEXAPRO is indicated for the treatment of major depressive disorder. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LEXAPRO (U.S. Patent No. 34,712) from H. Lundbeck A/S, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LEXAPRO represented the first permitted commercial marketing or use of the product. Shortly 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 LEXAPRO is 1,146 days. Of this time, 636 days occurred during the testing phase of the regulatory review period, while 510 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 27, 1999. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 27, 1999.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: March 23, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for LEXAPRO (NDA 21–323) was initially submitted on March 23, 2001.

3. *The date the application was approved*: August 14, 2002. FDA has verified the applicant's claim that NDA 21–323 was approved on August 14, 2002.

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 827 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by February 2, 2004. 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 June 1, 2004. 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 Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–29927 Filed 12–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0153]

Determination of Regulatory Review Period for Purposes of Patent Extension; ELOXATIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ELOXATIN 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 Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

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 ELOXATIN (oxaliplatin). ELOXATIN, used in combination with infusional 5–FU/LV, is indicated for the treatment of patients with metastatic carcinoma of the colon or rectum whose disease has recurred or progressed during or within 6 months of completion of first line therapy with the combination of bolus 5–FU/LV and irinotecan. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ELOXATIN (U.S. Patent No. 5,420,319) from Sanofi-Synthelabo, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ELOXATIN represented the first permitted commercial marketing or use of the product. Shortly 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 ELOXATIN is 3,417 days. Of this time, 3,370 days occurred during the testing phase of the regulatory review period, while 47 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: April 3, 1993. The applicant claims May 2, 1997, as the date the investigational new drug application (IND) became effective. The date provided by the applicant is the date FDA released a clinical hold that had been placed on the application on August 16, 1993. Because that clinical hold was placed on the application more than 30 days after receipt of the IND, FDA considers the IND effective date to be April 3, 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(b) of the act*: June 24, 2002. The applicant claims July 22, 1999, as the date the new drug application (NDA) for ELOXATIN (NDA 21–063) was initially submitted. However, FDA records indicate that FDA refused to file NDA 21–063, and this NDA was ultimately withdrawn. The applicant subsequently submitted, and FDA accepted for filing, a different NDA (NDA 21–492) on June 24, 2002. NDA 21–492 was approved for marketing on August 9, 2002.

3. *The date the application was approved*: August 9, 2002. FDA has verified the applicant's claim that NDA 21–492 was approved on August 9, 2002.

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 1,138 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by February 2, 2004. 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 June 1, 2004. 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 Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–29928 Filed 12–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0250]

Determination of Regulatory Review Period for Purposes of Patent Extension; INVANZ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for INVANZ 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 Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

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 INVANZ (ertapenem sodium). INVANZ is indicated for the treatment of adult patients with certain moderate to severe infections caused by susceptible strains of designated microorganisms. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for INVANZ (U.S. Patent No. 5,478,820) from Syngenta Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of INVANZ represented the first permitted commercial marketing or use of the product. Shortly 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 INVANZ is 2,273 days. Of this time, 1,916 days occurred during the testing phase of the regulatory review period, while 357 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 3, 1995. The applicant claims September 2, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 3, 1995, 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(b) of the act*: November 30, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for INVANZ (NDA 21–337) was initially submitted on November 30, 2000.

3. *The date the application was approved*: November 21, 2001. FDA has verified the applicant's claim that NDA 21–337 was approved on November 21, 2001.

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 1,023 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by February 2, 2004. 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 June 1, 2004. 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 Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 29, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–29929 Filed 12–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999N–1168]

Relative Risk to Public Health From Foodborne Listeria Monocytogenes Among Selected Categories of Ready-to-Eat Foods; Quantitative Risk Assessment and Risk Management Action Plan; Notice of Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that announced a public meeting to be held on December 4, 2003, in the **Federal Register** of November 7, 2003 (68 FR 63108). The location of the meeting at the FDA Center for Food Safety and Applied Nutrition Harvey W. Wiley Building in College Park, MD was incorrect. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lori Pisciotta, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2279, FAX: 301–436–2630, e-mail: *lpisciot@cfsan.fda.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 03–28005, appearing on page 63108 in the **Federal Register** of Friday, November 7, 2003, the following correction is made:

1. On page 63109, in the first column, under the *Location* paragraph, the correct address reads as follows: Harvey W. Wiley Building, 5100 Paint Branch Pkwy., College Park, MD 20740–3835.

Dated: November 26, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30076 Filed 11–28–03; 11:23 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0306]

Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices.'' This guidance document describes a means by which certain dental sonography and jaw tracking devices may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify certain types of these devices into class II (special controls).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mary S. Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 14, 2002 (67 FR 52901), FDA published a proposed rule to classify certain dental sonography and jaw tracking devices into class II. In the **Federal Register** of August 14, 2002 (67 FR 53005), FDA also identified the document ''Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Draft Guidance for Industry and FDA Reviewers'' as the special control, which in conjunction with general controls, is capable of providing reasonable assurance of safety and effectiveness for these devices. This guidance document describes a means by which certain dental sonography and jaw tracking devices may comply with the requirement of special controls for class II devices.

Following the effective date of the final classification rule, any firm submitting a 510(k) premarket notification for the class II devices described in that final rule will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Interested persons were invited to comment on the draft guidance by November 12, 2002. FDA received no comments on the draft guidance document. FDA made minor revisions to the guidance to improve clarity and provide more detailed descriptions of our recommendations for electromagnetic compatibility testing and labeling.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on dental sonography and jaw tracking devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive ''Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1393) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturer's addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: October 23, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–29864 Filed 12–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0522]

Draft Guidance for Industry and Food and Drug Administration Staff; Premarket Submissions and Labeling Recommendations for Drugs of Abuse Screening Tests; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Draft Guidance for Industry and FDA Staff; Premarket Submission and Labeling Recommendations for Drugs of Abuse Screening Tests.'' This draft guidance is intended to assist industry in preparing premarket notification submissions for drugs of abuse screening tests. The draft guidance also provides recommendations regarding the labeling of these tests. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this guidance by March 1, 2004.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Draft Guidance for Industry and FDA Staff; Premarket Submission and Labeling Recommendations for Drugs of Abuse Screening Tests'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jean Cooper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850 301–594–1243

SUPPLEMENTARY INFORMATION:

I. Background

On November 14, 2000, FDA issued two draft guidance documents entitled ''Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications'' and ''Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications'' (docket nos. 1999D–1020 and 2000D–1587). This draft guidance replaces those documents and is intended to address concerns about those documents, including concerns regarding a recommendation that the cost of confirmatory testing be bundled with the cost of screening tests. Among other changes, the draft guidance FDA is issuing today recognizes that measures other than bundling the cost of confirmatory testing may help mitigate the risk of inaccurate results. The new draft guidance also clarifies that premarket submissions for drugs of abuse screening tests used in workplace and other repetitive testing sites may not require the same types of data as submissions for screening tests that are intended for sale directly to untrained users. The draft guidance is intended to assist manufacturers in preparing premarket submissions for drugs of abuse tests used in any setting, including hospital, workplace, sports, insurance, and home settings. The draft guidance also provides recommendations on labeling drugs of abuse screening tests.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on premarket submissions and labeling of drugs of abuse screening tests. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Draft Guidance for Industry and FDA Staff; Premarket Submissions and Labeling Recommendations for Drugs of Abuse Screening Tests'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (152) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E) (OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document at any time. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–29855 Filed 12–01–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999N–1168]

Listeria Monocytogenes Risk Management Action Plan; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) is announcing the availability of a *Listeria monocytogenes* risk management action plan. The action plan identifies activities planned by FDA and the Centers for Disease Control and Prevention (CDC) that are targeted to reduce *L. monocytogenes* associated with illnesses; these activities are intended to help achieve the Healthy People 2010 goal of reducing listeriosis by 50 percent by the year 2005.

ADDRESSES: Submit written requests for single copies of the risk management action plan entitled ''Reducing the Risk of *Listeria Monocytogenes* FDA/CDC 2003 Update of the Listeria Action Plan'' to John Kvenberg, Center for Food Safety and Applied Nutrition (CFSAN) (see **FOR FURTHER INFORMATION CONTACT**). Send one self-adhesive label with your address to assist that office in processing your request. You also may request a copy of the risk management action plan by faxing your name and mailing address with the name of the document you are requesting to the CFSAN Outreach and Information Center at 1–877–366–3322. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 20740, 301–436–2359.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 2001 (67 FR 5515), FDA, in cooperation with the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture and in consultation with CDC of HHS, announced the availability of two documents on these topics: (1) A draft risk assessment on the relationship between foodborne *L. monocytogenes* and human health that considers categories of ready-to-eat food and (2) a proposed risk management action plan that considered the draft *L. monocytogenes* risk assessment. The action plan articulated how FDA, FSIS, and CDC intended to achieve the Healthy People 2010 goal of reducing *L. monocytogenes* illness by 50 percent. FDA, FSIS, and CDC held a public meeting on March 19, 2001 (66 FR 13544), to receive comments on the technical aspects of the draft risk assessment and the draft action plan. Interested persons were given until March 20, 2001, with extensions to May 21, 2001, and to July 18, 2001, to comment on the documents. The risk assessment has been revised in response to the public comments, newly available data, and updated modeling techniques; and it was made available to the public on October 24, 2003 (68 FR 61006).

II. Risk Management Action Plan

The updated risk management action plan outlines the actions that FDA and CDC plan to undertake to reduce *L. monocytogenes* illness from ready-to-eat foods. These planned actions are structured according to the food categories used in the risk assessment as either warranting additional measures to reduce *L. monocytogenes* contamination or warranting collection of additional data.

The action plan contains these six action areas:

- Guidance for processors, retailers, food service operations, and institutional establishments;
- Training and technical assistance;
- Consumer and health care provider information and education;
- Enforcement and regulatory strategies;
- Disease surveillance and outbreak response; and
- Research needs.

A public meeting to present the revised risk assessment and the action plan has been scheduled for December 4, 2003, from 8:30 a.m. to 5 p.m. (see 68 FR 63108 for details). The meeting will be held at the FDA/CFSAN Harvey W. Wiley Building, 5100 Paint Branch Pkwy., College Park, MD 20740.

III. Review of Document

The risk management action plan may be reviewed at the FDA Division of Dockets Management (Docket No. 1999N–1168), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

The risk management action plan is available electronically at *http://www.cfsan.fda.gov* and *www.foodsafety.gov.*

Dated: November 26, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30025 Filed 11–28–03; 9:19 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as amended most recently at 68 FR 45264, August 1, 2003, is amended to: revise the functional statements for the Office of the Administrator (OA); and the Office of Policy, Planning and Budget (OPPB) within the Office of the Administrator, and reflect changes in the Division structure within OPPB; and to also revise the functional statements for the Office of Program Services (OPS), and reflect changes in the Division structure within OPS. These organizational changes will more effectively align budget, planning, and administrative functions; achieve further delayering by restructuring certain divisions, abolishing subordinate branch structures, and reducing the number of supervisory positions; and allow SAMHSA to more effectively use its resources and deploy additional positions to mission support activities. The changes are as follows:

Section M.20, Functions is amended as follows:

(A) The functional statements for the Office of the Administrator (MA), the Office of Policy, Planning and Budget (MAC) and the prior Division of Policy Coordination (MAC–1) and Division of Planning and Budget (MAC–2) are replaced with the following:

Office of the Administrator (MA)

The Administrator is responsible to the Secretary for managing and directing SAMHSA. The office functions are as follows: (1) Provides leadership in the development of agency policies and programs; (2) maintains liaison with the Office of the Secretary on matters related to program and other activities;

(3) provides oversight for coordination between SAMHSA and the National Institutes of Health (NIH) on the conduct of research and the dissemination of research findings in the areas of alcohol, drug abuse, and mental health; (4) analyzes legislative issues, and maintains liaison with congressional committees; (5) coordinates Agency communications and conducts public affairs activities; and (6) provides agency-wide correspondence control services.

Office of Policy, Planning and Budget (MD)

Provides leadership for the development and implementation of the Administrator's policies and programs through the following functions: (1) Develops and manages Agency policy for the Administrator and senior staff; (2) performs the Chief Financial Officer function and manages budget formulation and execution; (3) manages agency-wide strategic and program planning activities; and (4) provides leadership to the Centers Offices of Policy Analysis and Coordination (OPAC) and other Agency staff to assure consistent implementation of policies and procedures in budget, planning, and policy review.

Office of the Director (MD1)

(1) Coordinates agency participation in Department of Health and Human Services strategic and program planning activities; (2) coordinates agency-level strategic and program planning activities; (3) develops policy guidance for grants and contracts development processes, and monitors progress; (4) develops and manages the Government Performance and Results Act (GPRA) process for the agency, assesses progress in attaining goals, and reports accomplishments; (5) manages Agency response to the OMB PART review process; (6) provides policy guidance and oversight for Agency evaluation activities; (7) develops extramural policy recommendations for the Administrator and guidance for the Agency; (8) manages the SAMHSA National Advisory Council and the Advisory Committee for Women?s Services; and (9) provides Chief Financial Officer function.

Division of Policy Coordination (MDA)

(1) Develops policy recommendations and issues for the Administrator and senior leadership and manages the coordination and implementation of the Agency's national program policies; (2) coordinates policy development for the Administrator?s program priorities and principles; (3) provides expertise for Agency leadership on issues and initiatives for alcohol, HIV/AIDS, minority health, disaster readiness and response, children and families, women's services, and science-to-services; and (4) manages the Agency's coordination of departmental and Presidential initiatives, nationally and internationally.

Division of Financial Management (MDB)

(1) Manages and coordinates the Agency budget plans and formulates and presents SAMHSA's future budget and financial management activities; (2) prepares budget justification documents which support the Administrator's priorities and decisions; (3) provides day-to-day liaison with budget staff at other levels: (4) evaluates internal fiscal controls to assure compliance with laws, regulations, policies, and sound business practices; and (5) manages and coordinates Agency budget execution, including the apportionment and allotment processes, overhead and assessment changes, and monitoring of overall expenditures.

(B) The functional statements for the Office of Program Services (MB) and the subordinate Office of the Director (formerly MB–1) and the Divisions within OPS are replaced with the following:

Office of Program Services (MB)

(1) Works in partnership with other SAMHSA and HHS components in managing, providing leadership, and ensuring SAMHSA's needs are met in the following service areas: grant and contract application review, grants and contracts management, administrative services, human resources management, equal employment opportunity, organizational development and analysis, and information technology; (2) provides leadership in the development of policies for and the analysis, performance measurement, and improvement of SAMHSA administrative and management systems; (3) provides leadership, guidance, and technical expertise for the Agency's information technology program; (4) provides centralized administrative services for the Agency; and (5) conducts all aspects of the SAMHSA grants and contracts management process.

Office of the Director (MB1)

(1) Provides leadership and guidance, oversees and monitors the range of administrative and program services which are provided to all SAMHSA components; (2) provides general policy review and executive oversight of cross-cutting management and administrative issues; (3) streamlines, improves, and integrates administrative services and systems; (4) coordinates cross-cutting tasks and initiatives; (5) tracks and measures administrative program performance; (6) plans, administers, and coordinates the review of grant and cooperative agreement applications; (7) develops grant review policies and procedures; (8) monitors the grant review process to ensure the quality of the review and its conformance to Agency policies; (9) participates in the review of Requests for Applications (RFAs); and (10) administers participant and confidentiality certificate activities.

Division of Management Systems (MBC)

(1) Provides leadership in the development of policies for and the analysis, performance measurement, and improvement of SAMHSA administrative, management, and information systems; (2) coordinates with other service providers the provision of human resource management services, equal employment opportunity services, and information technology services (including operation of the LAN and personal computer, databases, voice mail/faxes, and general machine repairs), working with HHS service components and outside organizations as necessary and monitoring their performance; (3) manages the SAMHSA ethics program; (4) coordinates and serves as a focal point for SAMHSA intern and summer employment programs; (5) provides advisory services to managers and supervisors in such matters as organizational development, analysis, performance, and performance measurement; (6) coordinates General Accounting Office and Office of the Inspector General reviews and information requests, internal control reviews, and Federal Managers Financial Integrity Act responses; (7) plans and coordinates various management activities such as records management, forms management, Privacy Act, and OPS Freedom of Information Act requests; (8) develops, maintains, and manages administrative management systems regarding policies and procedures; (9) serves as the focal point for information systems policy, strategic planning, budget preparation, coordination and security; (10) coordinates agency-wide database administration and systems configuration management; provides advice, assistance, and training to Agency staff in obtaining maximum utilization of and services from its information/application systems and databases; (11) exercises clearance

authority for agency-wide information resources management projects; and (12) reviews and analyzes new information resources management developments and ensures necessary support services are provided.

Division of Grants Management (MBE)

(1) Conducts all aspects of the SAMHSA grants management process; (2) develops, implements, and coordinates the application of Agency standards, methods and procedures for the management of grants and cooperative agreements; (3) provides guidance to the Agency, applicants, and grantees on the management and administrative aspects of grant programs; (4) reviews applications, reports, and active projects to ensure compliance with management policies and procedures; (5) prepares, processes, and disseminates award documents; (6) prepares special and recurring reports relating to applications and awards; and (7) measures and tracks grants management performance.

Division of Contracts Management (MBF)

(1) Conducts all aspects of the SAMHSA contracts management process; (2) develops and implements standards and procedures for the management of the Agency's contracts and purchase card programs; (3) reviews and evaluates contract proposals to determine acceptability and cost reasonableness; (4) advises Agency personnel on contracts management policies and procedures established by law and Agency guidelines; (5) maintains internal control over the contracts management function; (6) issues contract awards following appropriate laws, regulations, guidelines and policies; (7) coordinates and participates in all phases of the acquisition cycle, including pre-solicitation, solicitation, negotiation, award, administration, and close out of the Agency's contracts; and (8) measures and tracks contract management performance.

Division of Operational Support (MBH)

(1) Provides centralized administrative services for the Agency, including processing and coordinating requests for and providing advice on procurement actions, travel, property, facilities, and other activities; (2) coordinates actions as necessary with other HHS components such as the Program Support Center (PSC) procurement staff and the contract travel agency; (3) promotes the awarding of contracts to disadvantaged businesses and women-owned small businesses; (4) processes and coordinates requests for SAMHSA administrative actions; (5) provides advice and guidance to staff on administrative procedures for processing actions such as travel orders, acquisition requests, and training documents; (6) ensures administrative actions are consistent with regulations and other requirements, and implements general management policies as prescribed by SAMHSA and higher authorities; (7) coordinates the provision of support in the areas of real and personal property, building management, facility management, health and safety, security, transportation, parking, and telecommunications; (8) in collaboration with the Division of Financial Management in the Office of Policy, Planning, and Budget, performs budget execution tasks such as certifying funds, maintaining the commitment database, and reconciling accounts for program management for SAMHSA; (9) coordinates and complies with policies and procedures set forth by the Division of Financial Management for budget execution.

Section M.40. Delegations of Authority. All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue in effect pending further redelegations, providing they are consistent with the reorganization.

These organizational changes are effective November 21, 2003.

Dated: November 21, 2003.

Charles G. Curie,

Administrator.

[FR Doc. 03–30024 Filed 12–1–03; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

James L. Stone, Chairperson,
H. Westley Clark, M.D., J.D., M.P.H,
Daryl W. Kade,
Mark A. Weber.

For further information about the SAMHSA Performance Review Board, contact the Division of Management Systems and Analysis, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 14 C–24, Rockville, Maryland 20857, telephone (301) 443–3408 (not a toll-free number).

Charles G. Curie,

Administrator, SAMHSA.

[FR Doc. 03–29982 Filed 12–1–03; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Employment Eligibility Verification; Form I–9.

The Department of Homeland Security (DHS) and the U.S. Citizenship and Immigration Services (CIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. A notice containing this information collection was previously published in the **Federal Register** on July 28, 2002, at 68 FR 44347. The notice allowed for a 60-day public review and comment period. No comments were received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this

notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act (the Act), as amended by the Immigration Reform and Control Act of 1986 (IRCA), which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 respondents at 9 minutes or (.15) hours per response and 20,000,000 record keepers at 4 minutes or (.066) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202)–514–3291, Director, Regulations and Forms Service Division, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of the Chief Information Officer, Regional Office building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: November 24, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Citizenship and Immigration Service.

[FR Doc. 03–29880 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Memorandum of Understanding To Participate in an Employment Eligibility Confirmation Pilot Program (File No. OMB–18).

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) 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. This proposed information collection was previously published in the **Federal Register** at 68 FR 54912 on September 19, 2003, allowing for a 60-day public review and comment period. No comments were received by the ICE.

The purpose of this notice is to allow for an additional 30 days for public comment until January 2, 2004. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Homeland Security Officer, 725 17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Memorandum of Understanding To Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No agency form number; File No. OMB–18, SAVE Program, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. Employers electing to participate in a

pilot will execute a Memorandum of Understanding with the Department of Homeland Security and the Social Security Administration (if applicable), that provides the specific terms and conditions governing the pilot and company information for each site that will be performing employment verification queries.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour and 20 minutes (1.33 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,650 hours annually.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536; (202) 514–3291. Comments and suggestions regarding items contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, NW., Washington, DC 20202.

Dated: November 25, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Immigration and Customs Enforcement.

[FR Doc. 03–29881 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–96]

Notice of Submission of Proposed Information Collection to OMB: Research Studies on Homeownership and Affordable Lending (NOFA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

A NOFA funding a study of homeownership and affordable lending will aid in the formulation of policies in support of the President's goal of increasing the number of minority homeowners.

DATES: *Comments Due Date:* January 2, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2528–0228) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Research Studies on Homeownership and affordable Lending (NOFA).

OMB Approval Number: 2528–0228.

Form Numbers: HUD–424, HUD–424–B, 424–CB, HUD–424–CBW, SF–LLL, HUD–2880, HUD–2993, HUD–2994, HUD–1044, SF–1199A, HUD–27053, HUD–27054, SF–269A.

Description of the Need for the Information and Its Proposed Use: A NOFA funding a study of homeownership and affordable lending will aid in the formulation of policies in support of the President's goal of increasing the number of minority homeowners.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Quarterly.

Reporting Burden: Number of Respondents 40; Average annual responses per respondent 2.8; Total annual responses 115; Average burden per response 16 hrs.

Total Estimated Burden Hours: 1,870.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 26, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–29995 Filed 12–1–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before January 2, 2004 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE.

11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–073416

Applicant: Siskiyou National Forest, Grants Pass, Oregon.

The applicant requests a permit to remove/reduce to possession (collect seed) *Arabis mcdonaldiana* (McDonald's rock-cress) in conjunction with research in Josephine and Curry Counties, Oregon, and Del Norte County, California, for the purpose of enhancing its survival.

Permit No. TE–077753

Applicant: Erica Fleishman, Stanford, California.

The applicant requests a permit to remove/reduce to possession (collect seed and tissue) *Cordylanthus palmatus* (palmate-bracted bird's-beak) in conjunction with research in Colusa, Fresno, Alameda, Yolo, and Sacramento Counties, California, for the purpose of enhancing its survival.

Permit No. TE–062125

Applicant: Bureau of Land Management, Folsom, California.

The permittee requests an amendment to remove/reduce to possession (collect) *Calystegia stebbinsii* (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Eriogonum apricum* var. *apricum* (Apricum Hill buckwheat), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), *Galium californicum* ssp. *sierrae* (El Dorado bedstraw) in conjunction with research in Tuolumne, Amador, El Dorado, Nevada, and Yuba Counties, California, for the purpose of enhancing their survival.

Permit No. TE–077943

Applicant: Matthew Williams, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–066621

Applicant: Point Mugu Naval Base, Point Mugu, California.

The permittee requests an amendment to remove/reduce to possession (collect seed, propagate, and outplant) *Cordylanthus maritimus* ssp. *maritimus* (salt marsh bird's-beak) in conjunction with a planting program in Ventura County, California, for the purpose of enhancing its survival.

Permit No. TE–078657

Applicant: Amanda J. Colombo, Livermore, California.

The applicant requests a permit to take (capture and mark) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in conjunction with monitoring, surveys, and scientific research throughout the range of each species for the purpose of enhancing their survival.

Permit No. TE–078712

Applicant: Kimberly Kindt, Palm Springs, California.

The applicant requests a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with demographic studies in Riverside County, California, for the purpose of enhancing their survival.

Permit No. TE–033365

Applicant: National Wildlife Health Center, Honolulu, Hawaii.

The permittee requests an amendment to take (capture, handle, mark, measure, collect biological samples, release, and recapture) the Nihoa millerbird (*Acrocephalus familiaris kingi*), nightingale reed warbler (*Acrocephalus luscinia*), Mariana gray swiftlet (*Aerodramust vanikorensis bartschi*), Laysan duck (*Anas laysanensis*), Hawaiian duck or koloa (*Anas wyvilliana*), Hawaiian hawk or 'io (*Buteo solitarius*), Hawaiian crow or 'alala (*Corvus hawaiiensis*), Mariana crow (*Corvus kubaryi*), Hawaiian coot or 'alae ke'o ke'o (*Fulica americana alai*), Mariana moorhen (*Gallinula chloropus guami*), Hawaiian moorhen or 'alae'ula (*Gallinula chloropus sandvicensis*), Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), Maui nukupu'u (*Hemignathus lucidus affinus*), Kauai nukupu'u (*Hemignathus lucidus hanapepe*), 'akiapola'au (*Hemignathus munroi*), Kauai 'akialoa (*Hemignathus procerus*), Hawaiian stilt or ae'o (*Himantopus mexicanus knudseni*), palila (*Loxioides bailleui*), Hawaii 'akepa (*Loxops coccineus coccineus*), Maui 'akepa (*Loxops coccineus ochraceus*), Micronesian megapode (*Megapodius laperouse*), po'ouli (*Melamprosops phaeosoma*), Kauai 'o'o (*Moho braccatus*), Tinian monarch (*Monarcha takatsukasae*), Molokai solitare or oloma'o (*Myadestes lanaiensis rutha*), large Kauai solitare or kama'o (*Myadestes myadesinus*), small Kauai solitare or puaiohi (*Myadestes palmeri*), Hawaiian goose or nene (*Nesochen sandvicensis*), Hawaii creeper (*Oreomystis mana*), crested honeycreeper or 'akohekohe (*Palmeria dolei*), Molokai creeper or kakawahie (*Paroreomyza flammea*), Oahu creeper or 'alauahia (*Paroreomyza maculata*), Maui parrotbill (*Pseudonestor xanthophrys*), 'o'u (*Psittirostra psittacea*), Hawaiian petrel or 'ua'u (*Pterodroma phaeopygia sandwichensis*), Newell's shearwater (*Puffinus auricularis*), Guam rail (*Rallus owstoni*), Laysan finch (*Telespiza cantans*), Nihoa finch (*Telespiza ultima*), bridled white-eye (*Zosterops conspicillatus conspicillatus*), Hawaiian hoary bat or ope'ape'a (*Lasiurus cinereus semotus*), Mariana fruit bat (*Pteropus mariannus mariannus*), and the Green sea turtle (*Chelonia mydas*) for evaluation of injury and/or disease, to determine epidemiologic trends, and to assist other permitted biologists in broader ecological studies in the Hawaiian Islands; Midway, Johnston, Wake, Palmyra, and Kingman Reef Atolls; Howland, Baker, and Jarvis Islands; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; and the Republic of Palau for the purpose of enhancing their survival. All of these activities for these species were previously authorized under subpermit BRDVET–3.

Permit No. TE–837010

Applicant: Bruce Koebele, Wai'anae, Hawai'i.

The permittee requests an amendment to remove/reduce to possession (collect and propagate) *Achyranthes splendens* var. *rotundata* (round-leaved chaff-flower) and *Chamaesyce skottsbergii* var. *kalaeloana* ('Ewa Plains 'akoko) in conjunction with site rehabilitation in O'ahu, Hawai'i, for the purpose of enhancing their survival.

Permit No. TE–062121

Applicant: Ryan Young, Carlsbad, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), the vernal pool tadpole shrimp (*Lepidurus packardi*), and to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–068799

Applicant: Mikael Romich, San Bernardino, California.

The permittee requests an amendment to take (monitor nests, video monitor, and band) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with demographic studies in Riverside, San Bernardino, Los Angeles, Orange, San Diego, and Ventura Counties, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: November 13, 2003.

Cynthia U. Barry,

Acting Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–29870 Filed 12–1–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–DQ–NPRA]

Notice of Availability of the Northwest National Petroleum Reserve—Alaska Final Integrated Activity Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Northwest National Petroleum Reserve—Alaska (NPR–A) Final Integrated Activity Plan/ Environmental Impact Statement (IAP/ EIS) will be made available to the public for a 30-day period beginning on the date the Environmental Protection Agency (EPA) files a Notice of Availability of the Final IAP/EIS in the **Federal Register**. The EPA notice is expected to be filed on or about November 28, 2003. A Record of Decision (ROD) will be issued after the 30-day availability period. The ROD will identify the selected alternative as well as mitigation measures.

The Bureau of Land Management (BLM) has worked closely with the North Slope Borough and the State of Alaska in developing the Final IAP/EIS. The Minerals Management Service of the Department of the Interior has also assisted the BLM in developing the document.

ADDRESSES: The Final IAP/EIS will be available in either hard copy or on compact disk at the Alaska State Office, Public Information Center at 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Copies of the Final IAP/EIS will also be available at the following locations: Tuzzy Public Library, Barrow, Alaska; City of Nuiqsut, Nuiqsut, Alaska; City of Atqasuk, Atqasuk, Alaska; City of Anaktuvuk, Pass, Anaktuvuk Pass, Alaska; City of Wainwright, Wainwright, Alaska; and City of Point Lay, Point Lay, Alaska.

The Final IAP/EIS will also be available on BLM's Web site at *http://www.ak.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Curt Wilson, BLM Alaska State Office, (907) 271–5546.

SUPPLEMENTARY INFORMATION: The Planning Area boundary encompasses approximately 9.4 million acres located in the northwestern portion of the NPR–A. Within the 9.4 million acre Planning Area are approximately 8.8 million acres of federal surface and 9.1 million acres of federal subsurface estate. The Planning Area is roughly bounded on the east by the Ikpikpuk River. The southern boundary extends along a portion of the Colville River and then proceeds along township and section lines in a ''stair-step'' fashion to the northwestern corner of the NPR–A at Icy Cape on the Arctic Ocean. The northern boundary from Icy Cape to the mouth of the Ikpikpuk River follows the Arctic Ocean coastline encompassing the bays, lagoons, inlets, and tidal waters between the NPR-–'s outlying islands and the mainland. The Final IAP/EIS addresses three primary questions regarding management of the Northwest portion of the NPR–A. First, what lands, if any, will be made available for oil and gas leasing? Second, what measures will BLM use to protect important surface resources during oil and gas exploration and development activities? Third, what non-oil and gas land use allocations should BLM consider for the Northwest portion of the NPR–A?

The release of the Final IAP/EIS concludes a planning and environmental analysis process for the Northwest portion of the NPR–A which started in November, 2002. A Draft IAP/ EIS was made available for a 60-day comment period on January 17, 2003. Scoping and comment meetings on the Draft IAP/EIS were held in Nuiqsut, Atqasuk, Barrow, Wainwright, Point Lay, Fairbanks, and Anchorage. The Planning Area provides particularly important habitat for caribou, waterfowl, and other species. Many of the local residents of the area rely on harvesting these resources for subsistence purposes. Ensuring adequate protection of these resources has been one of the main focuses of public comment. The BLM held public hearings on subsistence in conjunction with the public meetings held on the Draft IAP/EIS.

The Final IAP/EIS describes the Preferred Alternative which was developed in consideration of more than 96,000 public comments on the four alternatives included in the Draft IAP/ EIS. All the significant elements of the Preferred Alternative were included in one or more of the alternatives presented in the Draft IAP/EIS.

Under the Preferred Alternative, all 9.1 million acres of BLM administered subsurface estate within the Planning Area would be available for oil and gas leasing. No areas would be recommended as Wilderness Study Areas or Wild and Scenic Rivers. Leasing, however, would be deferred for 10 years in the western portion of the Planning Area, which encompasses approximately 1,570,000 acres. The Preferred Alternative also recommends the Kasegaluk Lagoon and adjacent lands for designation as a Special Area and prohibits permanent oil and gas facilities within this 102,000-acre proposed Special Area. Under the Preferred Alternative, setbacks have been established prohibiting permanent facilities within 1/4 to 1 mile along major rivers, deep water lakes and coastal areas to protect subsistence resources/activities and other important surface resources. Multi-year studies are required prior to development to protect spectacled and Steller's eiders, yellow-billed loons, brant and caribou. Other stipulations and required operating procedures establish restrictions and guidance that apply to waste prevention and spills, water use, winter overland moves and seismic activity, exploratory drilling, aircraft use and subsistence consultation.

The no action alternative calls for continuation of current management, and no leasing would occur. Alternatives A through C make progressively less land, especially

environmentally sensitive land, available for oil and gas leasing. Alternative A makes 100 percent available for oil and gas leasing, Alternative B makes 96 percent available, and Alternative C makes 47 percent available. Stipulations would provide protection for natural and cultural resources under all alternatives, but their nature, number and scope varies between the alternatives.

Authority for developing this document is derived from the Federal Land Policy and Management Act, the Naval Petroleum Reserves Production Act of 1976, as amended, and the National Environmental Policy Act (NEPA).

Henri R. Bisson,

State Director, Alaska.

[FR Doc. 03–30035 Filed 11–26–03; 4:43 pm]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1610–PG; G–04–0036]

Notice of Public Meetings, Steens Mountain Advisory Council

AGENCY: Department of the Interior, Bureau of Land Management (BLM), Burns District Office.

ACTION: Notice of public meetings for the Steens Mountain Advisory Council.

SUMMARY: In accordance with the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act), the Federal Land Policy and Management Act (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Steens Mountain Advisory Council (SMAC) will meet as indicated below:

DATES: The SMAC will meet at the BLM, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, on February 17, 18 and 19; April 12 and 13, 2004; June 14 and 15, 2004; August 9 and 10, 2004; and November 15 and 16, 2004. A meeting in Bend, Oregon, (location to be determined) will be held on May 10 and 11, 2004 and one in Frenchglen, Oregon, on September 13 and 14, 2004. All meeting sessions will begin at 8 a.m., local time, and will end at approximately 4:30 p.m., local time.

SUPPLEMENTARY INFORMATION: The SMAC was appointed by the Secretary of Interior on August 14, 2001 pursuant to the Steens Act and re-chartered in August 2003. The SMAC's purpose is to provide representative counsel and advice to the BLM regarding (1) new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area (CMPA), (2) cooperative programs and incentives for landscape management that meet human needs, maintain and improve the ecological and economic integrity of the area and (3) preparation and implementation of a management plan for the CMPA.

Topics to be discussed by the SMAC at these meetings include categories such as transportation, recreation/public use, wildlife, special designated areas, partnerships/programs, cultural resources, watersheds, projects, education, volunteer-based information, adaptive management, planning process (Andrews Management Unit/Steens Mountain Cooperative Management and Protection Area Resource Management Plan and Environmental Impact Statement), science committee/consultants, socioeconomics, and other matters that may reasonably come before the SMAC.

All meetings are open to the public in their entirety. Information to be distributed to the SMAC is requested at least 10 days prior to the start of each SMAC meeting. Public comment is generally scheduled for 11 a.m. to 11:30 a.m., local time, both days of each meeting session. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all who seek to be heard regarding matters on the agenda.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SMAC may be obtained from Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, (541) 573–4400 or *Rhonda_Karges@or.blm.gov* or from the following Web site: *http://www.or.blm.gov/Steens.*

Dated: November 24, 2003.

Karla Bird,

Andrews Resource Area Field Manager.

[FR Doc. 03–29896 Filed 12–1–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection survey.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to conduct a new survey on Potential Impacts of Outer Continental Shelf (OCS) Activities on Bowhead Whale Hunting Activities in the Beaufort Sea. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by January 2, 2004.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–NEW). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@mms.gov.* Reference Information Collection 1010–NEW in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, at (703) 787–1600, to obtain a copy of the survey instruments. For more information on the survey itself, contact Dr. Dee Williams in the MMS Alaska Regional Office, at (907) 271–6680.

SUPPLEMENTARY INFORMATION:

Title: Survey Instruments—Quantitative Description of Potential Impacts of OCS Activities on Bowhead Whale Hunting Activities in the Beaufort Sea.

OMB Control Number: 1010–NEW.

Abstract: The Minerals Management Service (MMS) of the U.S. Department of the Interior (USDOI) is responsible for oil and gas leasing on the Outer Continental Shelf (OCS) under the OCS Lands Act of 1953, the OCS Lands Act Amendments of 1978 (OCSLA), and the National Environmental Policy Act (NEPA) of 1969. OCSLA (Section 18) and NEPA (40 CFR 1500–1508) require assessment of the effects of OCS oil and gas activities on adjacent human and physical environments. Therefore, USDOI/MMS acquires and analyzes and/or oversees collection and analysis of environmental, socio-economic, and

socio-cultural information relevant to OCS decisions and uses that information in Environmental Assessments (EA) and Environmental Impact Statements (EIS).

This study is responsive to concerns among North Slope Borough (NSB) residents that oil exploration and development activities in general, and OCS activities in particular, are having an adverse effect on whale hunting and Iñupiat life. There are three general areas of concern. First are the worries over the physical effects of seismic testing; the movement of barges, aircraft, and other transport vessels; and the erection of platforms. Many think these disruptions alter the feeding and migration patterns of bowhead whales and other marine mammals. The result is that fall whaling crews must move further out to sea, thereby increasing both the danger and the costs of the hunt. There is also considerable anxiety over the contamination of wild foods and the environment from drilling cuts, mudflows, and production water wastes and petroleum discharges. Many of the residents in the smaller villages question the long-term consequences of altering freshwater habitats by draining lakes to build ice roads; the interference of oil well structures, fences, and pipeline on caribou crossings and the behavior of other land mammals; and the ability of local residents to continue to access marine and land mammals.

Secondly, the social, cultural, and economic impact of energy development is a second area of interest and apprehension. There are the direct benefits of economic growth that many look forward to, such as more employment opportunities, more discretionary income, and improved public services. There are also negative trends associated with industrialization, such as general anomie, excessive alcohol and drug use, abusive and self-destructive behavior, higher accident rates, loss of territory, restrictions on land use, loss of language and subsistence skills, dissolution of family relations, decline in community rituals and festivities, and the dilution of cultural values such as sharing, reciprocity, respect for others, and consensual decision making.

There is another, more intangible, worry about what some social scientists call an ''opportunity-threat impact'' or fears about what might happen to the health and well-being of one's family and community. The implications of economic and social change in the Arctic are not fully understood. Some welcome the transformation of the community and the availability of freshwater, sewers, and better housing. According to others, Iñupiat peoples have ''over adapted'' to the new industrial economy, which can threaten the long-term survival of cultural traditions and a distinctive way of life.

Finally, whether the changes that accompany economic development are positive or destructive depends heavily on the regulatory regimes and mitigation measures that are in place, a final area of contention. Here, complaints have been voiced about the pressure on the NSB to deal with the accidents and damages tied to development for which it is not responsible. This puts added stress on the capacity of the NSB to serve the needs of residents and is particularly troublesome in a time of declining revenues and personnel layoffs.

MMS proposes to collect the information in this study: (1) To describe participation in bowhead whale hunting and its importance to and relationship with other traditional activities in three Iñupiat communities on Alaska's North Slope and one control community of similar size in the western part of the State; (2) to describe and analyze community assessments of the effects of oil and gas development and modernization on participation in traditional activities, especially bowhead whale hunting; (3) to describe and analyze community assessments of desired future conditions for whale hunting and related traditional activities; and (4) to describe how oil and gas development and other forces of modernization influence these desired future conditions for whaling and other traditional activities. The information collected will be used in regional EAs and EISs and will be used to make decisions on future oil and gas lease sales in the Beaufort Sea, currently scheduled for 2005 and 2007. These data will enhance the ability of MMS and the Secretary of the Interior to make fully informed leasing and development decisions about the Beaufort Sea.

Survey Instruments: An integral aspect of the research effort is the development and administration of three survey instruments that will collect information about the North Slope communities of Barrow, Kaktovik, and Nuiqsut and the ''control community'' of Savoonga on St. Lawrence Island in the Bering Straits. The survey data are divided into five broad categories: demographic and economic characteristics; quantitative and qualitative summaries of participation in bowhead whaling and other subsistence activities; an assessment of residents' perceptions of the potential threats and benefits of OCS development to subsistence and other traditional activities, especially bowhead whaling; changes in the quality of life in each community, measured in both economic and cultural terms; and the way residents view the likely future of their communities.

The information under this proposed collection will be obtained through personal interviews with three distinct groups: whaling captains, adult-headed households and elders, and high school juniors and seniors. A separate survey, based on previous studies, has been developed for each of these groups.

The *Whaling Captain Survey* focuses on the patterns of participation in whale hunting activities and the possible impact of OCS development on these patterns. Demographic questions about age, length of time in the community, education, gender, shareholder status in village and regional corporations, and family relations will reveal, in part, a captain's experience, understanding, and perspectives on social change and resource development. The *Household Survey* focuses on the effects of offshore oil industry activities on individual residents, households, and groups in each community. Population characteristics such as age, number, and relationships of people in the household and level of education are related to changes in employment, income, and economic opportunity. Gender, ethnic background, length of residency, and corporate membership can also result in divergent views about subsistence, development, language, and many other factors. The *Student Survey* focuses on perceptions about the effects of OCS oil and gas activities, documents student attitudes about Iñupiat traditions, and tracks changes in student behaviors that help assess inter-generational continuities. Responses may vary depending on age, ethnicity, and gender.

It is assumed in all three surveys that Native ancestry is predictably tied to participation in subsistence and other traditional cultural activities. Since only coastal Alaskan Natives can legally hunt bowhead whales and other marine mammals, the survey will include only Native residents. Variation of participation in subsistence and other traditional activities among groups, as well as over time, will be a key analytical focus.

Interview Methods: The interviews for each survey will be done face to face in a setting that is most comfortable for the respondent. This personal method is more expensive and time consuming for the researchers, but these drawbacks are outweighed by improvements in the quality of information obtained and the rapport established between the

surveyor and the person interviewed. Telephone interviews have not been successful on the North Slope.

Households in Barrow, Kaktovik, Nuiqsut, and Savoonga (control village) will be randomly chosen for interviews. To achieve the desired statistical confidence level, smaller communities are sampled at a higher rate than are larger ones. Respondents will be paid for taking part in the survey.

Frequency: One-time survey.

Estimated Number and Description of Respondents: Approximately 614 respondents from Alaska's North Slope communities and a control group in western Alaska.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 474 hours. The following chart details the individual components and estimated hour burdens.

Respondent categories	Estimated hour burden	Estimated number of respondents	Estimated annual burden hours (rounded)	Personal time value (estimated)
Whaling Captains				($30/interview)
Barrow	50 minutes	43	36	1290
Kaktovik	50 minutes	10	8	300
Nuiqsut	50 minutes	10	8	300
Savoonga	50 minutes	28	23	840
Subtotal		91	75	$2,730
Households				($20/interview)
NSB	45 minutes	281	211	5620
Control Village	45 minutes	70	53	1400
Subtotal		351	264	$7,020
Elders				($30/interview)
NSB	50 minutes	42	35	1260
Control Village	50 minutes	20	17	600
Subtotal		62	52	$1,860
High School (total)				($20/interview)
	45 minutes	110	83	$2,200
Grand Total		614	474	$13,810

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: No non-hour cost burden has been identified.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on July 14, 2003, we published a **Federal Register** notice (68 FR 41658) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. This notice also informed the public that they may comment at any time on the collections of information and provided the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 2, 2004.

Public Comment Policy: MMS practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law. However, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson, (202) 208–3976.

Dated: September 16, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–29887 Filed 12–1–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 15, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments

should be submitted by December 17, 2003.

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

Florida

Duval County

Lynch Building (Downtown Jacksonville MPS), 11 Forsyth St., Jacksonville, 03001310

Union County

Lake Butler Woman's Club, (Clubhouses of Florida's Woman's Clubs MPS) 285 NE. First Ave., Lake Butler, 03001309

Hawaii

Hawaii County

Guard, Thomas, House, 240 Kaiulani St., Hilo, 03001311

Indiana

Carroll County

Camden Masonic Temple, 213 W. Main St., Camden, 03001313

Carroll County Courthouse, 101 W. Main St., Delphi, 03001317

Dearborn County

Major, Daniel S., House, 761 W. Eads Pkwy., Lawrenceburg, 03001320

Elkhart County

Nappaness Eastside Historic District, Roughly bounded by Market, Main, John and Summit Sts., Nappanee, 03001321

Grant County

Gas City High School (Indiana's Public Common and High Schools MPS) 400 East South A St., Gas City, 03001316

Jasper County

Remington Water Tower and Town Hall, 3 E. Michigan St., Remington, 03001314

Montgomery County

Steele, T.C., Boyhoos Home, 110 S. Cross St., Waveland, 03001318

Noble County

Kendallville Downtown Historic District, Roughly bounded by Harris and Rush Sts., the alleys E and W of Main, Kenallville, 03001315

Posey County

Elliott, James, Farm, Church St.—IN 66, New Harmony, 03001312

Wayne County

Old Richmond Historic District (Boundary Increase and Decrease), Roughly bounded by A, 11th E Sts., and the C & O Railroad tracks, Richmond, 03001319

Maryland

Baltimore Independent City

Baltimore Gas and Electric Company Building, 39 W. Lexington St., Baltimore (Independent City), 03001325

Cedarcroft Historic District, Bounded by Gittings Ave., York Rd., E. Lake Ave. and Bellona Ave., Baltimore (Independent City), 03001332

Equitable Gas Works, 1401 Severn St., Baltimore (Independent City), 03001322

Federal Hill South Historic District, Roughly bounded by Cross St., Olive St., Marshall St., Ostend St., Fort Ave. and Covington St., Baltimore (Independent City), 03001331

Lake—Evesham Historic District, Roughly bounded by East Lake Ave., York Rd, Evesham Ave., and Bellona Ave. Baltimore (Independent City), 03001323

Radnor—Winston Historic District, Roughly bounded by Notre Dame Ln., College of Notre Damem Radnor Ave. and York Rd., Baltimore (Independent City), 03001327

Woodberry Historic District, Roughly Clipper Ave, Druid Park Dr., Girard, Hooper, Keystone, Malden, Parkdale and Rockrose Aves., Baltimore (Independent City), 03001326

Frederick County

Middletown Historic District, Including E and W Main St., Green St., Washington St., Jefferson St., Church St., and Walnut St., Middletown, 03001334

St. Mary's County

Abell House, 22530 Washington St., MD 326, Leonardtown, 03001324

All Faith Church, 38885 New Market Turner Rd., Charlotte Hall, 03001328

Washington County

Donnelly, Daniel, House, 14906 Falling Waters Rd., Williamsport, 03001333

Minnesota

Freeborn County

Albert Lea Commercial Historic District (Boundary Increase and Decrease), Broadway Ave. bet. Water and Pearl Sts., Albert Lea, 03001337

Hennepin County

Calhoun Beach Club, 2730 W. Lake St., Minneapolis, 03001335

Station 13 Minneapolis Fire Department, 4201 Cedar Ave. S, Minneapolis, 03001340

Nobles County

Dayton, George D., House, 1311 4th Ave., Worthington, 03001336

Montana

Cascade County

First United Methodist Church Parsonage, 113 Sixth St., N., Great Falls, 03001329

Lewis and Clark County

Helena Railroad Depot Historic District, Roughly bounded by Railroad/Helena Aves., Gallatin St., N. Sanders St. and N. Harris St., Helena, 03001330

Nebraska

Lancaster County

Stuart Building, 13th and P Sts., Lincoln, 03001341

Ohio

Franklin County

Cambridge Arms Apartment (East Broad Street MRA), 5926 W. Broad St., Columbus, 03001338

Tennessee

Williamson County

Craig—Beasley House, 503 Boyd Mill Ave., Franklin, 03001342

Washington

Spokane County

Turner, Luther P. and Jane Marie, House, E. 1521 Illinois Ave, Spokane, 03001343

Williams, James and Corinne, House, 1225 W. 19th Ave., Spokane, 03001344

Wyoming

Lincoln County

Haddenham Cabin, Fossil Butte National Monument, Kemmerer, 03001339

Park County

Grand Loop Road Historic District, Grand Loop Rd., Yellowstone National Park, 03001345

A request for *removal* has been made for the following resource:

Minnesota

Pope County

Lakeside Pavilion, S. Lakeshore Dr. and First Ave., SW., Glenwood, 98001444

[FR Doc. 03–29877 Filed 12–1–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 8, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 17, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Florida

Lee County

Punta Gorda Fish Company Cabin (Fish Cabins of Charlotte Harbor MPS), Pines Island Sound, Bokeelia, 03001289

Indiana

Lake County

First National Bank and Trust Company, 720 W. Chicago Ave., East Chicago, 03001291

Iowa

Scott County

Crescent Warehouse Historic District, portions of E. 4th St., E. 5th St., Iowa St. and Pershing Ave., Devenport, 03001290

Maryland

Baltimore Independent City

Hochschild, Kohn Belvedere and Hess Shoes, 5911 York Rd. and 510 Belvedere Ave., Baltimore (Independent City), 03001296

Oakenshawe Historic District, roughly bounded by York Rd., University Pkwy., Calvert St., and Southway, Baltimore (Independent City), 03001293

Queen Anne's County

Stratton, 3102 Ruthsburg Rd., Centreville, 03001294

Washington County

Leitersburg Historic District, Leitersburg-Smithsburg Rd., Leiter St., Leiter's Mill Rd., Ringgold St., Leitersburg, 03001295

Rockledge, 13535 Foxfire Ln., Hagerstown, 03001292

Montana

Custer County

Shore, Thomas and Beulah, House, 602 S. Strevell Ave., Miles City, 03001299

Lewis and Clark County

Dearborn River High Bridge, 15 mi. SW. of Augusta on Bean Lake Rd., Augusta, 03001298

Missoula County

Reid House, 526 E. Front, Missoula, 03001297

New Jersey

Camden County

St. Joseph Polish Catholic Church, 1010 Liberty St., Camden City, 03001307

Salem County

Alloways Creek Friends Meetinghouse, Buttonwood Ave, 150 ft. W. of Main St., Hancock's Bridge, 03001306

New York

Dutchess County

Quaker Lane Farms, 11 Ruskey Ln., Hyde Park, 03001303

New York County

Corbin Building, 192 Broadway, New York, 03001302

Onondaga County

Brook Farm, 2870 W. Lake Rd., Skaneateles, 03001304

North Carolina

Wake County

Wake Forest Historic District (Wake County MPS), Bounded by Oak St., RR tracks, Holding St., W. Vernon Ave., S. Wingate, N. Wingate, Durham Rd. and N. College Sts., Wake Forest, 03001301

West Raleigh Historic District, Roughly bounded by Mayview Rd., Enterprise St., Hillsbourgh St. and Faircloth St., Raleigh, 03001300

Tennessee

Madison County

Oakslea Place, 1210 N. Highland Ave., Jackson, 03001305

Vermont

Caledonia County

Peacham Corner Historic District, Bayley Hazen Rd., Main St., Church St., Academy Hill, Old Cemetery Rd., Macks Mountain Rd., Peacham, 03001308

[FR Doc. 03–29878 Filed 12–1–03; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1021 (Final)]

Malleable Iron Pipe Fittings From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of malleable iron pipe fittings, provided for in subheading 7307.19.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 30, 2002, following receipt of a petition filed with the Commission and Commerce by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of malleable iron pipe fittings from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 10, 2003 (68 FR 41176). The hearing was held in Washington, DC, on October 23, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

3, 2003. The views of the Commission are contained in USITC Publication 3649 (December 2003), entitled Malleable Iron Pipe Fittings from China: Investigation No. 731–TA–1021 (Final).

Issued: November 25, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–29959 Filed 12–1–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule II and prior to issuing a registration under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registration for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 30, 2003, Abbott Laboratories, 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The firm plans to import the remifentanil to manufacture a controlled substance for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule (or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1211.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29964 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 19, 2003, and published in the **Federal Register** on September 2, 2003, (68 FR 52224), American Radiolabeled Chemical, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Meperidine (9230)	II
Metazocine (9240)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to bulk manufacturer small quantities of the listed controlled substances as radiolabeled compounds.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of American Radiolabeled Chemical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemical, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: November 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29976 Filed 12–01–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 19, 2003, and published in the **Federal Register** on September 2, 2003, (68 FR 52224), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by letter to the Drug Enforcement Administration for registration as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of Schedule II controlled substance.

The firm plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the regulation of Cambrex Charles City, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state

and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: November 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29974 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 25, 2003 and published in the **Federal Register** on July 14, 2003, (68 FR 41661), Cambrex North Brunswick, Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the listed controlled substance to manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Cambrex North Brunswick, Inc. to import the listed controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cambrex North Brunswick, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29971 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 25, 2003, and published in the **Federal Register** on July 14, 2003, (68 FR 41661), Cambrex North Brunswick, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
Tetrahydrocannabinols (7370)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Cambrex North Brunswick, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex North Brunswick, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29972 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 19, 2003, and published in the **Federal Register** on September 2, 2003, (68 FR 52224), Cambridge Isotope Laboratories, Inc., 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobartbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cambridge Isotope Laboratories, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. this investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: November 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29977 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 3–4]

Anthony D. Dinozzi, D.D.S., Revocation of Registration

On September 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anthony David Dinozzi, D.D.S. (Respondent) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BD4361692 under 21 U.S.C. 824(a)(2), (a)(3), and (a)(4). The Order to Show Cause further sought to deny any pending applications for renewal or modification of the Repsondent's registration for reasons that he was convicted of a felony offense related to controlled substances, is not authorized to handle controlled substances, and his continued registration would be inconsistent with the public interest.

Specifically, the Order to Show alleged that the Respondent is not authorized under state law to handle controlled substances based upon the March 31, 2001, expiration of his Pennsylvania state license to practice dentistry. The Order to Show Cause further alleged that the Respondent was convicted in Clermont County, Ohio on charges of Tampering with Evidence (a third degree felony) and Aggravated Trafficking in Drugs under Bulk (a fourth degree felony).

By letter dated October 11, 2002, the Respondent, acting *pro se,* timely requested a hearing in this matter. On October 25, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued to the Government as well as the Respondent an Order for Prehearing Statements.

In view of filing a prehearing statement, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Judgment. The Government asserted that the Respondent is without authorization to handle controlled substances in the State of Pennsylvania, and as a result, further proceedings in the matter were not required. On November 6, 2002, Judge Bittner issued a Memorandum to Counsel staying the Order for Filing Prehearing Statements, and afforded the Respondent until November 25, 2002, to respond to the Government's Motion. The Respondent did not file a response.

Accordingly, on January 13, 2003, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in Pennsylvania, the jurisdiction in which the is registered with DEA. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision, and on February 19, 2003, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration BD4361692, and is registered to handle controlled substances in Pennsylvania. The Acting Deputy Administrator further finds that on March 31, 2001, the Respondent license to practice dentistry expired. There is no evidence before the Acting Deputy Administrator that the Respondent has applied for, and been granted renewal of his Pennsylvania dental license. Therefore, the Acting Deputy Administrator finds that the Respondent is currently not licensed to practice dentistry in Pennsylvania and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Kanwaljit S. Serai, M.D.,* 68 FR 48943 (2003); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988). The agency has further held that a person may not hold a DEA registration even if the loss of state authority is due to the expiration of state licensure without further action by the state. *William D. Levitt, D.O.,* 64 FR 49,822 (1999).

Here, it is clear that the Respondent is not currently licensed to handle controlled substances in Pennsylvania, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because the Respondent is not entitled to a DEA registration in Pennsylvania due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address whether the Respondent's registration should be revoked based upon the other grounds asserted in the Order to Show Cause. *See Cordell Clark, M.D.,* 68 FR 48942 (2003); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BD4361692, issued to Anthony David Dinozzi, D.D.S., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective January 2, 2004.

Dated: November 13, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–29966 Filed 12–01–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 25,

2003, Lifepoint, Inc., 10400 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
phencyclidine (7471)	II
Benzoylecogonine (9180)	II
Morphine (9300)	II

The firm plans to produce small quantities of controlled substances for use in drug test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objectives may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than February 2, 2004.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29961 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 19, 2003, and published in the **Federal Register** on September 2, 2003, (68 FR 52225), LinZhi International, Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085, made application to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of controlled substances to make drug testing reagents and controls.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of LinZhi International, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Lin-Zhi International, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: November 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29975 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–2]

Jules M. Lusman, M.D., Revocation of Registration

On September 6, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jules Lusman, M.D. (Respondent) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BL2210300 under 21 U.S.C. 824(a)(3) and (a)(4). The Order to Show Cause alleged that the Respondent's DEA Certificate of Registration should be revoked because the Respondent was without authorization to handle controlled substances. The Order to Show Cause further sought denial of any pending applications for registration based on allegations that the Respondent's continued registration would be inconsistent with the public interest. Specifically, the Order to Show alleged that effective March 15, 2002, the California Medical Board (Medical Board) ordered that Respondent be prohibited from handling controlled substances based upon acts of negligence in both his care of patients and billing practices. The Order to Show Cause further alleged that a DEA investigation revealed the Respondent's failure to adhere to various DEA-recordkeeping requirements.

By letter dated September 30, 2002, the Respondent, acting *pro se,* timely requested a hearing in this matter. On October 15, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued to the Government as well as the Respondent an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Judgment. The Government argued that the Respondent is without authorization to handle controlled substances in the State of California, and as a result, further proceedings in the matter were not required. Attached to the Government's motion was a copy of a declaration from the Medical Board's Chief of Enforcement who averred among other things, that on March 15, 2002, the Medical Board issued an Interim Order of Suspension summarily suspending the Respondent's medical license. The Medical Board representative further stated that as of October 25, 2002, the Medical Board's Interim Order of Suspension remained in effect. On November 7, 2002, Judge Bittner issued a Memorandum to Counsel staying the filing or prehearing statements and afforded the Respondent until November 26, 2002, to respond to the Government's Motion.

On or around October 30, 2002, the Respondent filed a prehearing statement where he disputed allegations that he maintained inadequate records of his handling of controlled substances. The Respondent maintained that his procedures for handling controlled substances were proper, and that prosecution witnesses offered biased testimony in the previous Board proceeding involving the Respondent's

medical license. However, the Respondent did not refute the allegation that he is presently without authorization to handle controlled substances in California.

On December 10, 2002, the Respondent filed a copy of a document entitled Petition for Peremptory Writ of Mandate C.C.P. Section 1094.5. The writ apparently relates to a proceeding in the Superior Court for the County of Los Angeles, where the Respondent asserted that in or around November 2002, the Medical Board revoked his medical license effective December 6, 2002, that the Medical Board's actions were not supported by evidence, and that the Medical Board's revocation action was an abuse of its discretion. However, the Respondent again did not deny that he is without authorization to handle controlled substances.

On January 13, 2003, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in California, the jurisdiction in which he is registered with DEA. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision, and on February 20, 2003, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration BL2210300, and is registered to handle controlled substances in the State of California. The Acting Deputy Administrator further finds that on March 15, 2002, the Medical Board issued an Interim Order of Suspension summarily suspending the Respondent's medical license and prohibiting him from prescribing, furnishing, dispensing, or distributing any and all controlled substances. There is no evidence before the Acting Deputy Administrator that the Interim Order of Suspension has been lifted or modified. Therefore, the Acting Deputy Administrator finds that the Respondent is currently not licensed to practice medicine in California and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Karen Joe Smiley, M.D.,* 68 FR 48944 (2003); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that the Respondent is not currently licensed to handle controlled substances in California, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because the Respondent is not entitled to a DEA registration in California due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address whether the Respondent's registration should be revoked based upon the other grounds asserted in the Order to Show Cause. *See Fereida Walker-Graham, M.D.,* 68 FR 24761 (2003); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BL2210300, issued to Jules M. Lusman, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective January 2, 2004.

Dated: November 13, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–29967 Filed 12–01–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 11, 2003 and September 18, 2003, National Center for Development of Natural Products, The University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to bulk manufacture for product development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the Proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than February 2, 2004.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29962 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 2, 2003 and published in the **Federal Register** on July 21, 2003, (68 FR 431650, Noramco Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:]

Drug	Schedule
Opium, (raw) (9600)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to bulk manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Noramco Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29968 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 25, 2003, and published in the **Federal Register** on July 14, 2003, (68 FR 41663), Novus Fine Chemicals, LLC, 611 Broad Street, Carlstadt, New Jersey 07072, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic class of Methylphenidate (1724), a Schedule II controlled substance.

The firm plans to manufacture bulk Methylphenidate to distribute to its customers for the manufacture of finished products.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Novus Fine Chemicals, LLC, to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Novus Fine Chemicals, LLC, to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: November 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29973 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 22, 2003, and published in the **Federal Register** on August 5, 2003, (68 FR 46226), Penick, Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to manufacture controlled substances and non-controlled flavor extracts.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Penick, Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Penick, Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29969 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–9]

Keith Perry, M.D. Revocation of Registration

On October 17, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Keith O'Neil Perry, M.D. (Respondent) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AP3109077 under 21 U.S.C. 824(a)(3) and (a)(4), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f). The Order to Show Cause alleged that the Respondent's DEA Certificate of Registration should be revoked because the Respondent was without authorization to handle controlled substances. The Order to Show Cause further sought denial of any pending applications for registration based on allegations that the Respondent's continued registration would be inconsistent with the public interest. Specifically, the Order to Show alleged that effective April 8, 2002, the California Medical Board (Medical Board) suspended the Respondent's license to practice medicine. The Order to Show Cause further alleged that on or about February 29, 2000, the

Respondent was convicted by jury verdict of the following federal offenses:

—Sixteen counts of Mail Fraud (21 U.S.C. 1341)
—Two counts of Making False Statements on Medi-Cal Group Provider Applications (18 U.S.C. 1001)
—Fifteen counts of Wire Fraud (18 U.S.C. 1343 & 2)
—Four counts Bankruptcy Fraud (18 U.S.C. 152(3))
—One count of Tax Evasion

By letter dated November 19, 2002, the Respondent, acting *pro se,* requested a hearing in this matter. On December 2, 2002, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued to the Government as well as the Respondent an Order for Prehearing Statements.

In lieu of filing a prehearing statement, on December 16, 2002, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Judgment. The Government asserted that the Respondent is without authorization to handle controlled substances in the State of California, and as a result, further proceedings in the matter were not required. Attached to the Government's motion was a copy of a Suspension Order, signed by the Medicaid Board's Chief of Enforcement, who averred among other things, that effective April 8, 2002, the Medical Board issued an Automatic Suspension Order, suspending the Respondent's Physician's and Surgeon's Certificate No. 54688. The Medical Board representative further stated that the Suspension Order remains in effect until further order of the Medical Board.

On December 19, 2002, Judge Randall issued an Order Staying Proceedings, and afforded the Respondent until January 8, 2003, to respond to the Government's Motion. The Respondent did not file a response. In his request for hearing, the Respondent pointed out that the suspension of his California medical license is temporary and that he is currently appealing the decision of the Medical Board. However, the Respondent did not rebut evidence presented by the Government his medical license remains suspended.

On February 13, 2003, Judge Randall issued her Opinion and Recommended Decision on the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in California, the jurisdiction in which he is registered with DEA. In granting the Government's motion, Judge Randall further recommended that the Respondent's DEA registration be revoked and any pending applications for modification nor renewal be denied. No exceptions were filed by either party to Judge Randall's Opinion and Recommended Decision, and on March 18, 2003, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration AP3109077, and is registered to handle controlled substances in the State of California. The Acting Administrator further finds that effective April 8, 2002, the Medical Board of California issued a Suspension Order, suspending indefinitely the Respondent's medical license. There is no evidence before the Acting Deputy Administrator that the Suspension Order has been lifted or modified. Therefore, the Acting Deputy Administrator finds that the Respondent is currently not licensed to practice medicine in California and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 801(21), 823(f) and 824(a)(30. This prerequisite has been consistently upheld. *See Karen Joe Smiley, M.D.,* 68 FR 48944 (2003); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that the Respondent is not currently licensed to handle controlled substances in California, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because the Respondent is not entitled to a DEA registration in California due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address whether the Respondent's registration should be revoked based upon the other grounds asserted in the Order to Show Cause. *See Fereida Walker-Graham, M.D.,* 68 FR 24761 (20030; *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AP3109077, issued to Keith O'Neil Perry, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and there hereby are, denied. This order is effective January 2, 2004.

Dated: November 13, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–29965 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 18, 2003, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxy-amphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I

Drug	Schedule
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
1-[1-(2-thienyl)cyclohexyl]piperidine (TCP) (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than February 2, 2004.

November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29963 Filed 12–01–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 11, 2003, Stepan Company, Natural Products Dept, 100 W. Hunter Avenue, Maywood, new Jersey 07607, made application by renewal to the Drug Enforcement Administration to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: November 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29960 Filed 12–01–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration

By Notice dated July 22, 2003, and published in the **Federal Register** on August 5, 2003, (68 FR 46227), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the listed controlled substance for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Wildlife Laboratories, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Wildlife Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: November 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–29970 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Semi-Annual Progress Report for the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 167, page 51805 on August 27, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. 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:

- 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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 18 grantees from the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program. These grants provide funds for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 18 respondents (grantees from Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program) approximately one hour to complete a Semi-annual Progress Report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-annual Progress Report is 36 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–29913 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Semi-Annual Progress Report for the Grants to State Sexual Assault and Domestic Violence Coalitions Program.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 167, page 51806 on August 28, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. 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:

- 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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Grants to State Sexual Assault and Domestic Violence Coalitions Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 88 grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program. The Grants to State Sexual Assault and Domestic Violence Coalitions Program is intended to provide federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 88 respondents (grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program) approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden to complete the Semi-annual Progress Report is 176 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–29914 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Semi-Annual Progress Report for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 167, page 51805 on August 28, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. 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:

- 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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 33 grantees from the Safe Havens: Supervised Visitation and Safe Exchange Grant Program who are States, Indian tribal governments, and units of local government. The Safe Havens Program provides an opportunity for communities to support the supervised visitation and safe exchange of children, by and between parents, in situations involving domestic violence, child abuse, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 33 respondents (grantees from the Safe Havens: Supervised Visitation and Safe Exchange Grant Program) approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-annual Progress Report is 66 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building,

Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–29915 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Semi-annual Progress Report for the Grants to Reduce Violent Crimes Against Women on Campus Program.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 167, page 51807 on August 28, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. 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:

- 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 agencies 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 submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Semi-annual Progress Report for Grants to Reduce Violent Crimes Against Women on Campus Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: OMB Number 1121–0258. The U.S. Department of Justice, Office on Violence Against Women is sponsoring the collection.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: The affected public includes the 100 grantees (institutions of higher education) from the Grants to Reduce Violent Crimes Against Women on Campus Program. Campus Program grants may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the 100 respondents (grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program—institutions of higher education) approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. Grantees must complete only those sections that are relevant to their activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden to complete the Semi-annual Progress Report is 200.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–29916 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Revision of a currently approved collection; Local Law Enforcement Block Grant Program.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 108, page 33745 on June 5, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments, or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile at (202) 395–5806.

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:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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.

—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:

(1) Type of information collection: Revision of currently approved collection.

(2) The title of the form/collection: Local Law Enforcement Block Grant Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number: None, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, local, or tribal governments. Other: None. Abstract: The Local Government Law Enforcement Block Grants Act of 1995 authorizes the Director of the Bureau of Justice Assistance to make funds available to local units of government in order to reduce crime and improve public safety. Federal funds are allocated by a formula based on Part I Violent Crimes as reported in the Federal Bureau of Investigation's Uniform Crime Reports.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: There are approximately 3,000 respondents who will request LLEBG grant funds by completing the no more than 30-minute online process.

(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 763 hours.

If additional information is required, contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, U.S. Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004, or via facsimile at (202) 514–1590.

Dated: November 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, U.S. Department of Justice.

[FR Doc. 03–29917 Filed 12–1–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,098]

Alcoa Composition Foils, Pevely, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 1, 2003 in response to a worker petition filed on behalf of workers at Alcoa Composition Foils, Pevely, Missouri. The facility shut down March 31, 2003.

The Department issued a negative determination applicable to the petitioning group of workers on April 28, 2003 (TA–W–50,823). That determination was upheld upon reconsideration in a decision rendered July 25, 2003. No new information or change in circumstances is evident which would result in a reversal of the Department's previous determinations. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29948 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,230]

The Amerbelle Corporation, Vernon, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 2003 in response to a worker petition which was filed by a company official on behalf of workers at the Amerbelle Corporation, Vernon, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29950 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,241]

Art Leather Manufacturing Company, Inc., Elmhurst, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2003 in response to a worker petition filed by a company official on behalf of workers at Art Leather Manufacturing Company, Inc., Elmhurst, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 10th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29951 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,305]

Dillon Floral Corporation, Bloomsburg, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 21, 2003 in response to a petition filed on behalf of workers at Dillon Floral Corporation, Bloomsburg, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 10th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29953 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,371]

Fishing Vessel (F/V) New Viking, Haines, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 29, 2003 in response to a petition filed by a company official on behalf of workers of F/V New Viking, Haines, Alaska.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29955 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,372]

Fishing Vessel (F/V) Lady Sandra, Valdez, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 29, 2003 in response to a petition filed by a company official on behalf of workers of F/V Lady Sandra, Ketchikan, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29956 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,391]

J.P. Berringer, Brooklyn, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 30, 2003 in response to a petition filed by a company official on behalf of workers at J.P. Berringer, Brooklyn, New York. The workers produced women's knitted sweaters.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29957 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,153]

Metal Process Assistance, Norwich, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2003 in response to a petition filed by a company official on behalf of workers at Metal Process Assistance, Norwich, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29949 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,247]

MT Picture Display Corporation of America (New York), a Subsidiary of MT Picture Display Corporation Japan, Horseheads, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 15, 2003 in response to a petition filed by a company official on behalf of workers at MT Picture Display Corporation of America (New York), a subsidiary of MT Picture Display Corporation Japan, Horseheads, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29952 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,340]

Star Machine Shop, Galax, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 24, 2003 in response to a petition filed on behalf of workers of Star Machine Shop, Galax, Virginia.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three

workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29954 Filed 12–1–03; 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: Fair Labor Standards Act Recordkeeping Requirements. 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 February 2, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Labor Standards Act sets minimum wage, overtime pay, child labor and recordkeeping standards for employees engaged in interstate commerce in certain enterprises. The Fair Labor Standards Act requires that all employers covered by the Act make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. This information collection is currently approved for use through May 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to enforce the provisions of the Fair Labor Standards Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Fair Labor Standards Act Recordkeeping Requirements.

OMB Number: 1215–0017.

Affected Public: Business of other for-profit; Individuals or households; Farms; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Frequency: Weekly.

Annual Respondents: 5,800,000.

Annual Responses: 5,800,000.

Average Time per Recordkeeper: 1 hour.

Total Burden Hours: 1,015,798.

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: November 24, 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. 03–29947 Filed 12–1–03; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection Under OMB Review

[Notice: 03–150]

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Financial Monitoring and Control—Grants and Cooperative Agreements.

OMB Number: 2700–0049.

Type of review: Extension of a currently approved collection.

Need and Uses: The information collected is required to ensure the proper accounting of Federal funds provided under grants and cooperative agreements with institutions of higher education and other non-profit organizations.

Affected Public: Not-for-profit institutions.

Number of Respondents: 1,172.

Responses Per Respondent: varies.

Annual Responses: 47,710.

Hours Per Request: varies.

Annual Burden Hours: 291,326.

Frequency of Report: As needed.

Dated: November 24, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–29991 Filed 12–1–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–151]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Evaluating the Effectiveness of the 2003–2004 NASA Science Files/ Connect Program Series.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: Surveying the registrants of NASA educational programs is necessary in order to determine the programs' effectiveness.

Affected Public: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 250.

Responses Per Respondent: 1.

Annual Responses: 250.

Hours Per Request: 15 minutes.

Annual Burden Hours: 62.5.

Frequency of Report: Randomized.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–29992 Filed 12–1–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–152]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. William Braun, National Aeronautics and Space Administration, MS 240.0, Goddard Space Flight Center, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Locator and Information Services Tracking System (LISTS) Form.

OMB Number: 2700–0063.

Type of review: Extension of a currently approved collection.

Need and Uses: Information collected is used primarily to support Goddard Space Flight Center services that are dependent upon accurate locator-type information.

Affected Public: Individuals or households.

Number of Respondents: 8,455.

Responses Per Respondent: 1.

Annual Responses: 8,455.

Hours Per Request: 8 minutes per response.

Annual Burden Hours: 702.

Frequency of Report: Other (as required).

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–29993 Filed 12–1–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–153]

Correction: Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Correction: notice of information collection under OMB review.

Correction: Information on this collection originally appeared as notice document 03–144 on page 63820 in the issue of Monday, November 10, 2003. This notice corrects the date for comments from December 3, 2003 to January 10, 2004. The full collection notice is reproduced here.

SUMMARY: The National Aeronautics and Space Administration (NASA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by January 10, 2004.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Public Awareness/Opinion Survey for NASA.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: The analysis of this survey will position NASA to develop a strategy to effectively communicate Agency messages.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,800.

Responses Per Respondent: 1.

Annual Responses: 1,800.

Hours Per Request: 20 minutes.

Annual Burden Hours: 600.

Frequency of Report: Other (one time).

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–29994 Filed 12–1–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission:* Revision.

2. *The title of the information collection:* ''10 CFR Part 35, Medical Use of Byproduct Material—Recognition of Specialty Boards, Proposed Rule and Burden Revision to NRC Form 313A, Training and Experience and Preceptor Statement.''

3. *The form number if applicable:* NRC Form 313A.

4. *How often the collection is required:* Part 35—one-time only; NRC Form 313A—upon application or amendment to a license.

5. *Who will be required or asked to report:* Specialty boards requesting the NRC to recognize their certification processes or recognized boards responding to NRC requests for information when being considered for delisting and materials licensees permitting board-certified individuals to work as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, or authorized users.

6. *An estimate of the number of responses:* 857.

7. *The estimated number of annual respondents:* 857.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:*

10 CFR Part 35—341 reporting hours (0.4 hours per response); NRC Form 313A—889 recordkeeping hours (1.0 hours per individual).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certifications may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists or authorized users. The proposed rule would also revise the requirements for demonstrating the adequacy of training and experience for pathways other than the board certification pathway. This rulemaking is necessary to address the training and experience issue for recognition of specialty board certifications.

Submit, by January 2, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O1 F23, Rockville, MD 20852. The proposed rule indicated in ''The title of the information collection'' is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC's worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov.* Comments and questions should be directed to the OMB reviewer by January 2, 2004: OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0010 and 3150–0120), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 25th day of November 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–29899 Filed 12–1–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* General Licensee Registration.

3. *The form number if applicable:* NRC Form 664.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* General Licensees of the NRC who possess devices subject to registration under 10 CFR 31.5.

6. *An estimate of the number of annual responses:* 3,000.

7. *The estimated number of annual respondents:* 3,000.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,000 hours annually (3,000 respondents x 20 minutes per form).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not Applicable.

10. *Abstract:* NRC Form 664 is used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program allows NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices

and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: http://www.nrc.gov/public-involve/doc-comment/omb/index.html. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 2, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0198), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of November, 2003.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–29903 Filed 12–1–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–008]

Dominion Nuclear North Anna, LLC; Notice of Hearing and Opportunity To Petition for Leave To Intervene; Early Site Permit for the North Anna ESP Site

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, Domestic Licensing of Production and Utilization Facilities, Part 52, Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants, and Part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, notice is hearby given that a hearing will be held, at a time and place to be set in the future by the Commission or designated Atomic Safety and Licensing Board (Board). The hearing will consider the application dated September 25, 2003 filed by Dominion Nuclear North Anna, LLC (Dominion) pursuant to subpart A of 10 CFR part 52 for an early site permit (ESP). The application requests approval of a site owned by Virginia Electric and Power Company and Old Dominion Electric Cooperative in Louisa County, Virginia, approximately 7 miles east northeast of Mineral, Virginia and 40 miles north northwest of Richmond, Virginia, as a location for two or more new nuclear reactors that would, if authorized for construction and operation in a separate licensing proceeding under subpart C of 10 CFR part 52 or under 10 CFR part 50, have a capacity of no more than 8600 Megawatts (thermal) additional for the site. The docket number established for this application is 52–008.

The hearing will be conducted by a Board which will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or by the Nuclear Regulatory Commission (NRC, the Commission). Notice as to the membership of the Board will be published in the **Federal Register** at a later date.

The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report (SER) and an environmental impact statement (EIS). In addition, the Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.23, and the ACRS will report on those portions of the application that concern safety. Upon receipt of the ACRS report and completion of the NRC staff's SER and EIS, the Director, Office of Nuclear Reactor Regulation, NRC, will propose findings on the following issues:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

(1) Whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); and, (2) whether, taking into consideration the site criteria contained in 10 CFR part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public (Safety Issue 2).

Issue Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

Whether, in accordance with the requirements of subpart A of 10 CFR part 51, the ESP should be issued as proposed.

The Board will conduct the hearing in accordance with subpart G of 10 CFR part 2. If the hearing is contested as defined by 10 CFR 2.4, the presiding officer will consider Safety Issues 1 and 2 and the issue pursuant to NEPA set forth above.

If the hearing is not a contested proceeding as defined by 10 CFR 2.4, the presiding officer will determine: whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support a negative finding on Safety Issue 1 above, and an affirmative finding on Safety Issue 2 above, as proposed to be made by the Director, Office of Nuclear Reactor Regulation; and whether the review conducted by the Commission pursuant to NEPA has been adequate.

Regardless of whether the proceeding is contested or uncontested, the presiding officer will: (1) Determine whether the requirements of Section 102(2) (A), (C), and (E) of NEPA and subpart A of 10 CFR part 51 have been complied with in the proceeding; (2) independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values.

In accordance with 10 CFR 2.714, any person whose interest may be affected by this proceeding and who desires to participate as a party shall file a written petition for leave to intervene. Petitions must set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene with particular reference to the factors set forth in 10 CFR 2.714(d)(1), and the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene.

The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene shall, in ruling on petitions to intervene, consider the following factors, among other things: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order that may

be entered in the proceeding on the petitioner's interest.

All such petitions must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition, that the petition should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v).

The Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to intervene, or their counsel, to be held at such times as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.751a. Notice of this special prehearing conference will be published in the **Federal Register**. The Board will convene a prehearing conference of the parties, or their counsel, to be held subsequent to any special prehearing conference, after discovery has been completed, or within such other time as may be appropriate, at a time and place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.752.

Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or if no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his or her petition to intervene that must include a list of the contentions which petitioner seeks to have litigated in the hearing. A petitioner who fails to file a supplement that satisfies the requirements of 10 CFR 2.714(b)(2) with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in 10 CFR 2.714(a)(1).

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention: (1) A brief explanation of the bases of the contention, (2) a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion, and (3) sufficient information (which may include information pursuant to 10 CFR 2.714(b)(2)(i) and (ii)) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under NEPA, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final EIS, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene shall, in ruling on the admissibility of a contention, refuse to admit a contention if: (1) The contention and supporting material fail to satisfy the requirements of 10 CFR 2.714(b)(2); or (2) the contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to 10 CFR 2.714(f). Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

Petitions for leave to intervene may be filed by delivery to the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738, or by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemakings and Adjudication Staff. A copy of the petition should also be sent to the Assistant General Counsel for Reactor Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Rope Ferry Road, Waterford, CT 06385, and to David R. Lewis, Shaw Pittman, 2300 N. Street NW., Washington, DC 20037. All petitions must be accompanied by proof of service upon all parties to the proceeding or their attorneys of record.

A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but may not otherwise participate in the proceeding.

A copy of the Dominion ESP application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application is ML032731517. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of November, 2003.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 03–29898 Filed 12–1–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Energy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.60(a) for Facility Operating License No. DPR–64, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3), located in Westchester County, New York. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would provide an exemption from the requirements of

10 CFR 50.60(a) to permit the use of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Code Case N–640, ''Alternative Requirement Fracture Toughness for Development of P–T [Pressure and Temperature] Limit Curves for ASME Section XI Division I,'' in lieu of 10 CFR part 50, appendix G, paragraph I.

The proposed action is in accordance with the licensee's application dated May 28, 2003.

The Need for the Proposed Action

The proposed action provides relief from the restriction of the P–T operating window defined by the P–T operating and test curves developed in accordance with ASME Code, Section XI, Appendix G procedure. ASME Code, Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor pressure vessel materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. This increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G, requirements via application of ASME Code Case N–640 while maintaining the underlying purpose of the ASME Code, Section XI, Appendix G procedure. The restriction of the P–T operating and test curves developed in accordance with ASME Code, Section XI, Appendix G procedure would challenge the operations staff when operating at low temperatures.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes as set forth below, there are no significant environmental impacts associated with the use of the alternative analysis methods to support the revision of the P–T curves.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for IP3, dated September 1972.

Agencies and Persons Consulted

On November 20, 2003, the staff consulted with the New York State official, Mr. John Spath of the New York State Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 28, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of November 2003.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–29901 Filed 12–1–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 1.198, ''Procedures and Criteria for Assessing Seismic Soil Liquefaction at Nuclear Power Plant Sites,'' has been developed to provide guidance to license applicants on acceptable methods for evaluating the potential for earthquake-induced instability of soils resulting from liquefaction and strength degradation. The guidance includes procedures and criteria currently applied to assess the liquefaction potential of soils ranging from gravel to clays.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. Y. Li, (301) 415–4141; email *yxl1@nrc.gov.*

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov.* Issued guides may also be purchased from the

National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov.* Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 21st day of November 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–29900 Filed 12–1–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Pilot Program on the Use of Alternative Dispute Resolution in the Enforcement Program; Request for Comments and Announcement of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments and announcement of public meeting.

SUMMARY: The Commission has recently approved an NRC staff proposal to develop a pilot program on the use of ''Alternative Dispute Resolution'' (ADR) in cases involving the NRC's enforcement activities concerning allegations or findings of discrimination and other wrongdoing. *See* SECY–03–0115. ''ADR'' is a term that refers to a number of processes that can be used in assisting parties in resolving disputes and potential conflicts. Most of these processes are voluntary, where the parties to the dispute are in control of the decision on whether to participate in the process and whether to agree to any resolution of the dispute. The parties are assisted in their efforts to reach agreement by a neutral third party. The NRC staff is now proceeding to develop the policies and procedures for implementation of the pilot program. As an initial step in the development of the pilot program, the NRC will be holding a public workshop on December 10, 2003, at One White Flint North, 11555 Rockville Pike, Room 014B6, Rockville, Maryland from 9 a.m.–3:30 p.m. to discuss multiple issues. These issues include: (1) How should cases be selected for the use of ADR?, (2) What ADR processes should be used?, (3) What is the appropriate NRC involvement in the early ADR process?, (4) Who Should Participate in the ADR Process?, (5) How Should Neutrals Be Selected?, (6) How Should Confidentiality Be Handled?, (7) What Information Concerning ADR Sessions Should Be Public?, (8) How Will NRC internal management procedures Be Impacted?, (9) How Will The Program Be Coordinated with NRC Enforcement Process? (10) What Training Will Be Done?, and (11) How Will The Program Be Evaluated? These issues are addressed in a document for comment on the NRC's Web site at *http://www.nrc.gov:* select What We Do, Enforcement, then Alternative Dispute Resolution. This document is also available in ADAMS at ML033290248.

DATES: The comment period expires December 31, 2003.

ADDRESSES: Submit written responses to the issues addressed in the ''ADR Pilot Program Discussion Issues'' document included on the ADR Web page to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may be submitted by e-mail to *nrcrep@nrc.gov.* Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North (O1–F21), Rockville, Maryland, 20852–2738.

FOR FURTHER INFORMATION CONTACT: Nick Hilton, Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2741, e-mail *ndh@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of November, 2003.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 03–29902 Filed 12–1–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–4(b) and (c), SEC File No. 270–264, OMB Control No. 3235–0341.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17Ad–4(b) and (c) Notices Regarding Exempt Transfer Agent Status

Rule 17Ad–4(b) and (c) are used to document when transfer agents are exempt, or no longer exempt, from the minimum performance standards and certain recordkeeping provisions of the Commission's transfer agent rules. Rule 17Ad–4(c) sets forth the conditions under which a registered transfer agent loses its exempt status. Once the conditions for exemption no longer exist, the transfer agent, to keep the appropriate regulatory authority (''ARA'') apprised of its current status, must prepare, and file if the ARA for the transfer agent is the Board of Governors of the Federal Reserve System (''BGFRS'') or the Federal Deposit Insurance Corporation (''FDIC''), a notice of loss of exempt status under paragraph (c). The transfer agent then cannot claim exempt status under Rule 17Ad–4(b) again until it remains subject to the minimum performance standards for non-exempt transfer agents for six consecutive months. The ARAs use the information contained in the notice to determine whether a registered transfer agent qualifies for the exemption, to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation.

The BGFRS receives approximately twelve notices of exempt status and six notices of loss of exempt status annually. The FDIC receives approximately eighteen notices of exempt status and three notices of loss of exempt status annually. The Commission and the Office of the Comptroller of the Currency (''OCC'') do not require transfer agent to file notice of exempt status or loss of exempt status. Instead, transfer agents whose ARA is the Commission or OCC need only to prepare and maintain these notices. The Commission estimates that approximately sixteen notices of exempt status and loss of exempt status are prepared annually by transfer agents whose ARA is the Commission. Similarly, the OCC estimates that the transfer agents for which it is the ARA prepare and maintain approximately fifteen notices of exempt status and loss of exempt status annually. Thus, a total of approximately seventy notices of exempt status and loss of exempt status are prepared and maintained by transfer

agents annually. Of these seventy notices, approximately forty are filed with an ARA. Any additional costs associated with filing such notices would be limited primarily to postage, which would be minimal. Since the Commission estimates that no more than one-half hour is required to prepare each notice, the total annual burden to transfer agents is approximately thirty-five hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance to the transfer agent community is $1,050.

Transfer agents should prepare and maintain in its possession or file with its ARA notice of exempt status or loss of exempt status for the period of the exemption or loss of exemption. When the transfer agent's status changes, the transfer agent should file a notice of exempt status or loss of exempt status reflecting that change. The notice requirement is mandatory to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation. Notices submitted according to Rule 17Ad–4(b) & (c) will not be kept confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 25, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29933 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Extension:

Rule 30e–2, SEC File No. 270–437, OMB Control No. 3235–0494.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (the ''Paperwork Reduction Act'') the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 30(e) of the Investment Company Act of 1940 [15 U.S.C. 80a–29(e)] (the ''Investment Company Act'' or ''Act'') and rule 30e–2 [1] thereunder [17 CFR 270.30e–2] require registered unit investment trusts (''UITs'') that invest substantially all of their assets in securities of a management investment company [2] (''fund'') to send to shareholders at least semi-annually a report containing certain financial statements and other information. Specifically, rule 30e–2 requires that the report contain the financial statements and other information that rule 30e–1 under the Act [17 CFR 270.30e–1] requires to be included in the report of the underlying fund for the same fiscal period. Rule 30e–1 requires that the underlying fund's report contain, among other things, the financial statements and other information that is required to be included in such report by the fund's registration form. Preparing and sending the above-described reports under rule 30e–2 are collections of information under the Paperwork Reduction Act.

Rule 30e–2, however, permits, under certain conditions, delivery of a single shareholder report to investors who share an address (''householding''). The purpose of the householding provisions of the rule is to reduce the amount of duplicative reports delivered to investors sharing the same address. Specifically, rule 30e–2 permits householding of annual and semi-annual reports by UITs to satisfy the delivery requirements of rule 30e–2 if, in addition to the other conditions set forth in the rule, the UIT has obtained from each applicable investor written or implied consent to the householding of shareholder reports at such address. The rule requires UITs that wish to household shareholder reports with implied consent to send a notice to each applicable investor stating that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, UITs relying on the rule for householding must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke consent are collections of information under the Paperwork Reduction Act.

The purpose of the requirement that UITs that invest substantially all of their assets in securities of a fund transmit to shareholders at least semi-annually reports containing financial statements and certain other information is to apprise current shareholders of the operational and financial condition of the UIT. Absent the requirement to disclose all material information in reports, investors would be unable to obtain accurate information upon which to base investment decisions and consumer confidence in the securities industry might be adversely affected. Requiring the submission of these reports to the Commission permits us to verify compliance with securities law requirements.

The purpose of the notice and annual explanation requirements associated with the householding provisions of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

The Commission estimates that as of April 2003, approximately 733 UITs were subject to the provisions of rule 30e–2. The Commission further estimates that the annual burden associated with rule 30e–2 is 121 hours for each UIT, including an estimated 20 hours associated with the notice requirement for householding and an estimated 1 hour associated with the explanation of the right to revoke consent to householding, for a total of 88,693 burden hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

In addition to the burden hours, the Commission estimates that the cost of contracting for outside services associated with complying with rule

[1] Rule 30e–2 was originally adopted as rule 30d–2, but was redesignated as rule 30e–2 effective February 15, 2001. *See* Role of Independent Directors of Investment Companies, Securities Act Rel. No. 7932; Exchange Act Rel. No. 43786; Investment Company Act Rel. No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

[2] Management investment companies are defined in section 4(3) of the Investment Company Act as any investment company other than a face-amount certificate company or a unit investment trust, as those terms are defined in sections 4(1) and 4(2) of the Investment Company Act. *See* 15 U.S.C. 80a–4.

30e–2 is $12,000 per respondent (80 hours times $150 per hour for independent auditor services), for a total of $8,796,000 ($12,000 per respondent times 733 respondents).

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections 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 in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 25, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29934 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Preferred Income Fund Incorporated To Withdraw From Listing and Registration Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc. File No. 1–06179

November 25, 2003.

The Preferred Income Fund Incorporated, a Maryland corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on April 25, 2003, to withdraw its Security from listing on the Exchange. In making its decision to delist its Security from the PCX the Issuer states that: (i) At the time the Security was listed on the PCX on March 10, 1995, the expectation was that competition from a second trading venue would benefit shareholders by narrowing bid/offer spreads, and provide shareholders additional liquidity during the time period the PCX remained opened following the New York Stock Exchange close; (ii) since the PCX was purchased by Archipelago Exchange and converted to a fully electronic format, bid/offer spreads on the PCX have widened dramatically, adversely impacting shareholders' executions; and (iii) the Issuer has been unable to obtain statistics from the PCX, making it impossible to track historic trading volume and determine the efficiency of executions.

The Issuer stated in its application that it has complied with the PCX Rule 5.4(b) that governs the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under section 12(b) [3] of the Act and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before December 19, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–29935 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of the Preferred Income Opportunity Fund Incorporated To Withdraw From Listing and Registration Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc. File No. 1–06495

November 25, 2003.

The Preferred Income Opportunity Fund Incorporated, a Maryland corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on April 25, 2003, to withdraw its Security from listing on the Exchange. In making its decision to delist its Security from the PCX the Issuer states that: (i) At the time the Security was listed on the PCX on March 10, 1995, the expectation was that competition from a second trading venue would benefit shareholders by narrowing bid/offer spreads, and provide shareholders additional liquidity during the time period the PCX remained opened following the New York Stock Exchange close; (ii) since the PCX was purchased by Archipelago Exchange and converted to a fully electronic format, bid/offer spreads on the PCX have widened dramatically, adversely impacting shareholders' executions; and (iii) the Issuer has been unable to obtain statistics from the PCX, making it impossible to track historic trading volume and determine the efficiency of executions.

The Issuer stated in its application that it has complied with PCX Rule 5.4(b) that governs the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under section 12(b) [3] of the Act and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before December 19, 2003, submit by letter to the Secretary of the Securities

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–29936 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27768]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 25, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 18, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CenterPoint Energy, Inc., et. al. (70–10128)

CenterPoint Energy, Inc. (''CenterPoint''), 1111 Louisiana, Houston, Texas, 77002, a registered holding company under the Act; its subsidiary, Utility Holding, LLC,[1] 200 West Ninth Street Plaza, Suite 411, Wilmington, Delaware 19801; and CenterPoint Energy Houston Electric, LLC (''T&D Utility''), 1111 Louisiana, Houston, Texas, 77002, an indirect electric public utility subsidiary of CenterPoint (together, ''Applicants'') have filed a post-effective amendment under sections 6 and 7 of the Act and rules 44 and 54 under the Act, to their previously filed application-declaration (''Declaration'').

The Applicants are asking the Commission to modify the authority granted under the order dated June 30, 2003 (Holding Company Act Release No. 35–27692) (''Omnibus Financing Order''), as supplemented by the order dated August 1, 2003 (Holding Company Act Release No. 35–27705) (collectively, ''T&D Utility Financing Orders''). The T&D Utility Financing Orders authorized the T&D Utility to: (1) Issue up to $500 million principal amount of incremental external debt securities through June 30, 2005 (''Authorization Period'') so that the total amount of T&D Utility external debt would not exceed $3.603 billion principal amount (''T&D Utility Additional Debt Limit'') at any one time outstanding during the Authorization Period; and (2) enter into obligations with respect to tax-exempt debt issued on its behalf by governmental authorities in connection with the refunding of outstanding tax-exempt debt assumed by CenterPoint in connection with the electric restructuring by which CenterPoint and Utility Holding, LLC became holding companies for the T&D Utility.

The T&D Utility has issued $300 million principal amount of debt securities under the authority granted in the T&D Utility Financing Orders. The T&D Utility has remaining authority to issue up to $200 million principal amount of incremental external debt securities during the Authorization Period.

Applicants request the Commission to modify the existing authority under the T&D Utility Financing Orders to permit the T&D Utility to issue an additional $300 million principal amount of incremental external debt securities during the Authorization Period, so that the amount of the T&D Utility Additional Debt Limit would increase to $3.903 billion principal amount during the Authorization Period. Applicants request that the Commission reserve jurisdiction over the issuance of $250 million principal amount of incremental external debt, out of the $300 million principal amount of debt authority requested, until completion of the record.

Prior to the electric restructuring, a utility to which the T&D Utility is the corporate successor entered into agreements with certain governmental authorities (''Authorities'') for the issuance of pollution control bonds (''Bonds'') by those Authorities. Under these agreements, the proceeds of the Bonds were used by the utility to finance qualifying pollution control facilities used in its business or to refund bonds previously issued for that purpose. In connection with the electric restructuring: (1) CenterPoint assumed the installment payment obligations of the utility; (2) the mortgage bonds that secured certain of these obligations remained with the T&D Utility as corporate successor to the utility; and (3) the T&D Utility issued promissory notes payable to CenterPoint with payment terms equivalent to CenterPoint's installment payment obligations for each series of secured bonds.

Certain of these currently outstanding Bonds are, or soon will become, callable. The Applicants believe, on the basis of currently available information, including current interest rates and other factors, that it would be in the best interest of the T&D Utility to cause some or all of these Bonds to be refunded prior to their maturity. In connection with any refunding, the T&D Utility would request the relevant Authorities to issue a new series of revenue refunding bonds, the proceeds of which would ultimately be used to redeem up to approximately $250 million of Bonds supported by CenterPoint installment payment obligations. The new series of revenue refunding bonds would be issued by the applicable governmental Authority on behalf of the T&D Utility, and supported by credit support in the form of: (1) T&D Utility installment payment obligations; (2) possibly, a separate series of T&D Utility first mortgage bonds or general mortgage bonds; and (3) possibly, bond insurance. As noted above, the T&D Utility has outstanding promissory notes payable to CenterPoint for each series of

[1] CenterPoint holds its utility interests through Utility Holding, LLC, a Delaware limited liability company that is a conduit entity formed solely to minimize tax liability.

outstanding Bonds. These intercompany notes that the T&D Utility owes to CenterPoint would be ''deemed paid'' when the outstanding Bonds are redeemed. In addition, the redemption of the outstanding Bonds would result in a corresponding satisfaction of the related series of currently outstanding mortgage bonds.

The precise amount of the costs associated with the refunding will not be known until the refinancing is complete but the fees and terms and conditions of the refinancing will comply with the terms and conditions established in the Omnibus Financing Order. Among other things, Applicants would continue to comply with the investment grade and equity capitalization criteria in the Omnibus Financing Order. In particular, the T&D Utility will continue to maintain a minimum of 30% common equity, as required by the Omnibus Financing Order.

Dominion Resources, Inc., et al. (70–10144)

Dominion Resources, Inc. (''DRI''), a registered holding company, and Consolidated Natural Gas Company (''CNG''), a registered holding company and direct subsidiary of DRI (''Applicants''), both at 120 Tredegar Street, Richmond, VA 23219, have filed a declaration (''Declaration'') under sections 6(a) and 7 of the Act and rules 53 and 54 under the Act.

I. Request To Issue and Sell Short-Term Debt

DRI and CNG, each requests authority to issue short-term debt through December 31, 2004. DRI and CNG request authorization to issue short-term debt including, but not limited to, the issuance of commercial paper, in an aggregate amount of up to $4.0 billion principal amount outstanding at any one time, $2.0 billion for DRI and $2.0 billion for CNG. The short-term debt will enable DRI to support its Money Pool and other short-term financing needs, which vary significantly during a calendar period. This $2.0 billion short-term debt authorization will enable CNG to support its short-term financing needs which vary significantly during a calendar period.

Short-term borrowings from banks or other financial institutions borrowings will be evidenced by (a) ''transactional'' promissory notes to be dated the date of such borrowings and to mature not more than one year after the date thereof or (b) ''grid'' promissory notes evidencing all outstanding borrowings from the respective lender, to be dated as of the date of the first borrowing evidenced thereby, with each borrowing maturing not more than one year thereafter. DRI and CNG state that, at any given time, some or all of its outstanding short-term notes will be issuable in connection with the establishment of back-up credit facilities to support DRI's and CNG's commercial paper program, but that the credit facilities will not be drawn upon and no borrowings will occur, except in certain limited circumstances, at which time obligations under the related commercial paper will be paid. Thus, short-term notes issued in connection with the establishment of commercial paper back-up facilities backstop and duplicate commercial paper issuances and should not be deemed to be borrowings under DRI's and CNG's financing authorization unless and until an actual borrowing occurs under the related credit facility. Additionally, with respect to any ''grid'' notes issued by Applicants, only the amount actually outstanding at any given time shall be considered a borrowing. DRI and CNG each propose to issue and sell the commercial paper at market rates with varying maturities not to exceed 270 days.

II. Parameters for Financing Authorization

Authorization is requested to engage in certain financing transactions through December 31, 2004 for which the specific terms and conditions are not at this time known. The following general terms will be applicable, where appropriate to the financing transactions:

Common Equity. Consistent with the current authority, the Applicants will each maintain common equity of at least 30% of its consolidated capitalization; provided that the Applicants will in any event be authorized to issue common stock to the extent authorized.

Investment Grade Ratings. Applicants will not issue any securities under this Declaration, unless upon original issuance: (i) the securities, if rated, are rated at least investment grade; and (ii) all outstanding senior debt obligations of the Applicants that are rated, are rated investment grade. For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in rule 15c3–1(c) (2) (vi) (F) under the Securities Exchange Act of 1934.

Effective Cost of Money on Financings. The effective cost of capital for short-term debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital on such short-term debt securities exceed 700 basis points over the comparable term London Interbank Offered Rate (''LIBOR'').

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Declaration will not exceed 700 basis points of the principal or face amount of the securities being issued or gross proceeds of the financing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29937 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48818; File No. SR–Amex–2003–28]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to the Elimination of the 10-Second Interval at Which Persons May Enter Auto-Ex Eligible Orders for Exchange-Traded Funds

November 21, 2003.

I. Introduction

On April 16, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the 10-second ''speed bump'' on the entry of Auto-Ex eligible orders for Exchange-Traded Funds (''ETFs'') and Trust-Issued Receipts (''TIRs''), while allowing it to be reinstated if conditions warrant its reintroduction. On May 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.[3] On June 3, 2003, Amex

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission dated May 6, 2003 (''Amendment No. 1'').

submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendment Nos. 1 and 2 was published for comment in the **Federal Register** on June 16, 2003.[5] The Commission received one comment letter with respect to the proposal.[6] On October 3, 2003, the Amex filed Amendment No. 3 to the proposed rule change.[7] This Order approves the proposed rule change; grants accelerated approval to Amendment No. 3 to the proposed rule change; and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposal and Amendment Nos. 1 and 2 Thereto

On June 19, 2001, the Commission approved the Exchange's proposal to permit the automatic execution (''Auto-Ex'') of orders for Exchange Traded Funds (''ETFs'') on a six-month pilot program basis.[8] The Exchange extended the pilot several times for an additional six months, most recently on July 2, 2003.[9] As part of an extension of the Auto-Ex for ETFs pilot the Exchange reduced, from 30 seconds to 10 seconds, the interval at which member firms could enter orders on the same side of the market for any account in which the same person is directly or indirectly interested.[10] The Exchange now proposes to eliminate the 10-second ''speed bump'' for all ETFs. The Exchange also proposes to amend Amex Rule 128A to clarify that Auto-Ex for ETFs applies to both ETFs and TIRs.

The Exchange's rules currently provide that Auto-Ex eligible orders on the same side of the market in an ETF for any account in which the same person is directly or indirectly interested may only be entered at intervals of 10 seconds or more. According to the Exchange, order flow providers have objected to this interval since it requires them to block their customers from entering any Auto-Ex eligible orders on the same side of the market in the Exchange's order routing systems for the affected security within 10 seconds. Accordingly, the Exchange proposes to eliminate the speed bump in ETFs and TIRs while allowing it to be reinstated on a temporary basis if conditions warrant its reintroduction.

The Exchange states that the Auto-Ex Enhancements Committee (''Committee''), upon the request of a specialist, would review a request to reinstate the 10-second speed bump. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association and the Floor Brokers Association. According to the Exchange, this Committee currently reviews requests to change various Auto-Ex parameters. (*See* Commentaries .02 and .04 to Amex Rule 128A.) Under Amendment No. 2, which was included in the Notice, the Exchange proposed to give members and member organizations ten business days' notice prior to reintroducing the 10-second speed bump to allow them to implement internal procedures to comply with this requirement. The Exchange also proposed to notify members and member organizations of the reintroduction of the 10-second speed bump through Amex Notices, which are distributed on the Exchange Floor and posted on the Exchange's ''Amex Trader'' Web site.

III. Comment Summary

The Commission received one comment letter on the proposed rule change. The commenter supported the elimination of the 10-second speed bump, but opposed the requirement of only ten business days' notice for reinstatement of the speed bump.[11] Specifically, the commenter noted that reinstatement of the speed bump with just ten business days' notice is an insufficient amount of time to prepare internal systems to comply with the reinstated speed bump. The commenter suggested that the Exchange provide a 60 to 90 day reinstatement period. On October 3, 2003, the Exchange submitted Amendment No. 3 in response to the comment letter. In particular, the Exchange amended the proposal to give members and member organizations 30 calendar days' notice prior to reintroducing the 10-second speed bump to allow them to implement internal procedures to comply with the reinstated requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 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 Amex. All submissions should refer to File No. SR–Amex–2003–28 and should be submitted by December 23, 2003.

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[13] in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest. The Commission believes that the proposed rule change should benefit investors by allowing the entry of multiple Auto-Ex eligible orders on the same side of the market without

[4] *See* letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission dated June 2, 2003 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 48004 (June 9, 2003), 68 FR 35741 (June 16, 2003) (''Notice'').

[6] *See* letter to Jonathan G. Katz, Secretary, Commission, from Patrick K. Blackburn, Executive Vice President and Lawrence J. Hanson, Senior Vice President, ABN AMRO Incorporated, dated June 30, 2003.

[7] *See* letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 3, 2003 (''Amendment No. 3'').

[8] *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001), (SR–Amex–2001–29).

[9] *See* Securities Exchange Act Release No. 48126 (July 2, 2003), 68 FR 41189 (July 10, 2003).

[10] *See* Securities Exchange Act Release No. 47105 (December 30, 2002), 68 FR 592 (January 6, 2003).

[11] *See* ABN AMRO Letter.

[12] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

regard to any ''time-out'' between entry of those orders, while affording the Exchange the option to reinstate the 10-second speed-bump if circumstances warrant such reintroduction. The Commission believes that 30 days is an appropriate period of time for members and member organizations to accommodate potential reinstatement of the 10-second speed bump.

VI. Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[14] In Amendment No. 3, Amex addresses the concern raised in the comment letter by increasing the required notice of reinstatement of the 10-second speed bump from ten business days to 30 calendar days. As noted above, the Commission believes that this time period is appropriate. The Commission further believes that acceleration of the amendment will allow the Amex to remove the speed-bump without delay, thereby enabling entry of multiple Auto-Ex eligible orders on the same side of the market without a 10-second ''time-out.''

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[15] *It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[16] that Amendment No. 3 be approved on an accelerated basis, and that the proposed rule change (SR–Amex–2003–28) be approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29884 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48827; File No. SR–CBOE–2001–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Adopt a New Rule Regarding Nullification and Adjustment of Transactions

November 24, 2003.

I. Introduction

On February 14, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt an obvious error trading rule, CBOE Rule 6.25. On August 15, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On September 12, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On September 26, 2003, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] On September 29, 2003, the proposed rule change, as amended, was granted partial accelerated approval on a pilot basis and published for comment in the **Federal Register** on October 6, 2003.[6] The Commission did not receive any comments on the proposed rule change. On November 17, 2003, the CBOE filed Amendment No. 4 to the proposed rule change.[7] This order approves the proposed rule change, as amended; grants accelerated approval to Amendment No. 4; and solicits comments from interested persons on Amendment No. 4.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[9] of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.[10]

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an ''obvious error'' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the CBOE's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 14, 2003 (''Amendment No. 1''). Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] *See* Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 11, 2003 (''Amendment No. 2''). In Amendment No. 2, the CBOE replaced proposed subparagraph (a)(5) of CBOE Rule 6.25, relating to erroneous quotes in the underlying market, with language substantially similar to CBOE Rule 43.5(b)(4).

[5] *See* Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 26, 2003 (''Amendment No. 3''). In Amendment No. 3, the CBOE requested accelerated effectiveness of paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25. The CBOE also requested that paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 operate as a pilot program until December 1, 2003.

[6] *See* Securities Exchange Act Release No. 48556 (September 29, 2003), 68 FR 57716 (''Notice and Partial Approval Order''). In the Notice and Partial Approval Order, the Commission granted accelerated approval to paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 on a pilot basis.

[7] *See* Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated November 14, 2003 (''Amendment No. 4''). In Amendment No. 4, the Exchange: (1) Amended paragraphs (a)(1)(i) and (c) of proposed CBOE Rule 6.25 to include a reference to the Hybrid Opening System (''HOSS''); (2) defined the term ''average trade'' in proposed CBOE Rule 6.25(a)(4) based on the definition currently used in CBOE Rule 43.5; (3) requested permanent approval of paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25; (4) deleted CBOE Rule 6.8(d)(iii); (5) amended CBOE Rule 6.20, Interpretation .05 to clarify that trades subject to adjustment or nullification pursuant to CBOE Rule 6.25 shall be subject to the procedures set forth in CBOE Rule 6.25; and (6) made technical corrections to the proposed rule text.

[8] For a description of the proposed rule change, *see* Notice and Partial Approval Order, *supra,* n. 6.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed obvious error rule establishes specific and objective criteria for determining when a trade is an ''obvious error.'' The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trade. In addition, the Commission notes that several provisions of the CBOE obvious error rule proposal are substantially similar to proposed rule changes submitted by the Pacific Exchange, Inc. to adopt an obvious error rule and by the Exchange to adopt a trade nullification rule for CBOEdirect, both of which the Commission has approved.[11] Finally, the Commission notes that CBOE represented that, with the adoption of CBOE Rule 6.25, the Exchange withdraws the effectiveness of CBOE Regulatory Circular RG 00–169.[12]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 4 strengthens the proposal by clarifying the circumstances under which the CBOE obvious error rule will apply; by describing the meaning of certain provisions contained in CBOE Rule 6.25; and by withdrawing a provision of another CBOE rule that is superceded by CBOE Rule 6.25. Therefore, the Commission believes that granting accelerated approval of Amendment No. 4 is appropriate and consistent with Section 6(b)(5)[14] of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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 proposal that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–04 and should be submitted by December 23, 2003.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2001–04), as amended, be, and hereby is, approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29939 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* Securities Exchange Act Release Nos. 48538 (September 23, 2003), 68 FR 56858 (October 2, 2003) (File No. SR–PCX–2002–01); and 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR–CBOE–00–55).

[12] *See* Amendment No. 1, *supra* note 3; *see also* Notice and Partial Approval Order, *supra* note 6.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48837; File No. SR–ISE–2003–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Fee Changes

November 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2003, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing changes to its Schedule of Fees in order to adopt certain fees and temporary fee waivers relating to index options. The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing changes to its Schedule of Fees in order to adopt certain fees and temporary fee waivers relating to index options.

The Exchange plans to list index options for trading. The first index option product the Exchange plans to list is the S&P SmallCap 600 Index. The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. (''S&P''), in connection with the listing and trading of index options on the S&P SmallCap 600 Index. As with licensed equity options, the Exchange is adopting a member fee for trading in these options to defray the licensing costs. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs of the license.

However, the Exchange is proposing to temporarily waive certain transaction fees that would otherwise apply to index options in an attempt to generate trading interest and for competitive purposes. Specifically, the Exchange is proposing to waive the following transaction fees on index options until February 28, 2004: (i) The facilitation execution fee; (ii) the market maker and firm proprietary execution fee; (iii) the surcharge for options on the S&P SmallCap 600 Index execution fee; and (iv) the comparison fee. Lastly, the Exchange made certain minor, non-substantive changes to its Schedule of Fees for clarity and consistency, as well as removed language relating to a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

temporary fee waiver for market maker and firm proprietary complex order execution fees that expired on June 30, 2003.

2. Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–24 and should be submitted by December 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29938 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48828; File No. SR–PCX–2003–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Exchange Rules for the Automatic Executions of Intermarket Linkage Orders in Locked Markets

November 24, 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 November 21, 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 Exchange. On November 24, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change has been filed by PCX as a ''non-controversial'' rule change under Rule 19b-4(f)(6) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules to eliminate a Lead Market Maker's (''LMM'') ability to have Linkage Orders in a locked market default for manual representation when those orders would otherwise be automatically executed via the Exchange's automatic execution (''Auto-Ex'') system.

The text of the proposed rule change, as amended, is below. Proposed additions are in italics; deletions are in [brackets].

* * * * *

Rule 6

Options Trading

Rule 6.87 Automatic Execution System

(a)–(i)—(No change.)

(j) Crossed or Locked Markets. *Except as provided herein,* [T]two Floor Officials may approve an LMM's request to designate, for an option issue, that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked. *Notwithstanding the forgoing, Linkage Orders subject to PCX Rule 6.93(e) will not default for manual representation if the NBBO is locked.*

(k)–(p)—(No change.)

Commentary

.01–.08—(No change.)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Mai Shiver, Acting Director, Regulatory Policy, PCX to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2003 (''Amendment No. 1''). Amendment No. 1 replaced and superceded the original filing in its entirety.

[4] 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on November 24, 2003, the date PCX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 6.87 (relating to Auto-Ex) permits eligible orders to be automatically executed in the event of a locked and crossed market. However, PCX Rule 6.87(j) provides that an LMM may seek the approval of two Floor Officials to allow an order to default to manual representation in the trading crowd if the National Best Bid or Offer (''NBBO'') is crossed or locked. The rule allows this exception in order to protect against potential misuse of the Auto-Ex system by arbitrage firms who may lock or cross the market in order to game the Auto-Ex system.

The Exchange proposes to amend PCX Rule 6.87(j) to state that Linkage Orders subject to Exchange Rule 6.93(e) will not default for manual handling if the NBBO is locked. Thus, as proposed, when the market is locked, Linkage Orders will be automatically executed in accordance with PCX Rule 6.93(e) and the Exchange will not permit such orders to default for manual representation in the trading crowd.

The PCX represents that treating Linkage Orders as proposed in this filing is consistent with the practice of the other options exchanges. The Exchange further represents that the proposed rule will improve the national market system by improving Linkage execution rates for the PCX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the Exchange as a ''non-controversial'' rule pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (f)(6) of Rule 19b-4 thereunder.[8] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b-4 thereunder.[10]

The PCX has requested that the Commission waive the five-day pre-filing notice requirement and the thirty-day operative waiting period. The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing requirement and the thirty-day operative waiting period since the proposed rule change, as amended, is consistent with the practice of the other options exchanges.[11] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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–2003–65 and should be submitted by December 23, 2003.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4.

[11] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29883 Filed 12–1–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3559]

Commonwealth of Puerto Rico

As a result of the President's major disaster declaration on November 21, 2003, I find that the municipalities of Guanica, Guayama, Juana Diaz, Maunabo, Patillas, Rio Grande, Salinas, Santa Isabel and Yauco in the Commonwealth of Puerto Rico constitute a disaster area due to damages caused by severe storms, flooding, mudslides and landslides beginning on November 10, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 20, 2004, and for loans for economic injury until the close of business on August 23, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous municipalities may be filed until the specified date at the above location: Adjuntas, Aibonito, Arroyo, Canovanas, Cayey, Ceiba, Coamo, Guayanilla, Jayuya, Lajas, Lares, Las Piedras, Loiza, Luquillo, Maricao, Naguabo, Orocovis, Ponce, Sabana Grande, San Lorenzo,

Villalba and Yabucoa in the Commonwealth of Puerto Rico.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	6.123
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.061
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.061

The number assigned to this disaster is 355911 for physical damage and 9Y0600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 24, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–29875 Filed 12–1–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558]

State of West Virginia

As a result of the President's major disaster declaration on November 21, 2003, I find that Cabell, Kanawha, Lincoln, Nicholas, Putnam and Wayne Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms, flooding and landslides occurring on November 11, 2003, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 20, 2004 and for economic injury until the close of business on August 23, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Braxton, Clay, Fayette, Greenbrier, Jackson, Logan, Mason, Mingo, Raleigh, Roane and Webster in the State of West Virginia; Boyd, Lawrence and Martin counties in the Commonwealth of Kentucky; and Gallia and Lawrence counties in the State of Ohio.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	6.123
Businesses and non-profit organizations without credit available elsewhere	3.061
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.061

The number assigned to this disaster for physical damage is 355811. For economic injury the number is 9Y0300 for West Virginia; 9Y0400 for Kentucky; and 9Y0500 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 24, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–29876 Filed 12–1–03; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 11, 2003 on pages 47269–47269.

DATES: Comments must be submitted on or before January 2, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Landing Area Proposal.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0036.

Forms(s): FAA form 7480–1

Affected Public: A total of 3,868 airport operators.

Abstract: FAR Part 157 requires that each person who intends to construct, deactivate, or change the status of an airport, runway, or taxiway must notify the FAA of such activity. The information collected provides the basis for determining the effect the proposed action would have on existing airports and on the safe and efficient use of airspace by aircraft, determining the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports, determining the effects the proposed action would have on the existing airspace structure and projected programs of the FAA, and determining the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal.

Estimated Annual Burden Hours: An estimated 2,901 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on : Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: November 24, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 03–30021 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice within a 60-day comment period soliciting comments on the following collection of information was published on August 11, 2003 on pages 47628–47629.

DATES: Comments must be submitted on or before January 2, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publications.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Special Federal Aviation Regulation (SFAR) No. 71.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0620.

Form(s): N/A.

Affected Public: A total of 35 air tour pilots.

Abstract: Special Federal Aviation Regulation (SFAR) No. 71 applies to air tour operators in Hawaii. SFAR 71 requires that part 121 and 135 air tour operators verbally brief passengers on safety, particularly related to overwater operations before each air tour flight.

Estimated Annual Burden Hours: An estimated 6,667 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use automated collection technique or other forms of information technology.

Issued in Washington, DC, on November 24, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 03–30022 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revised Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review for Jackson Hole Airport, Jackson, WY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: This revised notice, the restart of the Part 150 acceptance/approval process and associated dates is necessary because of the Federal Aviation Administration's need to acquire additional information from the Jackson Hole Airport Board. the Federal Aviation Administration (FAA) announces its determination that the noise exposure maps (NEM) submitted by the Jackson Hole Airport Board for Jackson Hole Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Jackson Hole Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 17, 2004.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 19, 2003. The public comment period ends January 18, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Ave., SW., Renton, WA 98055–4056, telephone (425) 227–2611. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Jackson Hole Airport are in compliance with applicable requirements of Part 150, effective November 19, 2003. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 17, 2004. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Jackson Hole Airport Board submitted to the FAA on July 2, 2003, noise exposure maps, descriptions and other documentation that were produced during Jackson Hole Airport FAR Part 150 Study Update, dated July 1, 2003. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Jackson Hole Airport Board. The specific documentation determined to constitute the Noise Exposure Maps includes the following from the May 2003, *Jackson Hole Airport FAR part 150 Study Update:*

Figure B1 at page B.5, Existing Noise Exposure Map, 2002;

Figure E1 at page E.8 Future Noise Exposure Map, 2008;

Figure D4 at page D.11 Flight Track/ Noise Monitoring Sites;

Table A2 at page A.2 Revised Summary of Aviation Forecasts 2002–2008 and additional aviation activity data;

Table C4 at page C.5 Existing Land Use Within Existing Noise Contours presents estimates of the number of persons residing with the DNL 55, 60, and 65 noise contours;

Table E2 at page E.4 Future Noise Exposure Map with Existing Land Use, 2008, presents estimates of the number of persons residing with the DNL 55, 60, and 65 noise contours;

Appendix F presents Revised Consultation.

The year of submission (2003) airport operations data (shown in Table A1 at page A.2 as 35,779 operations) is equivalent to the submitted existing condition;

Noise Exposure Map (2002) operations data (also shown in Table A1 as 35,036) and the five-year forecast Noise Exposure Map is still reasonable.

The Jackson Hole Airport Board has stated, in a separate letter dated November 13, 2003, that there are no properties on or eligible for inclusion in the National Register of Historic Places.

The FAA has determined that these maps for Jackson Hole Airport are in compliance with applicable requirements. This determination is effective on November 19, 2003. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure controls onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Jackson Hole Airport, also effective on November 19, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 17, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. The FAA will consider all comments, other than those properly addressed to local land use authorities, to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 1601 Lind Avenue, SW., Suite 315, Renton, Washington.

Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado.

Jackson Hole Airport, 1250 East Airport Road, Jackson, Wyoming.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, November 19, 2003.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 03–30019 Filed 12–01–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–68]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 22, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–16491.

Petitioner: Department of the Army, Army's 2nd Battalion, 75th Ranger Regiment.

Section of 14 CFR Affected: 14 CFR 105.19(a) and (b).

Description of Relief Sought: To permit the Department of the Army, Army's 2nd Battalion, 75th Ranger Regiment to conduct unlighted night airborne operations outside Special Use Airspace at Rogers and Rogers West training areas, Fort Lewis, Washington.

[FR Doc. 03–30012 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC approvals and disapprovals. In October 2003, there were three application approved. Additionally, 13 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Glynn County Airport Commission, Brunswick, Georgia.

Application Number: 03–02–U–00–BQK.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in This Decision: $572,623.

Charge Effective Date: May 1, 2001.

Estimated Charge Expiration Date: September 1, 2011.

Class of Air Carriers Not Required to Collect PFC'S: No change from previous decision.

Brief Description of Project Approved for Use: Airport terminal renovations.

Decision date: October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Atlanta Airports District Office, (404) 305–7152.

Public Agency: Birmingham, Airport Authority, Birmingham. Alabama.

Application Number: 03–04–C–00–BHM.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $9,959,371.

Earliest Charge Effective Date: January 1, 2004.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required To Collect PFCs: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Birmingham International Airport.

Brief Description of Projects Approved for Collection and Use:

Replace and/or relocate the existing sanitary sewer lift station and associated lines.

Expand air carrier apron.

Runway 24 obstruction removal (four phases).

Brief Description of Disapproved Project: Demolition of old air traffic control tower.

Determination: Disapproved. Paragraph 593 of FAA Order 5100.38B, (Airport Improvement Program (AIP) Handbook (May 31, 2002)), limits the eligibility of air traffic control tower demolition to projects that constitute aviation hazards or impede an AIP project actually funded by an AIP grant or with PFC revenue. This tower has not been determined to be an aviation hazard nor does it impede any PFC or AIP project.

Decision Date: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Jackson Airports District Office, (601) 664–9884.

Public Agency: Valdosta-Lowndes County Airport Authority, Valdosta, Georgia.

Application Number: 03–06–C–00–VLD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $185,100.

Earliest Charge Effective Date: November 1, 2003.

Estimated Charge Expiration Date: June 1, 2005.

Class of Air Carriers Not Required To Collect PFCs: Non-scheduled large certificated route air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total enplanements at Valdosta Regional Airport.

Brief Description of Projects Approved for Collection and Use:

PFC application 03–06–C–00–VLD.

Overlay taxiway A and stubs.

Avigation/fee simple easement runway 4/22.

Mark runway 4/22 for non-precision approaches.

Expand commuter apron.

Environmental assessment—runway 17/35 extension.

Extend taxiway M.

Enhanced airfield fencing.

Upgrade tower communications.

Brief Description of Disapproved Projects: Purchase land, airport expansion.

Determination: Disapproved. The FAA has determined that the project is not justified at this time. The public agency failed to demonstrate that there was a valid aeronautical need for the land as required in paragraph 702 of FAA Order 5100.38B, AIP Handbook (May 31, 2002).

PFC application 00–04–C–00–VLD.

Determination: Disapproved. This project was previously approved in the 01–05–C–00–VLD PFC decision.

PFC application 01–05–C–00–VLD.

Determination: Disapproved. This project was previously approved in the 01–05–C–00–VLD FPC decision.

Brief Description of Withdrawn Project: Extend runway 17/35 by 700 feet.

Determination: This project was withdrawn by the public agency on October 27, 2003.

Decision Date: October 29, 2003.

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Atlanta Airports District Office, (404) 305–7152.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimate charge exp. date
01–03–C–02–LYH, Lynchburg, VA	04/18/03	$705,654	$705,654	06/01/05	06/01/05
*98–06–C–01–TYS, Knoxville, TN	06/26/03	57,921,122	91,108,707	07/01/21	07/01/22
*00–01–C–01–BQK, Brunswick, GA	08/19/03	517,141	813,170	01/01/11	09/01/11
99–03–C–02–DJU, Dubois, PA	09/26/03	424,734	386,638	10/01/04	11/01/03
95–02–C–02–EWR, Newark, NJ	10/14/03	281,080,800	321,607,000	01/01/01	03/01/03
95–02–C–02–JFK, New York, NY	10/14/03	263,314,800	301,279,500	01/01/01	03/01/03
95–02–C–02–LGA, New York, NY	10/14/03	211,604,400	242,113,500	01/01/01	03/01/03
97–04–C–01–EWR, Newark, NJ	10/14/03	257,285,600	280,783,360	01/01/09	05/01/09
97–04–C–01–JFK, New York, NY	10/14/03	241,023,600	263,036,160	01/01/09	05/01/09
97–04–C–01–LGA, New York, NY	10/14/03	193,690,800	211,380,480	01/01/09	05/01/09
97–02–C–02–ERI, Erie, PA	10/17/03	1,251,996	1,216,914	05/01/01	05/01/01
98–03–C–04–DCA, Alexandria, VA	10/20/03	53,846,780	83,193,187	02/01/04	06/01/05
02–13–C–01–SJC, San Jose, CA	10/21/03	142,846,000	146,485,000	05/01/11	08/01/14

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Knoxville, TN, this change is effective on October 1, 2003. For Brunswick, GA, this change is effective on November 1, 2003.

Issued in Washington, DC on November 25, 2003.

Sheryl Scarborough,

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 03–30023 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–05–C–00–AL0 To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Waterloo Municipal Airport, Waterloo, IA

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

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Waterloo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 2, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brad Hagen, Director of Aviation, Waterloo Municipal Airport, at the following address: 2790 Livingston Lane, Waterloo, Iowa 50703.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Waterloo Municipal Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Waterloo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 21, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Waterloo Municipal Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no latter than February 27, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July 2004.

Proposed charge expiration date: April 2007.

Total estimated use revenue: $251,200.

Total estimated impose revenue: $611,200. Brief description of proposed project(s): Annual Audit and Program Administration; Part 139 Guidance Signs; Acquisition of Snow Removal Equipment; Perimeter Fencing; Acquisition of Aircraft Rescue Firefighting Equipment and Tappley Meter; and Reconstruction of the Terminal Area Ramp.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Waterloo Municipal Airport.

Issued in Kansas City, Missouri, on November 21, 2003.

Jim Johnson,

Acting Manager, Airport Division Central Region.

[FR Doc. 03–30020 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16573]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FOREVER YOUNG.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build

requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16573 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 2, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003 16573. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FOREVER YOUNG is:

Intended Use: ''Chartering, sightseeing, overnight chartering and fishing.''

Geographic Region: ''Maine to New Jersey.''

Dated: November 25, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–29885 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003–15674]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LET IT RIDE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15674 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 2, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003–16574. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LET IT RIDE is:

Intended Use: ''passenger cruise charters.''

Geographic Region: ''U.S. East Coast and the entire State of Florida.''

Dated: November 25, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–29886 Filed 12–1–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34436]

Burlington Northern and Santa Fe Railway Co.—Trackage Rights Exemption—Union Pacific Railroad Co.

Union Pacific Railroad Company (UP) has agreed to grant certain trackage rights to The Burlington Northern and Santa Fe Railway (BNSF) between Gibbs, ID, at Coeur d'Alene Industrial Lead milepost 7.40 and Coeur d'Alene, at Coeur d'Alene Industrial Lead milepost 8.79, a distance of approximately 1.4 miles.

The transaction was scheduled to be consummated on November 19, 2003 (7 days after the notice was filed).

The purpose of the trackage rights is to allow BNSF to deliver and receive rail cars from the Stimson Lumber facility at Coeur d'Alene, ID, as part of BNSF's agreement to provide haulage services for UP between Spokane, WA and Coeur d'Alene.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34436, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, PO Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29809 Filed 12–1–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 405X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Jefferson, Gage, and Pawnee Counties, NE

On November 12, 2003, The Burlington Northern and Santa Fe Railway Company (BNSF), filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad extending between milepost 57.80, near Pawnee, and milepost 117.03, near Endicott, a distance of approximately 59.23 miles in Jefferson, Gage, and Pawnee Counties, NE. The line traverses United States Postal Service Zip Codes 68420, 68323, 68381, 68466, 68310, 68415, 68432, 68352, and 68350, and includes the following stations: Burchard, Liberty, Wymore, Krider, Odell, and Diller.

The line does not contain federally granted rights-of-way. Any documentation in BNSF's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 1, 2004.

Any offer of financial assistance (OFA) will be due no later than 10 days after service of a decision granting the petition for exemption. *See* 49 CFR 1152.27(b)(2). Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 22, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 405X) and must be sent to: (1) Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001; and (2) Michael Smith, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606–6677. Replies to the BNSF petition are due on or before December 22, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 21, 2003.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29711 Filed 12–1–03; 8:45 am]

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Part II

Federal Maritime Commission

46 CFR Parts 501 and 535

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984; Proposed Rule

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 535

[Docket No. 03–15]

RIN 3072–AC28

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing agreements among ocean common carriers and marine terminal operators in response to changes in the shipping industry since the enactment of the Ocean Shipping Reform Act of 1998 (''OSRA''), which amended the Shipping Act of 1984 (''Shipping Act''). The Commission proposes to delegate additional authority to the Director of the Commission's Bureau of Trade Analysis (46 CFR part 501). The Commission also proposes to update its rules relating to standards and exceptions for information that a filed agreement must contain and to revise its regulations pertaining to transshipment agreements (46 CFR part 535). Further, the Commission proposes to modify its Information Form and Monitoring Reports regulations and appendices (46 CFR part 535) to reflect changes in the amount and kind of data the Commission deems necessary to monitor carriers' use of their antitrust immunity for filed agreements. Finally, the Commission proposes to revise its regulations regarding the filing of agreement minutes (46 CFR part 535). The revision would reduce inadequate inclusion or coverage of substantive issues and insufficient levels of detail to describe carrier discussions, clarify regulations on meetings for which minutes are required to be filed, and identify and provide for timely Commission access to materials used or discussed in such meetings.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2000, or earlier versions of these applications, no later than January 30, 2004. Requests for meetings to make oral presentations to individual Commissioners must be received, and the meetings completed, by this date as well.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT:

Carol J. Neustadt, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001, (202) 523–5740, E-mail: GeneralCounsel@fmc.gov.

Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Room 940, Washington, DC 20573–0001, (202) 523–5796, E-mail: tradeanalysis@fmc.gov.

SUPPLEMENTARY INFORMATION:

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I. Delegations to the Director, Bureau of Trade Analysis, 46 CFR 501.26

The proposed rule amends § 501.26 to account for modifications in the delegations of the Commission's authority to the Director, Bureau of Trade Analysis (''BTA'') in connection with the proposed modifications in 46 CFR part 535. Specifically, sections 501.26(c) and (d) are being revised to match the re-coded section numbers for applications for waivers to the reporting requirements for carrier agreements in part 535 of the proposed rule. Sections 501.26(o) and (p) are being added to provide new delegations of authority to the Director of BTA pertaining to the proposed Monitoring Report regulations for carrier agreements in part 535 of the proposed rule.

II. The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984, 46 CFR Part 535, Subparts A, B, C, and D

A. Background—Docket No. 99–13

1. Introduction

The Shipping Act of 1984, 46 U.S.C. app. §§ 1701–1719 (''Shipping Act''), requires, at section 5(a), the filing of certain types of commercial agreements by and among ocean common carriers and marine terminal operators with the Federal Maritime Commission (''Commission'' or ''FMC''). 46 U.S.C. app. § 1704(a). The Commission's current regulations implementing this provision were first adopted by the Commission in that same year. Docket Nos. 84–26 and 84–32, *Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984,* 22 S.R.R. 1453, 49 FR 45320 (final rule) (November 15, 1984) (''Docket Nos. 84–26 and 84–32 (final rule)''). The Commission most recently amended its agreement rules in 1999, in response to changes made to the Shipping Act by the Ocean Shipping Reform Act of 1998, Public Law No.

105–258 (''OSRA''). Docket No. 98–26, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* 64 FR 11236, March 8, 1999, (''Docket No. 98–26'').

Pursuant to changes mandated by OSRA, Docket No. 98–26 eliminated most of the ''form and manner'' rules describing the procedural rules for filing these agreements, but left unchanged the substantive ''content'' requirements, which were not affected by OSRA. 64 FR 11238. Comments submitted in the course of Docket No. 98–26 revealed concerns and uncertainties about the Commission's substantive requirements for agreements, and requested further clarifications, enhancements or new rules on agreements. In response to these concerns, the Commission initiated Docket No. 99–13, *The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* by the publication of a Notice of Inquiry (''NOI'') on August 3, 1999, requesting comment on the specific manner in which the Commission's agreement content rules should be updated or refined. 64 FR 42057.[1] The Commission asked commenters to include concrete examples and to quantify their answers in response to the NOI. *Id.*

The Commission received five comments in response to the NOI, all of which requested that the Commission's rules on content standards for agreement filings be updated or refined in a further rulemaking and identified three main concerns: certainty, flexibility, and confidentiality. These comments are summarized below.

2. Summary of the Comments

The Commission received comments from the National Industrial Transportation League (''NITL''), the Council of European & Japanese National Shipowners'' Associations (''CENSA''), the International Longshoreman's Association (''ILA'') P&O Nedlloyd, Ltd. (''PONL''), and the Ocean Carrier Working Group Agreement (''OCWGA'').[2]

In addition to responses directed at particular questions posed by the Commission in the NOI, summarized below, there were some general comments in response to the Commission's initial inquiry. OCWGA recommends that the Commission revise the rules by affirmatively defining what must be included in the filed agreement, rather than enumerating what need not be filed. OCWGA at 11. It states that this approach would allow for incremental adjustments to the regulations and clarify any uncertainty in the rule. *Id.* at 11–12.

OCWGA and PONL both assert that the Commission should determine the level of specificity it requires for such filings to be meaningful, and balance that need against the burden on filers. OCWGA at 19; PONL at 8. OCWGA suggests that the Commission seek to alleviate commercial harm arising from the disclosure of sensitive business information and the administrative costs associated with filing agreements so specific that they require constant amendments which also must be filed. OCWGA at 19.

A summary of comments addressed to the specific questions contained in the NOI follows. (a) The Commission asked whether the current filing exemption for routine operational or administrative matters should be eliminated, retained in its current form, or modified (NOI Question 1). Although the current regulations provide that filed agreements be ''the complete agreement among the parties and * * * specify in detail the substance of the understanding of the parties'' (46 CFR 535.407(a)), as summarized below, several comments generally remark that there are exceptions to this requirement. The comments cite the Commission's rules allowing ''permissive authority'' at 46 CFR 535.407(b)[3] and the exemption from additional filing for interstitial implementation of routine operational or administrative matters at 46 CFR 407(c). OCWGA contends that the Commission has never required the parties to a filed agreement to actually exercise all the authority in an agreement. It also alleges that the Commission's proceedings in Docket No. 97–07, *Possible Unfiled Agreement between Hyundai Merchant Marine Co., Ltd. and Mediterranean Shipping Co., S.A.,* 28 S.R.R. 1428 (2000) and Docket No. 97–08, *Possible Unfiled Agreement Among A.P. Moller-Maersk Line, P&O Nedlloyd Limited and Sea-Land Service, Inc.,* 28 S.R.R. 1431 (2000) (''Docket No. 97–08''), deviate from that position. OCWGA at 12–13. OCWGA asserts that allowing permissive authority benefits both the Commission and the carriers because it allows the Commission to consider both the immediate and potential future effects of the agreement, while providing carriers essential operational and commercial flexibility. *Id.* at 13. OCWGA suggests that not allowing such permissive authority would be impossibly burdensome for both carriers and the Commission. *Id.*

OCWGA gives four instances in which permissive authority could promote flexibility. *Id.* at 14–17. First, with regard to the requirement that an agreement provide information as to the number of vessels and vessel capacity/slots it intends to utilize, OCWGA asserts it would be useful for the Commission to formalize the current policy that an agreement may set forth a maximum number (or range) of vessels and capacity, or maximum number of slots, that may be used without amendment to the agreement. *Id.* at 14.

Second, OCWGA states that the Commission's practice allowing agreements to describe their geographic scope in terms of port ranges rather than the specific ports served is beneficial because operational and commercial considerations may require diversions on short notice. *Id.* at 15. OCWGA further asserts that there is no regulatory purpose in requiring that an agreement name the specific ports it intends to serve rather than port ranges, because such information is provided to the Commission in the information forms and monitoring reports, and typically is also provided to the public through published sailing schedules. *Id.*

Third, OCWGA recommends that agreements continue to have the ability to contain permissive authority for their members to discuss and agree on joining

[1] Docket No. 99–13, *The Content of Ocean Common Carrier and Marine Terminal Operators Agreements Subject to the Shipping Act of 1984,* has been discontinued by separate order. The instant proceeding, Docket No. 03–15, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* encompasses former Docket No. 99–13 and expands it to cover additional matters. As indicated below, the five comments submitted to the Commission in Docket No. 99–13 are incorporated by reference into the record of the instant proceeding and have been considered by the Commission.

[2] Members of OCWGA at the time of this submission were: the Latin America Agreement; Israel Trade Conference; Trans-Atlantic Conference Agreement; Transpacific Stabilization Agreement; United States/Australia-New Zealand Association; United States/South Europe Conference; United States/Southern Africa Conference; Westbound Transpacific Stabilization Agreement; Mediterranean-North Pacific Coast Freight Conference; A.P. Moller-Maersk Line; Contship Containerlines, Ltd.; Crowley American Transport, Inc; Evergreen Marine Corporation (Taiwan) Ltd.; King Ocean Service de Venezuela, S.A.; Sea-Land Service, Inc.; Star Shipping A/S; Tropical Shipping & Construction Company, Ltd.; Wallenius Wilhelmsen Lines AS; Zim-Israel Navigation Company; and Hapag-Lloyd Container Linie GmbH.

[3] That provision states:

Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Shipping Act and that interstitial implementation of routine operational or administrative matters is permitted without requiring further filings.

other agreements, as the Commission would have notice of any action taken under such authority through a subsequent filing. *Id.* at 15–16. OCWGA objects to any requirement that an amendment to the original agreement also be filed when the parties exercise permissive authority. It asserts that such a requirement would serve no legitimate regulatory purpose and would be duplicative. It notes that there are 25 effective agreements currently on file with the Commission which contain this authority. *Id.* at 16. Finally, OCWGA recommends that the Commission allow permissive authority to include operational agreements, such as slot or space charters.[4]

PONL and CENSA contend that the term, ''routine operational or administrative matters'' used in section 535.407(c), lacks clarity. PONL at 6; CENSA at 1. CENSA suggests that the Commission identify and define those aspects of agreements which are relevant to its initial review and subsequent monitoring responsibilities, and establish specific rules with respect to them. CENSA at 2. OCWGA, however, recommends that the existing exemption for ''routine operational or administrative matters'' be retained in its current form. OCWGA at 10.

PONL contends that the Commission's interpretations of the term ''interstitial implementation'' [5] in Docket No. 97–08 and Docket No. 96–14, *Compania Sud Americana de Vapores, S.A.* v. *Inter-American Freight Conference,* 28 S.R.R. 137 (1998) (''CSAV''), have made that term very unclear. PONL asserts that its attempts to use the term ''interstitial'' in agreements have met with objection from the Commission's Bureau of Trade Analysis Office of Agreements. PONL at 5.

PONL asserts that if the Commission considers a conference's implementation of its tariff rate agreement authority an ''interstitial implementation,'' as indicated in the example in 535.407(c), then it should similarly consider implementation of authority to agree on a joint approach to joining a conference to be a routine administrative matter and an interstitial implementation of such authority. *Id.* PONL further asserts that the implementation of rates, terms, and conditions by an agreement with space charter authority should also be considered interstitial. *Id.* PONL suggests that an agreement that, for example, includes the authority for its members to enter into space charters, as well as other authorities, can enter into a space charter without any additional filings, as contemplated by 46 CFR 535.407(b). PONL asserts that little purpose would be served by requiring the public filing of agreements that involve interstitial implementation of express enabling authority contained in a filed and effective agreement. *Id.* at 8.

(b) The Commission posed the question, ''if parties were required to file every arrangement or understanding that came within the scope of section 4, would they be subject to commercial harm or burden?'' (NOI Question 2). Section 5(a) of the Shipping Act requires the filing of a ''true copy of every agreement.'' 46 U.S.C. app. § 1704(a). The Commission's regulations currently require that the filed agreement be true, complete, detailed and specific. 46 CFR 535.103(g), 535.401(a)(1), 535.407(a). PONL, CENSA and OCWGA all assert that the Commission's requirement that the ''complete'' agreement be filed cannot be interpreted literally. PONL asserts that a literal reading would create an internal conflict between the Shipping Act's 45-day waiting period imposed on agreements before they become effective, and the fact that tariff rate reductions may become effective immediately. PONL at 7. Similarly, OCWGA believes that the 45-day waiting provision indicates that Congress did not intend to require every detail of coordinated carrier activity to be filed. OCWGA maintains that the Shipping Act's use of the phrase ''every agreement'' should not be construed literally or else it would be impossible to file every detail of joint or group arrangements. OCWGA at 8, 19. OCWGA asserts that imposing such a requirement on service contracting agreements would subject them to an enormous and repetitive filing burden (because the service contracts themselves are filed) and, in the case of contracts with confidentiality clauses, might violate the terms of the service contract itself and the Shipping Act. *Id.* at 21. OCWGA believes that at some level of specificity, ''agreements'' cease to have any relevance to the Commission's statutory duties. *Id.*

CENSA contends that the term ''complete'' is of little guidance to the industry. CENSA at 1. PONL objects to the current regulation's requirement that a ''true and complete'' agreement be filed, stating that the statutory requirement is only that a ''true copy'' of the agreement be filed. PONL at 2 (comparing section 5(a) of the Shipping Act with 46 CFR 535.407(a)). It notes that the Commission's jurisdiction may not cover the ''complete'' agreement if, for example, it involves trade between foreign ports; and states that based on the Commission's regulations, ''complete'' does not include ''routine operational or administrative matters.'' *Id.* at 2–3 (citing 46 CFR 535.407(c)).

PONL asserts that certain agreements, for example, cross space charters, vessel sharing, and alliance agreements, that are on their face subject to additional understandings have been accepted for filing and allowed to go into effect by the Commission. *Id.* at 3. It further asserts that, therefore, the Commission's jurisdictional limitations, its current regulations, and its past practice of not objecting to the filing of agreements using permissive authority phrases indicate that the term ''complete'' does not literally mean complete. *Id.* at 4.

NITL urges that only those carrier agreements which are likely to have a significant impact on competition in a given market continue to require ''complete'' filing with the Commission. NITL at 4. NITL asserts that the Commission and the public need to have the ability to read and understand the scope and terms of agreements that are likely to result in a reduction in competition or otherwise artificially influence the supply of and demand for ocean transportation service. *Id.* at 3–4. NITL opines that detailed and complete information filed by the carrier parties to such agreements is required. However, NITL cautions that the requirement for the filing of a complete agreement should not be interpreted so as to restrict useful operational flexibility, particularly in non-conference type settings such as space/slot charter and sailing agreements. *Id.*

(c) The Commission asked whether it should adopt different standards for agreement content for different types of agreements. (NOI Question 3). OCWGA points out that the Commission already distinguishes between conference and other types of agreements in 46 CFR 535.404, but warns that developing further general standards for different types of agreements may create more confusion. OCWGA at 22. With respect to alliances and space/vessel sharing agreements, which do not easily fit into fixed categories however, OCWGA suggests that the Commission clarify the filing requirements through guidance stated in functional terms, as opposed to

[4] OCWGA's position on operational agreements generally is discussed below.

[5] The terms ''interstitial implementation'' and ''routine operational or administrative matters'' are found in 46 CFR 535.407(c), which provides that:

[f]urther specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules and regulations.

the rules' current use of classification terms. *Id.* at 22. OCWGA suggests as an example, that the Commission's rules direct that each ''agreement that provides for the sharing of vessels or space on vessels shall state the maximum number and capacity of vessels that may be so employed.'' *Id.*

NITL believes that the level of detail for filings related to agreements that would not significantly alter competitive conditions in a given market should be relaxed. NITL at 5. CENSA simply urges that the Commission avoid unnecessary and burdensome requirements and provide carriers with a reasonable amount of operational flexibility. CENSA at 2.

(d) The Commission asked whether commenters could identify types of agreements currently filed which would be appropriate for exemption from filing under section 16 of the Shipping Act.[6] (NOI Question 4). OCWGA, PONL and CENSA maintain that agreements with little or no competitive effect, agreements concerning operations, and slot charter agreements should all be exempt from the filing requirements of the Shipping Act. OCWGA asserts that agreements which typically have little or no competitive effect (such as those that do not authorize discussion or agreement on rates, vessel operating costs, shared vessel usage, service contracts, or capacity) should be completely exempt from the filing requirements of the Shipping Act. OCWGA at 23. OCWGA contends that this exemption would serve the dual purposes of defining the applicability of the term ''cooperative working arrangement'' found in section 4(a)(5) of the Shipping Act[7] and providing certainty regarding the filing requirements. *Id.* It urges the Commission to retain the other existing exemptions. *Id.*

NITL suggests that the Commission consider further exemptions for other types of agreements that do not significantly affect competition. NITL at 6. NITL approves of the existing exemption from filing for interstitial implementation of routine operational or administrative matters found in section 535.407(c). Where full exemption for a certain type of agreement is not warranted, NITL believes that the Commission should consider a relaxation of other procedural requirements, such as the waiting period requirement. *Id.*

OCWGA observes that in late 1996 and early 1997, Commission staff began informally requiring space charter, slot charter, sailing and other forms of cooperative agreements among carriers (collectively referred to as ''slot charter agreements'') to contain a greater degree of detail than had been required at any time since 1984. OCWGA at 4–5. OCWGA contends that there is now considerable uncertainty stemming from recent Commission proceedings as to what must be set forth in such agreements. *Id.*

PONL suggests that the Commission adopt an exemption for simple space charter agreements where one carrier charters space to another, stating that this enhances, not reduces competition. PONL at 9. OCWGA opines that most slot charter agreements ''resemble a joint venture or partnership in which on-going and extensive operational coordination is necessary to provide an efficient, competitive, and coordinated service.'' OCWGA at 5–6. OCWGA urges that the Commission resolve this uncertainty in the proposed rules bearing in mind such things as the purpose of agreement filing, what information is practical to include, the procedural requirements of the Shipping Act, and flexibility for the Commission and carriers to process amendments to agreements. *Id.* at 6.

OCWGA contends that the Shipping Act's replacement of the ''public interest'' standard (which required an affirmative showing of public benefit before an agreement could be approved) with the presumption that agreements are permissible, changed the Commission's need for certain information. *Id.* at 7. OCWGA states that, therefore, the information necessary to analyze whether an agreement is likely to result in an unreasonable increase in rates or unreasonable reduction in services is identifiable and limited to the nature of the coordinated activities, the identity and number of parties involved, and the trades in which the agreement will operate. *Id.* Beyond these basic points of information, OCWGA contends, there is a dispute over what should be filed. *Id.* at 7–8.

OCWGA further contends that operational arrangements arising from slot charter agreements that detail how the parties put into effect the authority set forth in the filed agreement should be exempted from filing, arguing the documents are ''non-standard'' and not ''created to fulfill a regulatory purpose.'' *Id.* at 17. OCWGA also opines that filing operational arrangements arising from slot charter agreements would be unworkable, because of their excessive specificity, and impractical, because including such details would require the frequent filing of amendments. *Id.*

(e) The Commission asked whether the rates charged by one carrier to another for use of space and/or vessels should be exempt from filing or withheld from public disclosure. (NOI Question 5). PONL and OCWGA contend that for the last 15 years there has been a *de facto* exemption to the Shipping Act's filing requirements for slot charter costs. PONL at 9; OCWGA at 24. PONL states that requiring the filing and subsequent public disclosure of that information would harm carriers because other carriers would insist on getting the same rates, and competing carriers and shippers could use the price information in any further pricing and rate negotiation. PONL at 9. PONL believes that there would be no regulatory benefit to requiring that such rates be made public. *Id.* Similarly, OCWGA believes that these rates should be confidential and that the public has no legitimate interest in them. OCWGA at 24. OCWGA also maintains that such disclosure would be anticompetitive because it would ''circumscribe the ability of carriers to negotiate different rates with different carriers.'' *Id.*

CENSA also asserts that the ''industry needs some degree of confidentiality with respect to the commercial terms of their operational agreements.'' CENSA at 2. It claims that requiring carriers to disclose the amounts they pay for vessel space ''could prove to be anticompetitive and contrary to the objectives of OSRA.'' *Id.*

(f) The Commission requested comments on whether public disclosure of filed agreements is useful to shippers, intermediaries, labor, non-party carriers, marine terminal operators or other interested persons. (NOI Question 6). PONL and OCWGA state that beneficial shippers and ocean transportation intermediaries (''OTIs'') have shown little interest in filed agreements. PONL at 10; OCWGA at 24. OCWGA opines that on the rare occasions that shippers or OTIs do express such interest they usually request the information directly from the carrier or from the agreement rather than from the Commission.

[6] Section 16 provides, *inter alia,* that the Commission ''may exempt for the future any class of agreements * * * if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.'' 46 U.S.C. app. § 1715.

[7] Section 4(a)(5) of the Shipping Act reads, ''This Act applies to agreements by or among ocean common carriers to—(5) engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators * * *.'' 46 U.S.C. app. § 1703(a)(5). The Commission's regulations define a ''cooperative working arrangement'' as an agreement which establishes exclusive, preferential, or cooperative working relationships which are subject to the Shipping Act of 1984, but which do not fall precisely within the arrangements of any specifically defined agreement. 46 CFR 535.104(i).

OCWGA at 24. PONL suggests that the Commission answer this question by reviewing its records pertaining to requests for copies of agreements and comments on filed agreements. PONL at 10.

ILA would like certain matters in agreement filings to be made public and for agreements filed with the Commission (and noticed in the **Federal Register**) to document the origins, destinations, and points of entry and departure of cargo accurately and in an easily understandable manner that will not handicap it in administering and enforcing the provisions of its own collective bargaining agreements. ILA at 1. ILA argues that not making such information publicly available would hamper its ability to detect the movements of containers destined for a designated port area but off-loaded at different port. *Id.* at 1–2. ILA states that it requires access to the carriers' electronic systems, and that it is concerned by some carriers' practice of making certain information public but masking it in digitized codes. *Id.* at 2. ILA maintains that it is not seeking to have the Commission require disclosure of competitive rates of carriers, their surrogates or allies. *Id.* Although ILA asserts that its labor contracts apply regardless of whether the filed agreement is classified as a ''rate agreement'' or an ''operational agreement,'' ILA wants the ''ability to anticipate and locate the shipments which its contracts entitle its [l]ongshorepersons to handle and which are subject to charges as defined under those agreements.'' *Id.*

(g) The Commission asked whether it can implement measures to protect commercially sensitive information contained in filed agreements. (NOI Question 7). Some commenters assert that there may be sensitive commercial information in filed agreements that the parties may legitimately need to protect. OCWGA notes that while section 6(a) requires publication in the **Federal Register**, section 6(j) appears to specify a different treatment for section 5 agreements than for ''documentary material'' submitted under sections 5 and 6. OCWGA at 24–25. It maintains that this may place some procedural restrictions on how the Commission implements its authority to protect such information from disclosure and urges that, ''[s]pecifically, in order for information to be unambiguously protected from disclosure, such information must not be required to be included in the agreement required to be filed under section 5.'' *Id.* PONL opines that the Commission has already implemented measures to protect commercially sensitive information because it does not require conferences to publicly file minutes and notes that the Commission's exemption authority can shield such information. PONL at 10.

NITL believes that the Commission should not shield from disclosure information that would enable shippers to gain a thorough and complete understanding of the scope of a filed agreement likely to have a substantial impact on competition, such as conference or discussion agreements. NITL at 7. However, NITL asserts that information of a purely operational nature, and not relating to competition may be appropriately protected from public disclosure and should be determined on a case-by-case basis. *Id.*

ILA believes that the Commission should require that agreements filed with it contain provisions which, while neither exposing rates nor other truly confidential data, would allow labor interests to track the movements of containerized cargoes subject to collective bargaining agreements. ILA at 2.

(h) The Commission requested commenters to provide information on how competing concerns of completeness, burden and confidentiality are resolved in the filing requirements of other regulatory agencies. (NOI Question 8). OCWGA notes that no other agency operates under a statutory provision identical to section 6(j) of the Shipping Act but cites some comparable provisions used by other agencies. OCWGA at 26. These include provisions by the Department of Transportation (''DOT'') for air carrier agreements, the Surface Transportation Board (''STB'') for agreements among railroads, the Federal Trade Commission (''FTC'') for general pre-merger notifications and the Securities and Exchange Commission (''SEC'') for registration statements for securities. OCWGA notes that under 49 U.S.C. 41308 and 49 U.S.C. 41309(a) the Secretary of Transportation has the authority to exempt from antitrust laws cooperative air carrier agreements filed with it and that to obtain this exemption, an air carrier must file ''a true copy * * * and complete memorandum of an agreement.'' *Id.* OCWGA further notes that DOT has implemented regulations to protect the confidentiality of this information (14 CFR 302.39(b)) which provide a procedure by which a carrier may mark as confidential portions of an agreement and may move to withhold such portion from public disclosure.[8] *Id.*

OCWGA also cites to 49 U.S.C. 10502 which grants the STB authority to exempt rail carriers from the antitrust laws and directs it to approve and monitor those agreements pursuant to 49 U.S.C. 10704 and 10705. OCWGA urges that 49 CFR 1313.7 and 1313.16 be used as examples for the confidential treatment of agreement information. *Id.* Finally, OCWGA notes that the FTC receives pre-merger notification filings for companies under its jurisdiction and that 15 U.S.C. 18a(h) exempts from disclosure any information filed pursuant to the pre-merger notification requirement, unless relevant to any administrative or judicial action or proceeding. *Id.*

Similarly, PONL notes that the Antitrust Division of the Department of Justice (''DOJ'') receives pre-merger filings as well as requests for Business Review Letters and that DOJ may ask filers for more information and prevent disclosure of confidential information. PONL at 10.

PONL and OCWGA observe that the SEC receives securities registrations as authorized by its controlling statute which enumerates all information required to be submitted in the registration, but that SEC regulations allow filers to request confidential treatment by separating the confidential portion from the regulation statement and filing it separately. 17 CFR 230.406(2). PONL at 10; OCGWA at 26.

B. The Proposed Rule

In accommodating the concerns expressed in the comments, the Commission must reconcile what may appear to be conflicting missions of the agency—on the one hand, to exercise the meaningful oversight of agreements to check any abuses arising from antitrust immunity required by section 6 of the Shipping Act, and on the other, to minimize regulatory intrusions and burdens, as required by section 1. Therefore, the Commission proposes the following regulations, which are intended to permit it to exercise effective oversight consistent with the Commission's statutory responsibilities without imposing undue regulatory burdens.

[8] The rule reads, in pertinent part:

Any person who objects to the public disclosure of any information in any paper filed in any proceeding * * * shall segregate, or request the segregation of, such information into a separate paper and shall file it * * * separately in a sealed envelope, bearing the caption of the enclosed paper, and the notation ''Classified or Confidential Treatment Requested Under Sec. 302.39.''

14 CFR 302.39(b).

1. Proposed Changes To Address Concerns for Certainty

Section 5(a) of the Shipping Act requires that a true copy of every agreement entered into with respect to an activity described in section 4(a) or (b) of this Act shall be filed with the Commission, except agreements related to transportation to be performed within or between foreign countries and agreements among common carriers to establish, operate, or maintain a marine terminal in the United States. 46 U.S.C. app. § 1704.

Many commenters assert that it is simply not reasonable to require the filing of a true copy of every agreement because there are some details which cannot reasonably be expected to be specifically reflected, and also for the following reasons:

- Doing so would subject sensitive commercial information to disclosure, due to the notice requirement of section 6(a) of the Shipping Act;
- The parties need more flexibility than the 45-day waiting period would provide;
- There are details which have not yet been agreed upon when the agreement is filed;
- Some details have no anticompetitive potential; and/or
- The details are not reflected in standardized documents, so drafting them would be burdensome for the filer and reviewing them would be burdensome for the Commission.

Therefore, they argue that the text of the Shipping Act cannot be interpreted to literally mean a copy of the commercial agreement.

The present text of the Commission's policy, stated at section 535.103(g), was originally added in rulemakings in 1984.[9] It represented a codification of the Commission's then-existing policy. Early on in its administration of the Shipping Act, the Commission had received agreements with unacceptably vague, incomplete or indefinite statements of authority. *See*, Docket Nos. 84–26 and 84–32 (final rule). Therefore, the Commission created this rule to ensure that ''a complete agreement is filed in sufficient detail to conduct a meaningful review.'' *Id.*

Such review, based on the requirements of section 6 of the Shipping Act, includes: (1) A preliminary review of the section 5 requirements; (2) a review for section 6(g) compliance; and (3) a general review of the agreement to ensure that it does not facially contravene other sections of the Shipping Act (*e.g.*, acts prohibited by section 10). Section 535.103(g) reflects the Commission's need for specificity in order that it may: (1) Evaluate the probable impact of an agreement; (2) conduct ongoing monitoring of agreement operations (especially for section 10(a)(2) and (3) prohibitions); and (3) avoid ambiguities concerning antitrust immunity granted to agreements.[10]

The policy presently stated at section 535.103(g) is carried out through section 535.407(a)[11] which requires an agreement to ''reflect the full and complete present understanding of the parties as to its essential terms.'' Docket No. 84–32, *Rules Governing Agreements by Ocean Common Carriers and Other Persons*, 49 FR 36371 (Interim Rule and Request for Comments) (''1984 Interim Agreement Rule''). The 1984 Interim Agreement Rule also described the reach of section 535.407(a) as follows:

The rule does not contemplate that every activity be enumerated in detail. However, general grants of authority which do not specify the activities under the agreement are not favored. For example, an agreement which, as its authority, merely recited the language of section 4(a)(1)–(7) of the Act would require some further clarification. Otherwise, review of such an agreement would be virtually meaningless. Such general statements of authority, even where clarified by subsequent refinement, should be avoided. *Id.* at 36372.

Some commenters claim that the industry does not have a clear understanding of the significance of the term ''true and complete,'' and argue that the phrase cannot be interpreted literally if it is read concurrently with the exemption allowing routine operational or administrative matters interstitial to a filed agreement without further filing. Some commenters also point out that matters which may be part of the commercial arrangement but which are outside the scope of the Commission's jurisdiction necessarily must not be included in the filed agreement.

The Commission's rules (as well as past Commission case law) are not more extensive than its jurisdiction: section 535.103(g) refers to an ''agreement filed under the Act'' and section 535.407(a) refers to ''any agreement required to be filed by the Act.'' These jurisdictional limitations, also discussed in *Transpacific Westbound Rate Agreement*, 951 F.2d 950 (9th Cir. 1991) (''TWRA''), provide boundaries to the information required in a filed agreement. Nevertheless, these concerns appear to be addressed to the limits of the Commission's subject matter jurisdiction over agreements, as opposed to the completeness with which matters within that jurisdiction must be reflected.

The Commission has consistently interpreted 46 U.S.C. app. § 1704(a) to require filed agreements to be complete, specific, detailed reflections of the present understanding of the parties. 46 CFR 535.103(g) and 535.407(a). The commenters point to no legislative history to demonstrate that the subject matter jurisdictional limitations of the Shipping Act indicate that its drafters did not intend the phrase ''true copy'' to be interpreted literally. A general definition of the term indicates ''[a] true copy does not mean an absolute exact copy but means that the copy shall be so true that anybody can understand it.'' Black's Law Dictionary (1995 ed.).[12] For oral agreements, the Shipping Act requires that ''a complete memorandum specifying in detail the substance of the agreement'' be filed. 46 U.S.C. app. § 1704(a). The Commission finds no indication that Congress intended the Commission to subject oral agreements to greater requirements than those which are written. Therefore, we disagree with the commenters' assertion that the text of the Shipping Act cannot be interpreted literally.

Nevertheless, we recognize that there may be some legitimate confusion as to what the Commission expects a filed agreement to contain. This confusion may have arisen from the Commission's historical usage of suggested language for form and manner, especially for filed agreements' ''authority'' clauses. We believe confusion may also arise when the policy reflected in sections 535.103(g) and 535.407(a) is read in tandem with the allowances of sections 535.407(b) and (c) for further agreements on certain routine matters. However, we find no precedent to support the proposition that the term ''true and complete'' means only those

[9] 46 CFR 535.103(g) states:

An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

[10] In Docket Nos. 84–26 and 84–32 (final rule), the Commission stated, ''agreements should be sufficiently precise and definite to determine whether a particular activity is within the scope of the antitrust immunity conferred upon them by section 7 of the [Shipping] Act.'' 49 FR at 45332.

[11] Section 535.407(a) provides:

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

[12] *See also*, *Associated-Banning Co.* v. *Matson Nav. Co.*, 5 F.M.B. 336, 342 (1957), interpreting the ''true and complete'' standard under the 1916 Act(''when parties file an agreement for approval they must include all understandings and arrangements of the character covered by section 15 which exist between them at the time.'')

details which the Commission had positively required to be filed in its prior form and manner regulations.

For the sake of clarity, the Commission now proposes to remove current sections 535.103(g) and 535.407(a) and replace them with a newly created section 535.402 to serve as one concise and clearly controlling rule. The new section is intended to reassert the Commission's original interpretation requiring the filing of the commercial document as agreed to by the parties, in contrast to the filing of a document drafted solely to meet U.S. regulatory requirements.

2. Proposed Changes to Address Concerns for Future Commercial Flexibility

a. Requirement to File Every Agreement (46 CFR 535.402)

In promulgating what is now section 535.407(a), the Commission asserted that the statute and the new rule required that an agreement ''reflect the * * * present understanding of the parties as to its essential terms.''[13] 1984 Interim Agreements Rule at 36372. Thus, the Shipping Act does not require or allow for the filing of proposed, draft or preliminary agreements. In addition, the Commission's rules positively prohibit clauses in agreements which contemplate a further agreement, sometimes called ''agreements to agree.'' 46 CFR 535.407(b).[14] Allowing vague authority clauses to be filed in agreements appears to conflict somewhat with the Commission's policy requiring that the agreement ''set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations' (46 CFR 535.103(g)). However, forward-looking clauses have been permitted when there is an indication that any further contemplated agreements will not be carried out unless and until filed and effective under the Shipping Act. 46 CFR 407(b).

In order to address parties' needs to maintain future flexibility in agreements describing their collaborative arrangements, the Commission generally has permitted the filing of agreements containing statements of authority which must be amended when the parties have reached the details of their agreement. The Commission has also crafted an exemption for certain day-to-day details, thereby removing the filing requirement for ''interstitial implementation of routine operational and administrative matters.'' 46 CFR 535.407(c). However, the comments appear to suggest that this approach has proved unsatisfactory.

In suggesting that the statute be read broadly enough to accommodate the future needs of parties, the commenters use a term that appears neither in the Shipping Act nor in the Commission's regulations: ''permissive authority.'' This term apparently refers to: (1) Authority that may never actually be exercised (*e.g.*, ''the parties may discuss rates'' or ''the parties are authorized to discuss rates''); (2) broad statements of authority (*e.g.*, ''the parties are authorized to exchange slots on such terms as they may from time to time agree''); or (3) an agreement to act ''within a range,'' for example, of capacity or ports served. Such forward-looking statements frequently appear in filed agreements. Indeed, the Commission itself may have encouraged their use by referring in its rules to agreement ''authority,'' a term that itself implies future implementing agreements.

Moreover, we recognize that parties may not wish to file details of their collaboration for at least two reasons. For example, this may be because: (1) agreement on the details has not yet been reached and the parties are still in negotiation, but wish to file and thereby commence the 45-day waiting period; or (2) the parties have reached a final and specific agreement, but anticipate changes to those understandings and wish to build flexibility into the document they file. No commenter has cited nor has the Commission found any legislative history of the Shipping Act which would support the suggestion that Congress intended that parties may file a ''preliminary draft'' of an agreement, which would commence the running of the 45-day review period. Therefore, the proposed regulations clarify that the Commission will not accept any such ''preliminary draft'' agreements.

This determination is reflected in the revised section 535.402, which retains the Commission's core interpretation of the Shipping Act's requirement that a ''true copy of every agreement'' be filed. The proposed rule also clarifies this by rephrasing it as a positive requirement in section 535.402 rather than as a policy statement.

b. Modifications to Effective Agreements (46 CFR 535.407)

While the Commission interprets the Shipping Act to generally require that parties file their final, detailed agreement, rather than a general agreement to collaborate, the Commission has also historically recognized certain exceptions to that general standard. The first of these exceptions is explicit in the Shipping Act: section 4 necessarily contemplates certain agreements which cannot contain implementing details because they are by their very nature agreements to discuss future collaboration. These are the rate agreements authorized by section 4(a)(1), 4(a)(7) and 4(b)(1). 46 U.S.C. app. §§ 1703(a)(1), (a)(7), (b)(1).

We believe that the most logical interpretation of section 4 is that certain matters may not be discussed in detail unless and until the parties have a filed and effective agreement. Therefore, the parties cannot be required to file a detailed, complete or specific agreement for those types of agreements. We believe this view is supported by the Commission's historical treatment of conference and other rate-setting agreements in its rulemakings.

The use of authority that might (or might not) be exercised pursuant to a filed agreement but would not require further filings, was first recognized by the Commission in ''suggested agreement language'' published in Docket No. 67–55 (General Order 24), *Filing of Agreements Between Common Carriers of Freight by Water in the Foreign Commerce of the United States,* 33 FR 11655 (1968). Those rules were intended to ''establish guidelines for the filing, format and content of agreements'' to ''encourage uniformity of agreements'' and expedite their review by the Commission. 46 CFR 522.1 (1968). To that end, the regulations suggested language to be used by conference and rate agreements.[15] Although the 1968 ''guidelines'' for agreements included some suggested language for agreements other than conference and rate agreements, the suggested terms did not include ''authority'' clauses.[16]

[13] *See also*, *Isbrandtsen Co.* v. *States Marine*, 6 F.M.B. 422, 434 (1961)(''There is no filing requirement until there is an agreement or a meeting of minds * * * regarding activities described in Sec. 15.''). The issue in this case concerned unacceptably vague authority statements in agreements that were being filed at the time.

[14] This prohibition might appear to be inconsistent with the Shipping Act's specific provision for agreements ''to discuss *and agree* on any matter related to service contracts.'' 46 U.S.C. app. § 1703(a)(7). However, we believe the statute provides consistent treatment by providing that any resulting agreement with respect to service contracts be reflected in confidentially filed ''voluntary guidelines.'' 46 U.S.C. app. § 1704(c)(3).

[15] For conference agreements, the Commission's rules included the following suggested language:

[16] Pooling, joint service, sailing, transshipment and cooperative working agreements did not include the ''authority'' provisions which were suggested for conference and rate agreements. 46 CFR 521.6(c)–(g)(1970).

Authority Under This Agreement

On their face, therefore, such agreements were, in fact, ''agreements to agree.'' The two sets of guidelines for agreement language (both intended for agreements with rate-making activity) were the only such Commission-provided examples for agreements containing such open-ended authority. It appears that over the years, the ''suggested authority'' language has been adopted for use in non-rate-making agreements (also called ''operational agreements'') as well.

The Commission subsequently recognized and addressed the need for some open-ended authority in agreements through current section 535.407(b). This provision permits ''agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement'' to be included in filed agreements only if ''the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.'' The 1984 Interim Agreements Rule's supplementary information described the Commission's reasons for requiring that provisions in agreements that contemplate further agreements not become operative until filed and effective under the Shipping Act:

> [a] problem of open-ended authority arises where an agreement allows for future substantive modification of an agreement without specifically requiring filing under section 5. Such general authority to make future modifications without filing with the Commission would subvert the Commission's ability to review and monitor an agreement. 49 FR 36372.

The Commission's 1984 Agreements Rules offered a further degree of commercial flexibility to agreement parties through another provision: the exception from filing for the ''interstitial implementation of routine operational and administrative matters'' under section 535.407(c).[17] The Commission explained in the 1984 Interim Agreements Rule that the provision was originally intended to ''allow[] flexibility to make changes for tariff matters or routine operational and administrative matters having no anticompetitive effect.'' 49 FR 36372. The Commission asserted that this section ''provide[s] that activities which may reasonably be viewed as interstitial to a stated agreement authority need not be expressly stated.'' *Id.* The Interim Rule gave only the following two examples: (1) authority to establish ''overland common point'' rates would be interstitial to general ratemaking authority, but establishing a tariffed contract rate system would not; and (2) changes in the terms and conditions of a charter party (contract) underlying a space charter agreement would generally be interstitial, but changes in the number of vessels (or range of number of vessels) and definition of vessel capacity (or range of capacities) dedicated in a joint service or space charter agreement would not. *Id.*[18]

Until recently, conferences (and other rate) agreements were those with which the Commission had the most concern. The Commission's current rules on agreements were adopted at a time when conferences were the principal method by which ocean common carriers exercised their antitrust immunity to achieve price discipline and rate stabilization. Now, however, there has been a precipitous decline in the number and role of traditional conferences, and their influence has been supplanted by discussion agreements on pricing. This development, concurrent with the appearance of global strategic alliances, has resulted in agreements which may be more effective than conferences ever were at stabilizing rates by controlling capacity.

As a result of the above-discussed history, the commenters assert that ''permissive authority'' has come to be invoked for matters much broader than simply the implementation of rate-related authority, *i.e.* tariffs and service contracts. In addition, the exemption from filing for ''interstitial implementation of routine operational and administrative matters'' under section 535.407(c) has been a prime source of confusion. Some commenters assert that ''interstitial implementation of routine operational or administrative matters'' could be indicated by the use of phrases such as, ''the parties agree to ___ according to terms, rates and conditions as the parties may from time to time agree.'' Thus, with respect to ''permissive authority,'' responses to the NOI generally proffer two types of future actions taken pursuant to an agreement: (1) those allowed by grants of authority which might (or might not) be exercised, but which do not anticipate subsequent filing if exercised; and (2) those allowed without further filing due to their categorization as ''interstitial implementation of routine operational or administrative matters.'' There also appears to be another type of ''permissive authority'': that which outlines a range (for example of capacity, ports, *etc.*) in which the agreement may operate. The following discussion addresses each of these interpretations.

In promulgating the exception for ''interstitial implementation of routine operational and administrative matters,'' the Commission explained that section 535.407(c) would be interpreted on an *ad hoc* basis. *Id.* The comments received in the NOI demonstrate that this ad hoc approach may have created some confusion. Recently, the Commission found a violation of section 10(a)(2) of the Shipping Act[19] where a conference failed to file its understanding as to the winding up of its affairs. The respondent conference argued that such a matter was ''routine operational or administrative'' and therefore exempt from the filing requirements. *Compania*

Subject to applicable provisions of law, the Conference *is authorized* to:

1. *Agree upon* and establish rates and charges for the carriage of cargo and rules and regulations governing the application thereof and defining the service to be rendered therefor;

2. Declare rates for specified commodities to be ''open'' with or without agreed minimum, and thereafter declare the rates for such commodities to be ''closed'';

3. *Agree upon* and establish tariffs, tariff amendments, and supplements;

4. Make rules and regulations for the handling and carriage of cargo;

5. *Provide for* use of a contract/noncontract rate system for filing with the Commission for approval pursuant to section 14b of the Shipping Act, 1916;

6. *Agree on* amounts of brokerage and/or compensation to forwarders and the conditions for the payment thereof as permitted by applicable law;

7. Keep such records and statistics as may be required by the parties or deemed helpful to their interests.

46 CFR 522.6(a)(1968)(emphasis added).

Similar ''authority'' provisions were also suggested for non-conference rate agreements. 46 CFR 522.6(b)(196

[17] Section 535.407(c) reads:

''Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.''

[18] The Commission also gave the following guidance:

''[A]n agreement which merely stated that the parties are authorized ''to operate a joint service,'' without indicating the number, or range of vessels, committed to the service would not be deemed to reflect the full understanding of the parties. Such a deficiency would defeat any meaningful Commission review. Similarly, a statement in a joint service agreement which authorized the parties to ''acquire substitute or additional tonnage'' would result in a situation where the Commission would be unable to evaluate the economic impact of the agreement on the trade under section 6(g). Finally, a filed agreement which referred to or was governed by another agreement not filed with the Commission would be incomplete.''

Id.

[19] Section 10(a)(2) reads, ''No person may . . . operate under an agreement required to be filed under section 5 of this Act that has not become effective under section 6, or that has been rejected, disapproved or canceled.''

Sud Americana De Vapores S.A. v. *Inter-American Freight Conference* (''CSAV''), 28 S.R.R. 141, 141–142 (1998). The Commission found that the winding up was not ''routine operational,'' but extraordinary and, therefore, not falling within the exemption of section 535.407(c).

In *CSAV,* the Commission provided further guidance as to matters it would consider ''routine operational or administrative,'' namely, the establishment of individual tariff rates;[20] the scheduling of individual meetings; the securing of office space or supplies; and the circulation of particular reports or memoranda to members. These are matters which require day-to-day operational flexibility.*CSAV,* 28 S.R.R. at 142.

As discussed above, the Commission's general rule has been that all agreements must be true, complete, detailed and specific and represent the present understanding of the parties. With the exception of agreement clauses which anticipate a further agreement to be filed that are permitted under section 535.407(b), only two types of ''further agreements'' may be acted upon without further filing: agreements which fall under section 535.407(c), or which are otherwise exempt from filing under an explicit exemption found in subpart C of this part.

OCWGA suggests that the Commission recognize four additional types of ''further agreements'' as ''interstitial implementation of routine operational or administrative matters'': (1) Changes to the number of vessels/slots (or changes within a quantified range); (2) changes in port calls; (3) decisions on operation within another filed agreement; and (4) ''operational'' agreements generally. OCWGA at 14–17. While we rejected the first three suggestions in our previous rulemaking on ''routine operational or administrative matters,'' we now reconsider these suggestions in light of the comments and recent changes in the industry.

It has been the Commission's approach since the passage of the Shipping Act to determine on an ad hoc basis what it considers ''routine operational and administrative matters'' to be implemented without further filing. However, we believe the comments indicate the public's desire that the better approach is to list specifically operational matters that are exempted and revise the current regulations accordingly.

OCWGA's suggestion that the Commission enumerate what must be contained (a positive list), rather than what need not be contained (a negative list or exemptions) appears impractical. The Commission chooses to follow the latter approach. While it is true that the Commission may anticipate some developments in the industry, we do not have the ability to predict them all, nor should we seek to stifle innovation or dictate what must be contemplated in an agreement. We can, however, determine what activities, as they are presently employed by agreements, are most likely not to raise concerns about competition.

The Commission, therefore, proposes to remove the current terms ''interstitial implementation'' and ''routine operational and administrative'' altogether from its rules, and add a list of specific exemptions for certain types of operations. Under section 16 of the Shipping Act, the Commission has the discretion to grant exemptions it finds will neither cause substantial reduction in competition nor be detrimental to commerce. 46 U.S.C. app. § 1715. The Commission has determined to propose several new specific exemptions to replace the current exemptions for ''routine operational and administrative matters'' and other operational matters which it finds have met the criteria for exemptions under section 16.

The initial proposals for a list begin with the activities already determined by the Commission to be ''routine operational and administrative matters,'' such as those enumerated in *CSAV.* Additionally, the Commission proposes to include the following matters previously treated as ''interstitial implementation of routine operational and administrative matters'' not requiring further filing:

- charter parties arising out of filed agreements (such as those pursuant to a space, slot or vessel sharing agreement);
- specific monetary amounts for compensation for space; booking and documentation procedures;
- insurance;
- procedures for resolution of disputes relating to loss and/or damage to cargo;
- maintenance of books and records;
- force majeure clauses;
- common terminal and stevedoring arrangements;
- procedures for allocating space and forecasting demand; and
- schedule adjustments.[21]

With regard to the suggestion that changes to the number of vessels or slots to be operated (*i.e.*, capacity) be implemented without amendment to an agreement, we find that it may be acceptable to change these terms without further filing if the originally-filed agreement contains an adequately described range (*i.e.*, maximum and minimum) of slots or vessels to be used under the agreement and if the changes fall within that range. This approach would allow filers to adjust their agreement from time to time without the need to file, and allow the Commission to make an assessment of the commercial impact of the agreement for both ends of the range.

OCWGA also urges the Commission to exempt slot charter costs from a filed slot charter agreement. As the comments point out, it has been the practice of the Commission to allow slot charter costs to be agreed upon from time to time (without requiring further filings or amendments), and not specifically disclosed in the filed agreement, under an interpretation of 535.407(b) and (c). The phrases, ''as may be agreed upon from time to time'' or ''whatever is reasonable based on actual costs'' have been used in filed agreements to this effect. We have therefore proposed to treat slot charter rates as matters specifically exempted in proposed section 535.408.

The Commission is also proposing to codify its de facto exemption from the filing requirements for vessel charter parties in a new section 535.312. This codification would eliminate uncertainty the commenters now appear to have regarding which agreements must be filed. These contracts, which are generally for the control of single vessels, do not appear to have potential to result in a substantial reduction in competition or be detrimental to commerce, and are therefore within the Commission's section 16 authority for exemption from the requirements of the Shipping Act and its regulations.

The commenters are also concerned about operational flexibility for changes to port calls which typically are commercial decisions that must be made quickly. It appears that most agreements are filed reciting only a general ''geographic scope'' within which they will operate. While it

[20] The establishment of individual tariff rates are specifically enumerated as exempt in the text of the rule. 46 CFR 535.407(c).

[21] We recognize that most if not all of these commercially essential matters are likely determined before an agreement can be implemented and are unlikely to require frequent changes in the course of carrying out the agreement. We are skeptical that these need the sort of day-to-day flexibility the current exemption contemplates. Nevertheless, as a practical matter, we also recognize that these details of agreement implementation may be the most commercially sensitive and their absence appears to be unlikely to impair the Commission's ability to assess the relationship among the parties.

remains a required term in the Commission's rules,[22] geographic scope may be put forth in terms of ports or port ranges. This requirement has in the past provided adequate detail for Commission review purposes, while allowing changes in specific port calls or rotations to be made without filing a modification.[23] Therefore, OCWGA's concern that port calls cannot presently be changed on an emergency or ''as-needed'' basis without filing a modification of the agreement (entailing a 45-day waiting period) appears to be unfounded. Because the Commission's regulations currently provide that an agreement's scope may be defined in terms of port ranges, such a situation would only arise if the agreement were so specifically drafted as to contain each individual port. We agree that if within a port range, any changes would generally be acceptable with no need for further filing. We note OCWGA's assertion that the public generally is apprised of changes to port calls by the carriers themselves. While the Commission is sensitive to ILA's concern that allowing an agreement's specific port calls to be changed on an ad hoc basis may hamper its ability to anticipate where the cargo which its membership is entitled to handle will arrive or depart,[24] we believe that the current approach, reflected explicitly in the proposed exemption, is an adequate accommodation to the legitimate commercial needs of parties to agreements.

Third, OCWGA suggests that the Commission allow ''permissive authority'' to ensure flexibility as to how agreement parties would operate vis-a-vis another filed agreement. This appears to run afoul of NITL's concern that the public will not have adequate notice of how an agreement will operate. Further, PONL's assertion that any implementation of such an agreement will be reflected in an agreement filing, does not take into consideration either an agreement that the parties participate only to a limited extent or in a particular concerted manner in another agreement. The Commission's ability to assess an agreement's potential impact on competition would be severely impaired if the relationship between facially ''non-restrictive'' agreements and other agreements which contain market or capacity restrictions were not revealed. The Commission therefore declines to adopt such an interpretation.

Fourth, the OCWGA recommends that the Commission allow agreements to implement ''operational'' agreements contemplated in, and pursuant to, authority within filed agreements without further filing. We note that NITL expresses no objections to permissive authority in agreements for ''purely operational matters which are not likely to have impact on competition.'' The proposed language attempts to address these concerns, without creating an exemption so broad as to render other provisions of the regulations meaningless, by an exemption for terms and conditions of space allocation and slot sales, the establishment of space charter rates, and terms and conditions of charter parties, if contemplated by a filed agreement.

While we see nothing contradictory between the Commission's current rules requiring true, complete, and detailed agreements to be filed and those providing exemptions from filing certain agreements, the comments indicate that this position should be clarified. The Commission, therefore, proposes to revise sections 535.407(b) and sections 535.407(c). New section 535.408 provides that an agreement reached pursuant to general authority in a filed agreement is not considered part of the filed agreement unless it provides for one or more of the ''technical or operational matters'' specifically listed or is otherwise exempt from filing under the rules.

c. Exemptions

Subpart C of part 535 of the Commission's current rules contains exemptions (either partial or full) from the filing requirements of the Shipping Act for several types of agreements and modifications to agreements.[25] The commenters suggest further vague categories of agreements the Commission might exempt from filing, such as: (a) Agreements that have little or no competitive effect (but do not suggest what those may be); (b) agreements for routine operations (be exempt or have a reduced waiting period for effectiveness); and (c) slot charter arrangements (be fully exempt from filing). The Commission has the authority and discretion to grant exemptions from all requirements, or to grant exemptions limited to one or more of the specific filing, notice, and waiting requirements of the Shipping Act and its regulations, consistent with the policies of Congress.[26] 46 U.S.C. app. § 1715. The Commission proposes one new exemption and several changes to existing exemptions, as discussed below.

i. Low Market Share Exemption and Definition of Capacity Rationalization (proposed §§ 535.311, 535.104(e))

The Shipping Act's general scheme is to enable filers to obtain immunity from prosecution for commercial collaborations that might otherwise be violative of the antitrust laws, in return for oversight of these collaborations by the Commission. 46 U.S.C. app. § 1706. If not filed with the Commission, in addition to being a violation of the Shipping Act itself, collaborations restraining competition are otherwise subject to the antitrust laws and the scrutiny of the agencies which administer those laws.

The Commission believes that exemption from the Shipping Act's waiting period requirement of certain types of agreements that fall under a market share threshold (or ''safety zone'') may fall within the criteria of section 16 and be a reasonable way to meet the purposes of the Shipping Act by reducing the regulatory burdens on the industry. This approach also appears consistent with current

[22] Section 535.403(b) requires, in pertinent part, that the parties ''[s]tate the ports or port ranges to which the agreement applies and any inland points or areas to which it also applies with respect to the collective activities contemplated and authorized in the agreement.''

[23] The Commission is apprised of parties' past service levels and initial changes resulting from an agreement through the concurrently-filed Information Form. 46 CFR part 535 App. A (Information Form, parts V, VI, and VIII). Thereafter, changes to the port calls which expand the overall geographic scope of the agreement must be indicated by the filing of a modification and in some cases an accompanying Information Form. 46 CFR 535.503(b). The Commission does not require such a filing for changes to port calls which effectively reduce the scope of an agreement.

[24] It appears that ILA may have confused Shipping Act agreements (a term of art in Shipping Act context) with ''agreements'' used as a general term, and that their comments may more appropriately address issues which arise in a ''service contract'' context. It is unclear to which ''electronic systems'' ILA's comments refer—perhaps it is to the carriers' electronic container tracking systems or to electronic tariff publications.

[25] The Commission's current regulations contain various exemptions for the following types of agreements: non-substantive agreements and non-substantive modifications to existing agreements (exempt from notice and waiting requirements); husbanding agreements (fully exempt from filing requirements); agency agreements (limited exemption from filing requirements); equipment interchange agreements (fully exempt from filing requirements); non-exclusive transshipment agreements (limited exemption from filing requirements); marine terminal agreements (exempt from waiting requirements); agreements between or among wholly-owned subsidiaries and/or their parent (fully exempt from filing requirements); miscellaneous modifications to agreements (if filed for informational purposes, exempt from notice and waiting); marine terminal service agreements (limited exemption from filing and waiting requirements, but no antitrust immunity unless the agreement is filed); and marine terminal facilities agreements (exempt from filing and waiting requirements). 46 CFR 535.302–311.

[26] S. Rep. No. 61, 105th Cong., 1st Sess. 30 (1997) (''Senate Report'').

practices by other regulatory entities charged with oversight of commercial agreements affecting competition.[27]

Appropriately exempted agreements would appear to include those which: (1) have neither pricing nor capacity or trade lane allocation authority; and (2) have less than 20% combined market share in the relevant trade lane and all sub-trades, or 15%, if operating within a rate agreement. This exemption might cover, for example, non-exclusive two-party vessel sharing agreements and slot/space charters and other types of collaborative agreements in which the parties' combined market share falls below the 20% level. A definition of ''sub-trade'' consistent with the definition in the appendix to the Monitoring Report has been added to the Commission's regulations at § 535.104(hh).

The types of agreements outlined above would appear to meet the criteria under which the Commission has the authority to grant exemptions from requirements of the Shipping Act. The Commission has discretion to grant such exemptions only if doing so (1) will not result in substantial reduction in competition or (2) be detrimental to commerce. 46 U.S.C. app. § 1715. Agreements within the safety zone exemption would appear to cause neither a substantial reduction in competition nor otherwise be detrimental to commerce.[28] The Commission, therefore, proposes new section 535.311 providing for an exemption from the 45-day waiting period for agreements meeting the above-discussed criteria.

In connection with this proposed new exemption, the Commission also proposes to introduce a new term, ''capacity rationalization,'' to describe one of the authorities that would prevent an agreement from qualifying for this low market share exemption. The Commission's rules currently utilize the term ''capacity management agreement,'' which is defined very narrowly: only ''artificial'' reduction of space on a per vessel basis is contemplated. *See,* 46 CFR 535.104(e). However, sailing or space charter agreements, especially those with exclusivity clauses, such as vessel sharing arrangements or alliances, may also be properly considered agreements which manage or restrict the amount or use of productive capacity. Therefore, the Commission proposes to revise section 535.104(e) to utilize the term ''capacity rationalization'' rather than the term ''capacity management agreement,'' in order to distinguish between those agreements reflecting simple operational arrangements and those which actively impose restrictions on capacity, thereby raising section 6(g) concerns for effects on price and service, and to promote consistency with other Commission regulations. Agreements with capacity rationalization authority would include, for example, agreements in which the parties restrict their ability to provide transportation in the Trade on vessels other than those utilized by the agreement or to enter into services that are alternate to/or in competition with the services provided under the agreement, without the prior consent of the agreement members.

ii. Revision of the Present Exemptions for Non-substantive Agreements and Amendments, Miscellaneous Modifications (proposed § 535.302), and Public Notice of Filings (proposed § 535.602)

As another effort to address the commenters' concern about the need for flexibility, the Commission proposes to retain and clarify its existing exemptions for certain types of modifications to agreements that may go into effect upon filing, or be filed for informational purposes only: namely, ''non-substantive'' modifications (46 CFR 535.302) and ''miscellaneous'' modifications (46 CFR 535.309).

We believe that the current ''non-substantive'' exemption is unnecessarily broader than the pre-1984 exemption for modifications which it was intended to continue, but which contained no category for ''non-substantive'' initial agreements. The Commission believes that the scope of this exemption is unclear and thus should be revised. In addition, the Commission has determined to eliminate the practice of determining on an ad hoc basis through delegated authority whether an amendment to an agreement is ''non-substantive.'' 46 CFR 535.302(c). Therefore, the Commission proposes to combine some of the language of section 535.309 with that of a revised section 535.302 to eliminate the exemption for non-substantive initial agreements and enumerate the ''non-substantive'' and ''miscellaneous'' modifications that are exempt from filing.

The Commission proposes to remove the current exemption for ''miscellaneous modifications'' for changes to parties to a discussion agreement contained in present section 535.309(a)(2)(i). Such additions in members to a discussion agreement may alter the potential competitive impact of the discussion agreement. On the other hand, the Commission believes that it is appropriate to continue the current exemption from the 45-day waiting period otherwise required by the Shipping Act for conferences, which are required to be open to all carriers serving the conference trade. Therefore, the Commission is proposing a revision to former 535.309(a)(2)(i) to indicate this change.

In addition to the specific exemption changes discussed above, the Commission is also proposing to change its current policy regarding publication of notice in the **Federal Register** of agreement filings that are otherwise exempt from the requirements of this part. At present, the Commission does not publish notice of optionally-filed agreements and modifications, or agreements and modifications exempted from the 45-day waiting period. However, the Commission recognizes that public notice is the most effective way for the public to know what agreements and modifications to agreements are being filed. The Commission believes it is important for the public to know, for example, whether a carrier joins a conference agreement or resigns from one, or whether certain marine terminal operators have leases. To that end, the Commission is proposing to revise § 535.602 to indicate that a notice will be published in the **Federal Register** of each new agreement and agreement modification, including those agreements that are exempt from the 45-day waiting period and those that are optionally filed under the various exemptions in subpart C.

iii. Transshipment Agreements (proposed §§ 535.104(jj) and 535.306(a))

The proposed rule changes for transshipment agreements are intended to clarify the Commission's view of what constitutes a transshipment agreement but not remove the filing exemption for nonexclusive transshipment agreements. The Commission has traditionally viewed transshipment agreements as agreements under which two ocean common carriers that both operate

[27] The *Antitrust Guidelines for Collaborations among Competitors,* (''Guidelines'') issued by the FTC and DOJ in April 2000, provides a ''safety zone'' for ''situations in which anticompetitive effects are so unlikely that [FTC and DOJ] presume the arrangements to be lawful without inquiring into particular circumstances.'' Guidelines at section 4. To qualify for this exemption the parties to commercial collaborations must meet established market share thresholds as well as meet other enumerated conditions. The European Commission's Competition Directorate has adopted a similar ''safety zone'' approach for international ocean carrier collaborations which do not involve price-fixing of freight rates and fall below a certain market share threshold.

[28] We estimate 87 presently effective agreements would have qualified for this exemption.

vessels provide a through service between the United States and a foreign port. However, the Commission also recognizes that the ocean transportation industry has substantially evolved since the Commission's current agreement rules were drafted. One notable change is the increased use of vessel sharing or space charter agreements by ocean common carriers to replace or augment their direct services. This change may have led to the development of what the Commission considers to be nontraditional transshipment arrangements, such as those in which a publishing carrier provides a transshipment service solely by taking space on vessels operated by other ocean common carriers. In an effort to provide a regulatory environment that promotes commercial flexibility and the resulting economic efficiencies for the carriers involved and the shipping public, the Commission is amending its definition of transshipment agreement to clarify that such arrangements between two ocean common carriers may be considered to be a transshipment agreement subject to the Shipping Act if the publishing carrier operates its own vessel in the through movement or provides service on its leg of the through service in accordance with a filed and effective space charter agreement.

The Commission acknowledged that there is some overlap between transshipment agreements and space charter agreements in promulgating the final rules implementing the Shipping Act, by stating that ''a transshipment agreement is a type of space charter.'' 49 FR 45324 (November 15, 1984). This observation remains accurate in today's marketplace. Just as a space charter agreement permits an ocean common carrier to offer service in a trade without having to introduce its own vessels, a transshipment agreement permits a carrier to offer a service that it would not otherwise be able to provide unless it operated vessels on both legs of the transshipment. The publishing carrier pays the connecting carrier for space on the connecting carrier's vessel, just as a space charterer pays for the space that it uses on another ocean common carrier's vessel. Inevitably, therefore, a transshipment agreement includes space chartering.

In 1984, the Commission exempted nonexclusive transshipment agreements from the filing requirements for policy and practical considerations. Though the publishing carrier provides certain information regarding the transshipment arrangement in its tariff pursuant to Section 535.306(b) and (c),[29] the filing exemption has resulted in reduced transparency for transshipment arrangements. As a result, the shipping public may lack a clear understanding of how the through transportation is being provided. To address the issue of transparency that arises when an ocean common carrier does not use its own vessels in the through transportation as well as to clarify the Commission's view of what constitutes a transshipment agreement, the Commission is proposing the addition of new language to the definition of a transshipment agreement.

The added language would clearly set forth the Commission's position that an ocean common carrier offering a transshipment service must either operate a vessel involved in the through movement or have a filed and effective space charter agreement to cover the portion of its service between the United States and the port of transshipment. The Commission believes that it is consistent with the provisions of the Shipping Act relating to agreements (46 U.S.C. app. §§ 1703, 1704) to require an ocean common carrier offering a transshipment service pursuant to a transshipment agreement to operate at least one vessel involved in the through movement. Nevertheless, in recognition that many ocean common carriers in U.S. trades now depend on space charter agreements, in addition to their own vessels, to provide their services, the Commission is including such arrangements in the revised definition of a transshipment agreement. In both instances, the goal of transparency would be achieved.

3. Confidentiality of Sensitive Commercial Information in Filed Agreements

The Commission has determined not to re-examine its interpretation of section 6(j) of the Shipping Act at this time. That provision reads,

(j) Nondisclosure of Submitted Material.

Except for an agreement filed under section 5 of this Act, information and documentary material filed with the Commission under section 5 or 6 is exempt from disclosure under section 552 of title 5, United States Code [FOIA] and may not be made public except as may be relevant to an administrative or judicial action or proceeding.

The Commission's current regulation at 46 CFR 535.608(a) states,

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for non-compliance, and replies to requests for additional information.

Section 6 (j) of the Shipping Act should be read harmoniously with the notice provision of section 6(a), which states that ''[w]ithin 7 days after an agreement is filed, the Commission shall transmit a notice of its filing to the **Federal Register** for publication.'' 46 U.S.C. app. § 1705(a). In this regard, current Commission regulations further define what the notice of filing must contain, reflecting a long-held understanding that the Commission should make the complete agreement as filed available to the public. 46 CFR 535.602(b)(5). The current regulation is nearly identical to that originally adopted under the Shipping Act, 1916. 46 CFR 572.6(1997); 46 CFR 522.6; General Order 24 (1968).

The Commission has long interpreted the Shipping Act to require the public availability of the complete filed agreement, and to protect from Freedom of Information Act (''FOIA'') disclosure only information supplementing the agreement. The Commission has never provided by rule for the protection of information contained in a filed agreement and no objection has ever been filed to the disclosure of such information. Most of the commenters appear to assume that the only means of protecting sensitive information contained in agreements is through filing exemptions.

Although no other statute precisely mirrors the Shipping Act procedures, especially as to the public's role in agreement review and their generally automatic effectiveness, we recognize that some agencies responsible for filings similar to agreements under the Shipping Act provide for confidentiality.[30] While it may be

[29] Under Section 535.306, nonexclusive transshipment agreements are exempt from the filing requirement of the Shipping Act provided that the publishing carrier publishes in its tariff the through rate, the routings, any additional charges, and the participating carriers. The publishing carrier also issues the bill of lading.

[30] *See, e.g.*, DOT (14 CFR 302.39(b)), STB (49 CFR 1001.4) and SEC (17 CFR 230.406). It is unclear what effect Executive Order 12,600 of June 23, 1987, may have on the Commission's ability to protect sensitive commercial information in filed agreements. Section 2(b) of that order directs Federal agencies ''to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm.'' The Commission's rules provide for such protection

Continued

arguable, therefore, whether the drafters intended to preclude the Commission from protecting sensitive commercial information contained in the agreement itself, it appears unnecessary for the Commission to make any such determination now. As the Commission is now proposing to exempt the information identified by the commenters as potentially sensitive commercial information, we see no need to address this issue further at this time. Therefore, the proposed rule contains no further proposals in this respect. However, commenters may wish to raise this issue, as well as to identify any item of sensitive commercial information which would be included in an agreement required to be filed that is not within the terms listed in section 535.408 or otherwise exempted. Such comments should also address the issue of the Commission's authority to protect commercially sensitive information contained in filed agreements.

III. Information Forms and Monitoring Reports, 46 CFR Part 535, Subparts E and G.

A. Introduction

Currently, when a carrier agreement is filed with the Commission, the Information Form regulations (subpart E of part 535) require that certain historic revenue and/or operational data be furnished for each party to the agreement. The Information Form must accompany the filed agreement. In addition, certain modifications filed as amendments that expand the geographic scope or authority of an existing agreement must also be accompanied by an Information Form at the time of filing. Once an agreement goes into effect under the Shipping Act, the Monitoring Report regulations (subpart G of part 535) require that ongoing revenue and/or operational data on the parties' activities under the agreement be submitted to the Commission for as long as the agreement remains in effect.

The jurisdiction to set rules requiring carrier agreement information is conferred on the Commission by the Shipping Act. Section 5(a) states that ''[t]he Commission may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.'' Further, section 17(a) authorizes the Commission to ''prescribe rules and regulations as necessary to carry out'' the Shipping Act. Additionally, the Shipping Act gives the Commission the direct authority to obtain any relevant information from carriers. Pursuant to section 15, the Commission may issue an order to require any common carrier ''to file with it any periodical or special report * * * appertaining to the business of that common carrier.'' [31]

The proposed rule replaces the current regulations with regulations that would require all carrier agreements identified in § 535.201(a) and subject to the forty-five day waiting period to submit an Information Form for the Commission's review upon filing with information and data on the agreement and the authority in the agreement.[32] The proposed rule limits the application of the Monitoring Report regulations to require reporting only from parties to agreements with certain authority. For some authority, the Monitoring Report regulations are further limited based on the parties' market share.

The reporting requirements for the proposed Information Form and Monitoring Report have been modified in relation to changes that have occurred in carrier agreements. Reporting requirements that are no longer necessary have been eliminated. New reporting requirements have been added to obtain essential data, such as vessel capacity, from agreements with authority that poses concerns under the Shipping Act. New terms and definitions have also been provided in the instructions of the proposed Information Form and Monitoring Report. These terms and definitions are intended to provide carriers with clearer instructions that should help to improve the accuracy and consistency of the agreement data reported to the Commission. Commenters are encouraged to review these proposals with this intent in mind, and to suggest further refinements or feasible alternatives to the proposed terms and definitions.

In general, the proposed modifications herein seek to ensure that the Commission receives the most meaningful and reliable agreement data to carry out its statutory responsibilities, without placing an undue regulatory burden on carriers. In this regard, the Commission has incorporated its experience in administering the current Information Form and Monitoring Report regulations. Changes in carrier agreements that have occurred since OSRA became effective have resulted in the changes reflected in the proposed rule. The proposed modifications also reduce, where possible, the reporting burden on the carriers.

B. Background

1. The Current Regulations

The Information Form regulations for carrier agreements were originally established under the Shipping Act in Docket Nos. 84–26 and 84–32 (final rule). Under this rule, depending on the agreement's authority, the Information Form required such data as market share, cargo carriage, and/or planned changes in port calls or services relating to the agreement. The rule did not prescribe standard periodic reporting requirements for carrier agreements after they become effective under the Shipping Act.

The current Information Form and Monitoring Report regulations were promulgated in Docket No. 94–31, *Information Form And Post-Effective Reporting Requirements For Agreements Among Ocean Common Carriers Subject To The Shipping Act of 1984*, 61 FR 11564 (March 21, 1996). The Information Form is used in the agreement review process to analyze the probable economic impact of filed agreements, or certain agreement modifications. Carrier agreements are initially reviewed upon filing to assess their compliance with the Shipping Act, particularly with respect to section 6(g) and the prohibited acts in section 10. Upon review, the Commission determines whether any action under the Shipping Act is necessary within the 45-day waiting period before an agreement becomes effective. In addition, the data submitted in the Information Form provides historic (or baseline) economic figures for analyzing changes that may occur after the agreement goes into effect.

generally: for nondisclosure of filings generally, 46 CFR 502.119; and for third party comments on agreements, 46 CFR 535.603.

[31] The Commission has consistently held the view that the most reliable source of information on carrier agreements is directly obtained from the parties to the agreement. In Docket No. 94–31, the Commission stressed ''that information regarding the operation and probable future impact of an agreement ''[a]lmost uniformly is in the hands of those seeking approval * * * and it is incumbent upon those in possession of such information to come forward with it.'' *Mediterranean Pools Investigation* 9 F.M.C. 264, 290 (1966).'' See Dkt. No. 94–31, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984*, 61 FR 11564, 11565 (March 21, 1996). The Commission further emphasized this point by stating that ''the 1984 Act removed the burden of proof in agreement investigations from the carriers, but did not alter the accuracy of the Commission's 1996 observation in the *Mediterranean Pools Investigation* that the primary source for information on the operation of an agreement is the carriers that are the parties to the agreement.'' *Id.*at page 11566.

[32] ''Low market share agreements'' defined in section 535.311 of the proposed rule would be exempted from the waiting period requirements, and from the Information Form and Monitoring Report requirements unless otherwise instructed by the Commission.

The Monitoring Report enables the Commission to track and analyze the ongoing economic effects of an agreement after it becomes effective, and accordingly, determine whether any action under the Shipping Act may be necessary. Monitoring Reports also are used to assess the probable economic effects of modifications filed. Monitoring Reports further help the Commission to stay informed of agreement activity in the U.S. trades, and to address agreement issues that might arise in connection with investigations, complaints, inquiries, or petitions for Commission action against an agreement.

The Commission's current regulations require some level of revenue and/or operational data from almost all carrier agreements subject to the Shipping Act. The degree of required data is determined by the agreement's classification. The current regulations classify agreements into three categories: Class A, Class B, and Class C. Upon a showing of good cause by an agreement, the Commission may waive any of the reporting requirements pursuant to sections 535.505 and 535.709.[33] Carrier agreements that fall outside of the classifications set in the current regulations are not obligated to submit the specified agreement information, unless otherwise instructed by the Commission.[34]

For the Information Form, Class A and B agreements are grouped together as ''Class A/B,'' and are identified in section 535.502(a) as: rate agreements, joint service agreements, pooling agreements, agreements authorizing discussion or exchange of data on vessel-operating costs, and agreements authorizing regulation or discussion of service contracts. Class A/B agreements contain forms of pricing or pooling authority that can have a significant impact on competition. The Commission thoroughly addressed its concerns with the agreement authorities included in the Class A/B category and the potential effects of each of these authorities on competition in its Notice of Proposed Rulemaking (''NPRM'')in Docket No. 94–31. *See* Dkt. No. 94–31, 59 FR 62372, 62375–62376 (December 5, 1994).

When a Class A/B agreement is filed for review, an Information Form must also be filed in accordance with the reporting requirements specified in appendix A of part 535 (section 535.503). These reporting requirements address the following topics relating to the parties activities in the agreement trade: other agreement participation, identification of agreement authority, market share for all liner operators, total average revenue, cargo volume and revenue results for major commodities, and port service. Much of this data must be specified for each sub-trade within the geographic scope of the agreement. The regulations define sub-trade to mean all liner movements between each U.S. port range and each foreign country within the scope of the agreement. The U.S. port ranges are specified separately for the Atlantic, Gulf, and Pacific coasts.

Information Forms for Class C agreements require much less data. Class C agreements contain various forms of operational authority, and are identified in section 535.502(b) as sailing agreements and space charter agreements.[35] In its NPRM in Docket No. 94–31, the Commission noted that ''[a]lthough such agreements have rarely presented serious regulatory concerns, some oversight is necessitated by section 6(g)'s admonition against agreements that cause unreasonable reductions in service.'' *Id.* at 62378. Thus, Class C agreements are only required to submit data on the parties' other agreement participation and port service within the agreement trade, in accordance with the reporting requirements specified in appendix B of part 535 (section 535.504).

For Monitoring Reports, however, the current regulations distinguish between Class A and B agreements.[36] Class A agreements are identified as those agreements specified in section 535.502(a) with market shares of 50 percent or more in half or more of the their sub-trades (section 535.702(a)(1)). Class B agreements are identified as those agreements specified in section 535.502(a) that do not have market shares of 50 percent or more in half or more of their sub-trades (section 535.702(a)(2)). To account for changes in market share that may alter an agreement's classification, the regulations direct BTA to classify all Class A and B agreements annually based on their second quarter market share data (section 535.702(b)). Class C agreements are also required to file quarterly Monitoring Reports and are identified as those agreements specified in section 535.502(b) (section 535.702(c)).

Class A agreements file the most Monitoring Report data in line with the same sub-trade specificity required for the Information Form, as instructed in appendix C of part 535 (section 535.703). The amount of Monitoring Report data and sub-trade specificity is reduced for Class B agreements, as instructed in appendix D to part 535 (section 535.704). Class C agreements only report on changes in the parties' other agreement participation and port service in the agreement trade, as instructed in appendix E to part 535 (section 535.705). As of August 2003, there were 29 Class A agreements, 51 Class B agreements, and 133 Class C agreements, for a total of 213 classified agreements on file with the Commission.[37]

Since the current regulations became effective in 1996, carriers have continued to raise issues specifically regarding the Monitoring Report requirements. The Ocean Carrier Working Group Agreement commented on the Monitoring Report requirements in Docket No. 98–26, 64 FR at 11240; Docket No. 01–01, *The Impact Of The Ocean Shipping Reform Act Of 1998; Notice of Issuance of Notice of Inquiry,* 66 FR 7764 (January 25, 2001); and the Commission's *Notice of Request for Public Comments Regarding Extensions to Existing OMB Clearances,* 67 FR 10407 (March 7, 2002).

In sum, carriers have generally voiced concerns about the burden involved in preparing the quarterly sub-trade data for the Monitoring Reports for Class A agreements. To ease this burden, carriers have repeatedly requested that the level of Monitoring Report data for Class A agreements be reduced to the lesser level required for Class B agreements. In support of this request,

[33] The Commission's authority to grant or deny waiver applications is delegated to the Director of the BTA in subpart C of part 501.

[34] Such agreements currently include housekeeping agreements, equipment management agreements, portal agreements, credit policy agreements, non-compete agreements associated with acquisitions, and general discussion agreements.

[35] The Class C category does not include agreements authorizing capacity management or regulation as currently defined in section 535.104(e). Such authority was intentionally not included in section 535.502. At the time of the Commission's rulemaking, agreements with capacity management or regulation programs also contained rate authority, and therefore, automatically fell within the regulations. Subsequently, the authority for capacity management was withdrawn from agreements or held in abeyance. Presently, no agreements engage in capacity management programs as currently identified in section 535.104(e).

[36] Under section 535.702(b), the classification of an agreement as Class A or Class B for purposes of its Monitoring Report obligations is initially based on the market share data reported on the agreement's Information Form pursuant to section 535.503, or on similar data otherwise obtained. Thereafter, before the beginning of each calendar year, the agreement is classified as Class A or Class B for that year, based on the market share data reported on the agreement's quarterly monitoring report for the previous second quarter (April-June).

[37] At the same time, there were 24 agreements on file with the Commission that were not subject to the reporting requirements.

carriers have argued that market changes since OSRA have rendered the level of Monitoring Report data for Class A agreements unnecessary. In Docket No. 98–26, the Commission dismissed the carriers' request noting that ''[a]ny modifications in the current agreement monitoring program based on changed market conditions will be considered only after an opportunity to evaluate the competitive effects of OSRA's regulatory changes.'' *See* Dkt. No. 98–26, 64 FR at 11240.

2. Changes in Carrier Agreements Since OSRA

The legislative reforms introduced by OSRA have considerably altered the ocean shipping industry in the U.S. trades. OSRA has encouraged carriers to operate more independently in response to competitive market forces. While these changes have improved competition, carriers are still very committed to cooperating in agreements and actively using their agreement authority to pursue and achieve their collective objectives. Thus, under OSRA, carrier agreements still can exert a powerful collective influence over competition in the U.S. trades. The Commission's need for reliable and specific information to evaluate and monitor carrier agreements remains.

Under OSRA, a clear pattern in carrier agreement activity has emerged in most of the U.S. trades. Collective pricing by carriers under conference agreements has declined in favor of voluntary rate authority under discussion agreements.[38] In addition, carriers are cooperating more in operational arrangements which can affect rate and service levels in the trades, particularly in agreements with capacity rationalization authority.[39]

Liner cargo in today's trades is predominantly shipped under individual service contracts with independently-negotiated freight rates and terms. While cargo carriage under a common conference tariff has diminished, discussion agreements and the concerted activities of their parties continue to pose significant anticompetitive and statutory concerns under the Shipping Act.

Although compliance is voluntary, discussion agreements contain considerable, broad authority over rate, service contract, and service matters spanning large geographic areas in the U.S. trades. Further, many discussion agreements include most of the major carriers operating within their respective geographic scopes. Thus, discussion agreements generally have high market shares which contribute toward their ability to affect freight rates and competitive conditions. For example, each of the agreement market shares for the Transpacific Stabilization Agreement (''TSA'') and the Westbound Transpacific Stabilization Agreement (''WTSA'') in the U.S./Asia trades exceeds 70 percent.

OSRA prohibited any mandatory restrictions on individual service contracts, but it allowed agreements to adopt voluntary service contract guidelines applicable to their parties' individual contracts. On a voluntary basis, carriers may collectively set and adhere to rates and terms for their individual service contracts. Thus, while agreement carriers are pricing more independently under OSRA, they still have the power to exert their collective influence over contract rates and terms.

The extent to which voluntary authority and adherence are effective under discussion agreements likely depends on the prevailing and anticipated economic conditions in the respective agreement trades. Such conditions, however, are difficult to discern and even harder to anticipate without reliable agreement and trade information.

Carriers are also relying more heavily on operational agreements to control the supply of excess vessel capacity. These agreements allow carriers to rationalize services and remove excess vessel capacity through vessel-sharing, space or slot chartering, sailing, and/or service arrangements. Operational agreements with capacity rationalization authority raise particular concerns under section 6(g). This concerted authority not only affects the amount of vessel capacity supplied in a trade, but also imposes restrictions on the parties' ability to freely participate in other service arrangements and/or independently operate competing services within the geographic scope of the agreement. Some carriers use this concerted authority to form complex and highly integrated alliance arrangements where the parties fix and allocate their collective vessel capacity on a global scale. Many of these alliances enter into space chartering agreements as a group with other carriers or groups of carriers.

Carriers assert that operational agreements, even those with capacity rationalization authority, produce cost and service benefits for the shipping public. Carriers may use their concerted authority to better align the supply of vessel space with the demand for vessel space in specific trade lanes. In trade lanes burdened with high excess capacity, the coordination of vessel space between carriers can achieve efficiencies by lowering operational costs while still preserving, or even enhancing, the level and frequency of ocean liner services. Alternatively, a concerted reduction in vessel capacity and the restrictions imposed by capacity rationalization authority can result in a shortage of vessel space in a trade causing unreasonable service decreases and/or unreasonable rate increases in violation of section 6(g). Even if a shortage does not occur, a concerted reduction in vessel capacity decreases the amount of market pressure placed on carriers competing to fill excess vessel space. This reduction in competition may be significant enough to enable carriers to increase or maintain rates more easily by discouraging rate discounting.

These concerns are compounded where carrier agreements contain both rate and capacity rationalization authority. Even if these authorities are not in the same agreement, many carriers participate in large rate discussion agreements that cover broad trade areas and also participate in separate agreements with capacity rationalization authority in the same trade areas. These authorities are interrelated and complementary. Carriers may discuss and agree on their overall rate and service objectives under the broad authority of their discussion agreements, and implement and fix their service and capacity levels within the same trade using their capacity rationalization authority contained in separate agreements. Likewise, carriers may collectively fix the supply of vessel capacity in a trade, through their capacity rationalization authority contained in separate agreements, to

[38] The preference for voluntary rate discussion agreements between carriers has evolved in most of the major U.S. trades, except for those trades that include member nations of the European Union (''EU''), where the conference system has remained in place. Conference agreements between ocean common carriers are specifically exempted from the competition laws of the EU, and the European Commission (''EC'') opposes other forms of collective pricing outside of formal conference agreements. The effects of conferences, however, have been mitigated under OSRA because most conference carriers heavily engage in individual service contracts to stay competitive in the trades. The EC further restricts conference carriers from adopting voluntary service contract guidelines and disclosing information relating to service contracts negotiated outside the conference system. Nonetheless, conferences still represent the main rate agreements in the U.S./Europe trades, and require close monitoring.

[39] The Commission's proposed rule defines capacity rationalization as the concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service.

augment the overall rate objectives agreed upon in their discussion agreements. Thus, in addition to market conditions, the structure of complementary authority in agreements within trades further helps carriers achieve their collective objectives, depending on how well they can coordinate and maintain these efforts.

While the use of conferences has subsided under OSRA, the benefits carriers enjoy as a result of their ability to participate in antitrust-exempted agreements under the Shipping Act has clearly not diminished. The developments in carrier agreements under OSRA reinforce the need for the Commission to obtain firsthand information directly from the carriers involved in agreements.

C. The Proposed Rule

To account for the changes that have occurred in carrier agreements since OSRA, and considering the views of carriers, the Commission proposes the following modifications to the Information Form and Monitoring Report regulations and requirements.

1. Information Form Regulations

The proposed rule no longer identifies carrier agreements by specific classes for the purpose of assigning reporting requirements. Instead, section 535.502(a) of the proposed rule would require that all carrier agreements identified in section 535.201(a), except for low market share agreements identified in section 535.311, submit an Information Form when the agreement is filed with the Commission. Agreements with certain authorities that have significant potential to affect competition would be required to submit Information Form data pertaining to the specific authority contained in the agreement.

The current agreement classification regulations in section 535.502 provide procedures for assigning specific reporting requirements to specific types of agreements. Agreements filed at the Commission, however, have evolved since the current classification regulations were implemented, especially under OSRA. Now, multiple or complex forms of authority may be contained in a single agreement that might not neatly fall under one specific agreement type or class. Further, the reporting requirements assigned to a particular type or class of agreement may not adequately address the full authority of the agreement. For instance, the current reporting requirements for Class C agreements do not distinguish between simple operational agreements, such as vessel space charter arrangements, and the more complex and anticompetitive operational agreements with capacity rationalization authority that include global alliance arrangements.

Section 535.503(b) of the proposed rule addresses these concerns by assigning specific reporting requirements to specific authorities contained in agreements. While no rule can cover all circumstances, the Commission believes that this approach would more directly address the elements of concern within the agreement, *i.e.*, the parties' authority and the concerted activities they may pursue with such authority. Further, the proposed rule would replace the current agreement classification procedures with simpler regulations and clearer instructions.

Section 535.502(b) of the proposed rule would require an Information Form when a modification to an existing agreement is filed that adds the authority to discuss or agree on capacity rationalization, or pricing or pooling authority.[40] Further, a modification that expands the geographic scope of such authority within an existing agreement would also require an Information Form under section 535.502(c) of the proposed rule. Aside from adding the Information Form requirement for agreements containing capacity rationalization authority, the proposed rule is not likely to increase the number of agreement modifications which would be subject to Information Form requirements. The proposed rule refers to agreement modifications by listing the actual authorities in place of the current agreement class labels. When authority is added or expanded, the competitive impact of the existing agreement is altered, and must be re-examined with a new Information Form.

Section 535.504 of the proposed rule provides waiver procedures whereby carriers may request relief from any of the Information Form requirements. Additional information, however, would be required for the Commission's review of waiver requests. Applications for waiver of the Information Form requirements would have to provide data and information in support of the requested relief along with details on the agreement or agreement modification that is to be filed with the Commission.

2. Information Form

The proposed rule changes the format of the Information Form. Section 535.503(a) of the proposed rule replaces the current Information Forms for Class A/B and Class C agreements with one form in appendix A of part 535. The form is divided into sections I through V. Section 535.503(b) of the proposed rule would require that agreement parties complete each section of the Information Form applicable to the agreement and the authority contained in the agreement. Sections I and V would apply to all carrier agreements subject to the Information Form requirements.[41] Sections II, III and IV would apply based on the authority contained in the agreement. The Information Form would be made available in electronic format using Microsoft Office 2000 (Word and Excel) that could be downloaded from the Commission's home page. Parties may complete and submit their Information Form in paper format, or in electronic format on diskette or CD–ROM. This procedure will remain available until the Commission develops and implements an electronic filing system for such documents.

a. Section I

As noted, section I of the proposed Information Form would be required from all carrier agreements subject to the Information Form requirements. Section I would require basic information on the following topics: the name of the agreement, narrative statements on the purpose and commercial circumstances relating to the agreement, a list of the parties' other agreement participation within the geographic scope of the filed agreement, and the identification of the authority and provisions contained in the agreement.

Section I requires carriers to supply relevant agreement information to the Commission at the start of the review process. This information would be used in the initial review and analysis of an agreement, and would help to avoid formal requests for additional information which delay the effective date of the agreement. The Commission does not believe that section I would impose any undue burden on carriers because most agreements that fall under

[40] For ease of reference, the term ''pricing or pooling authority'' is used herein to identify agreements containing any of the following authorities: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters. These authorities are listed in the proposed rule.

[41] Low market share agreements identified in section 535.311 of the proposed rule would be exempted from all Information Form and Monitoring Report requirements unless otherwise specifically instructed by the Commission.

the current regulations provide some degree of this information already. Carrier agreement filings that fall outside of the current classification regulations would also be required to provide this information. However, the number of such filings is very limited. Further, the Commission believes that this information is readily available to carriers and would not require any costly or extensive preparation that could affect or delay the filing of an agreement.

The requirements for narrative statements on the purpose and commercial circumstances of the agreement are new. These statements are not intended to elicit a justification of the agreement. They would simply provide the Commission with a clearer understanding of the parties' collective objectives under the agreement in relation to their services within the agreement trade. It may be that the parties formed an agreement to start a new liner service to expand into a new trade area. Such information would be relevant to the Commission's review of the agreement, but might not be readily apparent by the terms of the agreement without seeking additional information from the parties.

The proposed Information Form retains the existing requirement for a list of the parties' other agreements. The term ''other agreements'' refers to all other carrier agreements within the geographic scope of the filed agreement in which the parties to the filed agreement are participants. It remains important for the Commission to understand the parties' full authority within the context of all their agreements in a given trade. Given the brevity of the review period established by section 6 of the Shipping Act, it is necessary that the parties supply this information at the outset.

The proposed Information Form continues to require that the parties identify the specific authorities contained in the filed agreement. Authorities identified in the Information Form would now be expanded to include authorities and provisions relating to operational agreements and capacity rationalization. This modification reflects the increased importance and use of such authorities by carriers. Further, in assigning reporting requirements based on the parties' authority, it is important that the full authority of the agreement be identified.

b. Section II

Section II of the proposed Information Form would apply to carrier agreements that contain simple operational authority including vessel space charter and sailing or service rationalization arrangements. Such authority, however, would not include the establishment of a joint service, or capacity rationalization authority. The proposed Information Form retains the requirement that parties with operational authority provide data on their vessel calls at ports, along with a narrative statement of any changes in port service that are anticipated or planned to occur when the agreement goes into effect. For clarification, however, this requirement would be modified to limit the information required to vessel calls directly related to the parties' liner services covered by the agreement, rather than any or all vessel calls within the agreement trade. Similarly, changes in port service would be modified to mean anticipated or planned changes that the parties would implement under the agreement after it goes into effect, rather than any change in port service within the agreement trade. These modifications would refine the parties' data so that the actual impact of the agreement could be analyzed with greater accuracy.

c. Section III

Section III of the proposed Information Form would apply to carrier agreements with the authority to discuss or agree on capacity rationalization. Section III distinguishes the more complex operational agreements with capacity rationalization authority from the simpler operational authorities identified in section II above. As such, new reporting requirements have been added. To enable the Commission to properly analyze these agreements, parties with capacity rationalization authority would be required to provide, for a calendar quarter period, data on their vessel capacity and percentage of vessel capacity utilization for their liner services that would be covered by the agreement. In order to secure accurate and consistent data, definitions of vessel capacity and capacity utilization are provided in the instructions of the proposed Information Form. In addition, parties with capacity rationalization authority would also be required to provide data on their vessel calls at ports for their liner services that would be covered by the agreement. Lastly, such parties would be required to identify and state any anticipated or planned changes in their vessel capacity and/or liner services (including ports) that would be implemented under the agreement after it goes into effect.

Under the current Information Form regulations, operational agreements with capacity rationalization authority that do not contain pricing or pooling authority are Class C agreements. As such, the only operational data required from these agreements when filed relates to the parties' port services. As discussed above, however, capacity rationalization authority not only allows the parties to fix the levels of capacity and service as to which they will cooperate in a trade, it also restricts any other collective and individual operations of the parties within the agreement trade. In reviewing these agreements under section 6(g), the Commission is concerned about the likely impact of capacity rationalization authority on both service and rate levels in a trade. To determine this impact, the Commission has found it necessary in the past to request vessel capacity and capacity utilization information from parties to such agreements during the review process.

The proposed Information Form would require this necessary information when the agreement is first filed. The Commission does not believe that these additional reporting requirements would impose any undue burden because the parties readily have this information when entering into such agreements.

d. Section IV

Section IV of the proposed Information Form would apply to carrier agreements with pricing or pooling authority. Section 535.503(b)(4) of the proposed rule identifies the particular authorities contained in agreements which causes them to be subject to reporting information and data under section IV of the Information Form. These authorities are: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters.[42]

Agreements with any of these authorities would be required to submit data and information on the following topics in section IV: market share, total average revenue, cargo volume and revenue results for the top 10 agreement-wide commodities, vessel capacity and capacity utilization, and port service.

[42] Carrier agreements with these authorities currently fall under the Class A/B category and are listed as types of agreements.

i. Market Share

The proposed Information Form retains the requirement for market share data showing all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. The number of sub-trade reports, however, would be reduced by combining the separate U.S. Atlantic and Gulf port ranges into one U.S. port range. Liner services and pricing at U.S. Atlantic and Gulf ports are very similar, which allows these sub-trades to be combined. The different service and pricing circumstances prevalent at U.S. Pacific ports dictate that the Pacific be considered a separate U.S. sub-trade.

ii. Total Average Revenue

The proposed Information Form continues the current requirement that the parties report their total liner revenues, total liner cargo carried, and average revenue within the geographic scope of the agreement. A definition of total liner revenues is provided in the instructions to improve the accuracy and consistency of the parties' revenue data. Without a clear definition, the parties could calculate their total liner revenues differently, which makes it difficult to conduct a proper analysis of the data.

iii. Cargo Volume and Revenue Results for the Top 10 Agreement-Wide Commodities

The proposed Information Form retains, but significantly reduces, the reporting requirements for commodity data. Currently, when a Class A/B agreement is filed, the parties must report their cargo volume and revenue results for each major commodity for each sub-trade within the geographic scope of the agreement. The Commission first established these reporting requirements to incorporate commodity specific data into its impact analysis of agreements with pricing or pooling authority. *See* Docket No. 94–31, 59 FR at 62377. Commodity specific data remains an important component of the Commission's impact analysis of such agreements. The Commission, however, believes that the amount of commodity data reported can be reduced without hindering its ability to gauge the general impact of pricing or pooling agreements. Therefore, the proposed Information Form would eliminate the sub-trade requirement, and instead, would require that parties to pricing or pooling agreements report their cargo volume and revenue results on only the top 10 agreement-wide commodities. Commodity data reported on an agreement-wide basis, instead of a sub-trade basis, should be readily available to the parties and less burdensome to report. Further, a definition of revenue results is provided in the instructions to improve the accuracy and consistency of the parties' commodity revenue data. To maintain a consistent commodity reporting standard, the requirement that commodities be identified at the 4-digit level of customarily used commodity coding schedules remains. While some parties may not use commodity coding schedules to identify and track their cargo and revenues, such discrepancies should be easier to resolve under the reduced commodity reporting requirements proposed herein.

iv. Vessel Capacity and Utilization

The proposed Information Form adds new reporting requirements for agreements with pricing or pooling authority. Parties to such agreements would be required to report, for a calendar quarter period, their vessel capacity and percentage of vessel capacity utilization for their liner services that would fall under the agreement. Further, the parties would be required to identify and describe any significant changes in the amounts of vessel capacity for their liner services that are anticipated or planned to occur when the agreement goes into effect. For consistency and clarity, the Information Form instructions provide definitions of vessel capacity, capacity utilization, and the term ''significant changes in the amounts of vessel capacity.''

Parties to rate discussion and conference agreements collectively set freight rates in relation to the supply and demand conditions within trades. Even if these agreements do not contain operational authority, many rate discussion and conference agreements authorize the parties to exchange information and collectively discuss their vessel capacity, capacity utilization, and service levels. These agreements may regularly track and distribute this information to their carrier members. Further, as discussed, the parties may augment the overall rate objectives of their rate discussion or conference agreements by controlling the supply of vessel capacity under their separate operational agreements within trades.

To analyze the likely impact of agreements with pricing or pooling authority accurately, the Commission must examine such authority in close connection with the amounts of vessel capacity supplied by the parties along with their corresponding capacity utilization percentages. For a complete analysis, the Commission also would need to know whether the parties are planning to significantly alter their vessel capacity levels after the agreement goes into effect. Often, the Commission has requested such information from parties to pricing or pooling agreements during the review process, and after such agreements have become effective as concerns under section 6(g) have arisen. The proposed Information Form would provide the Commission with this necessary information. As such, the Commission would be better able to analyze both the supply and demand conditions in the U.S. trades, and consequently, the potential impact of pricing or pooling agreements on freight rates. Carriers to such agreements are the best source of accurate vessel capacity and capacity utilization information regarding their liner services. The Commission does not believe that the addition of these reporting requirements would impose an undue burden since carriers already routinely track this information for their operations.

v. Port Service

The proposed Information Form retains the requirement that parties to pricing or pooling agreements provide their vessel calls and describe any port service changes that are anticipated or planned to occur when the agreement goes into effect. As with similar modifications, this requirement would be clarified to limit the parties' reporting to only those vessel calls and port service changes relating to their liner services that would fall under the agreement, rather than any or all vessel calls and changes within the agreement trade.

e. Section V

Section V would require that parties to all subject agreements identify contact persons for the Information Form and the agreement, and that the Information Form be certified and signed by a representative of the parties.

3. Monitoring Report Regulations

Subpart G of part 535 of the proposed rule modifies the Monitoring Report regulations to mirror the proposed changes to the Information Form regulations in subpart E of part 535. Agreements subject to Monitoring Reports are identified by the authority contained in the agreement, rather than using the current agreement classifications. Most notably, the proposed rule reduces the number of agreements subject to Monitoring Reports and limits the application of the regulations.

Currently, all Class A, B, and C agreements that are effective under the Shipping Act are required to submit quarterly Monitoring Reports. Section 535.702(a) of the proposed rule would require Monitoring Reports from all agreements with the authority to discuss or agree on capacity rationalization, and from agreements with pricing or pooling authority [43] where the parties to a pricing or pooling agreement hold a combined market share of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement.[44] The Commission estimates that the number of agreements subject to Monitoring Reports would be reduced from 213 to 63. These 63 agreements would include rate discussion, conference, and major global alliance agreements in effect throughout the U.S. trades. The Commission believes that Monitoring Reports from these agreements would generally provide sufficient information to monitor the collective activities of carriers within the U.S. trades pursuant to the standards of the Shipping Act.

The Commission's proposal to apply a market share threshold of 35 percent to monitor pricing or pooling agreements is analogous to the Horizontal Merger Guidelines issued jointly by the U.S. Department of Justice and the Federal Trade Commission in 1992. *1992 Horizontal Merger Guidelines* (''1992 Guidelines''), 57 FR 41552 (Sept. 10, 1992). In analyzing horizontal mergers between firms, the 1992 guidelines set forth economic standards that the agencies use to apply U.S. antitrust law. Part of their analysis involves evaluating the likely effects of a merger on the competitive behavior of firms within a market. The intent is to determine whether a merger would likely lead to increased coordinated interaction between firms in a market, and/or create the incentive for merging firms to alter their unilateral behavior by increasing prices and suppressing output, *i.e.*, supply. The agencies conclude that:

> [w]here the merging firms have a combined market share of at least thirty-five percent, merged firms may find it profitable to raise price and reduce joint output below the sum of their premerger outputs because the lost markups on the foregone sales may be outweighed by the resulting price increase on the merged base of sales.[45]

1992 Guidelines at 41561.

Market share provides a general economic measure to gauge the competitive influence of carrier agreements. Under the Shipping Act, however, the Commission does not solely rely on market share in assessing the competitive impact of a carrier agreement on freight rates and service levels in the U.S. trades. Other factors must be considered, including the authority and terms of the agreement, the competitive structure of the agreement trade, and the prevailing and projected economic conditions within the agreement trade. We note, however, that the 35 percent market share threshold used for application of periodic reporting requirements should not be construed as establishing a determination of the likely impact of an agreement for purposes of section 6(g) of the Shipping Act, nor does it imply that we consider pricing or pooling agreements below this threshold to be economically insignificant.

The Commission recognizes that the Monitoring Report regulations must be flexible enough to provide for exceptional cases. These cases may occur when a pricing or pooling agreement with a market share below 35 percent constitutes the major rate agreement in a trade, or poses unique anticompetitive or statutory concerns that would require close monitoring. Therefore, section 535.702(c) of the proposed rule provides that the Commission may, as necessary, require Monitoring Reports from an agreement with pricing or pooling authority with a market share below the 35 percent threshold.[46]

In addition, the Commission occasionally may find it necessary to prescribe alternative periodic reports on the use of certain authority contained in an agreement. This may occur when an agreement contains unique authority, the effects of which may require monitoring, but is not captured under the standard Monitoring Reports. For example, the Commission currently requires alternative periodic reports, in addition to Monitoring Reports, from the Trans-Atlantic Conference Agreement on its temporary slot assist chartering authority. Traditionally, these types of reports have been negotiated on an informal basis with the parties when an agreement or an agreement modification was filed with the Commission. Section 535.702(d) of the proposed rule clarifies the Commission's authority in this regard by providing that in addition to or instead of the Monitoring Report, the Commission may, as necessary, prescribe alternative periodic reporting requirements on parties to any agreement subject to section 535.201.[47]

Section 535.705 of the proposed rule provides waiver procedures whereby carriers may request relief from any of the Monitoring Report requirements. Additional data and information in support of the requested relief, however, would be required for the Commission's review.

[43] ''Pricing or pooling authority'' as referred to in the Monitoring Report regulations is identical to the use of the term in the Information Form regulations; *i.e.*, it refers to any of the following authorities: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters.

[44] Under section 535.702(b) of the proposed rule, the Commission's Director of BTA may determine the Monitoring Report obligations of agreements with pricing or pooling authority using the 35 percent market share threshold. For newly filed agreements, this would be based on the market share data from the Information Form submitted with the agreement. Thereafter, at the beginning of each calendar year, BTA would notify such agreements of any change in their reporting obligations based on the market share data from their Monitoring Reports for the previous second calendar quarter (April–June).

[45] As discussed, carriers collectively set freight rates in relation to the supply and demand conditions within trades. The authorities to agree on rate levels and vessel capacity are interrelated and complementary even if such authorities are not contained within a single agreement. Many carriers in a trade may participate in a large rate discussion agreement and separate agreements with capacity rationalization authority, which such carriers may use to control the supply of vessel capacity to further their rate objectives under the discussion agreement. The Commission must examine the collective rate activities of carriers in relation to the vessel capacity supplied by carriers and any collective activities that might affect the supply of vessel capacity in a trade. For these reasons, the Commission believes that the underlying economic rationale used to apply the 35 percent market share standard under U.S. antitrust law makes it comparable and appropriate as a threshold for monitoring agreements with pricing or pooling authority.

The proposed rule does not apply a market share threshold for monitoring agreements with capacity rationalization authority. These arrangements tend to operate globally, which makes it difficult or impractical to apply a standard market share threshold to the entire geographic scope of the agreement, or any one particular trade within the scope of the agreement. The definition of capacity rationalization authority, however, distinguishes it from simpler forms of operational authority, and therefore, limits the application of the Monitoring Report regulations.

[46] The Commission's authority on this matter would be delegated to the Director of BTA in subpart C of part 501.

[47] Section 535.201 applies to carrier agreements, agreements between marine terminal operators, and agreements between carriers and marine terminal operators. At present, the Commission does not require any specifically prescribed periodic reports from any agreements between marine terminal operators, or between marine terminal operators and carriers. The Commission's jurisdiction to require additional information and documents from all such agreements is stated in section 5(a) of the Shipping Act. The proposed rule would delegate the Commission's authority to prescribe alternative periodic reports to the Director of BTA in subpart C of part 501.

4. Monitoring Report

Section 535.703(a) of the proposed rule replaces the current Monitoring Report forms with one form in appendix B of part 535 and divides the form into three sections. Section 535.703(b) of the proposed rule would require that parties to an agreement complete each section of the Monitoring Report applicable to the agreement and the authority contained in the agreement. Sections I and II would apply based on the authority contained in the agreement. Section III would apply to all agreements required to submit Monitoring Reports under section 535.702(a) of the proposed rule. The Monitoring Report form would be made available in electronic format using Microsoft Office 2000 (Word and Excel) that could be downloaded from the Commission's home page. Parties may complete and submit their Monitoring Reports in paper format, or in electronic format on diskette or CD–ROM. This procedure will remain available until the Commission has developed and implemented an electronic filing system for such documents.

It is further proposed to stay section 535.701(e) until such time as the Commission has developed and implemented an electronic system for filing Monitoring Reports and Minutes.

a. Section I

Section I of the proposed Monitoring Report would apply to all agreements with the authority to discuss or agree on capacity rationalization. Parties to agreements subject to this section would be required to submit quarterly data on their vessel capacity and capacity utilization. These reporting requirements correspond to the proposed requirements in section III of the Information Form.[48]

Section I would also require that a narrative statement of any changes in vessel capacity and/or liner services (including ports) that the parties plan to implement under the agreement be submitted to the Commission's Director of BTA no later than 15 days after a change has been agreed upon by the parties but prior to the implementation of that change (*See* section 535.703(c) of the proposed rule). Advance notice of the parties' planned changes in connection with this agreement authority is necessary. The Commission believes it should have more timely notice of such information than quarterly submissions would provide, in order to determine whether action pursuant to section 6(g) of the Shipping Act is necessary prior to implementation of a harmful reduction in vessel capacity or liner service.

b. Section II

Section II of the proposed Monitoring Report would apply to agreements under which the parties to an agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters.[49]

Parties to agreements subject to this section would be required to submit the following quarterly data and information: market share, total average revenue, cargo volume and revenue results on the top 10 agreement-wide commodities, vessel capacity and capacity utilization, significant changes in vessel capacity, and significant changes in service at ports. These requirements correspond to the proposed requirements in section IV of the Information Form. The proposed Monitoring Report would no longer require quarterly reporting on independent rate actions for parties to conference agreements. With the industry changes which have occurred since OSRA, the Commission no longer believes that a quarterly reporting burden on conference parties to monitor this information is necessary.

Regarding the commodity data requirements in this section, the Commission believes that quarterly information on the top 10 agreement-wide commodities would be sufficient for most agreements subject to this section. The Commission, however, recognizes that exceptional circumstances may arise in which it would be appropriate to require the submission of data on a sub-trade or regional basis, rather than an agreement-wide basis. This may occur when an agreement with extremely high market share covers a broad trade area comprised of large distinct sub-trades or regions, and establishes rates distinctly by sub-trade or region. For example, the Commission believes that it may be appropriate to require large rate discussion agreements, such as TSA and WTSA, to report commodity data for this section on a sub-trade or regional basis. In addition, sub-trade commodity data may be necessary where unique anticompetitive concerns are present, or where competitive issues affect pricing for certain commodities. Therefore, section 535.703(d) of the proposed rule provides that the Commission may, in its discretion, require sub-trade commodity data from agreements subject to this section of the Monitoring Reports.[50]

c. Section III

Section III would require that parties to all subject agreements identify a contact person for the Monitoring Report, and that the Monitoring Report be certified and signed by a representative of the parties.

D. Implementation of the Proposed Information Form and Monitoring Report Regulations

In order to assure a smooth transition from the Commission's existing system for collecting information and data in connection with filed agreements to the system proposed in this proceeding, the Commission proposes to implement the Information Form and Monitoring regulations as follows. The new regulations would become effective 30 days after publication of a final rule in the **Federal Register**. All new agreements filed after that time would be required to comply with the new Information Form provisions. The new Monitoring Report provisions would become effective 90 days after publication, and would apply to all agreements then in effect under the Shipping Act. Commenters are encouraged to provide input on this proposed timetable.

IV. Minutes, 46 CFR Part 535, Subpart G

A. Introduction

The Commission requires that certain agreements authorized to operate pursuant to section 4 of the Shipping Act, 46 U.S.C. app. 1703, file confidentially with the Commission a report of designated meetings describing all matters within the scope of the agreement which are discussed or addressed at any such meeting, and indicate any action taken. 46 CFR 535.706. The current minutes filing regulations, which largely reflect the original rules adopted nearly twenty

[48] At present, the Commission estimates that there are 30 agreements in effect with capacity rationalization authority.

[49] At present, the Commission estimates that there are 33 such agreements in effect.

[50] The Commission's authority on this matter would be delegated to the Director of BTA in subpart C of part 501.

years ago following the enactment of the Shipping Act, provide the Commission with a summary of the business transacted at a meeting of parties to an agreement filed with the Commission. Minutes provide the Commission with information on specific areas on which agreement parties focus their attention (*i.e.*, rates, service contracting, conditions of service), as well as the economic and competitive conditions of the trade that influence their collective activity. Minutes have been recognized by Congress as ''perhaps the chief means whereby the [agency] was to be kept apprised of conference action'' [51] and are useful in monitoring the activities of the agreement and its members, and in understanding important topics and issues discussed by the agreement members. More recently, during the legislative process that led to the enactment of OSRA, the Commission was encouraged to be more vigilant in exercising its agreements oversight function.[52]

The liner shipping industry has undergone significant regulatory and structural change since the enactment of the Shipping Act and the adoption of the Commission's current minutes regulations. Carrier agreements have become more complex, and many include authority to engage in a wider variety of activities. These changes have made it more difficult for the Commission to monitor agreement activities and assess economic and competitive trade conditions. Moreover, our experience reviewing agreement minutes, discussions with agreement filing counsel and representatives, and recent fact findings and other investigative proceedings have highlighted areas of concern that necessitate an enhancement of our minutes program. These areas of concern include: (1) Inadequate inclusion and coverage of substantive issues and insufficient level of detail used to describe carrier discussions; (2) failure to file minutes of meetings held under authority of the agreement where substantive issues are being discussed; (3) inadequate identification of and lack of provision for Commission access to documents used or discussed in agreement meetings; and (4) untimely filing of agreement minutes.

To address these concerns, the Commission proposes to replace its rules governing the filing of minutes by agreements, currently set forth at 46 CFR 535.706–07.[53] Our proposal would: (1) Require minutes to be filed by agreements based on the types of authority specified in the agreement, rather than according to agreement type as currently provided for in 46 CFR 535.706(b); (2) eliminate current regulatory language that limits the minutes filing requirement to meetings at which the parties are authorized to take ''final action'; (3) clarify the level of detail required to describe matters discussed or considered at agreement meetings; (4) establish a new requirement that each document distributed, discussed, or exchanged at meetings be submitted with the minutes of such meetings; (5) clarify the format used for assigning sequential numbers for minutes currently provided in 46 CFR 535.706(d); (6) reduce the time period for filing minutes with the Commission from 30 days as required in 46 CFR 535.701(f), to 15 days from the date of the meeting; and (7) amend language throughout the existing minutes rules to update definitions and Bureau designations, and replace references to ''conferences'' with the term ''agreement,'' clarifying the broad range of agreements to which these provisions apply.

B. Discussion of the components of the current minutes rules and the proposed changes

1. Agreements Required to File Minutes

The Commission's current rules require that minutes of agreement meetings be filed by ''conferences, interconference agreements, agreements between a conference and other ocean common carriers, pooling agreements, equal access agreements, discussion agreements, marine terminal conferences, and marine terminal rate fixing agreements * * *'' 46 CFR 535.706(b). Although most of these named agreement types are specifically defined in 46 CFR 535.104, others are not, *e.g.*, discussion agreements.[54] Thus, 46 CFR 535.706(b) identifies those agreements that must file minutes based on a specific type of agreement, rather than on the actual activities in which the parties are authorized to engage. Due to the changes in the industry and the concurrent increase in the types of agreement activities, this approach may not reflect all of the actual authority contained in the agreement itself, or the activities in which the agreement parties are engaged. Moreover, use of these agreement categories to identify which agreements must file minutes with the Commission often raises questions about agreements' compliance with Commission regulations. Further, use of these categories has often resulted in lengthy discussions with filing counsel as to an agreement's minutes filing responsibilities, particularly for those agreements that contain multiple authorities, *e.g.*, vessel space sharing, voluntary rate discussion, and joint service contracting authority.

When the Commission's rules governing the filing of agreement minutes were promulgated under the Shipping Act, the authority of most carrier agreements generally fit into the enumerated categories in the rules. At that time, the specified agreement types represented the universe of consequential agreements filed with the Commission and minutes were filed by agreements considered to be of significant regulatory concern. Rarely was there a question as to an agreement's minutes filing responsibilities based on its agreement classification. However, over time these agreement categories have not kept pace with the evolving nature of collective carrier activities. For example, most agreements now on file with the Commission combine a number of activities under one agreement (*e.g.*, operational agreements that also include authority to discuss service contract rates or terms), or have established new authority not anticipated when the current definitions were drafted (*e.g.*, portal agreements).

To address the evolving nature of carrier agreements and to clarify which agreements must file minutes of their meetings, we propose to create a new subsection (a) for the redesignated 46 CFR 535.704. This new subsection would provide that the filing requirement be based on the specific type of authority contained in the filed agreement, rather than on a generic agreement type. Thus, agreements authorized to engage in ''discussion or establishment of any type of rates, whether in tariffs or service contracts; pooling or apportioning of cargo; discussion of revenues, earnings, or losses; discussion or exchange of vessel operating costs; or discussion of service contract matters, including the

[51] *Report of the Antitrust Subcommittee on the Judiciary on the Ocean Freight Industry,* House of Representatives, 87th Cong., 2nd Sess., 363 (1962).

[52] Senate Report at 13.

[53] Sections 535.706–07 will be redesignated as section 535.704.

[54] While the Commission's rules do not specifically define a ''discussion agreement,'' 46 CFR 535.104(aa) defines ''rate agreement'' to mean an agreement between ocean common carriers which authorizes agreement upon, on either a binding basis under a common tariff or on a non-binding basis, or discussion of, any kind of rate. An agreement between ocean common carriers that authorizes voluntary, non-binding agreement on or discussion of a variety of pricing or operational matters including rates and terms of individual carrier tariffs or service contracts, or capacity rationalization, is what is commonly referred to as a ''discussion agreement.''

establishment of voluntary service contract guidelines'' would be required to file minutes of meetings with the Commission. We believe this approach more efficiently captures the true nature of agreements' activities.

2. Definition of Meeting

Section 535.706(a) currently defines the term ''meetings'' as including ''any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees or sub-committees of the parties authorized to take final action on behalf of the parties.'' Section 535.706(b) requires certain specified agreements to file ''a report of each meeting * * * describing all matters within the scope of the agreement which are discussed or considered at any such meeting * * * and shall indicate the action taken.''

The Commission's review of agreement minutes, discussions with filing counsel and agreement representatives, and recent fact findings and other investigative proceedings, all indicate that the current definition of ''meeting'' is ambiguous and causes confusion over which meetings or discussions held under an agreement are subject to the requirement to file minutes with the Commission. Further, differing interpretations of the regulations have resulted in minutes of meetings not being filed when such meetings covered substantive issues. Questions have arisen over whether the minutes filing requirement is based on the level of authority of the participants at a given meeting (*i.e.*, carrier representatives, committees, and subcommittees authorized to take final action on behalf of their respective lines or on behalf of the agreement, even if the discussions did not result in ''final'' decisions), or on whether ''final action'' was taken. Moreover, numerous documents obtained in Commission proceedings indicate that the Commission has not received minutes for communications for which we believe the regulations contemplate the filing of minutes.

Market-oriented regulatory reforms under the Shipping Act, and more recently under OSRA, especially those focused on liberalizing service contracting, encourage carriers to act more independently within discussion agreements, yet also challenge carriers to find effective ways to communicate and share information. Today, the Internet and agreement-administered email systems allow carriers to collect and share unlimited information on a more frequent and timely basis. Some agreements have comprehensive communications networks and procedures to ensure and support transparency through the flow of information among carrier members and the agreement secretariat. As a result, major discussions are being conducted under circumstances that may not be viewed as a meeting.

Agreements structure their organizations in varied ways and utilize many methods for decision-making. Many conduct their business under multiple committees and sub-committees and file minutes of meetings held under some of those groups. Other agreements have a more streamlined structure and file few, if any, minutes for committees or sub-committees, even if major policy discussions are conducted at these levels. As a consequence, time-consuming staff follow-up with agreement representatives is often necessary to gain a clear understanding of the origins of and issues behind those discussions that are reported.

In order to address these issues, the Commission proposes to revise the current definition of meeting at redesignated subsection 535.704(b) to include ''all discussions at which any agreement is reached among any number of parties to the agreement relating to the business of the agreement; and all other discussions among three or more members of the agreement (or all members if fewer than three) relating to the business of the agreement.'' Further, the rule would specify that this definition is intended to encompass meetings of the members' agents, principals, owners, officers, employees, representatives, committees or subcommittees. Thus, agreements authorized to engage in certain enumerated activities would be required to file minutes of all discussions among any number of members relating to the business of the agreement when an agreement is reached, and all discussions between three or more members relating to the business of the agreement regardless of whether an agreement is reached. Agreements with less than three members would submit minutes on all discussions relating to the business of the agreement. The proposal would also encompass discussions held via electronic means, and through agreement secretariats. The Commission considered eliminating completely the final action provision and proposing that minutes of all discussions among any number of members be filed. However, we believe that minutes of discussions between three or more members, whether or not agreement is reached, should provide the necessary coverage and details of relevant meetings enabling the Commission to obtain a clear picture of the activities of the agreement.[55] Further, it is not the intent of the Commission to require the filing of minutes for such discussions as two-party electronic communications. Requiring the filing of minutes for discussions of this nature would put an undue burden on the industry and appears to be unnecessary.

We propose to retain the present waiver provision, currently at 46 CFR 535.709 (redesignated as § 535.705). Under that provision, a waiver from the minutes filing requirement may be granted in advance upon a showing of good cause.

3. Content of Minutes

The Commission's current rules governing the content of minutes, at 46 CFR 535.706(b), provide that specified agreements shall file with the Commission ''a report of each meeting * * * describing all matters within the scope of the agreement which are discussed or considered at any such meeting * * * and shall indicate the action taken.'' The rules do not, however, specify the degree of detail such reports are expected to contain. As a result, the minutes currently being filed under this provision vary considerably in detail and scope. We are particularly concerned about the filing of vague and obscure minutes by some agreements. As a consequence, the minutes being filed by some agreements are not useful in assisting the Commission in its oversight of activities taking place under the authority of the filed agreement.

To that end, we are proposing to amend the minutes regulation, at redesignated subsection 535.704(c), to require that descriptions of agreement meetings be ''detailed enough that a non-participant reading the minutes could reasonably gain a clear understanding of the nature and extent of the discussions, and where applicable any decisions reached * * *'' We believe that this proposal more clearly enunciates our intention that the parties who are granted limited antitrust immunity to operate in concert under filed agreements must provide a sufficient degree of detail of the discussions permitted under these agreements. Further, we seek to make clear that full disclosure is required, and any efforts to obscure the true nature of discussions or actions taken is prohibited.

The Commission's current rules, at 46 CFR 535.707, require agreements subject

[55] The term ''final action'' has been eliminated. See discussion, *infra*.

to the minutes filing requirement to list in their minutes ''all reports, circulars, notices, statistics, analytical studies or other documents, not otherwise filed with the Commission, * * * which are distributed to the member lines and are used to reach a ''final decision'' on a variety of matters. The extent of compliance with this requirement is difficult to assess accurately since such documents may not be mentioned in minutes if they are not viewed as related to a ''final decision.'' Such documents may not be used to reach a final decision, but may be used to guide members' independent activities. The general paucity of such listings in current minutes, as well as material developed from Commission information demand orders and through discussions with agreement secretariats and filing counsel suggest that compliance with this requirement is far from complete. Further, in instances where a document is identified in the minutes, Commission staff must then determine its importance and attempt to obtain a copy of the document. We believe it is more likely that many documents, collectively prepared or used by agreement members, remain unknown to the Commission.

The Commission believes that effective monitoring of agreement activity requires efficient and timely access to such documents. To address this issue, we are proposing to eliminate the reference to ''final decision'' and add to the redesignated 46 CFR 535.704(c) a subparagraph that agreements must file with their minutes ''any report, circular, notice, statistical compilation, analytical study, survey, or other work distributed, discussed, or exchanged at the meeting, whether presented by oral, written, electronic, or other means.'' However, the parties would not be required to submit publicly available materials, provided they are identified in the minutes and are readily accessible.

This proposal is intended to provide the Commission with the relevant information necessary to fulfill its statutory obligation of monitoring carriers' collective activities to ensure they do not result in an unreasonable increase in transportation cost or an unreasonable reduction in transportation service. The Commission considered, as an alternative, requiring agreements to submit a summary of all documents discussed at minuted meetings in lieu of the actual documents. However, we rejected this proposal, believing that requiring agreements to create a summary, simply for filing purposes, would be more burdensome than requiring submission of the documents themselves. In addition, this approach would be less burdensome on the Commission's staff as it would reduce the utilization of scarce resources in tracking down documents, and instead allow us to focus on review and analysis of concerted activities.

4. Serial Numbers

Current section 535.706(d)(1) requires each set of minutes filed with the Commission to be assigned a serial number, and provides an illustrative example suggesting that minutes of meetings be sequentially numbered from the date the agreement becomes effective. Section 535.706(d)(2) provides that any conference or rate agreement which has a system for assigning sequential numbers to its minutes which differs from the example may continue to use its own system.

We now propose, at the redesignated 46 CFR 535.704(e), to require that each set of minutes filed with the Commission shall include the agreement name and number, and a unique identification number indicating the sequence in which the meeting took place during the calendar year. For example, the first meeting of 2003 for agreement ''A'' would be listed as: ''A (Agreement Number), 1/2003.'' The second meeting would be listed as ''A (Agreement Number), 2/2003'' and so on, irrespective of whether the meeting is of a specific committee or subcommittee. Numbering would start over in the following calendar year, *i.e.*, the first meeting of the 2004 calendar year would be ''A (Agreement Number), 1/2004.''

The current rule suggests that serial numbers be applied sequentially. Almost all agreements currently assign serial numbers in this manner to meetings held during a calendar year and start a new numbering sequence for each consecutive year. In addition, about one-third of those assign serial numbers based on the type of meeting or sub-committee, while a few agreements only refer to the date of the meeting and do not assign a unique serial number at all.

Agreements filed with the Commission today typically have a complex organizational structure. Policy level meetings and committees are used to establish pricing policy and to discuss and address broad trade and competitive issues, while working committees or sub-committees (usually consisting of less than the full membership) conduct research; collect, compile and analyze data and information; and make recommendations to the higher level policy committees on significant matters. Ad hoc committees also are established as necessary, and teleconferences are frequently used as a means to conduct collective carrier business.

Therefore, in order to establish and facilitate an efficient system for filing agreement minutes, as well as to manage the information for compliance and research purposes, the Commission proposes a regulation requiring a standard format for assigning serial numbers to agreement minutes. This proposal requires that agreement minutes' serial numbers be unique, sequentially assigned numbers reflecting the year in which the meeting takes place, adopting the format currently used by a number of carrier agreements.

5. Filing Deadlines

Section 535.701(f) currently requires, among other things, that minutes of agreement meetings be filed within 30 days of the meeting, and that any documents requested by the Commission be filed within 30 days from the receipt of a request. The 30-day requirement was established prior to the widespread adoption and use of new forms of electronic communications. Today, most agreements have electronic mail systems administered through a secretariat and use such systems to electronically record, review and disseminate information, including minutes of their meetings. Based on draft minutes of agreement meetings obtained in Commission investigations and responses to other Commission information demand orders, it appears that minutes for some agreement meetings are prepared within one or two days of the meeting (and sometimes the same day), and are provided promptly to the participants for review (mainly via email). These agreements then typically allow up to two weeks for the participants to respond with any revisions. Based on our comparison of the samples of draft minutes with the final versions, it appears that revisions are rare. Moreover, Commission records show that some agreements do file minutes of their meetings prior to the current 30-day deadline, and in fact, agreements have expedited their filings in response to informal staff requests for minutes of particular interest.

The Commission therefore proposes that the time period for filing minutes of meetings, set forth at section 535.701(f), be reduced from 30 to 15 calendar days from the date of the meeting. Relevant documents referenced in filed minutes would be submitted with the minutes.

V. Miscellaneous Changes to 46 CFR Part 535

Along with all the proposed changes discussed above, the Commission is also taking this opportunity to update and clarify language in some rule sections. For the most part, these changes involve rewording of rules with no substantial change in the intent or effect of the affected rules. Apart from non-substantive language changes throughout the rules, some of the miscellaneous changes include rearranging the sequence of marine terminal agreement exemptions under subpart C of the rules; updating the name of the Bureau of Trade Analysis; clarifying the identities of parties to husbanding and agency agreements in §§ 535.303 and 535.304, respectively; and clarifying the wording of the rules regarding requests for expedited review of agreements in § 535.605, requests for additional information in § 535.606, and failures to comply with requests for additional information in § 535.607.

Finally, the Commission is proposing removing obsolete language regarding the form requirements for agreements and agreement amendments; specifically, in § 535.403 removing reference to the generic classification of agreements and the date of the last republication of an agreement from the title page. The Commission further proposes to add minor form requirements for reflecting the original effective date on the title page of an agreement when the title page is revised and requiring that the latest amendment number be reflected on each revised page in § 535.403.

VI. Oral Presentations

Pursuant to Rule 53(a) of the Commission's Rules of Practice and Procedure, 46 CFR 502.53(a) (2002), in notice-and-comment rulemakings the Commission may permit interested persons to make oral presentations in addition to filing written comments. The Commission has determined to permit interested persons to make such presentations to individual Commissioners in this proceeding, at the discretion of each Commissioner.

Interested persons may request one-on-one meetings at which they may make presentations describing their views on the proposed rule. Any meeting or meetings shall be completed before the close of the comment period. The summary or transcript of oral presentations will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Interested persons wishing to make an oral presentation should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

VII. Statutory Reviews and Request for Comments

The reporting, recordkeeping, and disclosure requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB). Public burden for this collection of information is estimated to average 37 hours per response for agreement filings (including information forms); 170 hours per quarterly response for monitoring reports from pricing or pooling agreements; 40 hours per quarterly response for monitoring reports from capacity rationalization agreements; and two hours per response for minutes filing. The overall estimated burden is 41,947 hours per annum, a reduction of 52.85 percent from the current estimated burden of 88,970 hours per annum. These estimates include, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gather and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 within 30 days of publication in the **Federal Register**.

The Commission would also like to solicit comments to: (a) 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; (b) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record.

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed rules will not, if promulgated, have a significant impact on a substantial number of small entities. The affected universe of parties is limited to ocean common carriers, passenger vessel operators, and marine terminal operators. The Commission has determined that these entities do not come under the program and policies mandated by the Small Business Regulatory Enforcement Act as they typically exceed the threshold figures for number of employees or annual receipts or both to qualify as a small entity under the Small Business Administration Guidelines.

List of Subjects

46 CFR Part 501

Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 535

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Maritime Commission proposes to amend parts 501 and 535 of Subchapter A and Subchapter B, respectively, of Chapter IV of Title 46 Code of Federal Regulations as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903, and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 70 Stat. 195; 5 CFR part 2638; Pub. L. 89–777, 80 Stat. 1356; Pub L. 104–320, 110 Stat. 3870.

2. Amend § 501.26 by revising paragraphs (c) and (d), and adding new paragraphs (o) and (p) to read as follows:

§ 501.26 Delegation to the Director, Bureau of Trade Analysis

* * * * *

(c) Authority to grant or deny applications filed under § 535.504 of this chapter for waiver of the Information Form requirements in § 535.503 of this chapter.

(d) Authority to grant or deny applications filed under § 535.705 of

this chapter for waiver of the reporting requirements in subpart G of part 535 of this chapter.

* * * * *

(o) Authority to require Monitoring Reports from, or prescribe alternative periodic reporting requirements for, parties to agreements under §§ 535.702(c) and (d) of this chapter.

(p) Authority to require parties to agreements subject to the Monitoring Report requirements in § 535.702(a)(2) of this chapter to report their agreement commodity data on a sub-trade basis pursuant to § 535.703(d) of this chapter.

3. Revise part 535 to read as follows:

PART 535—OCEAN COMMON CARRIERS AND MARINE TERMINAL OPERATORS AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

Subpart A—General Provisions

Sec.
535.101 Authority.
535.102 Purpose.
535.103 Policies.
535.104 Definitions.

Subpart B—Scope

535.201 Subject agreements.
535.202 Non-subject agreements.

Subpart C—Exemptions

535.301 Exemption procedures.
535.302 Exemptions for certain modifications of effective agreements.
535.303 Husbanding agreements—exemption.
535.304 Agency agreements—exemption.
535.305 Equipment interchange agreements—exemption.
535.306 Nonexclusive transshipment agreements—exemption.
535.307 Agreements between or among wholly-owned subsidiaries and/or their parent—exemption.
535.308 Marine terminal agreements—exemption.
535.309 Marine terminal services agreements—exemption.
535.310 Marine terminal facilities agreements—exemption.
535.311 Low market share agreements-exemption.
535.312 Vessel charter party-exemption.

Subpart D—Filing of Agreements

535.401 General requirements.
535.402 Complete and definite agreements.
535.403 Form of agreements.
535.404 Agreement provisions.
535.405 Organization of conference and interconference agreements.
535.406 Modification of agreements.
535.407 Application for waiver.
535.408 Activities that may be conducted without further filings.

Subpart E—Information Form Requirements

535.501 General requirements.
535.502 Agreements subject to the Information Form requirements.
535.503 Information Form.
535.504 Application for waiver.

Subpart F—Action on Agreements

535.601 Preliminary review—rejection of agreements.
535.602 **Federal Register** notice.
535.603 Comment.
535.604 Waiting period.
535.605 Requests for expedited review.
535.606 Requests for additional information.
535.607 Failure to comply with requests for additional information.
535.608 Confidentiality of submitted material.
535.609 Negotiations.

Subpart G—Reporting Requirements

535.701 General requirements.
535.702 Agreements subject to Monitoring Report and alternative periodic reporting requirements.
535.703 Monitoring Report form.
535.704 Filing of minutes.
535.705 Application for waiver.

Subpart H—Mandatory and Prohibited Provisions

535.801 Independent action.
535.802 Service contracts.
535.803 Ocean freight forwarder compensation.

Subpart I—Penalties

535.901 Failure to file.
535.902 Falsification of reports.

Subpart J—Paperwork Reduction

535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Appendix A To Part 535—Information Form and Instructions

Appendix B To Part 535—Monitoring Report and Instructions

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1718; Pub. L. 105–258, 112 Stat. 1902 (46 U.S.C. app. 1701 note); Sec. 424, Pub. L. 105–383, 112 Stat. 3440.

Subpart A—General Provisions

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, and 19 of the Shipping Act of 1984 (''the Act''), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

§ 535.102 Purpose.

This part implements those provisions of the Act that govern agreements by or among ocean common carriers and agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

§ 535.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those classes of agreements that must be accompanied by information submissions when they are first filed, and sets forth the kind of information for certain agreements that the Commission believes relevant to that review. Only information that is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) To further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commercial relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from the filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. To minimize delay in the implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, certain classes of agreements are exempted from the filing requirements of this part.

(e) Under the regulatory framework established by the Act, the role of the Commission as a monitoring agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective to assure their continued compliance with all applicable provisions of the Act. The Act empowers the Commission to impose certain recordkeeping and reporting

requirements. This part identifies those agreements that require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. Only information that is necessary to assure that the Commission's monitoring responsibilities will be fulfilled is requested.

(f) The Act requires that conference agreements contain certain mandatory provisions. Each conference agreement must:

(1) State its purpose;

(2) Provide reasonable and equal terms and conditions for admission and readmission to membership;

(3) Allow for withdrawal from membership upon reasonable notice without penalty;

(4) Require an independent neutral body to police the conference, if requested by a member;

(5) Prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act;

(6) Provide for a consultation process;

(7) Establish procedures for considering shippers' requests and complaints; and

(8) Provide for independent action.

(g) To promote competitive and efficient transportation and a greater reliance on the marketplace, the Act places limits on carriers' agreements regarding service contracts. Carriers may not enter into an agreement to prohibit or restrict members from engaging in contract negotiations, may not require members to disclose service contract negotiations or terms and conditions (other than those required to be published), and may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into contracts. However, agreement members may adopt voluntary guidelines covering the terms and procedures of members' contracts.

§ 535.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement, or association, written or oral (including any modification, cancellation or appendix), entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust* laws means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, that provides for collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Capacity rationalization* means a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service. The term does not include sailing agreements or space charter agreements.

(f) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and

(ii) Only with respect to those commodities.

(g) *Conference agreement* means an agreement between or among two or more ocean common carriers that provides for the fixing of and adherence to uniform tariff rates, charges, practices, and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(i) *Cooperative working agreement* means an agreement that establishes exclusive, preferential, or cooperative working relationships that are subject to the Act, but that do not fall precisely within the parameters of any specifically defined agreement.

(j) *Effective agreement* means an agreement effective under the Act.

(k) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such ocean common carriers associate for the purpose of gaining reciprocal access to cargo that is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(l) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine, and investigate alleged breaches or violations of the conference agreement and/or the conference's properly promulgated tariffs, rules, or regulations by any member of the conference.

(m) *Information form means* the form containing economic information that must accompany the filing of certain agreements and modifications.

(n) *Interconference agreement* means an agreement between conferences.

(o)(1) *Joint service agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established that:

(i) Holds itself out in its own distinct operating name;

(ii) Independently fixes its own rates, charges, practices, and conditions of service or chooses to participate under its operating name in another agreement that is duly authorized to determine and implement such activities;

(iii) Independently publishes its own tariff or chooses to participate under its operating name in an otherwise established tariff;

(iv) Issues its own bills of lading; and

(v) Acts generally as a single carrier.

(2) The common use of facilities may occur, and there is no competition

between members for traffic in the agreement trade; but they otherwise maintain their separate identities.

(p) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(q) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of Title 49 U.S.C. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

(r) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multi-employer bargaining group; but the term does not include an assessment agreement.

(s) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(t) *Monitoring report* means the report containing economic information that must be filed at defined intervals with regard to certain kinds of agreements that are effective under the Act.

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(v) *Ocean freight forwarder* means a person in the United States that dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and processes the documentation or performs related activities incident to those shipments.

(w) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(x) *Pooling agreement* means an agreement between ocean common carriers that provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(y) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(z) *Rate,* for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(aa) *Rate agreement* means an agreement between ocean common carriers that authorizes discussion of or agreement on, either on a binding basis under a common tariff or on a non-binding basis, any kind of rate or charge.

(bb) *Sailing agreement* means an agreement between ocean common carriers to provide service by establishing a schedule of ports that each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity rationalization agreements.

(cc) *Service contract* means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers make a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(dd) *Shipper means:*

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) A non-vessel-operating common carrier (*i.e.*, a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier) that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(ee) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(ff) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(gg) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel space for use by another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity rationalization as defined in this subpart.

(hh) *Sub-trade* means the scope of ocean liner cargo carried between each U.S. port range and each foreign country within the scope of the agreement. U.S. port ranges are defined as follows:

(1) Atlantic and Gulf shall encompass ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. It also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in

the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands; and

(2) Pacific shall encompass all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. It also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

(ii) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(jj) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation and the publishing carrier performs the transportation on one leg of the through transportation on its own vessel or on a vessel on which it has rights to space under a filed and effective agreement. Such an agreement does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier. An agreement that involves the movement of cargo in a domestic offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Act and this part.

(kk) *Vessel-operating* costs means any of the following expenses incurred by an ocean common carrier: salaries and wages of officers and unlicenced crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and charter hire expenses.

Subpart B—Scope

§ 535.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) Control, regulate, or prevent competition in international ocean transportation; or

(7) Discuss and agree on any matter related to service contracts.

(b) *Marine terminal operator agreements.* This part applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; or

(2) Engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

§ 535.202 Non-subject agreements.

This part does not apply to the following agreements:

(a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;

(b) Any maritime labor agreement;

(c) Any agreement related to transportation to be performed within or between foreign countries;

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States; and

(e) Any agreement among marine terminal operators that exclusively and solely involves transportation in the interstate commerce of the United States.

Subpart C—Exemptions

§ 535.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or its own motion, may by order or rule exempt for the future any class of agreement involving ocean common carriers and/or marine terminal operators from any requirement of the Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Applications for exemptions shall conform to the general filing requirements for exemptions set forth at § 502.67 of this title.

(d) *Retention of agreement by parties.* Any agreement that has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Trade Analysis for inspection during the term of the agreement and for a period of three years after its termination.

§ 535.302 Exemptions for certain modifications of effective agreements.

(a) Non-substantive modifications to effective agreements. A non-substantive modification to an effective agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, is one which:

(1) Reflects changes in the name of any geographic locality stated therein, the name of the agreement or the name of a party to the agreement, the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement;

(2) Corrects typographical and grammatical errors in the text of the agreement or renumbers or reletters articles or sub-articles of agreements and references thereto in the text; or

(3) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) Other Miscellaneous Modifications to effective agreements. A miscellaneous modification to an effective agreement is one that:

(1) Cancels the agreement;

(2) Deletes an agreement party;

(3) Changes the parties to a conference agreement or a discussion agreement among passenger vessel operating common carriers that is open to all ocean common carriers operating passenger vessels of a class defined in the agreement and that does not contain ratemaking, pooling, joint service, sailing or space chartering authority; or

(4) Changes the officials of the agreement and delegations of authority.

(c) A copy of a modification described in (a) or (b) above shall be submitted to the Commission but is otherwise exempt from the waiting period requirement of the Act and this part.

(d) Parties to agreements may seek a determination from the Director of the Bureau of Trade Analysis as to whether a particular modification is a non-substantive or other miscellaneous modification within the meaning of this section.

(e) The filing fee for non-substantive or other miscellaneous modifications is provided in § 535.401(g).

§ 535.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent handles routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does not include an agreement that provides for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of husbanding agreements is provided in § 535.401(g).

§ 535.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent solicits and books cargoes and signs contracts of affreightment and bills of lading on behalf of the ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement as defined above is exempt from the filing requirements of the Act and of this part, except those:

(1) Where a common carrier is to be the agent for a competing ocean common carrier in the same trade; or

(2) That permit an agent to enter into similar agreements with more than one ocean common carrier in a trade.

(c) The filing fee for optional filing of agency agreements is provided in § 535.401(g).

§ 535.305 Equipment interchange agreements—exemption.

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for:

(1) The exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and

(2) The transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of equipment interchange agreements is provided in § 535.401(g).

§ 535.306 Nonexclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement is a transshipment agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not:

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

> The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost

effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

(f) The filing fee for optional filing of nonexclusive transshipment agreements is provided in § 535.401(g).

§ 535.307 Agreements between or among wholly-owned subsidiaries and/or their parent—exemption.

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the Act between or among an ocean common carrier or marine terminal operator subject to the Act and any one or more ocean common carriers or marine terminal operators which are ultimately owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing requirements of the Act and this part.

(c) Ocean common carriers are exempt from section 10(c) of the Act to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

(d) The filing fee for optional filing of these agreements is provided in § 535.401(g).

§ 535.308 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification or appendix) that applies to future, prospective activities between or among the parties and that relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations that provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 535.308(a), with the exception of marine terminal conference, marine terminal interconference, and marine terminal discussion agreements as defined in § 535.308(b), (c), and (d), are exempt from the waiting period requirements of the Act and this part and will, accordingly, be effective on filing with the Commission.

(f) The filing fee for marine terminal agreements is provided in § 535.401(g).

§ 535.309 Marine terminal services agreements—exemption.

(a) Marine terminal services agreement means an agreement, contract, understanding, arrangement, or association, written or oral, (including any modification or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services that are provided to and paid for by an ocean common carrier. These services include: Checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage and including any marine terminal facilities that may be provided incidentally to such marine terminal services. The term ''marine terminal services agreement'' does not include any agreement that conveys to the involved carrier any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or similar other arrangement for the use of marine terminal facilities or property.

(b) All marine terminal services agreements as defined in § 535.309(a) are exempt from the filing and waiting period requirements of the Act and this part on condition that:

(1) They do not include rates, charges, rules, and regulations that are determined through a marine terminal conference agreement, as defined in § 535.308(b); and

(2) No antitrust immunity is conferred under the Act with regard to terminal services provided to an ocean common carrier under a marine terminal services agreement that is not filed with the Commission.

(c) The filing fee for optional filing of terminal services agreements is provided in § 535.401(g).

§ 535.310 Marine terminal facilities agreement—exemption.

(a) Marine terminal facilities agreement means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, that conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 535.310(a) are exempt from the filing and waiting period requirements of the Act and this part.

(c) Parties to marine terminal facilities agreements currently in effect shall be provide copies to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for optional filing of terminal facilities agreements is provided in § 535.401(g).

§ 535.311 Low market share agreements—exemption.

(a) Low market share agreement means any agreement among ocean common carriers that neither authorizes agreement on or discussion of any rate or charge nor the rationalization of capacity, and for which the combined market share of the parties is either:

(1) Less than 15 percent if all parties are members of the same agreement having pricing or capacity rationalization authority in the relevant trade lane and all sub-trades; or

(2) Less than 20 percent if the parties are not members of the same agreement having pricing or capacity rationalization authority in the relevant trade lane and all sub-trades.

(b) Low market share agreements are exempt from the waiting period

requirement of the Act and of this part, and are effective on filing.

(c) Parties to agreements may seek a determination from the Director, Bureau of Trade Analysis, as to whether a proposed agreement meets the general definition of a low market share agreement.

§ 535.312 Vessel charter party—exemption.

(a) For purposes of this section, vessel charter party means a contractual agreement between two ocean common carriers for the charter of the full reach of a vessel, which agreement sets forth the entire terms and conditions (including duration, charter hire, and geographical or operational limitations, if any) under which the vessel will be employed.

(b) Vessel charter parties, as defined in paragraph (a) of this section, are exempt from the filing requirements of the Act and this part.

(c) The filing fee for optional filing of vessel charter parties is provided in § 535.401(g).

Subpart D—Filing of Agreements

§ 535.401 General Requirements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for review and disposition pursuant to section 6 of the Act, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, DC 20573. Such filing shall consist of:

(1) A true copy and seven additional copies of the executed agreement;

(2) Where required by this part, an original and five copies of the completed Information Form referenced at subpart E of this part; and

(3) A letter of transmittal as described in paragraph (b) of this section.

(b) The letter of transmittal shall:

(1) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned agreement number of the effective agreement and the revision, page and/or appendix number of the modification being filed;

(2) Provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(3) Clearly provide the typewritten or otherwise imprinted name, position, business address, and telephone number of the filing party; and

(4) Be signed in the original by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party.

(c) To facilitate the timely and accurate publication of the **Federal Register** notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(d) Any agreement that does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 535.601(b).

(e) Assessment agreements shall be filed and shall be effective upon filing.

(f) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the 45-day waiting period required under the Act.

(g) *Fees.* The filing fee is $1,834 for new agreements requiring Commission review and action; $931 for agreement modifications requiring Commission review and action; $442 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see 46 CFR 501.26(e)); and $145 for carrier and terminal exempt agreements.

(h) The fee for a copy of the Commission's agreement database report is $32.

§ 535.402 Complete and definite agreements.

An agreement filed under the Act must be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations and regulate the relationships among the agreement members, unless those details are matters specifically enumerated as exempt from the filing requirements of this part.

§ 535.403 Form of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreements shall be clearly and legibly written. Agreements in a language other than English shall be accompanied by an English translation.

(b) Every agreement shall include a Title Page indicating:

(1) The full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) If applicable, the expiration date of the agreement; and

(4) The original effective date of the agreement whenever the Title Page is revised.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement title page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page. For agreement modifications, the appropriate amendment number for each modification should also appear on the page along with the basic agreement number.

(d) Each agreement and/or modification filed will be signed in the original by an official or authorized representative of each of the parties and shall indicate the typewritten full name of the signing party and his or her position, including organizational affiliation. Faxed or photocopied signatures will be accepted if replaced with an original signature as soon as practicable before the effective date.

(e) Every agreement shall include a Table of Contents indicating the location of all agreement provisions.

§ 535.404 Agreement provisions.

Generally, each agreement should:

(a) Indicate the full legal name of each party, including any FMC-assigned agreement number associated with that name, and the address of its principal office (not the address of any agent or representative not an employee of the participating party);

(b) State the ports or port ranges to which the agreement applies as well as any inland points or areas to which it also applies with respect to the exercise of the collective activities contemplated and authorized in the agreement; and

(c) Specify, by organizational title, the administrative and executive officials determined by the agreement parties to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, the agreement should specify:

(1) The official(s) with authority to file the agreement and any modification thereto and to submit associated supporting materials; and

(2) A statement as to any designated U.S. representative of the agreement required by this chapter.

§ 535.405 Organization of conference agreements.

Each conference agreement shall:

(a) State that, at the request of any member, the conference shall engage the services of an independent neutral body

to fully police the obligations of the conference and its members. The agreement must include a description of any such neutral body authority and procedures related thereto.

(b) State affirmatively that the conference parties shall not engage in conduct prohibited by sections 10(c)(1) or 10(c)(3) of the Act.

(c) Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(d) Include provisions for independent action in accordance with § 535.801 of this part.

§ 535.406 Modification of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreement modifications shall be filed in accordance with the provisions of §§ 535.401 and 535.403.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published (''revised page''). The revised page shall indicate the consecutive denomination of the revision (*e.g.*, ''1st Revised Page 7''). Additional material may be published on a new original page. New original pages inserted between existing effective pages shall be numbered with an alpha suffix (*e.g.*, a page inserted between page 7 and page 8 shall be numbered 7a).

(c) Each revised page shall be accompanied by a duplicate page, submitted for illustrative purposes only, indicating the language being modified in the following manner:

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(d) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page that shall indicate the new location of the provisions.

§ 535.407 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive the requirements of §§ 535.401, 535.403, 535.404, 535.405, and 535.406.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state:

(1) The specific provisions from which relief is sought;

(2) The special circumstances requiring the requested relief; and

(3) Why granting the requested waiver will not substantially impair effective review of the agreement.

§ 535.408 Activities that may be conducted without further filings.

(a) Agreements that arise from authority of an effective agreement but whose terms are not fully set forth in the effective agreement to the extent required by § 535.402 are permitted without further filing only if they:

(1) Are themselves exempt from the filing requirements of this part (pursuant to subpart C—Exemptions of this part); or

(2) Concern matters set forth in paragraph (b) of this section.

(b) Unless otherwise exempt in subpart C of this part, only the following technical or operational matters of an agreement's affairs established pursuant to express enabling authority in an agreement are considered part of the effective agreement and do not require further filing under section 5 of the Act:

(1) Establishment of tariff rates, rules and regulations and their joint publication;

(2) The terms and conditions of space allocation and slot sales, the establishment of space charter rates, and terms and conditions of charter parties;

(3) Stevedoring, terminal, and related services, including the operation of tonnage centers or other joint container marshaling facilities;

(4) The following administrative matters:

(i) Scheduling of agreement meetings;

(ii) Collection, collation and circulation of data and reports from or to members; and

(iii) Procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(5) operational matters such as port rotations, changes in vessel size or number of vessels if within a range specified in the agreement, or vessel substitution or replacement if, as a result, there is no significant change in capacity; and

(6) neutral body policing (limited to the description of neutral body authority and procedures related thereto).

Subpart E—Information Form Requirements

§ 535.501 General requirements.

(a) Agreements and modifications to agreements identified in § 535.502 shall be accompanied by an Information Form containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to an agreement subject to this subpart shall complete and submit an original and five copies of the Information Form at the time the agreement is filed. A copy of the Form in Microsoft Word and Excel format may be downloaded from the Commission's home page at www.fmc.gov, or a paper copy of the Form may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Information Form in the Commission's prescribed electronic format, either on diskette or CD–ROM.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. If a party to the agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(d) Agreement parties may supplement the Information Form with any additional information or material to assist the Commission's review of an agreement.

(e) The Information Form and any additional information submitted in conjunction with the filing of an agreement shall not be disclosed by the Commission except as provided in § 535.608.

§ 535.502 Agreements subject to the Information Form requirements.

Agreements and modifications to agreements between or among ocean common carriers subject to this subpart are:

(a) All agreements identified in § 535.201(a), except for low market share agreements identified in § 535.311; or

(b) Modifications to an agreement that add any of the following authorities:

(1) The discussion of, or agreement on, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(2) The discussion of, or agreement on, capacity rationalization;

(3) The establishment of a joint service;

(4) The pooling or division of traffic, earnings, or revenues and/or losses;

(5) The discussion or exchange of data on vessel-operating costs; and/or

(6) The discussion of service contract matters; or

(c) For an agreement containing any authority identified in § 535.502(b),

modifications to the agreement that expand the geographic scope of the agreement.

§ 535.503 Information Form.

(a) The Information Form, with instructions, for agreements and modifications to agreements subject to this subpart, is set forth in sections I through V of appendix A of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Information Form shall apply as follows:

(1) Sections I and V shall be completed by parties to all agreements identified in § 535.502;

(2) Section II shall be completed by parties to agreements identified in § 535.502(a) that contain any of the following authorities: the charter or use of vessel space in exchange for compensation or services; and/or the rationalization of sailings or services relating to a schedule of ports, the frequency of port calls, and/or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a joint service, nor capacity rationalization;

(3) Section III shall be completed by parties to agreements identified in § 535.502 that contain the authority to discuss or agree on capacity rationalization; and

(4) Section IV shall be completed by parties to agreements identified in § 535.502 that contain any of the following authorities:

(i) The discussion of, or agreement on, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargoes, earnings, or revenues and/or losses;

(iv) The discussion or exchange of data on vessel-operating costs; and/or

(v) The discussion of service contract matters.

§ 535.504 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the Information Form requirements of § 535.503.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Information Form to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001, and shall state:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief;

(4) Why granting the requested waiver will not substantially impair effective review of the agreement; and

(5) A description of the full membership, geographic scope, and authority of the agreement or the agreement modification that is to be filed with the Commission.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

Subpart F—Action on Agreements

§ 535.601 Preliminary review—rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 535.504.

(b) (1) The Commission shall reject any agreement that fails to comply with the filing and Information Form requirements of the Act and this part. The Commission shall notify the filing party in writing of the reason for rejection of the agreement. The original filing, along with any supplemental information or documents submitted, shall be returned to the filing party.

(2) Should a rejected agreement be refiled, the full 45-day waiting period will apply to the refiled agreement.

§ 535.602 Federal Register notice.

(a) A notice of any filed agreement that has not already been rejected pursuant to § 535.601 will be transmitted to the **Federal Register** within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) The final date for filing comments regarding the agreement.

§ 535.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the **Federal Register** notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested, comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

(b) The filing of a comment does not entitle a person to:

(1) Reply to the comment by the Commission;

(2) The institution of any Commission or court proceeding;

(3) Discussion of the comment in any Commission or court proceeding concerning the filed agreement; or

(4) Participation in any proceeding that may be instituted.

§ 535.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the latter of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the **Federal Register**.

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act. The 45-day waiting period begins anew on the date of receipt of all the additional material requested or of a statement of the reasons for noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order or the Commission grants expedited review.

§ 535.605 Requests for expedited review.

(a) Upon written request of the filing party, the Commission may shorten the waiting period. In support of a request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. In reviewing requests, the Commission will consider the parties' needs and the Commission's ability to complete its review of the agreement's potential impact. In no event, however, may the period be shortened to less than fourteen days after the publication of the notice of the filing of the agreement in the **Federal Register**. When a request for expedited review is denied, the normal 45-day waiting period will apply. Requests for expedited review will not be granted routinely and will be granted only on a showing of good cause. Good cause would include, but is not limited to, the impending expiration of the agreement; an operational urgency; Federal or State imposed time limitations; or other reasons that, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited review will be considered for an agreement whose 45-day waiting period has begun anew after being stopped by a request for additional information.

§ 535.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documents necessary to complete the statutory review required by the Act. The request shall be made prior to the expiration of the 45-day waiting period. All responses to a request for additional information and documents shall be submitted to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573.

(b) Where the Commission has made a request for additional information, the agreement's effective date will be 45 days after receipt of the complete response to the request for additional information. If all questions are not fully answered or requested documents are not supplied, the parties must include a statement of reasons why questions were not fully answered or documents supplied. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act, request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the oral request.

(d) The Commission shall publish a notice in the **Federal Register** that it has requested additional information and serve that notice on any commenting party. The notice shall indicate only that a request was made and will not specify what information is being sought. Interested parties will have fifteen (15) days after publication of the notice to file further comments on the agreement.

§ 535.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act, request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request for additional information. The Commission may request that the court:

(1) Order compliance with the request;

(2) Extend the review period until there has been substantial compliance; or

(3) Grant other equitable relief that under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act provides that the court shall extend the review period until there has been substantial compliance.

§ 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information that is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

§ 535.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement. Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in these negotiations.

Subpart G—Reporting Requirements

§ 535.701 General requirements.

(a) Parties to agreements identified in § 535.702(a) shall submit quarterly Monitoring Reports on an ongoing basis for as long as the agreement remains in effect, containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to agreements identified in § 535.704 are required to submit minutes of their meetings for as long as their agreements remain in effect.

(c) If a joint service is a party to an agreement that is subject to the requirements of this subpart, the joint service shall be treated as one member of that agreement for purposes of that agreement's Monitoring Reports.

(d) Monitoring Reports and minutes required to be filed by this subpart should be submitted to: Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001. A copy of the Monitoring Report form in Microsoft Word and Excel format may be downloaded from the Commission's Home page at *http:\\www.fmc.gov,* or a paper copy may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Monitoring Reports in the Commission's prescribed electronic format, either on diskette or CD–ROM.

(e) (1) The regulations in this paragraph (e) are stayed until further notice.

(2) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2:00 p.m. Eastern time on Commission business days.

(f) *Time for filing.* Except as otherwise instructed, Monitoring Reports shall be filed within 75 days of the end of each calendar quarter. Minutes of meetings shall be filed within 15 days after the meeting. Other documents shall be filed within 15 days of the receipt of a request for documents.

(g) A complete response in accordance with the instructions on the Monitoring Report shall be supplied to each item. If a party to an agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(h) A Monitoring Report for a particular agreement may be supplemented with any other relevant information or documentary material.

(i) *Confidentiality.*

(1) The Monitoring Reports, minutes, and any other additional information submitted by a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(i) It is relevant to an administrative or judicial action or proceeding; or

(ii) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

(j) Monitoring Report or alternative periodic reporting requirements in this subpart shall not be construed to authorize the exchange or use by or among agreement members of information required to be submitted.

§ 535.702 Agreements subject to Monitoring Report and alternative periodic reporting requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are:

(1) An agreement that contains the authority to discuss or agree on capacity rationalization; and/or

(2) Where the parties to an agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities:

(i) The discussion of, or agreement on, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargoes, earnings, or revenues and/or losses;

(iv) The discussion or exchange of data on vessel-operating costs; and/or

(v) The discussion of service contract matters.

(b) The determination of an agreement's reporting obligation under § 535.702(a)(2) in the first instance shall be based on the market share data reported on the agreement's Information Form submitted pursuant to § 535.503. Thereafter, at the beginning of each calendar year, the Bureau of Trade Analysis will notify the agreement parties of any changes in its reporting requirements based on market share data reported on the agreement's quarterly Monitoring Report for the previous second quarter (April-June).

(c) The Commission may require, as necessary, that the parties to an agreement with market share below the 35 percent threshold, as identified and defined in § 535.702(a)(2), submit Monitoring Reports pursuant to § 535.703.

(d) In addition to or instead of the Monitoring Report in § 535.703, the Commission may prescribe, as necessary, alternative periodic reporting requirements for parties to any agreement identified in § 535.201.

§ 535.703 Monitoring Report form.

(a) For agreements subject to the Monitoring Report requirements in § 535.702(a), the Monitoring Report form, with instructions, is set forth in sections I through III of appendix B of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Monitoring Report shall apply as follows:

(1) Section I shall be completed by parties to agreements identified in § 535.702(a)(1);

(2) Section II shall be completed by parties to agreements identified in § 535.702(a)(2); and

(3) Section III shall be completed by parties to all agreements identified in § 535.702(a).

(c) In accordance with the requirements and instructions in appendix B of this part, parties to an agreement subject to part 3 of section I of the Monitoring Report shall submit a narrative statement on any planned changes in the vessel capacity and/or liner services that the parties will implement under the agreement. This statement shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a vessel capacity and/or liner service change has been agreed upon by the parties but prior to the implementation of the actual change under the agreement.

(d) (1) The Commission may require, in its discretion, that the information on the top agreement commodities in part 4 of section II of the Monitoring Report be reported on a sub-trade basis, as defined in appendix B of this part, rather than on an agreement-wide basis. When commodity sub-trade information is required under this section, the Commission shall notify the parties to the agreement.

(2) For purposes of § 535.703(d)(1), the top agreement commodities shall mean the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the agreement parties in each sub-trade within the geographic scope of the agreement during the calendar quarter. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades shall be stated separately. All other instructions, definitions, and terms shall apply as specified and required in appendix B of this part.

§ 535.704 Filing of minutes.

(a) *Agreements Required To File Minutes.*

(1) This section applies to agreements authorized to engage in any of the following activities: discussion or establishment of any type of rates, whether in tariffs or service contracts; pooling or apportionment of cargo; discussion of revenues, losses, or earnings; discussion or exchange of vessel-operating costs; discussion or agreement on service contract matters, including the establishment of voluntary service contract guidelines.

(2) Each agreement to which this section applies shall file with the Commission, through a designated official, minutes of all meetings defined in paragraph (b) of this section, except as provided in paragraph (d) of this section.

(b) *Meetings.* For purposes of this subpart, the term meeting shall include all discussions at which any agreement is reached among any number of the parties to an agreement relating to the business of the agreement, and all other discussions among three or more members of the agreement (or all members if fewer than three) relating to the business of the agreement. This includes, but is not limited to, meetings of the members' agents, principals, owners, officers, employees, representatives, committees, or subcommittees, and communications among members facilitated by agreement officials. Discussions conducted by telephone, electronic device, or other means are included.

(c) *Content of minutes.* Minutes shall include the following: (1) The date, time, and place of the meeting;

(2) A list of attendees and companies represented;

(3) A description of discussions detailed enough so that a non-participant reading the minutes could reasonably gain a clear understanding of the nature and extent of the discussions and, where applicable, any decisions reached; and

(4) Any report, circular, notice, statistical compilation, analytical study, survey, or other work distributed, discussed, or exchanged at the meeting, whether presented by oral, written, electronic, or other means. Where the aforementioned materials are reasonably available to the public, a citation to the work or relevant part thereof is acceptable in lieu of the actual work.

(d) *Exemption.* Minutes are not required to reflect discussions of administrative matters, as set forth in § 535.408(b)(4)(iii), or discussions of or actions taken with regard to rates that, if adopted, would be required to be published in an appropriate tariff. This exemption does not apply to discussions concerning general rate policy, general rate changes, the opening or closing of rates, service contracts, or time/volume rates.

(e) *Serial numbers.* Each set of minutes filed with the Commission shall include the agreement name and FMC number and a unique identification number indicating the sequence in which the meeting took place during the calendar year.

§ 535.705 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing date of the Monitoring Report or minutes to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001, and shall state and provide the following:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief; and

(4) Why granting the requested waiver will not substantially impair effective monitoring of the agreement.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

Subpart H—Mandatory and Prohibited Provisions

§ 535.801 Independent action.

(a) Each conference agreement shall specify the independent action (''IA'') procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b) (1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 5 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f) (1) As it pertains to this part, ''adopt'' means the assumption in identical form of an originating member's independent action rate or service item, or a particular portion of such rate or service item. If a carrier adopts an IA at a lower rate than the conference rate when there is less than 30 days remaining on the original IA, the adopted IA should be made to expire 30 days after its effectiveness to comply with the statutory 30-day notice requirement. In the case of an independent action time/volume rate (''IA TVR''), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than ''adopt'' (*e.g.*, ''follow,'' ''match'') can be used to describe the action of assuming as one's own an initiating carrier's IA. Additionally, if a party to an agreement chooses to take on an IA of another party, but alters it, such action is considered a new IA and must

be published pursuant to the IA publication and notice provisions of the applicable agreement.

(2) An IA TVR published by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (*i.e.*, a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering that results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. The adoption procedures discussed above do not authorize the participation by an adopting carrier in the cargo volume of the originating carrier's IA TVR. Member lines may publish and participate in joint IA TVRs, if permitted to do so under the terms of their agreement; however, no carrier may participate in an IA TVR already published by another carrier.

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the agreement in processing independent action filings.

(h) A conference agreement may not permit the conference to unilaterally designate an expiration date for an independent action taken by a member line. The right to determine the duration of an IA remains with the member line, and a member line must be given the opportunity to designate whatever duration it chooses for its IA, regardless if the duration is for a specified period or open ended. Only in instances where a member line gives its consent to the conference, or where a member line freely elects not to provide for the duration of its IA after having been given the opportunity, can the conference designate an expiration date for the member line's IA.

(i) Any new conference agreement or any modification to an existing conference agreement that does not comply with the requirements of this section shall be rejected pursuant to § 535.601 of this part.

(j) If ratemaking is by sections within a conference, then any notice to the conference required by this section may be made to the particular ratemaking section.

§ 535.802 Service contracts.

(a) Ocean common carrier agreements may not prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with one or more shippers.

(b) Ocean common carrier agreements may not require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required by section 8(c)(3) of the Act.

(c) Ocean common carrier agreements may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate or enter into service contracts.

(d) An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of the members of the agreement not to follow these guidelines.

(e) Voluntary guidelines shall be submitted to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573. Voluntary guidelines shall be kept confidential in accordance with § 535.608 of this part. Use of voluntary guidelines prior to their submission is prohibited.

§ 535.803 Ocean freight forwarder compensation.

No conference or group of two or more ocean common carriers may

(a) deny to any member of such conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(b) agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

Subpart I—Penalties

§ 535.901 Failure to file.

Any person operating under an agreement, involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, that has not been filed and that has not become effective pursuant to the Act and this part is in violation of the Act and this part and is subject to the civil penalties set forth in section 13(a) of the Act.

§ 535.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable agreement information and/or reporting requirements pursuant to subparts E and G of this part is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

Subpart J—Paperwork Reduction

§ 535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The Commission intends that this section comply with the requirements of section 3507(a)(3) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
535.101 through 535.902	3072–0045

Appendix A to Part 535—Information Form and Instructions

Instructions

All agreements and modifications to agreements between or among ocean common carriers identified in 46 CFR 535.502 must be accompanied by a completed Information Form to the full extent required in sections I through V of this Form. Sections I and V must be completed by all such agreements. In addition, sections II, III and IV must be completed, as applicable, in accordance with the authority contained in each agreement. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Form, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Information Form specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Form, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required

information. For purposes of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party. For clarification of the agreement terminology used in this Form, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Form: liner movement means the carriage of liner cargo by liner operators; liner cargo means cargo carried on liner vessels in a liner service; liner operator means a vessel-operating common carrier engaged in liner service; liner vessel means a vessel used in a liner service; liner service means a definite, advertised schedule of sailings at regular intervals; and TEU means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Form, the terms ''entire geographic scope of the agreement'' or ''agreement-wide'' refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, rather than ''sub-trades'' which refer to the specific foreign countries and specific U.S. port ranges that are included in the geographic scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

Section I

Section I applies to all agreements and modifications to agreements identified in 46 CFR 535.502. Parties to such agreements must complete parts 1 through 4 of this section.

Part 1

State the full name of the agreement.

Part 2(A)

Provide a narrative statement describing the specific purpose(s) of the agreement pertaining to the parties' business activities as ocean common carriers in the foreign commerce of the United States.

Part 2(B)

Provide a narrative statement describing the commercial or other relevant circumstances within the geographic scope of the agreement that led the parties to enter into the agreement.

Part 3

List all effective agreements that cover all or part of the geographic scope of this agreement, and whose parties include one or more of the parties to this agreement.

Part 4(A)

Identify whether the agreement authorizes the parties to discuss, or agree upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge.

Part 4(B)

Identify whether the agreement authorizes the parties to establish a joint service.

Part 4(C)

Identify whether the agreement authorizes the parties to pool cargoes or revenues.

Part 4(D)

Identify whether the agreement authorizes the parties to discuss or exchange data on vessel-operating costs.

Part 4(E)

Identify whether the agreement authorizes parties to discuss service contract matters.

Part 4(F)

Identify whether the agreement authorizes the parties to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e).

Part 4(G)

Identify whether the agreement contains provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services within the geographic scope of the agreement.

Part 4(H)

Identify whether the agreement authorizes the parties to charter or use vessel space in exchange for compensation or services. This authority does not include capacity rationalization as referred to in part 4(F) of this section.

Part 4(I)

Identify whether the agreement authorizes the parties to rationalize sailings or services relating to a schedule of ports, the frequency of port calls, and/or the size and capacity of vessels for deployment. This authority does not include establishment of a joint service or capacity rationalization as referred to in parts 4(B) and 4(F) of this section.

Part 4(J)

Identify any other authority contained in the agreement that is not otherwise covered in part 4 of this section. If there is no other authority in the agreement, it shall be noted with the term ''none'' in response to part 4(J) of this section.

Section II

Section II applies to agreements identified in 46 CFR 535.502(a) that contain any of the following authorities: (a) the charter or use of vessel space in exchange for compensation or services; and/or (b) the rationalization of sailings or services relating to a schedule of ports, the frequency of port calls, and/or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a joint service, nor capacity rationalization as defined in 46 CFR 535.104(e). Parties to agreements identified in this section must complete all items in part 1.

Part 1(A)

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

Part 1(B)

Provide a narrative statement that clearly describes the nature, level, or type of any anticipated or planned changes in service at ports that the parties would implement under the agreement after it goes into effect. Examples of such changes include a change in the base port designation, the frequency of vessel calls, and the use of indirect as opposed to direct service. If no change is anticipated or planned, it shall be noted with the term ''none'' in response to part 1(B) of this section.

Section III

Section III applies to agreements identified in 46 CFR 535.502 that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 through 3 of this section.

Part 1(A)

For the most recent calendar quarter for which complete data are available, provide the amount of vessel capacity for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would be covered by the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 1(B)

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 1(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that would be covered by the agreement, carried on any vessel space counted under part 1(A) of this section, divided by its total vessel capacity as defined and derived in part 1(A) of this section, which quotient is multiplied by 100.

Part 2

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

Part 3

Provide a narrative statement that clearly describes the nature, basis, and effects of any anticipated or planned changes in the vessel capacity and/or liner services (including service at ports) that the parties would implement under the agreement after it goes into effect. If no change is anticipated or planned, it shall be noted with the term ''none'' in response to part 3 of this section.

Section IV

Section IV applies to agreements identified in 46 CFR 535.502 that contain any of the following authorities: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) The pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters. Parties to such agreements must complete parts 1 through 5 of this section.

Part 1

For the most recent calendar quarter for which complete data are available, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

U.S. port ranges are defined as follows:

Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade'' under the procedure described in 46 CFR 535.504. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The parties must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Part 2

For each party that served all or any part of the geographic scope of the agreement during all or any part of the most recent 12-month period for which complete data are available, provide each party's total liner revenues within the geographic scope, total liner cargo carried within the geographic scope, and average revenue. For purposes of this Form, total liner revenues means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services that would fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party's total liner revenues within the geographic scope divided by its total cargo carried within the geographic scope.

When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic scope, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, each party shall report only its total carryings of non-containerized liner cargo (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 3(A)

For the same 12-month period used in part 2 of this section, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the parties for their liner services that would fall under the agreement. For purposes of this Form, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 3(B)

Provide the cargo volume and revenue results for each party for each of the major commodities listed in part 3(A) of this section, corresponding to the same 12-month period and unit of measurement used. For purposes of this Form, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 3(A) of this section, inclusive of all ocean freight, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 3(A) of this section, it shall be noted by using a zero for that party in response to part 3(B) of this section.

Part 4(A)

For the same calendar quarter used in part 1 of this section, provide the amount of vessel capacity for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would fall under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in

non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 4(B)

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 4(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that would fall under the agreement, carried on any vessel space counted under part 4(A) of this section, divided by its total vessel capacity as defined and derived in part 4(A) of this section, which quotient is multiplied by 100.

Part 4(C)

Provide a narrative statement describing the nature, basis, and effects of any significant changes in the amounts of vessel capacity, anticipated or planned for when the agreement goes into effect, for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. For purposes of this Form, the term ''significant changes in the amounts of vessel capacity'' means the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time, as opposed to incidental operational changes when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, on short notice. If no significant change is anticipated or planned, it shall be noted with the term ''none'' in response to part 4(C) of this section.

Part 5(A)

For the same 12-month period used in parts 2 and 3 of this section, provide the number of vessel calls each party made at each port for its liner services that would fall under the agreement within the entire geographic scope of the agreement.

Part 5(B)

Provide a narrative statement that clearly describes the nature, level, or type of any changes, anticipated or planned for when the agreement goes into effect, in service at ports for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. Examples of such changes include a change in the base port designation, the frequency of vessel calls, and the use of indirect as opposed to direct service. If no change is anticipated or planned, it shall be noted with the term ''none'' in response to part 5(B) of this section.

Section V

Section V applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part 1(B)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding a request for additional information or documents.

Part 1(C)

A representative of the parties shall sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

INFORMATION FORM FOR AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Section I
Part 1
Agreement Name:

Part 2

(A) Narrative statement on agreement purpose: _____

_____

_____

(B) Narrative statement on the commercial or other circumstances requiring the agreement: _____

_____

_____

Part 3
List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part 4
This agreement includes:

(A) Authority to discuss or agree upon rates or charges?	Yes ☐	No ☐
(B) Joint service?	Yes ☐	No ☐
(C) Pooling of cargoes or revenues?	Yes ☐	No ☐
(D) Authority to discuss or exchange data on vessel-operating costs?	Yes ☐	No ☐
(E) Authority to discuss or agree on service contracts and their terms?	Yes ☐	No ☐
(F) Authority to discuss or agree on capacity rationalization?	Yes ☐	No ☐
(G) Conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services in the geographic scope?	Yes ☐	No ☐
(H) Authority to charter vessel space?	Yes ☐	No ☐
(I) Authority to rationalize sailings or services?	Yes ☐	No ☐

(J) Other authority: _____

_____

_____

Section II

Part 1
(A) Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]

[Port Names]	*Port 1*	*Port 2*	*Port 3*	Etc. . . .
Carrier A [Name]				

Carrier B
Carrier C
Etc. . . .

(B) Narrative statement on anticipated or planned changes: _____

Section III

Part 1 Vessel Capacity And Utilization
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	(A) Vessel Capacity [TEUs or Other Units]	*(B) Utilization* [Percent]
Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

Part 2 Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]

[Port Names]	*Port 1*	*Port 2*	*Port 3*	Etc. . . .
Carrier A [Name]				
Carrier B				
Carrier C				
Etc. . . .				

Part 3 Planned Changes

Narrative statement on anticipated or planned changes: _____

Section IV

Part 1 Market Share
Agreement-Wide Trade [or Sub-Trade]: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	TEUs [or other units]	*Percent*
Agreement Market Share		
Line A [Name]	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Etc. . . .		
Total Agreement	X,XXX	XX
Non-Agreement Market Share		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Etc. . . .		
Total Agreement	X,XXX	XX
Total Trade [or Sub-Trade]	X,XXX	100

Part 2 Total Liner Cargo and Revenues
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]

	Total revenues	*TEUs* [or other units]	*Average revenue*
[Name]			
Carrier A	$	X,XXX	$
Carrier B	$	X,XXX	$
Carrier C	$	X,XXX	$
Etc. . . .			

Part 3 Top Liner Commodities
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Same 12-Months in part 2 of this section]

[Name]	*Carrier A*	*Carrier B*	Etc. . . .
Commodity 1 [Name and 4-Digit Code]			
TEUs [or other units]	X,XXX	X,XXX	
Revenues	$	$	
Commodity 2			
TEUs	X,XXX	X,XXX	

Revenues	$	$
Etc. . . .		

Part 4 Vessel Capacity and Utilization
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Same Calendar Quarter in part 1 of this section]

	(A) Vessel Capacity [TEUs or Other Units]	(B) Utilization [Percent]
Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative Statement on anticipated or planned significant changes: _____

Part 5
(A) Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Same 12-Months in parts 2 and 3 of this section]

[Port Names]	*Port 1*	*Port 2*	*Port 3*	Etc. . . .
Carrier A [Name]				
Carrier B				
Carrier C				
Etc. . . .				

(B) Narrative statement on anticipated or planned changes: _____

Section V

Part 1 Contact Persons and Certification
(A) Person(s) to Contact Regarding Information Form.
(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Fax Number _____
(6) E-Mail Address _____

(B) Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 535.606).
(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Fax Number _____
(6) E-Mail Address _____
(C) Certification _____

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete
Name (please print or type) _____
Title _____
Relationship with parties to agreement _____
Signature _____
Date _____

Appendix B to Part 535—Monitoring Report and Instructions

Instructions

All agreements between or among ocean common carriers identified in 46 CFR 535.702(a) must submit completed Monitoring Reports to the full extent required in sections I through III of this Report. Sections I and II must be completed, as applicable, in accordance with the authority contained in each agreement. Section III must be completed by all agreements subject to Monitoring Report requirements. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Report, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Monitoring Report specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Report, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Report, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Report as a single agreement party. For clarification of the agreement terminology used in this Report, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Report: liner movement means the carriage of liner cargo by liner operators; liner cargo means cargo carried on liner vessels in a liner service; liner operator means a vessel-operating common carrier engaged in liner service;

liner vessel means a vessel used in a liner service; liner service means a definite, advertised schedule of sailings at regular intervals; and TEU means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Report, the terms ''entire geographic scope of the agreement'' or ''agreement-wide'' refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, rather than ''sub-trades'' which refer to the trade between specific foreign countries and specific U.S. port ranges that are included in the geographic scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

Section I

Section I applies to agreements, identified in 46 CFR 535.702(a)(1), that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 through 3 of this section.

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2(A)

For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that is covered by the agreement.

When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 2(B)

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 2(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that is covered by the agreement, carried on any vessel space counted under part 2(A) of this section, divided by its total vessel capacity as defined and derived in part 2(A) of this section, which quotient is multiplied by 100.

Part 3

Provide a narrative statement that clearly describes the nature, basis, and effects of any planned changes in the vessel capacity and/or liner services (including service at ports) that the parties will implement under the agreement. This narrative statement shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a vessel capacity and/or liner service change has been agreed upon by the parties but prior to the implementation of the actual change under the agreement.

Section II

Section II applies to agreements, identified in 46 CFR 535.702(a)(2), where the parties to the agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters. Parties to such agreements must complete parts 1 through 6 of this section.

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2

For the preceding calendar quarter, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

U.S. port ranges are defined as follows:

Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade'' under the procedure described in 46 CFR 535.705. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternative definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form for the agreement.

The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Part 3

For the preceding calendar quarter, provide each party's total liner revenues in the entire geographic scope of the agreement, total liner cargo carried in the entire geographic scope of the agreement, and average revenue. For purposes of this Report, total liner revenues means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services that fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party's total liner revenues in the entire geographic scope divided by its total cargo carried in the entire geographic scope.

When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner

cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, each party shall report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 4(A)

For the preceding calendar quarter, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the parties for their liner services that fall under the agreement. For purposes of this Report, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 4(B)

For the preceding calendar quarter, provide the cargo volume and revenue results for each party for each of the major commodities listed in part 4(A) of this section, corresponding to the same unit of measurement used. For purposes of this Report, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 4(A) of this section, inclusive of all ocean freight, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 4(A) of this section, it shall be noted by using a zero for that party in response to part 4(B) of this section.

Part 5(A)

For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that falls under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 5(B)

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 5(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that falls under the agreement, carried on any vessel space counted under part 5(A) of this section, divided by its total vessel capacity as defined and derived in part 5(A) of this section, which quotient is multiplied by 100.

Part 5(C)

Provide a narrative statement describing the nature, basis, and effects of any significant changes in the amounts of vessel capacity that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. For purposes of this Report, the term ''significant changes in the amounts of vessel capacity'' means the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time, as opposed to incidental operational changes when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, on short notice. If no significant change occurred during the calendar quarter, it shall be noted with the term ''none'' in response to part 5(C) of this section.

Part 6

Provide a narrative statement that clearly describes the nature, level, or type of any significant changes in service at ports that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. For purposes of this Report, the term ''significant changes in service at ports'' means a planned change in port service for a fixed, seasonal, or indefinite period of time, as opposed to an incidental or unplanned alteration in port service that was temporary. If no significant change occurred during the calendar quarter, it shall be noted with the term ''none'' in response to part 6 of the section.

Section III

Section III applies to all agreements identified in 46 CFR 535.702(a). Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part 1(B)

A representative of the parties shall sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

MONITORING REPORT FOR AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Section I

Part 1

Agreement Name: _____

FMC Number: _____

Part 2 Vessel Capacity And Utilization
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	(A) Vessel Capacity [TEUs or Other Units]	(B) Utilization [Percent]
Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

Part 3 Planned Changes

Narrative statement on planned changes to be implemented (submit statement no later than 15 days after a change has been agreed upon but prior to the implementation of the change):

_____

_____

_____

Section II

Part 1
Agreement Name: _____
FMC Number: _____

Part 2 Market Share
Agreement-Wide Trade [or Sub-Trade]: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	TEUs [or other units]	Percent
Agreement Market Share		
Line A [Name]	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Etc. . . .		
Total Agreement	X,XXX	XX
Non-Agreement Market Share		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Etc. . . .		
Total Non-Agreement	X,XXX	XX
Total Trade [or Sub-Trade]	X,XXX	100

Part 3 Total Liner Cargo and Revenues
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	Total Revenues	TEUs [or other units]	Average Revenue
[Name]			
Carrier A	$	X,XXX	$
Carrier B	$	X,XXX	$
Carrier C	$	X,XXX	$
Etc. . . .			

Part 4 Top Liner Commodities
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

[Name]	Carrier A	Carrier B	Etc
Commodity 1 [Name and 4-Digit Code]			
TEUs [or other units]	X,XXX	X,XXX	
Revenues	$	$	
Commodity 2			
TEUs	X,XXX	X,XXX	
Revenues	$	$	
Etc. . . .			

Part 5 Vessel Capacity and Utilization
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	(A) Vessel Capacity [TEUs or Other Units]	(B) Utilization [Percent]
Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX

Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative Statement on significant changes that occurred during the calendar quarter: _____

_____

_____

Part 6 Port Service

Narrative statement on significant changes in service at ports that occurred during the calendar quarter: _____

Section III

Part 1 Contact Person and Certification

(A) Person(s) to Contact Regarding Monitoring Report.

(1) Name _____

(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Fax Number _____

(6) E-Mail Address _____

(B) Certification _____

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete

Name (please print or type) _____

Title _____

Relationship with parties to agreement _____

Signature _____

Date _____

By Order of the Commission.

Bryant VanBrakle,

Secretary.

[FR Doc. 03–29738 Filed 12–1–03; 8:45 am]

BILLING CODE 6730–01–P

Federal Register

Tuesday,
December 2, 2003

Part III

Department of Health and Human Services

Centers for Disease Control and Prevention

Capacity Building Assistance To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for Racial/Ethnic Minority Populations and Prevention Projects for Community-Based Organizations; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Capacity Building Assistance To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for Racial/Ethnic Minority Populations

Announcement Type: New.

Funding Opportunity Number: PA 04019.

Catalog of Federal Domestic Assistance Number: 93.943.

Key Dates

Letter of Intent Deadline: December 22, 2003.

Application Deadline: January 26, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act, 42 U.S.C. Section 241 and 42 U.S.C. Section 247b(k)(2).

Purpose: The purpose of this announcement is to provide financial assistance to national and regional non-governmental organizations to provide capacity building assistance (CBA) to community-based organizations (CBOs) and health departments (HDs) providing HIV prevention services, and to HIV prevention community planning groups (CPGs). These entities are referred to as the ''CBA consumers'' throughout the remainder of this document. This funding will enable the CBA consumers to implement, improve, evaluate, and sustain the delivery of effective human immunodeficiency virus (HIV) prevention services for high-risk racial/ethnic minority populations of unknown or negative serostatus, including pregnant women, and people of color who are living with HIV/AIDS and their partners.

The term ''capacity building assistance'' or ''CBA'' means the provision of information, technical assistance, training, and technology transfer for individuals and organizations to improve the delivery and effectiveness of HIV prevention services. CBA does not include the delivery of direct HIV prevention services and interventions. This program addresses the ''Healthy People 2010'' focus area of HIV infection, CDC's Government Performance and Results Act Performance Plan, the goals of CDC's HIV Prevention Strategic Plan through 2005 at *http://www.cdc.gov/hiv/partners/psp.htm* and Advancing HIV Prevention: New Strategies for a Changing Epidemic at *http://www.cdc.gov/mmwr/PDF/wk/mm5215.pdf*.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention:

1. Strengthen the capacity to develop and implement effective HIV prevention interventions.
2. Increase the proportion of HIV infected individuals who know they are infected.
3. Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services.
4. Decrease the number of persons at high risk for acquiring or transmitting HIV infection.

CBA developed under this program will be provided in four focus areas and applicants may apply for up to two of these as follows:

- Focus Area 1—Strengthening Organizational Infrastructure for HIV Prevention
- Focus Area 2—Strengthening Interventions for HIV Prevention
- Focus Area 3—Strengthening Community Access to and Utilization of HIV Prevention Services
- Focus Area 4—Strengthening Community Planning for HIV Prevention

This program announcement will emphasize regionally structured strategies within the following regions:

- North Region: CT, ME, MA, NH, NJ, NY, PR, RI, U.S. Virgin Islands, VT
- South Region: AL, AZ, FL, GA, KY, LA, MS, NM, NC, OK, SC, TN, TX
- Mid-East Region: DE, DC, IL, IN, MD, MI, MN, OH, PA, VA, WV, WI
- Mid-West Region: CO, IA, KS, MO, MT, NE, ND, SD, UT, WY
- West Region: AK, AZ, CA, HI, ID, NV, OR, WA, Guam, Pacific Basin: American Samoa, Northern Mariana Islands, Marshall Islands, Micronesia, Palau

Applicants for Focus Areas 1, 3, or 4 will be required to work nationally but implementing regional strategies. Refer to the section on Awardee Activities for additional requirements. Applicants for Focus Area 2 will be required to work within one of the five regions. Refer to the Application section of this announcement for additional information on how this applies to the four major racial ethnic groups (as listed under ''Other Eligibility Requirements.'')

Program Goals

The goals for this program are as follows:

1. Focus Area 1—Strengthening Organizational Infrastructure for HIV Prevention

Improve the capacity of CBOs to strengthen and sustain organizational infrastructures that support the delivery of effective HIV prevention services and interventions for high-risk racial/ethnic minority individuals.

2. Focus Area 2—Strengthening Interventions for HIV Prevention

Improve the capacity of CBOs and HDs to implement, improve, and evaluate HIV prevention interventions for high-risk racial/ethnic minority individuals of unknown serostatus, including pregnant women, and people of color who are living with HIV/AIDS and their partners.

3. Focus Area 3—Strengthening Community Access to and Utilization of HIV Prevention Services

Improve the capacity of CBOs and other community stakeholders to implement strategies that will increase access to and utilization of HIV prevention and risk-reduction and avoidance services (including those under the Advancing HIV Prevention initiative) for racial/ethnic minority individuals.

4. Focus Area 4—Strengthening Community Planning for HIV Prevention

Improve the capacity of CPGs and HDs to include HIV-infected and affected racial/ethnic minority participants in the community planning process, and increase parity, inclusion, and representation (PIR) on CPGs (for more information, *see* the HIV Prevention Community Planning Guidance at *http://www.cdc.gov/hiv/pubs/hiv-cp.htm*).

Performance Indicators

To ensure quality programs and to measure progress, applicants are required to report on core performance indicators and performance indicators by focus area.

Core Performance Indicators:

The core performance indicators apply to all focus areas and are as follows:

1. proportion of all CDC-funded CBOs receiving capacity building assistance through training;
2. proportion of CDC-funded health departments receiving CBA related to HIV prevention for racial/ethnic minority populations;
3. proportion of CBOs that report agreement with timeliness in completion of CBA;

4. proportion of health departments that report agreement with timeliness in completion of CBA;

5. of the total number of action plans, the proportion of action plans completed according to the scheduled timeliness;

6. proportion of CBOs that report agreement that CBA received met their needs; and

7. proportion of health departments that report agreement that CBA received met their needs.

Performance Indicators by Focus Area:

Performance indicators by focus are as follows:

Focus Area 1—Proportion of CDC-funded CBOs, by racial/ethnic minority population served, receiving assessment of organizational needs;

• Focus Area 2—Proportion of CDC-funded CBOs, by racial/ethnic minority population served, receiving assessments of intervention needs;

• Focus Area 3—Proportion of CBA programmatic events promoting HIV antibody testing; and

• Focus Area 4—Proportion of Community Planning Groups (CPGs) receiving CBA on Parity, Inclusion, and Representation.

• Additional performance indicators may be added or refined over the course of the project period. (For additional information on performance indicators, see Application and Submission Information.)

Applicants will be responsible for the following in response to the performance indicators:

a. Set baseline, one-year, and five-year target goals (target goals will be negotiated with CDC post-award).

b. Use performance indicators for the design of a monitoring evaluation plan.

c. Collect process and outcome monitoring data and report to the CDC.

Applicants are accountable for achieving performance target goals. If an applicant fails to achieve their target, CDC will work with the applicant to determine what steps can be taken to improve performance. CDC involvement may include technical assistance, conditional or restrictive funding. If your performance fails to improve, CDC may reduce the award or defund your program.

Activities

Awardee activities for this program are as follows:

General Awardee Activities for all Applicants

All applicants are required to implement general awardee activities by developing process objectives and activities for the following:

1. Use logic modeling for internal program planning and conducting CBA. A program logic model links outcomes (both short- and long-term) with program activities/processes and the theoretical assumptions/principles of the program.

2. Include input from target consumers and other potential consumers of the proposed services, including people living with HIV/AIDS.

3. Incorporate cultural competency and linguistic and educational appropriateness into all CBA activities.

4. Collaborate with CDC, CDC-funded CBA and Technical Assistance (TA) providers, and contractors to plan and deliver CBA that is (1) consistent with CDC expectations (as provided in trainings for grantees); and (2) to avoid duplication of services.

5. Undertake a coordinated systems approach in the delivery of regionally structured CBA services that includes (a) notifying, cooperating and coordinating with state and local health departments in the delivery of CBA services within their health jurisdictions; (b) collaborating with other sources of CBA (including CBA providers in other focus areas) in the regions to plan and implement comprehensive CBA; (c) conducting assessments of needs, community resources, and social capital; (d) identifying and addressing gaps in CBA services; and (e) leveraging other federal, state or local resources.

6. Implement a plan for developing and maintaining ongoing relationships with target consumers and CPGs for which the awardee has responsibility. The plan should include strategies for conducting ongoing assets assessments and needs assessments and developing tailored CBA packages to be delivered throughout the duration of the project period.

7. Develop protocols that respond to new CBA requests following procedures to be provided by CDC.

8. Refer all CBA requests, which fall outside of your focus area(s) to the CDC capacity building assistance coordinator for appropriate assignment.

9. Participate in a CDC-coordinated CBA network to enhance communication, coordination, cooperation, and training.

10. Identify the CBA training needs of your own program and staff. Develop and implement a plan to address these needs.

11. Implement a quality assurance strategy that ensures the delivery of high quality services.

12. Implement an evaluation monitoring plan that addresses the performance indicators. The plan should outline the process and outcome data to be collected, identify sources of information, methods by which information will be collected, process for analyzing and interpreting information, and using findings for program improvement.

13. Develop and implement an effective strategy for marketing your CBA services.

14. Report planned group CBA events to the Capacity Building Branch (CBB) Training Calendar for dissemination to HIV prevention partners and constituents to be provided by CDC.

15. Facilitate the dissemination of information about successful CBA strategies and ''lessons learned'' through replication packages, peer-to-peer interactions, meetings, workshops, conferences, case studies, and communications with CDC project officers.

Note: Successful or funded applicants will be expected to attend several post-award training events during April, May, and June 2004.

Focus Area-Specific Awardee Activities

Focus Area 1: Strengthening Organizational Infrastructure for HIV Prevention

a. Develop tools and protocols for assessing organizational infrastructure system needs, resources, readiness, and gaps.

b. Provide or ensure the provision of CBA in organizational infrastructure. Examples include, but are not limited to: organizational assessments to determine the needs, resources, readiness, and gaps of organizational infrastructure systems (*e.g.*, governance, management, administration, personnel, and fiscal); proposal development and grant writing; personnel policy development; program policy development, including confidentiality standards, and reporting rules and regulations; development of Memorandums of Agreement; resource development, including development of reimbursement mechanisms, identification of other funding sources and development of public/private partnership strategies; board development and training; biohazard management and disposable protocols; licensing and certification issues for HIV rapid testing; management information systems (MIS) data management; strategic planning; leadership development; team building; public relations; development of 501(c)3 of the Internal Revenue Code; human resources management, including staff and volunteer recruitment, management, retention, and training;

organizational quality assurance and monitoring; program marketing and public relations; personnel policy development; and cross-cultural communications.

c. Create, coordinate, and utilize regional resource consultant pools that include subject matter experts to provide CBA. To achieve cost effectiveness, the preference is for brokering CBA requests to locally based and culturally competent consultants and experts. Regional resource consultant pools should be created in each region for which the awardee has responsibility.

d. Coordinate and support the developmental needs of the regional resource consultant pools by developing training materials, diffusing best program practices and interventions for HIV negative and positive persons, and conducting orientation and training for consultants to help them deliver effective and efficient services.

Focus Area 2: Strengthening Interventions for HIV Prevention

a. Provide ongoing CBA for CBOs in the adaptation, implementation, quality assurance, and evaluation of effective HIV prevention interventions for high-risk seronegatives and HIV-positive racial/ethnic minority individuals. Examples of prevention interventions are: health education and risk reduction and avoidance; outreach capacity and preparation for testing; testing; referrals; prevention and partner counseling; prevention case management; interventions to prevent perinatal transmission; and rapid testing in non-traditional settings such as jails, and high-risk community venues. CBA provided must be consistent with CDC's Advancing HIV Prevention Initiative, the Compendium of Effective Behavioral Interventions (including Replicating Effective Programs and the Diffusion of Effective Behavioral Interventions), and other CDC approved procedures and protocols. (For information on the Compendium of Effective Behavioral Interventions visit: *http://www.cdc.gov/hiv/pubs/hivcompendium/HIVcompendium.htm*. Provide CBA to HDs on culturally appropriate HIV prevention interventions and strategies for racial/ethnic minority populations. Assistance may include needs assessments and adapting or adopting interventions. This may take the form of health departments requesting assistance on behalf of their CBOs.

b. Provide CBA on the diffusion of effective behavioral interventions, including training, cultural adaptation of curricula, and promotion of ''boxed'' interventions from CDC.

c. Create, coordinate, and utilize regional resource consultant pools that include subject matter experts (including social and behavioral scientists) to provide CBA. To achieve cost effectiveness, the preference is for brokering CBA to locally based and culturally-competent consultants and experts.

d. Coordinate and support the developmental needs of the regional resource consultant pools by developing training materials, diffusing best program practices and interventions for HIV negative and positive persons, and conducting orientation and training for consultants to help them deliver effective and efficient services.

Note: Prevention interventions, while mainly addressing risk reduction and avoidance for HIV infection, should also include risk reduction and avoidance for co-infections with other sexually transmitted diseases, blood borne diseases (for Hepatitis C) and tuberculosis.

Capacity building assistance on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

Focus Area 3: Strengthening Community Access and Utilization of HIV Prevention Services

a. Develop a strategy based on a model to improve access and utilization of HIV prevention services for a racial/ethnic minority population at risk for HIV infection or living with HIV. The strategy should be based on models for structural or population-based behavioral changes. Examples of what the strategy may address include, but are not limited to: (1) Coalition development for increased prevention and care service integration, national education and mobilization projects, increased institutional policies in support of HIV prevention, and community building among HIV-positive persons and other high-risk persons to expand HIV prevention and risk-reduction and avoidance services; (2) nationally designed and coordinated projects to be adapted locally that promote innovative community testing and service referral initiatives or that mobilize local communities in support of HIV prevention efforts; (3) or social marketing projects to reduce stigma or to increase the acceptability of HIV prevention services (including testing) and interventions (including risk reduction and avoidance for people living with HIV/AIDS, and perinatal HIV prevention).

Note: Structural factors associated with HIV risk and prevention may be broadly defined to include physical, social, cultural, organizational, community, economic, legal or policy aspects of the environment that impede or facilitate persons' efforts to avoid HIV infection. Structural interventions address one or more of these factors.

b. Develop and implement a plan to provide CBA to CBOs and community stakeholders on your selected model and strategy. The plan should identify the CBA consumers, capacity building outcomes, activities, and skill sets to be imparted.

Note: Models for increasing access and utilization to HIV prevention services should also emphasize access to and utilization of other services related to sexually transmitted diseases, blood borne diseases (for Hepatitis C) and tuberculosis.

Focus Area 4: Strengthening Community Planning for HIV Prevention

a. Through participation in the CDC National Technical Assistance (TA) Providers' Network for HIV Prevention Community Planning, provide CBA to CPGs and health departments to assist them in implementing HIV prevention community planning and improving the parity, inclusion, and representation of racial/ethnic minority populations in the community planning process.

b. Provide CBA to CPGs, HDs, CBOs, and other community stakeholders to increase their knowledge of, and skill and involvement in, community planning. Examples include, but are not limited to, leadership development, understanding the HIV Prevention Community Planning Guidance and the planning process, use of data for decision-making, priority setting, public speaking and persuasion, parliamentary procedures and meeting processes, group and meeting facilitation, and understanding public health delivery systems.

c. Participate in ongoing planning and coordination meetings with the CDC National TA Providers' Network for HIV Prevention Community Planning.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Supporting all funded awardees by coordinating a national network of capacity building providers.

b. Providing consultation and technical assistance in designing, planning, developing, operating, and evaluating activities (such as progress

reporting, submitting information for the training calendar) based on CDC's standards and expectations. CDC may provide consultation and technical assistance both directly from CDC and indirectly through prevention partners, such as health departments, national and regional minority partners, CBA partners, trainers, contractors, and other national organizations.

c. Monitoring the performance of program and fiscal activities through progress reports, data reporting, site visits, conference calls, and compliance with federally mandated requirements, such as protection of client privacy.

d. Providing up-to-date scientific information and training on the risk factors for transmitting HIV infection among persons living with HIV/AIDS; HIV prevention services for counseling, testing, and referral to care and treatment; partner counseling and proven effective behavioral interventions for people at risk for becoming infected.

e. Assisting in the development of collaborative efforts with state and local health departments, HIV prevention community planning groups, CBOs that receive direct funding from CDC, and other federally supported organizations providing HIV/AIDS services.

f. Facilitating the exchange of information about successful interventions, program models, and ''lessons learned'' through grantee meetings, workshops, conferences, newsletters, the Internet, and communications with CDC Project Officers. CDC will also facilitate the exchange of program information and technical assistance among community-based organizations, health departments, and national and regional organizations.

g. Conducting an overall evaluation of the program.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $21 million.

Approximate Number of Awards: 33 total.

Focus Area 1: Four (4) Awards
Focus Area 2: Twelve (12) to Fourteen (14) Awards
Focus Area 3: Twelve (12) Awards
Focus Area 4: Four (4) Awards

Approximate Average Award:

Focus Area 1: $1.15M per year
Focus Area 2: $690K per year
Focus Area 3: $365K per year
Focus Area 4: $250K per year

Floor and Ceiling of Award Range:

Focus Area 1: Floor $500K—Ceiling $1.8M
Focus Area 2: Floor $640K—Ceiling $750K
Focus Area 3: Floor $200K—Ceiling $530K
Focus Area 4: Floor $200K—Ceiling $300K

Anticipated Award Date: April 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the awardee (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

Eligible Applicants: Applications may be submitted by public and private nonprofit organizations, such as:

- National or regional organizations
- Universities
- Colleges
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribal organizations

Eligibility is limited to organizations that have experience and expertise providing capacity building assistance services to CBA consumers serving racial/ethnic minority populations. In order to be effective, these organizations must have access to, and credibility with, racial/ethnic minority populations in a manner that is culturally competent and facilitates learning.

Other Eligibility Requirements

CBA developed under this program announcement will be delivered to CBA consumers serving one or more of the four major racial/ethnic populations as follows:

- Black/African-American
- Hispanic/Latino
- Asian/Pacific Islander
- American Indian/Alaska Native

Your organization is eligible to apply if it meets all of the following criteria:

1. Has a currently valid 501(c)3 tax-exempt status as demonstrated by a valid Internal Revenue Service (IRS) determination letter.

2. Has a specific charge from its Articles of Incorporation, Bylaws, or a resolution from its executive board or governing body to operate nationally (*i.e.*, multi-regional) or regionally (*i.e.*, multi-state/territory) within the United States or its Territories.

3. Has a three-year track record of providing CBA, in the focus area for which you intend to apply as demonstrated by agency documentation (including evaluation and annual reports, participant feedback, agency records, *etc.*).

4. Has a three-year track record of providing CBA to consumers that serve a major racial/ethnic minority population(s) or of providing direct HIV prevention services to a major racial/ethnic minority population as documented by annual agency reports, a board resolution, or other documentation.

5. Is not a governmental or municipal agency, or an affiliate of a governmental or municipal agency (*e.g.*, health department, school board, public hospital).

Notes for Applicants:

1. If applying to provide CBA in Focus Area 2 for CBA consumers that serve Black/African-American or Hispanic/Latino populations, you may only work in one region, and your organization must have a presence (three-year track record of providing CBA or office) in that region.

2. If applying to provide CBA in Focus Area 2 to CBA consumers that serve Asian/Pacific Islander or American Indian/Alaska Native populations, you may work across all regions.

3. Funding estimates and project period may change based on the availability of funds, scope, and quality of the applications received, appropriateness and reasonableness of the budget justifications, and proposed use of project funds.

4. Continuation awards for a new 12-month budget period, within an approved five-year project period, will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving the stated objectives, and in that the project remains in the best interest of the government. Satisfactory progress toward achieving objectives will be determined by required progress and data reports submitted by the awardee and site visits conducted by CDC representatives.

Cost Sharing or Matching

Matching funds are not required for this program.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

How to Obtain Application Forms: To apply for this funding opportunity use application form PHS 5161–1. Forms are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If there are discrepancies between the application form instructions and the program announcement, adhere to the guidance in the program announcement.

To request a CD–ROM or hard copy of the application kit (which includes the request for application, required forms, Supplemental Information, CBA Guidelines, and other information), contact CDC's National Prevention Information Network (NPIN) at 1–800–282–7681; visit its Web site at *http://www.cdcnpin.org*, or send requests by fax to 1–888–282–7681 (TTY users: 1–1800–243–7012). This announcement and associated forms can also be found on the CDC home page, *http://www.cdc.gov.* Click on Funding Opportunities then Grants and Cooperative Agreements.

You are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Pre-Application Technical Consultation

Technical consultation audio-conference calls for all focus areas will be held on December 16, 2003 at 2 p.m. Eastern Time. A repeat audio-conference call will be held on and December 18, 2003 at 2 p.m. Eastern Time. Participants may call toll-free 888–655–9181. Please have the conference passcode ready: 54485.

Content and Form of Submission

Letter of Intent (LOI): CDC requires that you send a LOI if you intend to apply for this program. Your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Eligibility information is not required with the LOI. Your application should not accompany the LOI. Your LOI must be written in the following format:

- Maximum number of pages: One
- Font size: 12-point unreduced
- Paper size: 8.5 × 11 inches
- Page margin size: One-inch
- Printed only on one side of page
- Double-spaced.
- Your LOI must contain the following information:
- Program announcement title and number.
- Applicant's name and address.
- Focus area for which you intend to apply.
- If applying for Focus Area 2, in which region(s) you intend to provide services.
- CBA Consumers you intend to serve.

Application

You must submit a signed original and two copies of your application forms. You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

Format

Your application must be submitted in the following format:

- All material must be typewritten; single-spaced.
- Maximum number of pages: 40 pages (excluding budget, appendices and attachments). If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unreduced.
- Paper size: 8.5 x 11 inches.
- Page margin size: One-inch.
- Printed only on one side of page.
- Program announcement title and number must appear in the application.
- The original and each copy of the application sent must be submitted unstapled and unbound. Held together only by rubber bands or metal clips; not bound in any other way.
- Number each page, including appendices and attachments, sequentially and provide a complete table of contents to the application and its appendices and attachments.

Please begin each separate section of the application on a new page.

- Headers and footers printed on one side only.
- Applicants may not apply for more than two focus areas.
- Applicants must submit a separate application for each focus area.
- Applicants must submit a signed original and two copies of your application forms.

Proof of Eligibility

Applicants must complete this section on Proof of Eligibility, including providing the following documents as appropriate. Failure to provide the required documentation will result in your application being disqualified and returned to you without further review.

a. Provide documentation that your organization has the specific charge from its executive board or governing body to operate nationally or regionally (*i.e.*, a multi-state/territory) within the United States and its Territories. Documentation should include a copy of the section of your organization's Articles of Incorporation, Bylaws, or Board Resolution.

b. Provide a copy of the current, valid Internal Revenue Service (IRS) determination letter of your organization's 501(c) 3 tax-exempt status.

c. Provide evidence that your organization has a three-year track record providing CBA in the focus area for which you intend to apply.

d. Provide evidence that your organization has a three-year track record providing CBA to consumers that serve the major racial/ethnic minority population(s) identified in your proposal; or providing direct HIV prevention services to a major racial/ethnic minority population identified in your proposal.

Abstract

Please provide a brief two-page summary of your proposed program activities, including the following information:

a. A description of your CBA consumers.

b. A description of the major racial/ethnic minority population that will be the focus for your CBA consumers.

c. The focus area for which you intend to apply.

d. A brief description of your strategy that includes: (1) A description of your CBA; (2) the conditions you are seeking to change; and (3) the outcomes you are seeking to achieve.

e. If applying for Focus Area 2, indicate which region the program will serve and how it will be regionally structured.

Narrative

You must include a project narrative with your application and must include the following items in the order listed below. Your application will be evaluated on the information in these sections. It is important to follow the format provided in laying out your program proposal.

Program Plan

The program plan will include a description of your CBA program and strategy, objectives, activities, and timeline as follows:

CBA Program and Strategy

a. If applying for Focus Area 1, provide a description of your proposed program and the strategy for implementation. Include a description of the administrative, financial, accounting, and human resource models used to build organizational infrastructure capacity of HIV prevention CBOs (*e.g.*, grant writing, fiscal management, board development, staff and volunteer development, and strategic planning).

b. If applying for Focus Area 2, provide a description of your proposed program and the strategy for implementation. Include a description of the HIV prevention interventions you have helped to implement (adapted or adopted) or evaluated. Your strategy must include information on how you intend to build capacity for interventions such as: Health education and risk reduction and avoidance; outreach capacity and preparation for testing; testing; referrals; prevention and partner counseling; prevention case management; and interventions to prevent perinatal transmission.

c. If applying for Focus Area 3, provide a description of your model. Also include information on: (1) Data demonstrating evidence that your model will be successful; (2) how this model is appropriate for the selected community; (3) conditions you expect to influence; (4) outcomes you expect to achieve; (5) a strategy for implementation; and (6) description of training materials including curricula.

d. If applying for Focus Area 4, provide a description of your proposed program and the strategy for implementation. Include a description of how CPG needs will be addressed including, but not limited to, orientation to the community planning process; process management; parity, inclusion and representation; using data to support decision making; needs assessments; priority setting; intervention effectiveness; and evaluation of the planning process.

Objectives

What are your objectives to address the general and focus area-specific awardee activities in the focus area for which you intend to apply?

Note: Some of these objectives should address the development of protocols for these activities—*i.e.*, a protocol for undertaking a coordinated systems approach to delivering regionally structured CBA services.

Activities

Describe your proposed activities. These activities must relate to each of the objectives listed above.

Timeline

Provide a timeline and list staff responsible for implementing activities in the first year.

Program Experience

a. Describe your organization's program experience as it relates to the focus area for which you intend to apply.

b. Address the methods that you have used to provide CBA services and to whom.

c. Address your organization's program experience collaborating with other CBA providers and state and local health departments.

d. Address your organization's program experience in providing CBA that responds effectively to the cultural, gender, environmental, social, and linguistic characteristics of your CBA consumers. In answering this question, describe the types of services provided and list any culturally-, linguistically-, and developmentally appropriate curricula and materials that your organization has adapted or developed.

Organizational Capacity

a. Submit your organizational chart and indicate where the proposed program will be located.

b. Describe your fiscal management systems and how it functions.

c. Describe your human resource management system and how it functions.

d. Describe your Management Information System (MIS), its functional role and software assets.

e. Provide the number, and describe the organizational expertise, of your full-time employees (FTEs).

f. Summarize how the systems and assets described above will be used to support and manage the proposed program.

Evaluation Monitoring Plan

a. Provide baseline, one-year interim and five-year overall target performance goals based on the core performance indicators and performance indicators by focus area.

b. Describe the process and outcome data you will collect.

Note: Data collected must relate to your objectives and the performance indicators.

c. Describe your methods for collecting, analyzing, interpreting and reporting process and outcome data.

d. Describe your plans for using process and outcome data to improve your program.

Budget and Staffing Breakdown and Justification:

a. Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the planned activities and stated objectives. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

b. For each contract and consultant contained within the application budget, describe the type(s) of organizations or parties to be selected and the method of selection; identify the specific contractor(s), if known; describe the services to be performed, and justify the use of a third party to perform these services; provide a breakdown of and justification for the estimated costs of the contracts and consultants; specify the period of performance; and describe the methods to be used for contract monitoring.

c. Provide a job description for each position, specifying job title, function, general duties, and activities. Also provide salary range or rate of pay and the level of effort and percentage of time to be spent on activities that would be funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, his/her name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project, provide job descriptions.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget, are as follows:

a. Funds available under this announcement must support CBA that improves the capacity of the CBA consumers to implement, improve, and sustain programs that support the

delivery of effective HIV prevention services for high-risk racial/ethnic minority populations.

b. Funds available under this announcement (for Focus Areas 1 and 2) must support CBA that gives priority to CBOs directly-funded by CDC, followed by CBOs funded by state and local health departments.

c. These federal funds may not supplant or duplicate existing funding.

d. No funds will be provided for direct provision of health education and risk reduction and avoidance (HERR) services or patient care, including substance abuse treatment, medical treatment, or medications.

e. These Federal funds may not be used to support the cost of developing applications for other federal funds.

f. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, awardees must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by awardees must be made available for dissemination through the CDC NPIN. For further information on NPIN services and resources, contact NPIN at 1–800–458–5231; visit its Web site at *http://www.cdcnpin.org;* or send requests by fax to 1–888–282–7681 (TTY users: 1–800–243–7012).

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit.

Appendices

In addition to the documents required in the Proof of Eligibility section of your application, the following appendices should be included in your application, if relevant:

a. list of all organizations with which you will cooperate to avoid duplication of effort and ensure that gaps in CBA services are addressed. Include Memoranda of Agreement from each such organization as evidence of cooperative relationships. Memoranda of Agreement should specifically describe the proposed cooperative activities. These documents must be submitted annually with each interim progress report.

b. A list of culturally-, linguistically-, and developmentally-appropriate materials that are available and currently being delivered.

c. A description of funding received from CDC or other sources (federal, state, local, private, etc.) to conduct similar activities that includes:

(1) A summary of current funds and income received to conduct CBA programs. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel who will conduct the activities of this project and who are supported by other funding sources (include their roles and responsibilities).

(2) A summary of the objectives and activities of the funded programs that are described above.

(3) An explanation of how funds requested in this application will be used differently or in ways that will expand upon programs that are supported with existing or future funds.

(4) An assurance that the requested funds will not duplicate or supplant funds that have been received from any other Federal or non-Federal source. CDC-awarded funds may be used to expand or enhance services supported by other Federal or non-Federal funding sources.

d. Independent audit statements from a certified public accountant for the previous two years.

e. A copy of the organization's current negotiated Federal indirect cost rate agreement, if applicable.

Note: Materials, which should be part of the basic plan, will not be accepted if placed in the appendices.

Submission Date, Time, and Address

LOI Deadline Date: December 22, 2003.

LOI Submission Address: Submit your LOI by express, delivery service, or e-mail to: Samuel Taveras, Team Leader, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, 1600 Clifton Road, Mailstop E–40, Atlanta, Georgia 30333, Telephone: 404–639–5241, E-mail address: *syt2@cdc.gov.*

Application Deadline Date: January 26, 2004.

Application Submission Address: Submit your application by mail or express delivery service to: Technical Information management-PA 04019, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Applications will not be accepted by fax or email.

Explanation of Deadlines: Applications must be received in CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the Procurement and Grants Office—Technical Information Management (TIMS) staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

CDC will not notify applicants concerning receipt of applications.

Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

V. Application Review Information

Review Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation. Therefore, you must set baseline, annual, and five

year overall target levels of performance for each core performance indicators and performance indicator by focus area identified in this program announcement. These target levels of performance must be reflected in your objectives, submitted with the application, and will be an element of evaluation.

Each application will be evaluated individually by an independent review group appointed by CDC. Applications will be rated according to the quality of responses to the questions listed in the Content and Form of Submission section of this announcement and the quality of the stated process objectives. The criteria against which the questions will be rated and the number of points allocated to each component of the application are listed below. Your application will be evaluated against the following evaluation criteria:

1. Program Plan

a. Is the program and strategy based on sound reasoning or evidence? (10 points)

b. Are the proposed program objectives specific, measurable, achievable, realistic, and time-phased? (10 points)

c. What is the likelihood that proposed program activities will accomplish the proposed program objectives? (10 points)

d. Is the timeline feasible? (10 points) (40 points)

2. Program Experience

Is the applicant's program experience relevant to the provision of CBA in the focus area for which they intend to apply? (20 Points)

3. Organizational Capacity

Does the applicant demonstrate current organizational capacity to implement the focus area for which they are applying? (20 Points)

4. Evaluation Monitoring Plan

Is the evaluation-monitoring plan feasible and does it address the required target goals, process and outcome data collection, analysis, and reporting activities? (20 Points)

Review and Selection Process: An objective review panel will evaluate your application according to the criteria listed above. In addition, the following factors may affect the funding decision:

1. CDC's commitment to ensure overall funding for CBA services that serves each of the four major racial/ethnic minority populations for all five regions.

2. CDC's commitment to ensure overall funding for CBA services that is distributed in proportion to the HIV/AIDS disease burden among high-risk racial/ethnic minority populations.

3. CDC's commitment to ensure that overall funding for CBA services is distributed proportionally in all regions and according to the number of CBA consumers located in each region.

4. Under Focus Area 3, CDC's commitment to ensure that funding for CBA serves different high-risk sub-groups including, but not limited to, Men who have sex with men (MSM), Injection Drug Users (IDU), women, migrant workers at risk for HIV infection and high-risk youth.

5. Under Focus Area 3, CDC's commitment to ensure that funding for CBA includes strategies involving faith-based organizations.

VI. Award Administration Information

Award Notices: If your application is funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Administrative and National Policy Requirements: 45 CFR parts 74 and 92.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372 Review
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–20 Conference Support
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

Reporting Requirements

You must provide CDC with an original, plus two copies of the following reports:

1. First semi-annual progress report, it can serve as your interim progress report, no less than 120 days before the end of the budget period. The report must contain the following elements:

a. Current Budget Period Activities and Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information including: (1) Data related to performance target goals; (2) data on progress toward achieving objectives; (3) an inventory of total Individual Capacity Building Assistance and proactive training for the reporting period; and (4) data related to the quality assurance system.

2. Second semi-annual progress report shall be due 30 days after each budget period ends. Specific guidance on what to include in this report will be provided three months before the due date. This report should include the following:

a. Base line and actual level of performance on core performance indicators and performance indicators by focus area.

b. Current Budget Period Financial Progress.

c. Additional requested information.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

5. Submit any newly developed public information resources and materials to the CDC National Prevention Information Network (formerly the AIDS Information Clearinghouse) so that they can be incorporated into the current database for access by other organizations and agencies.

6. HIV Content Review Guidelines.

a. Submit completed Assurance of Compliance with the Requirements for Contents of AIDS-Related Written Materials Form (CDC form—0.1113). This form lists the members of your program review panel. The form is enclosed with your application kit. The current Guidelines and the form can also be downloaded from the CDC Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.* Please include this completed form with your application.

This form must be signed by the project director and authorized business official.

b. You must also include documentation of approval by the relevant review panel of any HIV educational materials used by your project. Use the enclosed form Report of Approval. If you have nothing to submit, you must complete the enclosed form No Report Necessary. Either the Report of Approval or No Report Necessary must be included with all progress reports and continuation requests.

7. Address your organization's adherence to CDC policies for securing approval for CDC sponsorship of conferences. If you plan to hold a conference, you must send a copy of the agenda to CDC's Grants Management Office.

8. If you plan to use materials using CDC's name, send a copy of the proposed material to CDC's Grants Management Office for approval.

Note: Send all reports to the Grants Management Specialist identified in the Section VII. Agency Contacts section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Centers for Disease Control and Prevention, Technical Information Management Section (TIMS), Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Samuel Taveras, Team Leader, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, 1600 Clifton Road, Mailstop E–40, Atlanta, GA 30333, Telephone: 404–639–5241, E-mail address: *dhapcbapt@cdc.gov.*

For budget assistance, contact: Carlos Smiley, Grants Officer, Centers for Disease Control and Prevention, Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: 770–488–2722, e-mail address: anx3@cdc.gov.

Dated: November 21, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–29806 Filed 11–26–03; 11:20 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Human Immunodeficiency Virus (HIV) Prevention Projects for Community-Based Organizations

Announcement Type: New.
Funding Opportunity Number: 04064.
Catalog of Federal Domestic Assistance Number: 93.939.

Key Dates

Letter of Intent Deadline: December 22, 2003.
Application Deadline: February 6, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241 and 42 U.S.C. 247b(k)(2)], as amended.

Purpose: The purpose of the program announcement is consistent with CDC's Government Performance and Results Act (GPRA) performance plan and the CDC goal to reduce the number of new HIV infections in the United States. Funds are available under this announcement for HIV prevention projects for Community-Based Organizations (CBOs).

This program announcement addresses the ''Healthy People 2010'' focus area of HIV Prevention.

Measurable outcomes of this program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP):

- Decrease the number of persons at high risk for acquiring or transmitting HIV.
- Increase the proportion of HIV-infected people who know they are infected.
- Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services.
- Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions, and evaluate prevention programs.

The specific objectives of this announcement are to:

- Reduce HIV transmission.
- Increase the proportion of individuals at high risk for HIV infection who receive appropriate prevention services.
- Reduce barriers to early diagnosis of HIV infection.
- Increase the proportion of individuals at high risk for HIV infection who become aware of their serostatus.
- Increase access to quality HIV medical care and ongoing prevention services for individuals living with HIV.
- Address high priorities identified by the state or local HIV prevention Community Planning Group (CPG).
- Complement HIV prevention activities and interventions supported by state and local health departments.

Activities

Throughout this program announcement, you will be asked to adapt and tailor CDC procedures, including Replicating Effective Programs (REP) and Diffusion of Effective Behavioral Interventions (DEBI) (see Attachment I). This program announcement and all attachments for this announcement are located on the CDC Web site *http://www.cdc.gov.* To view CDC procedures, program announcement attachments and other available technical assistance visit *http://www2a.cdc.gov/hivpra/pa04064.html.* Definitions for terms used frequently throughout the program announcement can be found in the Program Announcement Glossary (see Attachment II). The terms defined below are used frequently throughout the program announcement and are also included in the Glossary.

For the purpose of this program announcement, an individual at high risk for HIV infection is someone who has had unprotected sex or has shared injecting equipment in a high-prevalence setting or with a person who is living with HIV.

A high-prevalence setting is a geographic location or community with an HIV seroprevalence greater than or equal to one percent.

An individual at very high risk for HIV infection is someone who (within the past six months) has:

- Had unprotected sex with a person who is living with HIV.
- Had unprotected sex in exchange for money or drugs.
- Had multiple (greater than five) or anonymous unprotected sex or needle-sharing partners.

OR

- Been diagnosed with a sexually transmitted disease (STD).

If CDC funds your CBO, you will be responsible for one or more of the following activities:

1. Conducting targeted outreach and providing Health Education/Risk Reduction (HE/RR) for high-risk individuals.

2. Conducting targeted outreach and providing Counseling, Testing, and

Referral (CTR) services for high-risk individuals.

3. Implementing one or more of the interventions below:

(a) Prevention for individuals living with HIV and their sex or injecting drug-using partners who are HIV negative or unaware of their HIV status.

(b) Prevention for individuals at very high risk for HIV infection.

(c) Partner Counseling and Referral Services (PCRS).

You must also:

4. Set a baseline level, annual targets, and five year overall target levels of performance for each core indicator identified by CDC (*see* Attachment III for a description of program performance indicators). If your CBO is funded, CDC will meet with you within 60 days to review the indicators. CDC will help you revise the indicators if necessary. If you fail to achieve your target levels of performance, CDC will work with you to improve performance. If your performance fails to improve, CDC may reduce the award or defund your program.

5. Collect monitoring and evaluation data and report required data to CDC's Program Evaluation and Monitoring System (PEMS) (*see* Attachment IV for a description of PEMS).

6. Refer individuals living with HIV to prevention services and medical care (including STD screening) if your CBO is unable to provide them directly.

7. Refer individuals at very high risk for HIV infection to prevention services if your CBO is unable to provide them directly.

8. Collaborate and participate in the HIV prevention community planning process with your local health department.

9. Identify and address the capacity-building needs of your program and participate in mandatory CDC-sponsored training.

In a cooperative agreement, CDC staff is substantially involved in program activities in addition to grant monitoring. If your CBO is funded under this announcement, CDC involvement will include:

1. Providing assistance and consultation on program and administrative issues directly or through partnerships with health departments, national and regional minority organizations, contractors, and other national and local organizations.

2. Working with you to assess your training needs and ensure that those needs are met.

3. Disseminating current information, including best practices, in all areas of HIV prevention.

4. Helping you to adopt effective intervention models through CDC procedures, workshops, conferences, and other written materials.

5. Providing assistance and information on new rapid HIV testing technologies.

6. Helping you establish partnerships with state and local health departments, community planning groups, and other groups who receive federal funding to support HIV/AIDS activities.

7. Ensuring that successful prevention interventions, program models, and lessons learned are shared between grantees through meetings, workshops, conferences, newsletter development, Internet, and other avenues of communication.

8. Monitoring your success in program and fiscal activities, protection of client privacy, and compliance with other organizational requirements.

9. Developing program evaluation guidelines and protocols and program monitoring systems (including indicators) and protocols.

10. Monitoring your progress toward achieving your target level of performance for each core indicator, and by working with you if you fail to achieve your target levels of performance.

11. Providing assistance with required program indicators.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: 2004.

Approximate Total Funding: $49,000,000.

CDC anticipates the following distribution of funds: $12 million for targeted outreach and health education/risk reduction; $14 million for targeted outreach and counseling, testing and referral services (CTR); and $23 million for prevention interventions.

Approximate Number of Awards: 160.

Approximate Average Award: $300,000.

Floor of Award Range: $100,000.

Ceiling of Award Range: $500,000.

Anticipated Award Date: June 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Up to 5 years.

Continuation awards within an approved project period will be determined by the availability of funds and the best interest of the Federal Government. To be granted a continuation award, you must have:

- Completed all recipient requirements.
- Achieved your annual target levels of performance for each core indicator.
- Submitted all required reports.

III. Eligibility Information

Eligible Applicants

Applications may only be submitted by eligible CBOs, including faith-based CBOs. CBOs may apply under one of the following categories:

Category A: Providing HIV prevention services to members of racial/ethnic minority communities who are at high risk for HIV infection.

Category B: Providing HIV prevention services to members of groups at high risk for HIV infection regardless of their race/ethnicity.

Other Eligibility Requirements

To be eligible, your CBO must meet all criteria listed below. Your CBO must:

A. Have tax-exempt status.

B. Be located in the area(s) where services will be provided or have provided services in the area for at least three years.

C. Have discussed the details of your proposed CTR program with the health department and have agreed to follow their guidelines for these services if your CBO provides them (see Attachment V for a list of requirements).

D. Not be a government or municipal agency, private or public university or college, or private hospital.

E. Not be a 501(c) (4) organization.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, or loan.

F. If applying under Category A, your CBO must:

1. Have proof that 85 percent of the persons your CBO has served in each of the last three years were of racial/ethnic minority populations.

2. Have provided HIV prevention services in each of the last three years to your proposed high-risk population.

G. If applying under Category B, your CBO must:

1. Have proof that over 50 percent of the persons your program has served in each of the last three years were from high-risk groups, regardless of their race/ethnicity.

2. Have a program that has provided HIV prevention or care services in each of the last three years to your proposed target population, or have access to high-risk populations who do not have the services funded under this announcement available in their geographic area, such as transgender, drug-injecting women, and Native American populations.

Note: All information submitted with your application is subject to verification during pre-decisional site visits.

This program announcement is limited to CBOs due to their credibility among individuals living with HIV and those at very high risk for HIV infection. CBOs have proven their ability to access hard-to-reach populations (*e.g.*, Intravenous Drug Users) that have traditionally suffered exclusion from mainstream interventions and agencies.

Cost Sharing or Matching

Matching funds are not required for this program.

IV. Application and Submission Information

Letter of Intent (LOI)

Inform CDC that you plan to apply for funding by filling out the form found in Attachment VI. Please fax, mail, or e-mail your LOI to us by December 22, 2003. You may also complete this form online at: *http://www2a.cdc.gov/hivpra/pa04064.html.*

Although a letter of intent is not required, this information will assist CDC in planning for the review process.

Your LOI must contain:

- Your organization name, address, executive director.
- A description of your target population.
- A statement of your intent to apply and category under which you are eligible to apply (*e.g.*, Category A or Category B).

Your application should not accompany your LOI.

How to Obtain Application Forms: To apply for funding under this program announcement, use application form PHS 5161–1. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700. Application forms can be mailed to you.

This program announcement provides final guidance on application format, content, and deadlines. If there are differences between the application form instructions and the program announcement, adhere to the guidance in the program announcement.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, visit the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Application Content and Form of Submission

You must submit a signed original and two copies of your application forms.

You must include a project narrative with your application forms. Your narrative should address the activities that that your CBO will conduct over the entire five-year project period.

Your narrative must be submitted in the following format:

There is a maximum limit of 40 single-spaced pages. If your narrative exceeds the page limit, only the first 40 pages will be reviewed.

- 12 point, unreduced font size.
- 8.5 by 11 inch paper.
- One-inch margins on each page.
- Printed only on one side of paper.
- Held together only by rubber bands or metal clips; not bound in any other way.

This section of the program announcement defines program requirements. You must describe your plans to address each requirement. Your application will be reviewed based on your answers to the questions in subsections A through I. Please answer each question with complete sentences and provide all requested documents. If you fail to provide the required documents, your application will not be considered for review.

This section also lists the core program indicators that will be used to measure your program's success. In your application, you are required to make an effort to report on the baseline level for each indicator, as well as projected one-year interim and five-year overall target levels of performance. When you apply for funding continuation, you will have the opportunity to revise your baseline, interim, and overall levels of performance, as specified in the guidance for completing your continuation application. In subsequent reports, you will report on the progress your CBO has made toward achieving your target level of performance for each core indicator.

When answering questions for subsections A-I, you must:

- Label your application using the subsection title and name of the subsection (*e.g.*, A. Eligibility) if applicable.
- Use the abbreviation N/A (not applicable), if a question or subsection does not apply to your application.

A. Eligibility

Suggested length: ten pages or less.

This section will not count toward the 40 page limit of your application, but it will determine if you are eligible for funding. Place all documents requested in subsection A in Appendix A, labeled Proof of Eligibility.

In your application, answer the following questions:

1. Are you applying under Category A: Providing HIV prevention services to members of racial/ethnic minority communities who are at high risk for HIV infection or Category B: Providing HIV prevention services to members of groups at high risk for HIV infection regardless of their race/ethnicity?

Note: For questions two through five, please provide documentation. Proof of location, history, and service must include at least one copy of a progress report describing services to the population served, a letter from one of your funding organizations, process monitoring data, service utilization data (which includes client characteristics), or a newspaper article.

2. Does your CBO have a valid Internal Revenue Service (IRS) 501(c)(3) tax-exempt status or state proof of incorporation as a non-profit organization? If you answer yes, you must attach a copy of the letter from the IRS or a copy of your state proof of incorporation. If you answer no, you are not eligible to apply for funding under this program announcement.

3. Are you located in the area in which services will be provided, or have you provided services in that area for at least three years?

4. If your CBO is applying under Category A:

(a) What proportion of the individuals your organization has served during each of last three years were members of racial/ethnic minority populations?

(b) What evidence do you have that your CBO has provided HIV prevention services in each of the last three years to your proposed high-risk population?

5. If your CBO is applying under Category B:

(a) What evidence do you have that your program has provided HIV prevention or care services to your proposed target population during each of the last three years, or has access to high-risk populations who do not have services available in the area?

(b) What proportion of individuals served by your program during the last three years were from high-risk groups?

6. Is your organization a governmental or municipal agency, a government-affiliated organization or agency (*e.g.*, health department, school board, public hospital), or a private or public university or college?

7. Is your organization included in the category described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities?

8. If you plan to offer HIV counseling and testing or partner counseling and referral services, have you discussed your proposed program with the health department? Have you agreed to follow the health department's guidelines for these services? Provide a letter from the health department addressing each item included in the sample letter. (Use Attachment VII).

9. Do you have voluntary counseling and testing, or care or treatment services, available onsite? If not, please provide a letter of intent to provide these services through another agency/agencies.

10. Is your organization applying as a single CBO, as a member of a coalition, or as a lead organization in a coalition, *e.g.*, a collaborative contractual partnership? Please indicate which.

11. Is your organization currently funded under CDC Program Announcement 99091, 99092, 99096, 00023, 00100, 01033, 01163 or 03003? Please indicate which announcement(s).

B. Justification of Need

Suggested length: five pages.

Note: Contact your health department to obtain HIV/AIDS statistics and HIV needs assessment data developed for the community planning process. This information will help you answer the questions in this section.

In your application, please answer the following questions:

1. What kind of services does your agency provide?

2. Which organizations provide similar services in your area?

3. Who is your proposed target population for this program announcement? Complete Attachment VIII and include it in your application as Appendix B.

4. What are the behaviors that place your target population at high risk for HIV infection or for transmitting the virus?

5. How has your proposed target population been affected by the HIV/AIDS epidemic? (*e.g.*, HIV incidence or prevalence, AIDS incidence or prevalence, AIDS mortality)

6. What history do you have serving this population? (Please explain how long you have provided services, describe what kinds of services have been provided, describe the outcomes of services you provided, and describe your relationship with the community.)

7. How do your staff members reflect your proposed target population? (Please describe, in aggregate, the characteristics of your key program staff in terms of experience working with the target population, gender, race/ethnicity, HIV serostatus, area of behavioral risk expertise, or other relevant factors.)

8. How will you involve the target population when planning and implementing your proposed services?

9. How will your proposed activities meet the needs of your target population or improve available services?

10. What services do you plan to provide under this program announcement? List all that apply in your application.

(a) Targeted outreach and HE/RR to high-risk individuals.

(b) Targeted outreach and CTR.

(c) Prevention interventions for individuals living with HIV and their sex or injection drug-using partners.

(d) Prevention interventions for individuals at very high risk for HIV infection.

(e) Partner counseling and referral services.

C. Targeted Outreach and Health Education/Risk Reduction for High-Risk Individuals

Suggested length: five pages.

1. If you are applying for targeted outreach and HE/RR services, you must conduct activities listed in sections F, G, H, and I. You must also:

(a) Using CDC procedures including REP and DEBI, (see Attachment I), implement targeted strategies to increase the number of high-risk individuals who reduce their risk for HIV infection and consent to testing. Your strategies should aim to reach high-risk individuals who have not tested in the last six months or do not know their HIV serostatus. Activities should be conducted in a setting that is comfortable and accessible to your clients. Your strategies should also improve access to other local HIV prevention services. The following strategies will be supported:

(1) Targeted outreach.

(2) Individual-level interventions.

(3) Small group-level interventions.

(4) Referral networks.

(b) Offer voluntary HIV counseling and testing to each individual identified through your program. If you do not conduct testing, you must establish a formal agreement with another agency/agencies to provide testing.

(c) Collect and report process and outcome monitoring data on the services you provide, including core performance indicators, as directed in the PEMS and the Evaluation Guidance.

2. In your application, please answer the following questions:

(a) How will you target your efforts to reach high-risk individuals who have not been tested in the last six months or do not know their HIV serostatus?

(b) How will you identify and address barriers to accessing your target population?

(c) How will you involve your target population when planning and implementing your proposed services?

(d) How will you ensure that your activities will reach individuals at high risk for HIV infection who are unaware of their HIV serostatus or are not receiving prevention or care services?

(e) How will you adapt and tailor relevant CDC procedures, including REP and DEBI, into your existing or proposed program?

(f) How will you ensure access to voluntary HIV counseling and testing services?

(g) What are your quality assurance strategies?

(h) How will you train, support, and retain staff to conduct interventions?

(i) How will you ensure client confidentiality?

(j) How will you ensure that your services are culturally sensitive and relevant?

(k) What are your baseline levels, projected one-year interim, and five-year overall target levels of performance for the following core program indicators?

(1) The mean number of outreach contacts required to get one person with unknown or negative serostatus to access counseling and testing.

(2) The proportion of persons who access counseling and testing from each of the following interventions: individual-level interventions and group-level interventions.

(3) Proportion of persons that completed the intended number of sessions for each of the following interventions: Individual-level interventions and group-level interventions.

D. Targeted Outreach and Counseling, Testing, and Referral Services (CTR)

Suggested length: seven pages.

1. If you are applying for targeted outreach and CTR, you must conduct activities listed in sections F, G, H and I. You must also:

(a) Use CDC procedures, including REP and DEBI, (*see* Attachment I) to provide counseling and voluntary HIV-testing services to high-risk individuals identified through your outreach strategies. CDC encourages recipients to use a Clinical Laboratory Improvement Amendments (CLIA) waived rapid test when appropriate and to process confirmatory tests at the state or local health department laboratory. (Research has shown that the use of rapid HIV tests increases the number of individuals who receive their results; and knowledge of HIV serostatus promotes safer behaviors.) Your proposed activities must meet all local, state, and federal requirements for HIV prevention counseling, testing, and referral services. If required by state regulations, provide a letter of intent from a physician stating his/her involvement in HIV-testing activities. This letter must address each item included in the sample letter (use Attachment VII).

Funding may be used to cover testing-related costs. You must share your plans with the health department and obtain a letter of support to be eligible for funding.

(b) Provide post-test prevention counseling services for persons whose HIV test results are negative, but who are at ongoing very high risk for HIV infection. You must also provide appropriate prevention interventions for this population. If you cannot provide these services directly, you must refer these individuals to appropriate prevention interventions. Contact your health department to identify available referral services in your area.

(c) Provide post-test counseling services for persons whose HIV test results are positive. You must refer these individuals to the health department for Partner Counseling and Referral Services (PCRS).

(d) Establish a formal agreement with a laboratory and provide a plan for ensuring training, oversight, quality assurance, and compliance with CLIA requirements and relevant state and local regulations applicable to waived testing, if you will be using a waived rapid HIV test. Obtain a CLIA Certificate of Waiver or approval to operate under that laboratory's CLIA certificate. Submit a letter of support from the laboratory. Include this document as Appendix C.

(e) Implement strategies to reduce your target population's barriers to accessing CTR services (*e.g.*, economic barriers, environmental barriers, cultural barriers, and social barriers).

(f) Collect and report counseling and testing data, including core performance indicators, as directed in the PEMS and the Evaluation Guidance, and follow required health department reporting procedures.

(g) Report confirmed HIV-positive tests to state and local health departments, following all rules and regulations regarding HIV and AIDS surveillance.

2. In your application, please answer the following questions:

(a) How will you ensure that counseling and testing activities will reach high-risk individuals who have not tested in the last six months or do not know their HIV serostatus?

(b) How will you identify and address your target population's barriers to accessing voluntary HIV counseling and testing services?

(c) How will you ensure that clients receive their test results, particularly clients who test positive?

(d) How will you ensure that individuals with initial HIV-positive test results will receive confirmatory tests? (If you do not provide confirmatory HIV testing, you must provide a letter of intent or memorandum of agreement with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.)

(e) How will you involve the target population when planning and implementing your proposed services?

(f) How will you adapt, tailor, and implement relevant CDC procedures, including REP and DEBI?

(g) What are your quality assurance strategies?

(h) How will you train, support, and retain staff providing counseling and testing?

(i) How will you ensure client confidentiality?

(j) How will you ensure that your services are culturally sensitive and relevant?

(k) What are your baseline levels and projected one-year interim and five-year overall target levels of performance for the following core program indicators?

(1) Percent of newly identified, confirmed HIV-positive test results among all tests funded by CDC and reported by your organization.

(2) Percent of newly identified, confirmed HIV-positive test results delivered to clients.

E. Prevention Interventions

Suggested length: seven pages.

1. If you are applying for funding to provide prevention services, you must conduct activities listed in sections F, G, H, and I. You must also:

(a) Implement one or more of the interventions below using standard CDC procedures; including REP and DEBI (*see* Attachment I):

(1) Prevention interventions for individuals living with HIV, and their sex and injection drug-using partners who are HIV negative or are unaware of their HIV serostatus.

(2) Prevention interventions for seronegative individuals at very high risk for HIV infection.

(3) Partner Counseling and Referral Services (PCRS).

(b) If you want to provide PCRS, you must work with your health department and meet all local, state, and federal requirements for providing these services. Obtain a letter of agreement from your health department which must also state that your CBO meets all local, state, and federal requirements. This letter must address each item included in the sample letter. (Use Attachment VII.)

(c) Collect and report process and monitoring data on these services, including core performance indicators, as directed in the PEMS and Evaluation Guidance.

2. In your application, for each service you plan to provide, please answer the following questions:

(a) What are your proposed prevention interventions?

(b) How will you identify and offer services to individuals living with HIV, and their sex and injection drug-using partners who are HIV negative or who do not know their HIV status?

(c) How will you identify and offer services to individuals at very high risk for HIV infection?

(d) Where will you provide prevention services? (Please describe the setting.)

(e) How will you maintain and retain individuals in your prevention intervention(s)?

(f) How will you coordinate prevention services with other case management and/or treatment providers for individuals living with HIV?

(g) How will you ensure that prevention services do not duplicate services provided by the Ryan White Care Act program?

(h) How will you address barriers related to partner counseling and referral services?

(i) What are the qualifications of staff providing prevention services?

(j) How will you involve the target population when planning and implementing your proposed services?

(k) How will you adapt, tailor, and implement relevant CDC procedures, including REP and DEBI?

(l) What are your quality assurance strategies?

(m) How will you train, support, and retain staff to provide these interventions?

(n) How will you ensure services are culturally sensitive and relevant?

(o) How will you ensure client confidentiality?

(p) What are your baseline levels, projected one-year interim, and five-year target levels of performance for the following core program indicators relevant to your program:

(1) Proportion of persons living with HIV and their sex and injection drug-using partners who are HIV negative or who do not know their HIV status that completed the intended number of sessions for each of the prevention interventions supported by this program announcement.

(2) Proportion of persons at very high risk for HIV infection who completed the intended number of sessions for each of the prevention interventions supported by this program announcement.

(3) Percent of HIV infected persons who, after a specified period of participation in each of the prevention interventions supported by the program announcement, report a reduction in sexual or drug-using risk behaviors or maintain protective behaviors with seronegative partners or with partners of unknown status.

(4) Percent of contacts with unknown or negative serostatus receiving an HIV test after PCRS notification.

(5) Percent of contacts with a newly identified, confirmed HIV-positive test among contacts who are tested.

(6) Percent of contacts with a known, confirmed HIV-positive test among all contacts.

F. Evaluation and Monitoring Intervention Activities

Suggested length: five pages.

1. You must:

(a) Collect and report client-level data.

(b) Collect and report standardized process and outcome monitoring data consistent with CDC requirements.

(c) Enter and transmit data for CDC-funded services on CDC's browser-based system or describe plans to make a local system compatible with CDC's system. (There is a description of PEMS in Attachment IV.)

(d) Collect and report data consistent with CDC requirements to ensure data quality and security and client confidentiality.

(e) Collaborate with CDC to assess the impact of HIV prevention activities and participate in special projects upon request.

2. In your application, please describe your:

(a) Current system of data collection and methods for reporting HIV prevention activities including data system specifications and data management information systems.

(b) Capacity to collect and report client-level data for HIV prevention services and the effect of those services on client HIV risks and health service utilization.

(c) Plans to identify and address barriers and facilitators to the collection of client-level demographic and behavioral characteristics.

(d) Plans to ensure that data quality and security are consistent with CDC requirements and guidelines.

(e) Willingness to collaborate with CDC in the design and implementation of other evaluation projects.

(f) Technical assistance needs to meet evaluation and monitoring requirements.

(g) Baseline level, one-year interim, and five-year overall target levels of performance for the following core indicator: proportion of client records with the CDC-required demographic and behavioral risk information.

G. Referral Activities

Suggested length: four pages.

1. For services not available through your organization, you must:

(a) Collaborate with other agencies to increase the number of persons who receive comprehensive services including prevention, testing, medical care, mental health, and drug abuse treatment.

(b) Develop a formal agreement such as a memorandum of understanding with each collaborating agency serving persons identified through your program within six months of funding.

(c) Track referral activities and their outcomes. You must document the type of referral (*e.g.* mental health, housing), date of referral, and outcome of referral (such as completion of first appointment).

(d) Collect and report data on referrals, including core performance indicators, as directed in the PEMS and Evaluation Guidance.

2. In your application, you must:

(a) Describe your plans to develop a referral network to ensure that clients identified through your program have access to comprehensive services including access to primary care, life-prolonging medications, and essential support services that will maintain HIV-positive individuals in systems of care.

(b) Provide documentation of any formal agreements with providers and other agencies where your clients may be referred.

(c) Specify baseline levels, projected one-year interim, and five-year overall performance levels for the following core indicator: The mean number of outreach contacts required to get a person living with HIV, and their sex and injection drug-using partners, or an individual at very high risk for HIV infection, to access referrals made under this program announcement.

H. Collaboration and Coordination With the HIV Prevention Community Planning Process and Local Health Department

Suggested length: three pages.

1. You must:

(a) Collaborate and coordinate activities with the HIV prevention CPG and local health department. Collaboration activities may include participating in the needs assessment process, reviewing and commenting on plans, presenting an overview of your project activities to the CPG in their jurisdiction and making clients available for focus groups and other planning activities. Coordination activities may include sharing progress reports, program plans, and monthly calendars with state and local health departments, CPGs, and other organizations and agencies involved in HIV prevention activities serving your target population.

(b) Participate in the HIV prevention community planning process. Participation may include involvement in workshops, attending meetings, serving as a member of the CPG, and becoming familiar with and utilizing information from the community planning process, such as the epidemiologic profile, needs assessment data, and intervention strategies. Membership in the CPG is not required, and it is determined by the group's bylaws and selection criteria.

2. In your application, describe your plans to:

(a) Participate, collaborate, and coordinate with the HIV prevention CPG.

(b) Participate, collaborate, and coordinate with the local health department.

(c) Participate in the HIV prevention community planning process.

I. Capacity Building

Suggested length: four pages.

1. You must:

(a) Conduct a capacity-building needs assessment.

(b) Develop a comprehensive capacity-building plan based on the outcomes of the needs assessment.

(c) Share any new CBA needs that develop during the project period with your project officer.

(d) Attend a grantee orientation for administrative and programmatic staff.

(e) Participate in any mandatory training conducted or sponsored by CDC.

(f) Ensure that your CBO's financial manager attends a CDC-sponsored financial training. If the financial manager leaves your agency, his/her replacement must attend training within six months.

2. In your application, please answer the following questions:

(a) What are your immediate, intermediate and long term CBA needs; and how do you plan to address them?

(b) How do you plan to share any new CBA needs that develop during the project period with your project officer?

J. Guidance on Use of Funds

You must consider the following funding restrictions when you are creating your project budget:

- Funds may be used to hire contractors or support coalition partners to strengthen program activities. CDC encourages you to develop coalitions with other prevention providers, medical providers, and health departments to implement your proposed program; however, your CBO, not the contract organization(s) or the coalition partner(s), must conduct the largest portion of the activities (including managing the program and activities) funded by this award.
- Funds cannot be used to provide medical or substance abuse treatment.

If you are requesting indirect costs in your budget, you must include a copy of your negotiated indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

For budget guidance, visit the CDC Web site *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Submission Date, Time, and Address

LOI Deadline Date: December 22, 2003.

LOI Submission Address: Submit your LOI by express delivery service, or e-mail to: William Bancroft, Public Health Analyst, CDC, NCHSTP, DHAP, IR, 1600 Clifton Road, MS E58, Atlanta, GA 30333, *Pa04064@cdc.gov.*

Application Deadline Date: February 6, 2004.

Application Submission Address: Submit your application by mail or express delivery service to: Technical Information Management—PA# 04064, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

If your application does not meet the submission deadline, it will not be eligible for review and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not be sending postcards to confirm application receipt. Please contact your mail carrier to confirm delivery. If you still have questions, contact the PGO–TIM staff at 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for the applications to be processed and logged.

Intergovernmental Review of Applications: Executive Order 12372 does apply to this program.

V. Application Review Information

Review Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

There are 2 steps to the evaluation process.

Step One

In the first step of the evaluation process, your application will be evaluated based on each item referenced in Section IV., entitled, ''Application and Submission Information.'' Your application will be evaluated by an independent review panel assigned by CDC. The panel will assign your application a score using scored evaluation criteria as specified in Section V., entitled, ''Application Review Information,'' and based on your responses to the questions in Section IV., entitled, ''Application and Submission Information'' beginning with B. Justification of Need. Your application will be ranked based on this score. The highest-ranked applications will be considered for a pre-decisional site visit (Step two).

Step Two

The second step of the review process is conducted via pre-decisional site visits which are worth 100 points. To be considered for funding, you must score at least 70 points during this process. If you fail to reach 70 points, your CBO will be disqualified. CDC will invite health department staff to participate in the site visit.

Criteria for Step One: Application Review

Your application will be evaluated on the following criteria:

A. Eligibility (not scored)

This section of your application will be reviewed to determine if you are eligible for funding.

B. Justification of Need (200 points)

This section of your application will be scored based on your description of:

- The target population's needs.
- How your proposed intervention meets the needs of the jurisdiction's HIV Prevention Comprehensive Plan.
- Your experience and credibility in working with the proposed target population.

C. Targeted Outreach and Health Education/Risk Reduction for High-Risk Individuals (150 points)

This section of your application will be scored based on your target levels of performance for each core indicator and your plans to:

- Increase the number of persons at high risk for HIV infection who learn their HIV serostatus.
- Identify persons at high risk for HIV infection.
- Identify and address your target population's barriers to accessing HE/RR.
- Involve the target population when planning and implementing your program(s).
- Adapt and tailor CDC procedures, including REP and DEBI.
- Offer voluntary HIV counseling and testing to each individual reached by your program.
- Ensure that individuals who consent to HIV testing receive a test either through your CBO or via referral.
- Develop, implement, and maintain quality assurance strategies.
- Train, support, and retain staff.

- Ensure client confidentiality.
- Ensure cultural sensitivity and relevance of your interventions.

D. Targeted Outreach and Counseling, Testing, and Referral Services (CTR) (150 points)

This section of your application will be scored based on your target levels of performance for each core indicator and your plans to:

- Identify high-risk individuals who have not tested within the past six months or do not know their HIV serostatus for voluntary counseling and testing.
- Identify and address your target population's barriers to accessing counseling and testing services.
- Ensure clients receive their test results.
- Ensure confirmatory testing for positive initial test results.
- Involve your target population when planning and implementing your program(s).
- Adapt and tailor CDC procedures, including REP and DEBI, to your existing or proposed services.
- Develop, implement, and maintain quality assurance strategies for counseling, testing, and referral services.
- Train, support, and retain staff.
- Ensure client confidentiality.
- Ensure cultural sensitivity and relevance of your interventions.

E. Prevention Interventions (175 points)

This section of your application will be scored based on your proposed target levels of performance for each core indicator and your plans to:

- Identify and offer services to individuals living with HIV, and their sex and injection drug-using partners who are HIV negative, or who do not know their HIV status.
- Identify and offer services to individuals at very high risk for HIV infection.
- Coordinate prevention services with other case management and/or treatment providers for individuals living with HIV.
- Ensure that prevention services do not duplicate services provided by the Ryan White Care Act program.
- Identify and address barriers to retaining persons in interventions.
- Identify and address barriers to conducting your proposed prevention interventions.
- Meet all local, State, and Federal requirements for HIV prevention services.
- Involve your target population when planning and implementing your program(s).
- Adapt and tailor relevant CDC procedures, including REP and DEBI, to your existing services or proposed program.
- Develop, implement, and maintain quality assurance strategies for prevention interventions.
- Train, support, and retain staff.
- Ensure client confidentiality.
- Ensure cultural sensitivity and relevance of the prevention interventions.

F. Evaluation and Monitoring Intervention Activities (100 points)

This section of your application will be scored based on your target levels of performance for each core indicator and the description of your:

- Current data collection and reporting systems.
- Capacity to collect and report client-level data.
- Plans to identify and address barriers to client-level data.
- Plans to ensure data quality and security.
- Willingness to collaborate with CDC in special evaluation and monitoring projects.
- Technical assistance needs to meet evaluation and monitoring requirements.

G. Referral Activities (100 points)

This section of your application will be scored based on your baseline and projected target levels of performance for each core indicator and your plans to:

- Identify and collaborate with other agencies to ensure access to comprehensive services, including access to primary care, life-prolonging medications, and essential support services that will maintain HIV-positive individuals in systems of care.
- Track referral activities and outcomes of these activities.
- Develop formal agreements with your network of providers.

H. Collaboration and Coordination With the HIV Prevention Community Planning Process and Local Health Department (75 Points)

This section of your application will be scored based on your plans to:

- Collaborate and coordinate activities with the HIV prevention Community Planning Group (CPG).
- Collaborate and coordinate activities with the health department.
- Participate in the HIV prevention community planning process.

I. Capacity Building (50 points)

This section of your application will be scored based on your plans to:

- Conduct a comprehensive capacity-building needs assessment of your agency.
- Work with CDC-coordinated capacity-building programs.

Step Two: Pre-Decisional Site Visit

The following areas will be evaluated during the visit:

A. Proposed Program (250 points)

The purpose of this section is to assess your CBO's ability to effectively implement your proposed HIV prevention interventions. Your score will be based on:

- Your implementation of CDC protocols and procedures, including REP and DEBI.
- Your one-year and five-year overall target levels of performance
- How your target population reflects the priorities identified in the HIV Prevention Comprehensive Plan.
- How your interventions reflect the needs identified in the your jurisdiction's HIV Prevention Comprehensive Plan.

B. Programmatic Infrastructure (200 points)

The purpose of this section is to assess your CBO's experience and ability to identify and address the needs of your proposed target population. This section will also assess your ability to effectively and efficiently implement your proposed activities. Your score will be based on your CBO's:

- Organizational structure and planned collaborations.
- Experience in developing and implementing effective and efficient HIV prevention strategies and activities.
- Experience with governmental and non-governmental organizations, including other national agencies or organizations, state and local health departments, CPGs, and state and local non-governmental organizations that provide HIV prevention services.
- Ability to secure meaningful input and representation from members of the target population(s).
- Ability to provide culturally competent and appropriate services that respond effectively to the characteristics of the target population (characteristics may include cultural, gender, sexual orientation, HIV serostatus, race/ethnicity, age, environmental, social, and linguistic characteristics).
- Ability to adequately staff your program.
- Ability to collect and report process and monitoring data on services provided and use them to plan future interventions and improve available services.

C. Organizational Infrastructure (150 points)

The purpose of this section is to assess your CBO's ability to effectively and efficiently sustain your proposed program. Your score will be based on your CBO's:

- Organizational bylaws, mission, and vision.
- Composition, role, experience, and involvement of the board of directors in administering the agency.
- Current fiscal systems to track available funding.
- Personnel process and procedures.
- Organizational protocols and procedures *e.g.*, security, confidentiality, and grievances.
- Organizational capacity for fundraising.

D. Health Department Review (100 points)

The purpose of this section is to gather feedback on your proposed program plan from the health department. Your score will be based on the health department's review of your:

- Review of the program plan (e.g., proposed target population, proposed intervention(s), number of persons to be served, and service location) and your consistency with the HIV Prevention Comprehensive Plan.
- Rating of past experience with state/city-funded programs.
- Letter of support or non-support for funding from the health department, addressed to CDC.

CDC's Procurement and Grants Office (PGO) will conduct a Recipient Capability Assessment (RCA) to evaluate your CBO's ability to manage CDC funds. This assessment will be conducted by either PGO staff or another selected agency.

Review and Selection Process

In addition to your application content score and the outcome of your pre-decisional site visit, the following factors may affect the funding decision: Preference for funding will be given to ensure that:

- Funded CBOs are balanced in terms of targeted racial/ethnic minority groups. (The number of funded CBOs serving each racial/ethnic minority group may be adjusted based on the burden of infection in that group as measured by HIV or AIDS reporting.)
- Funded CBOs are balanced in terms of targeted risk behaviors. (The number of funded CBOs serving each risk group may be adjusted based on the burden of infection in that group as measured by HIV or AIDS reporting.)
- Funded CBOs are balanced in terms of geographic distribution. (Consideration will be given to both high and lower prevalence areas; the number of funded CBOs may be adjusted based on the burden of infection in the jurisdiction as measured by HIV or AIDS reporting.)
- Funded CBOs are balanced in terms of targeted gender. (The number of funded CBOs serving each gender group may be adjusted based on burden of infection in that group as measured by HIV or AIDS reporting.)
- Funding opportunities are available for faith-based CBOs and CBOs serving rural areas, incarcerated individuals, or high risk populations who do not have the services funded under this announcement available in their geographic area.

VI. Award Administration Information

Award Notices: If your CBO is funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Administrative and National Policy Requirements: 45 CFR part 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

Reporting Requirements

1. You must provide CDC with an original, plus two copies of the following reports:

(a) Your interim progress report, no later than February 15 of each year. The progress report will serve as your non-competing continuation application, and must contain the following elements:

(1) Current budget period activities objectives.

(2) Current budget period financial progress.

(3) New budget period proposed program activity objectives.

(4) Detailed line-item budget and justification.

(5) Baselines and target levels of performance for core and optional indicators.

(6) New budget period proposed program activities.

(7) Additional requested information.

(b) The second semi-annual report will be due August 30 of each year. Additional guidance on what to include in this report may be provided approximately three months before the due date. It should include:

(1) Baseline and actual level of performance on core and optional indicators.

(2) Current budget period financial progress.

(3) Additional requested information.

(c) Financial status report, no more than 90 days after the end of the budget period.

(d) Final financial and performance reports, no more than 90 days after the end of the project period.

(e) Data reports of agency, financial, and HIV interventions including, but not limited to, HIV individual and group level; PCM; outreach; CTR; and/or partner CTR services are required 45 days after the end of each quarter or as specified in the most recent evaluation guidance. Project areas may request technical assistance. Submit data to the Program Evaluation Research Branch electronically, and then send an electronic notification of your data submission to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

2. Submit any newly developed public information resources and materials to the CDC National Prevention Information Network (formerly the AIDS Information Clearinghouse) so that they can be incorporated into the current database for access by other organizations and agencies.

3. HIV Content Review Guidelines. (a) Submit the completed Assurance of Compliance with the Requirements for Contents of AIDS-Related Written Materials Form (CDC form—0.1113) with your application as Appendix D. This form lists the members of your program review panel. The form is included in your application kit. The

current Guidelines and the form may be downloaded from the CDC Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.* Please include this completed form with your application. This form must be signed by the Project Director and authorized business officer.

(b) You must also include approval by the relevant review panel of any CDC-funded HIV educational materials that you are currently using by the relevant review panel. Use the enclosed form, ''Report of Approval''. If you have nothing to submit, you must complete the enclosed form ''No Report Necessary''. You must include either the ''Report of Approval'' or ''No Report Necessary'' with all progress reports and continuation requests.

(c) Use a Web page notice if your Web site contains HIV/AIDS educational information subject to the CDC content review guidelines.

4. Adhere to CDC policies for securing approval for CDC-sponsored conferences. If you plan to hold a conference, you must send a copy of the agenda to CDC's Grants Management Office.

5. If you plan to use materials using CDC's name, send a copy of the proposed material to CDC's Grants Management Office for approval.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, MS K14, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Samuel Martinez, M.D., Health Scientist, CDC, NCHSTP, DHAP, IRS, 1600 Clifton Road, MS E58, Atlanta, GA 30333, Telephone: 404–639–5219, E-mail: *Sbm5@cdc.gov.*

For budget assistance, contact: Carlos Smiley, Grants Management Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, MS K14, Atlanta, GA 30341, Telephone: 770–488–2722, E-mail: *anx3@cdc.gov.*

Dated: November 21, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–29807 Filed 11–26–03; 11:20 am]

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Federal Register

Tuesday,
December 2, 2003

Part IV

Department of Homeland Security

8 CFR Part 264

Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 264

[ICE No. 2301–3]

RIN 1653–AA29

Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of Homeland Security (DHS) regulations for the registration and monitoring of certain nonimmigrant aliens. This rule amends existing regulations by suspending the 30-day and annual re-registration requirements for aliens who are subject to the National Security Entry-Exit Registration System (NSEERS) Registration. Instead of requiring all aliens subject to NSEERS to appear for 30-day and/or annual re-registration interviews, the DHS will utilize a more tailored system in which it will notify individual aliens of future registration requirements. This rule also eliminates the requirement for those nonimmigrant aliens subject to special registration who are also enrolled in the Student and Exchange Visitor Information System (SEVIS) to separately notify DHS of changes in educational institutions and addresses. Additionally, this rule clarifies how nonimmigrant aliens may apply for relief from special registration requirements and clarifies that certain alien crewmen are not subject to the departure requirements. Finally, certain conforming amendments have been made to the existing regulations to reflect the fact that the former Immigration and Naturalization Service (Service) has been abolished and its functions transferred from the Department of Justice to DHS under the Homeland Security Act of 2002 (HSA), Public Law 107–296.

DATES: *Effective date:* This interim rule is effective December 2, 2003.

Comment date: Written comments must be submitted on or before February 2, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, U.S. Citizenship and Immigration Services, DHS, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference ICE No. 2301–03 on your correspondence. Comments may also be submitted electronically to DHS at *rfs.regs@dhs.gov.* Comments submitted electronically must include the ICE No. 2301–03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Robert Schoch, U.S. Immigration and Customs Enforcement, DHS, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 353–3173.

SUPPLEMENTARY INFORMATION:

Background

How Does Registration of Aliens Work Under the Existing Statutory and Regulatory Provisions?

Section 262(a) of the Immigration and Nationality Act (Act) provides that all aliens who have not previously been registered and fingerprinted pursuant to section 221(b) of the Act have a duty to apply for registration and to be fingerprinted if they remain in the United States for 30 days or longer. Under the existing regulations at 8 CFR 264.1(a), DHS registers nonimmigrants using Form I–94 (Arrival-Departure Record). Section 263(a) of the Act also authorizes the Secretary of DHS to prescribe special regulations and forms for the registration of special groups of aliens in the United States. As authorized by section 262(c) of the Act, the existing regulations at 8 CFR 264.1(e) contain general provisions waiving the fingerprinting requirement for many nonimmigrants. Accordingly, at the present time, most nonimmigrant aliens are admitted to the United States without being either fingerprinted or photographed.

Section 214 of the Act authorizes the Attorney General (now deemed to be the Secretary of DHS under the HSA) to prescribe conditions for the admission of nonimmigrant aliens. Section 215 of the Act provides for departure control from the United States. In addition, section 265 of the Act requires that all aliens who remain in the United States who are required to be registered under the Act must notify the Secretary of DHS of each change of address within ten days from the date of such change and furnish with such notice additional information as the Secretary of DHS may prescribe.

Prior to the enactment of the HSA and the transfer of the functions of the former Service from the Department of Justice to DHS, the Service exercised the previously described registration authority to require that certain classes of aliens be specially registered while in the United States. Pursuant to section 263(a) of the Act, as well as the general registration authority under section 262 of the Act, the former Service promulgated 8 CFR 264.1(f), which required that certain nonimmigrant aliens be registered, fingerprinted, and photographed by the Service at the port of entry (POE) at the time the nonimmigrant aliens apply for admission. *See* 67 FR 52584 (Aug. 12, 2002). Registration at the POEs shall be known as ''POE registration'' for the purpose of this discussion. Additionally, pursuant to section 265 of the Act, 8 CFR 264.1(f) directed that certain nonimmigrant aliens designated by the Attorney General who were already in the United States appear before the Service for special registration. *Id.* Registration of aliens already present in the United States shall be known as ''call-in registration'' for the purpose of this discussion.

How Does This Rule Change the Current Special Registration Requirements?

Currently, 8 CFR 264.1(f)(3) provides that aliens specially registered at a POE must appear before DHS 30 days after their admission into the United States for a continuing registration interview. This rule suspends this automatic 30-day continuing registration requirement.

As currently written, 8 CFR 264.1(f)(5) requires that all aliens who were subject to special registration appear for an annual re-registration interview. This rule also suspends the annual re-registration requirement.

The suspension of the 30-day and annual re-registration requirement applies to all aliens previously registered under the NSEERS program, whether call-in or POE registration, as well as any aliens registered subsequent to the effective date of this rule. In place of these previous requirements that all nonimmigrant aliens subject to NSEERS registration appear for additional 30-yday and annual interviews, this rule will allow DHS, as a matter of discretion, to notify nonimmigrant aliens subject to NSEERS registration to appear for one or more additional continuing registration interviews in those particular cases where it may be necessary to determine whether the alien is complying with the conditions of his or her nonimmigrant visa status and admission.

This rule also provides that when an alien who is monitored under SEVIS notifies DHS of a change of address or educational institution through SEVIS, it also constitutes a notification for the purposes of NSEERS registration. It also clarifies that certain alien crewmen, described at section 101(a)(15)(D) of the

Act, and are subject to special registration, are exempted from the departure control requirements of 8 CFR section 264.1(f) (8).

Finally, this rule reflects that the Service was abolished, and DHS now performs its functions. Thus, throughout 8 CFR 264.1(f), this rule substitutes the Secretary of Homeland Security for the Attorney General, and replaces references to the Service with references to DHS.

This rule does not eliminate or in any way limit the authority of the Secretary of DHS under section 263 of the Act, for certain types of aliens, and section 265 of the Act, for any class or group of aliens, through notice, to require such aliens to appear for special registration in the future if circumstances so require. Additionally, this rule does not limit or alter any other special registration requirement under section 263 of the Act.

What Other Changes Are Made by This Rule?

This rule also clarifies how nonimmigrant aliens subject to NSEERS registration may apply for relief from registration departure requirements. Aliens subject to NSEERS registration are required to register their departure before an immigration officer at a designated port of departure and depart from that port on the same day. Aliens previously could contact the Service district director to obtain relief from these departure requirements. However, the abolition of the former Service and the distribution of its functions to various agencies within DHS, such as U.S. Citizenship and Immigration Services (CIS) and U.S. Customs and Border Protection (CBP), have created uncertainties for aliens as to how to seek such relief. For nonimmigrant aliens who have been NSEERS registered, this regulation clarifies how the alien may seek a waiver from the departure registration requirements.

First, under the revisions set out in this rule, a nonimmigrant alien subject to the departure registration requirements based upon NSEERS registration may seek relief from these requirements before his or her departure from an official designated by DHS or from the CBP field office director for the port from which the alien intends to depart. The alien seeking such relief must establish to the satisfaction of the field office director or designated official that exigent or unusual circumstances exist, and that the alien warrants a favorable exercise of discretion.

Additionally, for an alien who has been registered and who makes frequent trips to the United States, based upon a showing of good cause, exigent or unusual circumstances, the CBP field office director over the port to which the alien most frequently arrives in the United States may exempt the alien from future POE registrations. The field office director or his designee will make the determination that the frequency of arrival warrants relief from the registration requirements on a case-by-case basis. In making this determination, the field office director or his designee will consider the mode of travel, business and economic concerns, purpose of travel, or other factors as determined by the director. In seeking such relief, the alien bears the burden of establishing he or she warrants a favorable exercise of discretion. If granted, relief from POE registrations also shall include relief from NSEERS registration departure control requirements.

An alien alternatively may seek an exemption from the NSEERS registration requirements from the Department of State by such forms and methods as the Department of State may prescribe.

There are no specific forms to request relief from the NSEERS requirements from DHS; an individual seeking relief should direct a letter to the appropriate CBP field office director. In such a letter, the alien should provide a detailed description of the type of relief sought, their full name, date-of-birth, Fingerprint Identification Number (which is reflected on the Form I–94), a 1″ x 1″ passport style photograph, the alien's A-number, if one has been assigned, and any documents that support the relief request. Information regarding the relief provisions will be provided to aliens upon completion of registration. Copies of these materials, known as the ''walk-away'' materials, are also available on the Web site *www.ice.gov,* in the special registration section.

This rule further clarifies to aliens applying for relief that, until an application for relief from the NSEERS registration requirements is granted, the alien is required to comply with the registration requirements.

The decision of any DHS officer or official to grant or deny relief from the NSEERS registration provisions is done as an exercise of discretion, and as such is final and cannot be appealed.

A DHS officer authorized to grant relief also may terminate such relief by providing notice to the alien.

Why Is This Rule Necessary?

The former Service, and now DHS (as of March 1, 2003), have evaluated the utility of the 30-day and annual interviews under the current requirements for national security and immigration enforcement purposes. Additionally, DHS is under a congressional mandate set forth in various amendments to the Act to create a comprehensive entry-exit system. In carrying out this mandate through the establishment of the US–VISIT Program, DHS has reviewed the use of the special registration program for both POE and call-in registrations. After considering these factors, DHS has determined it is appropriate to suspend the continuing registration requirements set out in 8 CFR 264.1(f), that automatically required aliens subject to NSEERS registration to report for 30-day and/or annual re-registration interviews. Special registration of aliens at POEs has, consistent with the program's intent, provided important law enforcement benefits, which have included the identification of a number of alien terrorists and criminals. This rule is not amending the procedures for NSEERS registration at the POE's. In addition to US–VISIT, which will soon become operational, DHS has other systems available that can help ensure that those aliens who are already subject to NSEERS registration remain in compliance with the terms of their visa and admission. For example, Congress mandated that DHS develop a student monitoring system. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, section 641; ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism'' (USA Patriot Act), Public Law 107–56, section 416. This system, SEVIS, is now fully operational. Schools now must report directly to DHS when a student or exchange visitor alien changes schools, fails to appear for classes or otherwise fails to maintain his or her student status following admission into the United States.

Thus, DHS is now in a position to suspend the mandatory re-registration interview requirements for those aliens who are already subject to NSEERS registration, which will reduce the burden on those required to register under the current regulations, as well as to DHS. Instead, DHS will be able to schedule re-registration interviews on a more targeted and effective basis, only in those particular cases where it may be appropriate for additional scrutiny to ensure that an alien remains in compliance with the terms of his or her nonimmigrant visa and admission.

Who Is Affected by This Rule?

Aliens who have been subject to NSEERS registration, whether as a result of being registered at a POE upon arrival, or as a result of being called in to register by **Federal Register** notice, are affected by the rule, because it reduces their current reporting requirements by eliminating the mandatory 30-day and annual re-registration interviews. Additionally, aliens who hereafter enter the United States and are NSEERS registered at a POE are affected by this rule. Affected aliens have been or will be given a Form I–94 documenting their registration, which will reflect their Fingerprint Identification Number (FIN). DHS uses the FIN recorded on the Form I–94 to identify the records of an alien subject to special registration. Based upon the number of aliens who have previously registered, DHS estimates that over the 6 month time span from December 2003 through May 2004, approximately 82,532 aliens will benefit from this change and will not have to report for either a 30-day or annual re-interview during that period.

How Does This Rule Affect Registration at POEs?

This rule does not affect the procedures for the NSEERS registration of aliens, including fingerprinting, photographing, and provision of information, at POEs. As is obligatory under current regulations, nonimmigrant aliens subject to POE registration will still be required, utilizing the information collection system in place, to provide routine and readily available information as a condition of admission. This includes such information as is necessary to identify the alien in the United States. Lists of information that may be required during NSEERS registration have previously been issued. See, *e.g.*, 67 FR 40581, 40582.

Registration at POEs continues to allow DHS to determine if an alien's fingerprints match those of known terrorists or criminals, and to detain for removal or refuse admission of the alien if such an identity match is established.

How Will DHS Provide Notice to Individual Aliens That They Must Appear for an Additional Registration Interview?

In place of the automatic re-registration requirements set out in the original NSEERS registration provisions, this rule substitutes a more tailored approach to re-registration. The determination of whether an alien will be subject to additional registration requirements will be made on a case-by-case basis. The admission of any nonimmigrant alien subject to NSEERS registration is subject to the requirement that, under this rule, he or she may be required to appear for future continuing re-registration interviews at the discretion of DHS. At the time of admission, DHS will advise all nonimmigrant aliens subject to special registration that they may be required to appear for additional registration interviews upon notice. DHS will separately notify those aliens selected to appear before DHS to comply with the additional re-registration requirements, which for a small number of aliens may be more frequent than the 30-day and annual re-registration requirements set out in the prior rule. However, only aliens who are notified of the re-registration requirements will have to appear before DHS for such requirement, and the majority of individuals registered will see a reduction in the burden of additional registration as a result of this rule. Notification under these regulations may be given to the alien in a manner reasonably calculated to reach the alien, which shall include, but is not limited to, notice by publication in the **Federal Register**, a letter sent via standard U.S. postal mail to the last address provided by the alien to DHS using regular mail, an e-mail to the address the alien provided to DHS during a previous NSEERS registration interview, or in-person delivery. The nonimmigrant alien must appear at the designated U.S. Immigration and Customs Enforcement office location, and on the specified date and time, unless otherwise specified in the notice. DHS will provide the alien at least ten days, measured from the date DHS publishes or sends notice to the alien, to comply with the re-registration obligation.

Notice to an alien of registration or re-registration requirements may be issued by the ICE Assistant Secretary, his designee, or any other such individual designated by the Secretary of DHS.

How Does This Rule Affect an Alien's Obligation To Notify DHS of a Change of Address or Employment?

This rule reiterates, for this distinct group of nonimmigrant aliens who are subject to NSEERS registration, and who remain in the United States for more than thirty days, the requirement that the nonimmigrant alien notify DHS of any change of address, employment and/or educational institution within 10 days of such change. Affected aliens may notify DHS by mail, or such other means as the Secretary of DHS may designate, of a change of address. The required form, the AR–11 for Special Registration, is available at DHS offices and on the DHS Internet Web site at *http://www.uscis.gov*, in the special registration section.

However, this rule discontinues the requirement that student aliens monitored under SEVIS who are subject to special registration separately notify DHS of a change in their educational institution or address, if such information is provided to DHS through SEVIS. This rule provides that when an alien reports a change of address or educational institution to DHS through SEVIS, that action fulfills his or her special registration requirement to notify DHS of changes in address. However, student aliens who are monitored under SEVIS who are subject to special registration will still be required under 8 CFR 264.1(f)(5) to notify DHS of any change of employment which is currently not captured in the SEVIS system.

How Does This Rule Affect Departure Control Requirements?

This rule does not change the general requirement that a nonimmigrant alien subject to NSEERS registration, either POE registration or a prior or future call-in registration, also report his or her actual departure from the United States. Cessation of departure controls is inconsistent with the congressional mandate requiring that DHS establish a comprehensive entry-exit monitoring system. As DHS develops the larger system mandated by Congress, to be called US–VISIT, it will integrate the NSEERS registration currently in use. This requirement of departure registration means that the alien must appear at a designated Port of Departure before a departure control officer, *i.e.*, a CBP inspector, on the day he or she departs the United States to close his or her registration and also depart from that port. This departure requirement will ensure that all NSEERS registrations are properly closed.

If the departure control requirements do not continue, registration records for the nonimmigrant aliens subject to NSEERS registration would be left open without explanation. This could result in serious difficulties, including the possibility of future inadmissibility, for already registered aliens who depart and attempt to return to the United States.

The most recent **Federal Register** notice listing Ports of Departure can be found at 68 FR 8967. This rule does not alter or amend that list.

This rule does clarify that certain alien crewmen described at 101(a) (15) (D) of the Act who are subject to special registration requirements are exempt

from the departure registration requirements of 8 CFR 264(f) (8).

Does This Rule Change Any of the Penalties for Failing To Comply With the Special Registration Provisions?

No. This rule does not change any of the penalties for failing to comply with the special registration provisions. Moreover, this rule does not excuse any prior failure to comply with special registration provisions.

Under section 214(a) of the Act, as amended by the HSA, the admission of all nonimmigrant aliens to the United States ''shall be for such time and under such conditions as the [Secretary of DHS] may by regulations prescribe.'' The Secretary of DHS may impose conditions on admission that are rationally related to the maintenance of nonimmigrant status. See, *e.g., Narenji* v. *Civiletti*, 617 F.2d 745, 747 (D.C. Cir. 1980)(upholding regulation requiring Iranians on student visas to report and ''provide information as to residence and maintenance of nonimmigrant status'' or be subject to deportation proceedings). The regulations that currently implement section 214 of the Act provide in part that one condition of a nonimmigrant's continued stay in the country ''is the full and truthful disclosure of all information requested'' by DHS. 8 CFR 214.1(f).

The NSEERS registration requirements previously imposed upon aliens, either through POE registration or call-in registration, were intended in part to ensure that nonimmigrant aliens are complying with their nonimmigrant status (*e.g.*, by continuing to be students or employees, as contemplated at the time of the issuance of their visas or admission). Additionally, 8 CFR 214.1(f) was amended to reflect that a nonimmigrant alien's willful failure to comply with the special registration provisions constitutes a failure to maintain the relevant nonimmigrant status, and would render the alien removable under section 237(a)(1)(C)(i) of the Act.

Although this rule amends the regulations to eliminate the existing automatic 30-day and annual re-registration interview requirements, aliens who willfully failed to comply with prior registration requirements, including aliens who failed before December 2, 2003 to appear for a required initial call-in registration, a 30-day re-registration interview, or an annual re-registration interview, remain subject to the penalties outlined above and in previous **Federal Register** notices. Additionally, aliens who willfully fail to comply with any future call-in notice or additional registration requirement imposed pursuant to this rule would be removable under section 237(a)(1)(C)(i) of the Act.

What Is the Effect of an Alien's Failure To Comply With the Departure Reporting Requirements Upon the Alien's Subsequent Application for Admission?

An alien who is subject to the special registration requirements who has failed, without good cause, to report his or her departure with DHS is presumed inadmissible to the United States. The presumption of inadmissibility arises if there was no good cause for the alien's failure to report to DHS at the time of his or her departure from the United States. However, an alien may overcome the presumption of inadmissibility by establishing to the Secretary of State and the Secretary of DHS that he or she does not seek to enter the United States to engage solely, principally, or incidentally in any unlawful activity.

An alien who fails to report his or her departure may, at the time he or she applies for a new nonimmigrant visa abroad, attempt to establish that there was good cause for the failure to report and, in the event that no good cause is found, that he or she is not inadmissible under section 212(a)(3)(A)ii) of the Act. If the consular officer, in adjudicating the new visa application, finds good cause existed for the alien's failure to register departure or that the alien is not inadmissible under section 212(a)(3)(A)(ii) of the Act, the inspecting officer at the POE, while not bound by the DOS determination, will consider this finding as a significantly favorable factor in determining whether the alien is inadmissible due to his or her prior failure to register at the time of departure from the United States.

Good Cause Exception

Immediate implementation of this interim rule with provision for post-promulgation public comments is based upon the good cause exception found at 5 U.S.C. 553(b)(B). Pursuant to 5 U.S.C. 553(b)(B), prior notice and opportunity for comment is not necessary where it is ''impracticable, unnecessary, or contrary to the public interest.'' DHS estimates that without this regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews between December 2003 and May 2004. Therefore DHS believes there is an urgent need for the immediate implementation of this rule suspending the automatic interview requirements to avoid unnecessarily burdening the public impacted by this rule.

Initial Regulatory Flexibility Act Determination

The regulatory Flexibility Act of 1980, as amended (RFA) was enacted by Congress to ensure that small entities (small businesses, not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' DHS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

This rule will not affect small entities as defined at 5 U.S.C. 605(b) and will relieve cost burdens on individuals.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), I have reviewed this rule and by approving it, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

Executive Order 12866, ''Regulatory Planning and Review,'' requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to E.O. 12866's requirements.

This rule is considered by DHS to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. However, it does not have an impact on the economy of $100 million or more and, therefore, is not economically significant. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

DHS has assessed both the costs and benefits of this rule as required by Executive Order 12866. First, this rule significantly reduces costs to the public by reducing the burden of re-registration and continuing registration requirements for aliens present in the United States. Without this regulation, in between December 2003 and May 2004, an estimated 82,532 aliens would be subject to re-registration under prior regulations. Assuming that each interview will last 45 minutes, and each alien will have to prepare approximately 30 minutes for the interview, DHS anticipates that between December 2003 and May 2004, the burden reduction on the public to be a total of over 103,000 hours.

DHS also will experience a burden reduction, based upon the reduced costs related to information collection and

processing. Based upon the number of estimated registrations between December 2003 and May 2004 and assuming that each registration lasts approximately 45 minutes, under this regulation DHS estimates it will be able to reallocate almost 62,000 work hours. DHS is able to shift personnel who would have conducted these re-registration interviews to other law enforcement functions. These resources also can be better utilized to craft a targeted registration process that meets the national security needs of the country.

The costs to DHS of not amending the regulations would be significant. Because the initial call-in registrations by the former Service occurred over a brief period of months, the number of aliens appearing for re-registration in a brief period of time will be significant. DHS would be forced to reallocate personnel resources from other law-enforcement functions in order to timely register aliens.

Executive Order 13132

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. 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.

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 any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are 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 804 of the Small Business Regulatory Enforcement Act of 1996. 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 12988: Civil Justice Reform

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

Paperwork Reduction Act of 1995

The regulations at 8 CFR 264.1(f)(7) allows an alien who has been registered under the provisions of 8 CFR 264.1(f) and who has not yet departed from the United States, to seek relief from the departure control requirement contained in 8 CFR 264.1(f)(8) for that admission. In order to seek relief the alien must apply to the U.S. Customs and Border Protection field office director for the port from which the alien intends to depart. In making an application for relief, the alien must establish that exigent or unusual circumstances exist and that the alien warrants a favorable exercise of discretion. This request for relief is considered an information collection requirement under the Paperwork Reduction Act (PRA).

The Department of Homeland Security (DHS) and the U.S. Immigration and Customs Enforcement (ICE) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The DHS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, immediate OMB approval has been requested. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725—17th Street, NW., Suite 10235, Washington, DC 20503.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the DHS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 2, 2004. During 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the 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:* New information collection.

(2) *Title of the Form/Collection:* Exemption from NSEERS Registration Requirements.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number. File No. OMB–40. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information collection allows an alien to seek an exemption from the NSEERS registration requirements by submitting a letter to the Department of Homeland Security containing specific information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,800 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,900 annual burden hours.

If additional information is required contact: Mr. Steve Cooper, PRA

Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule suspends the 30-day and annual re-registration requirements for aliens who are subject to NSEERS registration. The OMB information collection number under NSEERS is 1115–0254. It is estimated that approximately 82,000 aliens will no longer be subject to the 30-day or annual re-registration interviews once this rule is implemented. Accordingly, ICE has submitted the required Paperwork Reduction Change Worksheet (OMB–83C) to OMB reflecting the reduction in burden hours for NSEERS.

List of Subjects in 8 CFR Part 264

Reporting and recordkeeping requirements.

■ Accordingly, part 264 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for Part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303—1305; 8 CFR part 2.

■ 2. Section 264.1(f) is revised to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(f) Registration, fingerprinting, and photographing of certain nonimmigrant aliens.

(1) Registration requirement for certain nonimmigrants. Notwithstanding the provisions in paragraph (e) of this section, nonimmigrant aliens identified in paragraph (f)(2) of this section are subject to special registration, fingerprinting, and photographing requirements upon arrival in the United States. This requirement shall not apply to those nonimmigrant aliens applying for admission to the United States under sections 101(a)(15)(A) (8 U.S.C. 1101(a)(15)(A)) or 101(a)(15)(G) (8 U.S.C. 1101(a)(15)(G)) of the Act. In addition, this requirement shall not apply to those classes of nonimmigrant aliens to whom the Secretary of Homeland Security and the Secretary of State jointly determine it shall not apply, or to any individual nonimmigrant alien to whom the Secretary of Homeland Security or the Secretary of State determines it shall not apply. Completion of special registration pursuant to this paragraph (f) is a condition of admission under section 214 of the Act (8 U.S.C. 1184) if the inspecting officer determines that the alien is subject to registration under this paragraph (f) (hereinafter ''nonimmigrant alien subject to special registration'').

(2) Identification of aliens subject to registration at ports-of-entry. Nonimmigrant aliens in the following categories are subject to the requirements of paragraph (f)(3) of this section:

(i) Nonimmigrant aliens who are nationals or citizens of a country or territory designated by the Secretary of Homeland Security, in consultation with the Secretary of State, by a notice in the **Federal Register**;

(ii) Nonimmigrant aliens whom a consular officer or an inspecting officer has reason to believe are nationals or citizens of a country or territory designated by the Secretary of Homeland Security, in consultation with the Secretary of State, by a notice in the **Federal Register**; or

(iii) Nonimmigrant aliens who meet pre-existing criteria, or whom a consular officer or the inspecting officer has reason to believe meet pre-existing criteria, determined by the Secretary of Homeland Security or the Secretary of State to indicate that such aliens' presence in the United States warrants monitoring in the national security interests, as defined in section 219 of the Act (8 U.S.C. 1189), or law enforcement interests of the United States.

(3) *Obligations regarding registration.* (i) Any nonimmigrant alien who is included in paragraph (f)(2) of this section, and who applies for admission to the United States, shall be specially registered by providing information required by the Department of Homeland Security, shall be fingerprinted, and shall be photographed, by Department of Homeland Security, at the port-of-entry at such time the nonimmigrant alien applies for admission to the United States. The Department of Homeland Security shall advise the nonimmigrant alien subject to special registration that the nonimmigrant alien may, upon ten days notice, and at the Department of Homeland Security's discretion, be required to appear at a U.S. Immigration and Customs Enforcement office in person to verify information by providing additional information or documentation confirming compliance with the conditions of his or her visa status and admission. The Department of Homeland Security will determine on a case-by-case basis which aliens must appear in person to verify information. The nonimmigrant alien subject to special registration must appear at the designated office location, and on the specified date and time, unless otherwise specified in the notice.

(ii) At the time of verification of information for registration pursuant to paragraph (f)(3)(i) of this section, the nonimmigrant alien subject to special registration shall provide the Department of Homeland Security with proof of compliance with the conditions of his or her nonimmigrant visa status and admission, including, but not limited to, proof of residence, employment, or registration and matriculation at an approved school or educational institution. The nonimmigrant alien subject to special registration shall provide any additional information required by the Department of Homeland Security.

(4) *Registration of aliens present in the United States.* (i) The Secretary of Homeland Security, by publication of a notice in the **Federal Register**, also may impose such special registration, fingerprinting, and photographing requirements upon nonimmigrant aliens who are nationals, citizens, or residents of specified countries or territories (or a designated subset of such nationals, citizens, or residents) who have already been admitted to the United States or who are otherwise in the United States. A notice under this paragraph (f)(4) shall explain the procedures for appearing in person and providing the information required by the Department of Homeland Security, providing fingerprints, photographs, or submitting supplemental information or documentation.

(ii) Any nonimmigrant alien who is currently subject to special registration as a result of the publication of any previous **Federal Register** notice may, while he or she remains in the United States, upon 10 days notice and at the Department of Homeland Security's discretion, be required to appear at a Department of Homeland Security Office in person to provide additional information or documentation confirming compliance with his or her visa and admission. The Department of Homeland Security will determine on a case-by-case basis which aliens must appear in person to verify information. The nonimmigrant alien subject to special registration must appear at the designated office location, and on the

specified date and time, unless otherwise specified in the notice.

(5) *Obligation to provide updated information.* In addition to any additional re-registrations that may be required pursuant to paragraphs (f)(3) and (f)(4) of this section, any nonimmigrant alien subject to special registration under this paragraph (f) who remains in the United States for 30 days or more shall notify the Department of Homeland Security by mail or other such means as determined by the Secretary of Homeland Security, using a notification form designated by the Department of Homeland Security, of any change of address, change of residence, change of employment, or change of educational institution within 10 days of such change. Notice to the Department of Homeland Security of a change of address, change of residence or change of educational institution made within 10 days of such a change through the Student and Exchange Visitor Information System (SEVIS) shall constitute notice under this paragraph.

(6) [Reserved]

(7) *Relief from registration requirements.* A nonimmigrant alien subject to special registration may apply for relief from the registration requirements as follows:

(i) *Relief from departure controls set out in 264.1(f) (8).* An alien who has been registered under the provisions of this section (f) and has not yet departed the United States may seek relief from the departure control requirement contained in paragraph (f)(8) for that admission by applying to the U.S. Customs and Border Protection field office director for the port from which the alien intends to depart. In making an application for relief, the alien must establish that exigent or unusual circumstances exist and that the alien warrants a favorable exercise of discretion.

(ii) *Frequent travelers.* An alien who previously has been registered and who would otherwise be subject to registration at a port of entry under the provisions of paragraphs (f)(2) and (3) of this section may seek relief from the registration requirements from the Secretary of Homeland Security after his initial registration if the alien makes frequent trips to the United States. An alien seeking relief under this paragraph from the Secretary of Homeland Security may apply to the U.S. Customs and Border Protection field office director for the port to which the alien most frequently arrives in the United States. The field office director or his designee will make the determination that the frequency of arrival warrants relief from the registration requirements on a case-by-case basis, and will consider in this analysis the mode of travel, business and economic concerns, purpose of travel, or other factors as determined by the director. In making an application for relief, the alien must establish that good cause or exigent or unusual circumstances exist and that the alien warrants a favorable exercise of discretion.

(iii) *Exemption from registration.* At a Department of State consular office abroad, an alien may seek exemption from these regulations from the Department of State by such methods as it may prescribe.

(iv) *For all applications for relief.* Any decision of a Department of Homeland Security officer or official to grant or deny relief under this paragraph (f)(7) is final and not appealable. Absent receipt of a decision exempting or relieving the nonimmigrant alien from these requirements, he or she shall comply with the special registration requirements contained in this section.

(v) *Termination of relief.* Relief granted under paragraphs (f)(7)(i) or (ii) of this section may be terminated by notice to the alien by any field office director or other Department of Homeland Security officer or official authorized to grant such relief.

(8) *Departure requirements.* (i) General requirements When a nonimmigrant alien subject to special registration departs from the United States (other than nonimmigrant crewmen as defined under section 101(a)(15)(D) of the Act) he or she shall report to an inspecting officer of the Department of Homeland Security at any'port-of entry unless the Department of Homeland Security has, by publication of a notice in the **Federal Register**, specified that nonimmigrant aliens subject to special registration may not depart from specific ports. This paragraph (f)(8) applies only to those nonimmigrant aliens who have been registered under paragraph (f)(3) of this section, or who have been required to register pursuant to paragraph (f)(4) of this section, and who have not been granted relief from the departure requirements under paragraph (f)(7).

(ii) *Presumption of inadmissibility.* Any nonimmigrant alien subject to special registration who fails, without good cause, to be examined by an inspecting officer at the time of his or her departure and to have his or her departure recorded by the inspecting officer shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act (8 U.S.C. 1182(a)(3)(A)(ii)), as an alien whom the Secretary of Homeland Security has reasonable grounds to believe, based on the alien's past failure to conform with the requirements for special registration, seeks to enter the United States to engage in unlawful activity.

(iii) *Overcoming inadmissibility.* An alien may overcome the presumption of inadmissibility set out in paragraph (f)(8)(ii) by making a showing that he or she satisfies conditions set by the Secretary of Homeland Security and the Secretary of State. If a consular officer, in adjudicating a new visa application by an alien that previously failed to register his or her departure from the United States, finds good cause existed for the alien's failure to register departure or that the alien is not inadmissible under section 212(a)(3)(A)(ii) of the Act, the inspecting officer at the port-of-entry, while not bound by the consular officer's decision, will consider this finding as a significantly favorable factor in determining whether the alien is admissible.

(9) *Completion of registration.* Registration under this paragraph (f) is not deemed to be complete unless all of the information required by the Department of Homeland Security and all requested documents are provided in a timely manner. Any additional re-registration that may be required and each change of material fact is a registration that is required under sections 262 and 263 of the Act (8 U.S.C. 1302, 1303). Each change of address required under this paragraph (f) is a change of address required under section 265 of the Act (8 U.S.C. 1305).

* * * * *

Dated: November 27, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–30120 Filed 12–1–03; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://*

www.access.gpo.gov/nara/nara005.html. Some laws may not yet be available.

H.R. 1588/P.L. 108–136
National Defense Authorization Act for Fiscal Year 2004 (Nov. 24, 2003; 117 Stat. 1392)

H.R. 2754/P.L. 108–137
Energy and Water Development Appropriations Act, 2004 (Dec. 1, 2003; 117 Stat. 1827)

S. 1066/P.L. 108–138
To correct a technical error from Unit T-07 of the John H. Chafee Coastal Barrier Resources System. (Dec. 1, 2003; 117 Stat. 1869)

S.J. Res. 18/P.L. 108–139
Commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years. (Dec. 1, 2003; 117 Stat. 1870)

S.J. Res. 22/P.L. 108–140
Recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research. (Dec. 1, 2003; 117 Stat. 1872)

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